

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

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 23, 2021 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall



Videoconference Information

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. <https://zoom.us/j/95641748099?pwd=ZGYvYm9uWIZyVUI5cEhyWIFWQm1SQTO9>

Passcode: 750359

Or iPhone one-tap:

+13462487799,,95641748099# US (Houston)

+16699009128,,95641748099# US (San Jose)

Or join by phone:

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

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592

Webinar ID: 956 4174 8099

International numbers available: <https://zoom.us/u/aG5ogJSmj>

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

OPENING ITEMS

1. Invocation – Pastor Jason Atchley, Greenwood Baptist Church
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:

- a. REGULAR CITY COUNCIL MEETING OF FEBRUARY 9, 2021
PACKET

4. 2021-022 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH JACOBS ENGINEERING GROUP, INC., FOR THE DESIGN OF A WASTEWATER EXTENSION TO REMOVE THE TERRELL AND PECK LIFT STATION AND REROUTE THE DISCHARGE FOR THE UTILITIES DEPARTMENT FOR A COST OF \$150,180.00; AND APPROVING \$30,036.00 FOR CONTINGENCIES (GENERAL SERVICES)
5. 2021-023 – RESOLUTION AUTHORIZING THE EXECUTION OF THE FIFTH 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 PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS AND NO ADJUSTMENT TO THE ANNUAL FEE; AND AUTHORIZING PAYMENT (ADMINISTRATIVE SERVICES)
6. 017-2021 – MOTION APPROVING AN AMENDMENT TO THAT CERTAIN LOCATION INCENTIVES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER FOR THE EXPANSION OF THE PHYSICIAN ASSISTANT STUDIES PROGRAM IN THE CITY OF MIDLAND, TEXAS (CITY MANAGER)
7. 018-2021 – 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 (CITY MANAGER)
8. 2021-024 – RESOLUTION APPROVING A GRANT OF CARES ACT FUNDS TO THE YMCA OF MIDLAND, TEXAS FOR CERTAIN COVID-19 COMMUNITY SERVICES IN THE AMOUNT OF \$241,687.00; AUTHORIZING THE EXECUTION OF ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS (CITY MANAGER)
9. 2021-025 – RESOLUTION REAPPOINTING BARRY BEAL JR. TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE INTERIM CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (COMMUNITY SERVICES)
10. 2021-026 – RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PARSLEY ENERGY OPERATIONS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 1, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,840 FEET NORTH OF EAST LOOP 250 NORTH AND 1,381 FEET WEST OF THE NORTH FAIRGROUNDS ROAD EXTENSION); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)

11. 019-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE AMENDMENT BETWEEN THE CITY OF MIDLAND AND BETA CRUDE CONNECTOR, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 44, BLOCK 38, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
12. 020-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX L.L.C.; THE PIPELINE IS LOCATED IN SECTION 10, BLOCK 38, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
13. 021-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX L.L.C., REGARDING CITY OWNED PROPERTY DESCRIBED AS SECTION 2, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
14. 022-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX L.L.C., REGARDING CITY OWNED PROPERTY DESCRIBED AS SECTION 4, BLOCK 38, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
15. 023-2021 – MOTION AUTHORIZING THE EXECUTION OF A SURFACE USE AGREEMENT BETWEEN THE CITY OF MIDLAND AND ENDEAVOR ENERGY RESOURCES, L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH, T&P R.R. CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
16. 024-2021 – MOTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO RIGHT OF WAY LICENSE BETWEEN THE CITY OF MIDLAND AND OLC KERMIT, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 5, BLOCK C24, PSL SURVEY, WINKLER AND LOVING COUNTIES, TEXAS, AND SECTIONS 7, 12, 13, 19, 20, AND 27, BLOCK C23, PSL SURVEY, WINKLER COUNTY, TEXAS (UTILITIES)

SECOND READINGS

17. 10151 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE

CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD FEBRUARY 09, 2021)

PUBLIC HEARINGS

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

18. 10152 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 30, SKYLINE TERRACE WEST, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF STILLMEADOW DRIVE AND FARGO AVENUE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE SOUTH 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 (DEVELOPMENT SERVICES)
19. 10153 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR TRACT 15, NORTH ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOLOMON LANE AND ACORN LANE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE TRACT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)
20. 10154 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF HENRY KOONTZ BOULEVARD, APPROXIMATELY 535 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)
21. 2021-027 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR RETAIL SALES ON LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WEST WADLEY AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DEVELOPMENT SERVICES)

MISCELLANEOUS

22. 015-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH MT223, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS AN APPROXIMATE 2,140-SQUARE FOOT PORTION OF SOUTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 65, AND CERTAIN OTHER NEARBY PORTIONS OF SOUTH COLORADO STREET, SOUTH LORAIN STREET, WEST WALL STREET, AND WEST MISSOURI AVENUE RIGHTS-OF-WAY, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (ENGINEERING SERVICES)
23. 10155 – DISCUSSION AND CONSIDERATION OF ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF “CITY OF MIDLAND, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021,” INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH BONDS, ESTABLISHING PARAMETERS FOR THE SALE AND ISSUANCE OF SUCH BONDS AND DELEGATING CERTAIN MATTERS TO AN AUTHORIZED OFFICIAL OF THE CITY (FINANCE)
24. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS (CITY SECRETARY’S OFFICE)

EXECUTIVE SESSION

25. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:
 - a. Section 551.071, Consultation with the City Attorney
 - a.1. Discuss matters in which the duty of the attorney(s) to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Respectfully Submitted,

Robert Patrick
Interim City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
February 9, 2021**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., February 09, 2021.

Council Members present: Patrick Payton, Spencer Robnett, Michael Trost, Scott Dufford, John Norman, Jack Ladd, Lori Blong

Council Members absent: None

Staff members present: City Attorney John Ohnemiller, Interim City Manager Robert Patrick, Assistant City Manager Morris Williams

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

OPENING ITEMS

1. Invocation
2. Pledge of Allegiance

CONSENT AGENDA

Spencer Robnett moved to approve the Consent Agenda items 3-11, excluding item(s) 6; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - a. REGULAR CITY COUNCIL MEETING OF JANUARY 26, 2021
4. 2021-019 – RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH CORE & MAIN, LP, FOR THE PURCHASE AND INSTALLATION OF CERTAIN NEPTUNE GATEWAY DATA COLLECTORS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION AT A TOTAL COST OF \$593,777.80 (GENERAL PACKET a.1 February 23, 2021)

SERVICES)

5. 009-2021 – MOTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE DIRECT CASE RATE PRACTITIONER AGREEMENTS WITH ANESTHESIA MEDICAL GROUP OF PERMIAN BASIN, MIDLAND EMERGENCY MANAGEMENT, PLLC, AND PERMIAN BASIN ANESTHESIA, PLLC, AND A DIRECT CASE RATE FACILITY AGREEMENT WITH MIDLAND MEMORIAL HOSPITAL, AND TO EXECUTE ANY OTHER DOCUMENTS AND TO TAKE ANY OTHER ACTIONS NECESSARY TO GIVE EFFECT TO SAID AGREEMENTS (ADMINISTRATIVE SERVICES)
7. 011-2021 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF WEST 191 INDUSTRIAL PARK, SECTION 6, BEING A PLAT OF A 33.95-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 171-FEET EAST OF NORTH FARM-TO-MARKET ROAD 1788, EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)
8. 012-2021 – MOTION AUTHORIZING THE INTENT OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ESTABLISH THE SCHEDULE FOR 2021 CDBG GRANT APPLICATION CYCLE (DEVELOPMENT SERVICES)
9. 2021-020 – RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO PURCHASE AN APPROXIMATE 0.076-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 104A, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BEAL PARKWAY AND THOMASON DRIVE); AUTHORIZING THE INTERIM CITY MANAGER TO OBTAIN AN APPRAISAL, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID REAL PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD A CLOSING; AUTHORIZING THE EMPLOYMENT OF LEGAL COUNSEL; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (ENGINEERING SERVICES)
10. 013-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND PINNACLE MIDSTREAM II LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 20, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
11. 2021-021 – RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT WITH CHAMBERS TRACTOR SERVICE OF MIDLAND, TEXAS, FOR THE DEMOLITION OF A STRUCTURE LOCATED ON LOT 3, BLOCK 2, SOLOMON ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING PAYMENT (GENERAL SERVICES)

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

6. 010-2021 – MOTION AUTHORIZING THE EXECUTION OF A LAND LEASE
PACKET a.2 February 23, 2021

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

Council Member Robnett asked if this had been bid. Airports Director Justine Ruff confirmed that it had been bid with the other one, but this one had no interest. She confirmed that this is the final space left.

Lori Blong moved to approve Motion No. 010-2021; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

SECOND READINGS

12. 10145 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 11, CORRECTION PLAT OF WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WINDHAVEN DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10145.

Michael Trost moved to approve the second and final reading of Ordinance No. 10145; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

13. 10146 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 56A, BELMONT ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED
PACKET a.3 February 23, 2021

DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 360 FEET EAST OF RANKIN HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10146.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10146; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

14. 10147 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 316-SQUARE FOOT PORTION OF LOT 2E, BLOCK 4, CORPORATE PLAZA, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 366 FEET EAST OF NORTH BIG SPRING STREET AND APPROXIMATELY 876 FEET NORTH OF CORPORATE DRIVE), WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN CONNECTION WITH A FOOD AND BEVERAGE SALES STORE FOR OFF-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10147.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10147; seconded by John Norman.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

15. 10148 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.08-ACRE TRACT OF LAND OUT OF TRACT 3, MIDKIFF HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED

APPROXIMATELY 160 FEET WEST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 250 FEET SOUTH OF ANDREWS HIGHWAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10148.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10148; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

16. 10149 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.58-ACRE TRACT OF LAND LOCATED IN SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JANUARY 26, 2021)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10149.

Lori Blong moved to approve the second and final reading of Ordinance No. 10149; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

PUBLIC HEARINGS

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

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

Mayor Payton opened the public hearing at 10:09 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

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

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10150.

Development Services Director Chuck Harrington gave a brief overview of the item noting the applicant is requesting a special exception to build multi-family housing that does not meet requirements. Staff feels it would be better to build two duplexes because of the size of the lot. Staff does not support this item. No letters of objection were received. If approved, staff asks that conditions A and B be included. Mr. Harrington clarified this is a drastic deviation. Normally multi-family requires 2 acre lots and this property is .316 acres. It was noted that the building comes within five feet of the back of the property.

Mayor Payton opened the public hearing at 10:15 a.m.

Liliana Vergara, 2100 N. Main Street, said she understood what they are saying about this project being too big and is willing to do modifications to her plan. Council Member Blong asked Ms. Vergara to confirm she was willing to make changes that staff is recommending. Ms. Vergara confirmed she was.

There being no one else wishing to speak, the public hearing was closed at 10:18 a.m.

The item died for lack of a motion. Mayor Payton asked staff to explain to Ms. Vergara what she needs to do to bring it back for Council consideration.

19. 10151 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00);

ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10151.

Mayor Payton opened the public hearing at 10:19 a.m.

Bob Gage, TN, explained that they are required to build an eight-foot tall masonry fence between their property and the surrounding property. To their north is a church that is not in use. They are requesting to reduce the fence from eight feet to six feet commercial grade wood privacy fence. They tried unsuccessfully to contact the owner of the property.

There being no one else wishing to speak, the public hearing was closed at 10:22 a.m.

Lori Blong moved to approve the first of two readings of Ordinance No. 10151; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

MISCELLANEOUS

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

Development Services Director Chuck Harrington gave a brief overview of the item noting the applicant is requesting a private valet parking service where vehicles would pull into existing City parking spaces, they would valet park the vehicles in a nearby parking garage and return the vehicles to the same area. He noted that there is already a shortage of parking spaces in downtown and does not feel it is best to remove available parking spaces to accommodate a private service. John Ohnemiller clarified that they would pay \$1,000/year for leasing the area.

It was suggested this item be deferred until more information could be obtained.

Scott Dufford moved to defer Motion No. 015-2021; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Blong

NAY: None

ABSTAIN: None

ABSENT: Ladd

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

Council Member Blong reported she asked staff to put this on the agenda after being contacted by property owners. There is currently a moratorium, through March 31, on evictions for non payment of rent. There is no incentive for renters to seek rental assistance because they know they cannot be evicted. In some cases, rent has not been paid for 6-8 months and the owner of the property is having difficulty in making their mortgage and tax payments and could lose custody of their property. There are programs available to cities with a population of more than 200,000 people and the State of Texas is working on a program, but there is nothing available at this time. She is not proposing to allocate additional money, but suggested using the money that was previously allocated to allow landlords to apply on behalf of their renters for rental assistance. This will not be available for multi-family or investment groups. It will be available for Midland residents who are landlords. She added that there is currently chatter that the moratorium on evictions will be extended beyond March 31. City Attorney John Ohnemiller clarified that whatever Council decides today, this program will not affect whether or not someone can get evicted.

Interim City Manager Robert Patrick clarified that they would like to use the program that is currently in place for larger cities. Council Member Blong reported she has been in contact with the non-profits that are currently administering the funds previously allocated and they could handle this item as well.

Lori Blong moved to approve Motion No. 016-2021; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Payton, Dufford, Norman, Ladd, Blong

NAY: Robnett

ABSTAIN: Trost

ABSENT: None

EXECUTIVE SESSION

Mayor Payton recessed the meeting to go to Executive Session at 10:54 a.m.

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

a. Section 551.071, Consultation with the City Attorney

PACKET

a.8

February 23, 2021

MINUTES

Page 8

February 9, 2021

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

All the business at hand having been completed, the meeting adjourned at 11:29 a.m.

PASSED AND APPROVED February 23, 2021.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Meeting

Item Number: 4
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH JACOBS ENGINEERING GROUP, INC., FOR THE DESIGN OF A WASTEWATER EXTENSION TO REMOVE THE TERRELL AND PECK LIFT STATION AND REROUTE THE DISCHARGE FOR THE UTILITIES DEPARTMENT FOR A COST OF \$150,180.00; AND APPROVING \$30,036.00 FOR CONTINGENCIES (GENERAL SERVICES)

Purpose:

Approval of a resolution authorizing the execution of a Professional Services Agreement with Jacobs Engineering Group, Inc. for the design of a wastewater extension to remove the Terrell and Peck lift station and reroute the discharge.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the Utilities Operating Budget and will be transferred to a capital project in Fund 305.

Discussion:

Resolution 2020-091 approved the selection of Jacobs Engineering Group, Inc. for performance of on-call engineering support services for the Utilities Department over the next five years. Any agreement exceeding \$100,000.00 shall not become effective until approved by City Council. This project will analyze the ability to remove the lift station at the intersection of Terrell and Peck that is in the front yard of a residence. Please see the attached memo from Carl Craig, PE, Utilities Director, for additional information.

Therefore, please consider a resolution authorizing the execution of a professional services agreement with Jacobs Engineering Group, Inc. of Dallas, Texas for the design of a wastewater extension to remove the Terrell and Peck lift station and reroute the discharge for the cost of \$150,180.00 plus contingencies in the amount of \$30,036.00 for a total cost of \$180,216.00.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH JACOBS ENGINEERING GROUP, INC., FOR THE DESIGN OF A WASTEWATER EXTENSION TO REMOVE THE TERRELL AND PECK LIFT STATION AND REROUTE THE DISCHARGE FOR THE UTILITIES DEPARTMENT FOR A COST OF \$150,180.00; AND APPROVING \$30,036.00 FOR CONTINGENCIES

WHEREAS, the City Council approved Resolution No. 2020-091 selecting six engineering firms to provide professional services for engineering designs and studies on an as-needed basis; and

WHEREAS, the Utilities Department has selected Jacobs Engineering Group, Inc., to provide the design of a wastewater extension to remove the Terrell and Peck lift station and reroute the discharge for the Utilities Department; and

WHEREAS, Jacobs Engineering Group, Inc., has agreed to perform said professional services at a cost of \$150,180.00; and

WHEREAS, the City Council finds that Jacobs Engineering Group, Inc., is qualified to perform said professional services; and

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

WHEREAS, the City Council finds that Jacobs Engineering Group, Inc., provides professional services for a fair and reasonable price; and

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

WHEREAS, the City Council finds it to be in the public interest to approve

\$30,036.00 for contingencies;

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

SECTION ONE. That the Interim 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 Jacobs Engineering Group, Inc., for said professional services. A copy said agreement is attached hereto as Exhibit “1” and incorporated herein for all purposes.

SECTION TWO. That the sum of \$30,036.00 for contingencies is hereby approved for said agreement.

SECTION THREE. That funds are available in the Utilities Operating Budget and are hereby transferred to a capital project in Fund 305.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Jacobs Engineering Group, Inc., from funds available in the capital project in Fund 305 upon receipt of proper invoices or statements approved by the Interim City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Carl CRAIGO, Utilities Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT

#21002206

THIS AGREEMENT is made and effective the 24th day of February 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Jacobs Engineering Group, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform on call engineering services for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".
2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. 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

CITY agrees to pay COMPANY in an amount not to exceed \$ 150,180.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, 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" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 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 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event 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 24, 2021 until March 31, 2022, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole 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 documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY 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

Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City. Company shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. Company shall be solely responsible for the acts and

omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this agreement is intended or construed as creating a “Community of Pecuniary Interest” or an “Equal Right of Control” which would give rise to vicarious liability.

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

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
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Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
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Workers’ Compensation:	Statutory limits
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Employers’ Liability:	\$500,000.00 per accident or occurrence
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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 Agreement. 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 Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, 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 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.

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 OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION,

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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 BENEFICIARIES

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 OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY

AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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 laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to COMPANY: Jacobs Engineering Group, Inc.
 1999 Bryan Street, Suite 1200
 Dallas, TX 75201

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 its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-

twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company shall settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

J. **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.

K. **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.

L. To the extent that Section 2270.002 of the Texas Government Code applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Section 2270.002 of the Texas Government Code 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 constitutes a contract described by Section 552.371 of the Texas Government Code, Company

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

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

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 numbered provisions of this Agreement that precede the signature page(s), which evidences the parties' execution.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

PACKET

February 23, 2021

PROJECT BACKGROUND AND SUMMARY

The City of Midland (OWNER) owns and operates a sanitary sewage lift station located on a City-owned site at the northwest corner of the intersection of S. Terrell St. and E. Peck Ave. in Midland, TX. This lift station collects domestic raw wastewater from the nearby areas and receives the discharges from three (3) 6-inch sanitary sewers: (1) One from the north that serves residences along a back alley between E. Peck Ave. and E. Summit Ave., (2) one from the west from a mobile home community located between E. Peck Ave. and E. Longview Ave., and (3) one from the south, which collects discharges along S. Terrell St. and a short area along E. Longview Ave. The existing lift station pumps wastewater into a sanitary force main line (unknown diameter), which discharges into an existing 15-inch sanitary sewer at the intersection of E. Walcott Ave. and S. Terrell St. OWNER desires to eliminate use of the above existing lift station and reroute its flow through a new gravity line towards the south to discharge this flow into an existing 20-inch sanitary sewer line that runs along the north side of Interstate Highway I-20 at a point about 800 feet to the east of the intersection between S. Terrell St. and the I-20 west bound frontage road (the PROJECT).

The scope of this project to be performed by Jacobs Engineering Group Inc. (ENGINEER) will be to evaluate the alignment for the new sanitary sewer line that will reroute the discharges from the existing lift station, design this sewer line, produce drawings and specifications to bid the project, assist OWNER in bidding the Project, and provide engineering services during construction. This will include the following improvement items:

1. Decommission the existing lift station from service and if possible, repurpose the use of the existing lift station wetwell for reconnection of the new sanitary sewer line. If connection of the new sanitary sewer line cannot be retrofitted in the existing wetwell due to hydraulic or constructability issues, a new manhole will need to be built in the existing site where the three (3) discharge lines and the new collection line will be interconnected.
2. Construct new sanitary sewer line to reroute the existing lift station flows towards a receiving point at an existing 20-inch sanitary sewer line at the I-20 westbound frontage road. The following assumptions relate to this improvement:
 - a. From discussions with OWNER, it is assumed that the new sanitary sewer line will approximately follow the alignment shown on Exhibit 1 attached. This alignment involves approximately 1,900 linear feet of new sewer line. This routing is preferable as it makes use of an existing City right-of-way corridor along the north and east ends of an area on the east side of the intersection between S. Terrell St. and I-20 developed for a hotel and an apartment complex.
 - b. From the diameters of the sewer lines that discharge into the existing lift station, it is estimate that the peak flow conveyed by this lift station could be up to about 1,800 gallons per minute total. From ground elevation data at the existing lift station site and the new sewer line point of discharge, it appears that there may be about 8 feet of elevation drop between these two sites. This would produce a slope of about 0.4 percent, which would require a new sewer line diameter of at least 15 inches to convey the necessary flows. Unless unknown site conditions are encountered that may affect the sewer main profile, this is anticipated to be doable and would meet minimum TCEQ sewer design requirements.

The following detailed tasks will constitute the Scope of Work for this project:

A. TASK I – PROJECT START-UP

1. Prepare a PROJECT planning document to define PROJECT team, lines of communications, deliverables, schedule, and budgeting for internal use in executing the PROJECT on schedule and within budget and establishing the contents of the PROJECT start-up meeting;
2. Plan and participate in a virtual (on-line, using Microsoft Teams or other meeting hosting application) PROJECT kickoff/ chartering meeting with OWNER to confirm PROJECT scope, personnel, lines of communication, security protocols, and schedule;
3. Prepare meeting summary (meeting minutes) of the PROJECT start-up meeting and distribute to participants; and
4. ENGINEER'S Project Manager shall be the primary client contact and lead communicator to ENGINEER'S staff.

B. TASK II – PROJECT MANAGEMENT AND QUALITY ASSURANCE

ENGINEER shall manage professional services to complete the PROJECT. These services will include preparation of PROJECT controls including progress reports, action items/ decision log, OWNER/ ENGINEER team meeting agendas and minutes, schedule and invoicing. ENGINEER shall provide professional services in this Task as follows:

1. Schedule and direct regular coordination meetings with the ENGINEER'S team to coordinate PROJECT task assignments, action items, and to prepare for review meetings with the OWNER. ENGINEER will maintain an Action Item/ Decision Log to monitor PROJECT activity.
2. Schedule and conduct up to four (3) review/ progress meetings with the OWNER. These meetings shall be conducted in a virtual (online) setting. In addition to reviewing the below-described deliverables and progress at each meeting, review schedule, outstanding action items and information needs, PROJECT budget status, decisions made, and PROJECT enhancements requested. Prepare agenda and meeting materials, direct and document review meetings, and facilitate the exchange of ideas and information. Prepare draft meeting minutes to include action lists and decision lists within five (5) business days to submit to the OWNER for review and approval. Final minutes will be issued within five (5) business days of receipt of review comments or the draft minutes will become final if there are no comments received;
3. Develop a baseline schedule for the PROJECT, which will be updated throughout completion of the PROJECT to reflect changes;
4. Prepare monthly Project Summary Reports and submit with monthly invoice. The report shall contain the following elements:
 - a. Summary of work completed to date;
 - b. PROJECT budget summary;
 - c. PROJECT schedule changes;
 - d. Summary of pending actions and decisions needed from the OWNER, ENGINEER, or other stakeholders; and
 - e. Upcoming PROJECT activities;
5. Quality Assurance (QA): Develop QA/ quality control (QC) plan and conduct QA/ QC reviews of the deliverables;

6. Schedule and conduct a PROJECT closeout meeting with the OWNER, including providing a summary report and final invoice to the OWNER.
7. Take into account the OWNER'S design and cost estimating standards and adopted codes in the development of design of new facilities.

C. TASK III – PRELIMINARY DESIGN PHASE

The Preliminary Design phase will include development of the project design criteria and preliminary design information that allows the OWNER to review and approve the design criteria. This task will include the following work items:

1. Data collection – ENGINEER will develop a data needs list to be provided by OWNER. Data will consist of, but not be necessarily limited to:
 - a. As-built drawings of the existing Terrel/ Peck Lift Station.
 - b. Current and anticipated future peak flows conveyed by the existing lift station.
 - c. As-built drawings of the discharge receiving segment of the 20-inch sanitary sewer line on the westbound service road of I-20.
 - d. Available information on utilities or buried structures along the desired new sewer line alignment.
 - e. Available information on existing City right-of-way corridor(s) along the proposed new sewer line route and easements.
2. ENGINEER will conduct up to one (1) site visit to observe, review and assess the existing lift station site, walk the proposed alignment, and discuss field questions/ information with OWNER.
3. Topographic Survey and Subsurface Utility Investigation (SUE) – ENGINEER will engage a surveying/ SUE specialty firm through a subcontract to complete the following tasks:
 - a. Perform a topographic survey of the existing lift station site and the new sewer line alignment corridor from the lift station to the receiving point at I-20. It is assumed that topographic information for a 60-foot wide corridor along the pipeline alignment will be collected and included in the plans.
 - b. Collect sewer line elevation and location information at up to two (2) manholes upstream of the lift station for the three (3) 6-inch sanitary sewer lines that discharge into the lift station.
 - c. Collect sewer line elevation and location information at up to two (2) manholes downstream of the connection point at the existing 20-inch sewer line that will receive the rerouted flows at I-20
 - d. Search and establish boundaries for existing right-of-ways and easements along the corridor of the selected new sewer line alignment. It is assumed that OWNER has an existing right-of-way along the east side of S. Terrel St. and an existing right-of-way or easement corridor along the north and east ends of the area on the east side of the intersection between S. Terrell St. and I-20 developed for a hotel and an apartment complex. Based on this understanding, it is assumed that no legal descriptions or plat documents for new right-of-ways or easements will be necessary.
 - e. Complete a SUE at the existing Terrel/ Peck Lift Station site and along the selected new sewer line alignment corridor to identify existing pipelines and utilities that may affect the routing and profile of the line. Identified pipelines and utilities will be determined at Quality Level A as defined by CI/ ASCE 38-02. From preliminary review of the proposed alignment corridor, it appears there are two (2) oil and gas pipelines crossing the proposed alignment at one location and three (3) oil and gas pipelines crossing at another location. Based on this information, the Scope of Work assumes that up to six (6) "pothole" locations will be required, five (5) for the above pipelines and one (1) extra for any other utility identified during SUE.

4. Geotechnical Investigation – ENGINEER will engage a geotechnical firm through a subcontract to complete the below tasks. If OWNER provides geotechnical reports associated with the Peck/ Terrell Lift Station and/ or other project in the PROJECT area near I-20, the proposed scope may be reduced or eliminated.
 - a. Perform a geotechnical field investigation including completion of up to two (2) shallow boreholes along the selected new sewer main alignment and laboratory evaluation of taken samples related to parameters needed for design.
 - b. Generate a geotechnical report that summarizes field and laboratory work and results and provides pipeline design recommendations, including corrosion concerns if any.
5. Basis of Design Determination – ENGINEER shall review all data collected from the OWNER and through its own field investigations and develop a preliminary design of the improvements in a technical memorandum for OWNER's review and approval before proceeding to the detailed design phase. This memorandum will generally include the basis of design of the improvements, including evaluation of the improvements needed at the upstream and downstream connection points, verification of the recommended alignment, hydraulic evaluation of the new sewer line and recommendation of pipe diameter and material, the collected survey/ SUE and geotechnical information, and an initial engineer's opinion of probable construction cost (EOPCC). An 11x17-sized figure showing the field information and preliminary alignment will be included. An electronic copy of this memorandum in PDF format will be provided to OWNER for review.
6. Review Meeting – OWNER and ENGINEER will conduct a Preliminary Design review meeting in a virtual setting (on-line, using Microsoft Teams or other meeting hosting application) to receive comments and approval from OWNER to proceed with detailed design of the proposed improvements.

D. TASK IV – DETAILED DESIGN PHASE

The Scope of Services includes detailed design services and the issuance of contract documents for construction. This phase will include the following work items::

1. ENGINEER will provide 50%, 90% and 100% submittal sets of drawings and specifications. Submittal sets will consist of 3 half-size prints of the drawings and 1 set of specifications and one electronic package in PDF format:
 - a. 50% Design. This includes 50% level drawings (preliminary lift station demo plan and modifications and sewer line plan and profile, without details) and technical specifications and an updated engineer's opinion of probable construction cost (EOPCC).
 - b. 90% Design. This includes complete set of drawings and front-end and technical specifications in pre-final version for review. Jacobs assumes that the City front-end documents (Division 0 documents) will be used and that the Division 1 and technical specifications will consist of Jacobs' standard specifications. This also includes an updated EOPCC.
 - c. 100% Design. This includes complete set of drawings and front-end and technical specifications in final version for regulatory review. This also includes an updated Preliminary Engineering Technical Memo, which will aid the regulators in their review. Further, this task includes assistance in resolving comments from regulators, including TCEQ.
 - d. At the intermediate milestones of 50 and 90 percent completion, OWNER and ENGINEER will conduct a review meeting of the design to gather comments and resolve questions and pending decisions needed to complete the next stage. It is assumed these meetings will be conducted in a virtual setting (on-line, using Microsoft Teams or other meeting hosting application).

- e. At each milestone, ENGINEER will complete a QA/ QC review of the design packages which will follow ENGINEER's guidelines and procedures that have been established to assure the application of industry design practices.
2. It is anticipated that the proposed improvements will generally require the following drawings:
 - a. Cover sheet and general notes, abbreviations and legend drawings (up to 4 drawings).
 - b. New sewer line plan and profile drawings. At a horizontal scale of 1"=50', it is anticipated that two (2) plan and profile drawings will be needed.
 - c. Existing lift station demolition plan and site plan showing recommended improvements (1 drawing).
 - d. Sections and details, up to two (2) drawings.
3. For the 50% and 90% review milestones, ENGINEER will deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format. For the 100% regulatory review package, ENGINEER will deliver 1 half-size print of the of the drawings and 1 hard-copy of the specifications and Preliminary Design Technical Memo and one electronic package in PDF format for use by TCEQ and the OWNER, respectively.
4. Upon regulatory review and approval, finalize drawings and specifications and produce a "For Construction" package ready for bidding and a final EOPCC.
 - a. Jacobs will deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format.
 - b. An electronic copy of the bid drawings will be delivered in either AutoCAD or MicroStation format at the OWNER's option.

E. TASK V – BID PHASE SERVICES

The Scope of Services includes bid phase services to assist the OWNER in bidding and awarding the construction contract. This phase will include the following work items:

1. Upon advertisement of the project bid by the OWNER, it is assumed that ENGINEER will make available to interested bidders copies of the bid documents for a price that will cover the cost of printing. ENGINEER will keep a log of bid document holders.
2. Assist the OWNER in conducting a pre-bid meeting with interested general contractors. Issue meeting minutes.
3. Assist the OWNER in responding to questions from bidders and issue addenda if needed.
4. ENGINEER will NOT attend bid opening and will obtain bid information from OWNER.
5. Assist the OWNER with bid tabulation and provide a bid evaluation and award recommendation letter including a bid tabulation.
6. Produce a set of "Conformed to Bid" plans and specifications and deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format. Also, deliver 1 full-size print, 1 half-size print, and one electronic PDF of the documents to the contractor.

F. TASK VI – CONSTRUCTION PHASE SERVICES

The Scope of Services includes construction phase services to assist the OWNER in management PROJECT construction. This phase will include the following work items:

1. Pre-Construction Meeting – ENGINEER will attend one pre-construction meeting with the construction contractor (the “Contractor”) to review the project communication, coordination and other procedures and discuss the Contractor’s general workplan and requirements for the PROJECT.
2. Construction Progress Meetings - ENGINEER will attend monthly construction progress meetings with the Contractor. We have assumed a construction period of 6 months. A longer construction period may require an additional fee.
3. Construction Documentation Processing – ENGINEER’s office-type engineering services during construction will be limited to the following:
 - a. Review of submittals from the Contractor, as indicated in the specifications of the construction contract. It has been assumed that, on average, each submitted item will take two (2) review cycles prior to approval and closing.
 - b. Review and response of requests for information (RFIs) from the Contractor [assumed a total of two (2)].
 - c. Preparation and issuance of work change directives associated with modifications needed due to differing site conditions or conflicting contract document information [assumed a total of one (1)].
 - d. Evaluation of change order cost information and recommendation for approval to TDCJ.
 - e. Review of the Contractor’s requests for payment and recommendation for approval to TDCJ. ENGINEER’s review will be limited to an arithmetic check and a high-level progress review based on its knowledge of construction progress from the site observations and information received from OWNER’s construction inspector.
 - f. Contractor Claims and Disputes - ENGINEER will receive letters and notices from the Contractor concerning claims or disputes between the Contractor and OWNER pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. ENGINEER will review such letters and notices and will discuss them with the Contractor as necessary to understand each such claim or dispute. ENGINEER will advise the OWNER regarding the Contractor’s compliance with the contract requirements for such claims and disputes. ENGINEER’s review and advice will be limited to the requirements of the construction contract and will not involve legal advice.
 - g. Substantial and Final Completion - ENGINEER will assist the OWNER with an inspection at substantial completion, in accordance with the contract for construction. The ENGINEER will prepare the punch list of items requiring completion or correction and make recommendations to the OWNER regarding the work being substantially complete. Based on the limited size of the PROJECT, it is assumed that a final completion inspection and punch list if needed, will be completed by the OWNER’s construction inspector or administrator.
 - h. Produce a set of "Conformed to Construction" plans and specifications and deliver 6 half-size prints of the drawings for use by the OWNER staff and one electronic package in PDF format.
4. Assumptions – The following assumptions apply to the construction phase services Scope of Work:
 - a. ENGINEER’s Scope of Work does NOT include provision of a construction resident or construction inspector. It is assumed OWNER will perform those services.
 - b. Meetings during construction will be led by the OWNER’s construction inspector or administrator, who will be responsible for issuing meeting agendas and minutes.

- c. Factory and Off-Site Tests and Inspections - No tests or inspections of work, materials and equipment for the project at off-site facilities and suppliers are anticipated.
- d. ENGINEER's construction phase services do not include environmental or hazardous materials assessments or remediation. If the event such issues are encountered during construction and ENGINEER is asked by OWNER to assist in any necessary evaluations or remediation, such services would need to be provided under a separate agreement and for additional compensation.
- e. ENGINEER will not, except as part of Additional Services, participate in judicial or alternative dispute resolution procedures for the claims or disputes from the Contractor. Any claims resolution or litigation assistance requested of ENGINEER will constitute additional services.

SCHEDULE

Upon execution of the engineering services contract and receipt of notice to proceed from OWNER, ENGINEER anticipates the following schedule for its services:

Preliminary Design – 2-1/2 months

Detailed Design – 4 months

TCEQ Approval – Up to 2 months

Produce Bid Documents – 2 weeks to 1 month

Bid Period – 1 month

Construction Contract Award – Up to 3 months

Construction Services upon Contractor's Notice to Proceed – 6 months

The above schedule is based on the following assumptions:

1. Jacobs surveying/ SUE and geotechnical subconsultants will be provided with readily access to the existing Peck/ Terrell lift station site, the proposed sewer line alignment corridor, and the manholes where existing pipeline invert elevation information collection is required.
2. It is assumed that if permits are required for crossings across existing oil and gas pipelines, such permits will be granted by the owner of those pipelines and associated easements within the period allowed between mid-Detailed Design and the generation of bid documents (5 months).
3. It is assumed that no environmental issues or hazardous materials exist underground along the proposed sewer line alignment corridor. In the event that such issues are discovered during construction, which cause a construction delay, ENGINEER may need additional compensation due to an extended schedule.

Exhibit 1 – Assumed New Sewer Line Alignment



CLIENT: City of Midland, Texas													
PROJECT: EvaluatiPeck/Terrell Lift Station Elimination and New Sewel Line Installation													
LABOR COSTS				2/10/2021 14:13									
TASK	SUBTASK	TASK DESCRIPTION	Project Manager	Project Engineer	CADD Tech	Admin	Subject Matter Expert and QC	Geotechnical Engineer	Structural Engineer	Cost Estimator	Contracts Specialist	EH&S Tecnologist	LABOR TOTAL HOURS
	NO.		Vallejo	Li, Zhen	TBD	A. Bishop	Pandey, V.	Insa, O.	Firth, Alex	TBD	Trimmer, L.	Mintz, Mike	\$
			\$247.00	\$126.00	\$140.00	\$75.00	\$238.00	\$108.00	\$228.00	\$140.00	\$132.00	\$158.00	
1		Task 1 - Project Start Up	11	6	0	0	0	0	0	0	0	2	19 \$3,789
	1.01	Prepare Project Plan	8	2								2	12 \$2,544
	1.02	Start-Up Meeting	3	4									7 \$1,245
2	---	Task 2 - Project Management	44	16	3	4	0	5	1	0	0	0	73 \$14,372
	2.01	Project Team Meetings	6	6	3			3	1				19 \$3,210
	2.02	Review Meetings (Assume 3; Virtual)	8	8		2		2					20 \$3,350
	2.03	Monthly Progress Reports and Invoicing (Assume 16)	12										12 \$2,964
	2.04	Project Controls	16										16 \$3,952
	2.05	Project Closeout	2	2		2							6 \$896
3	---	Task 3 -Preliminary Design	29	41	9	2	5	10	4	1		0	109 \$18,117
	3.01	Coordinate Survey/SUE and Geotechnical Work	4	10				4			8		26 \$3,736
	3.02	Site Visit (Assume 1)	12										12 \$2,964
	3.04	Develop Basis of Design Tech Memo	8	20	8	2	4	6	4				52 \$8,278
	3.05	Develop Initial EOPCC	2	4			1			1			8 \$1,376
	3.06	Review Meeting	2	3									5 \$872
	3.07	Issue Final Basis of Desing Tech Memo	1	4	1								6 \$891
4	---	Task 4 - Detailed Design	31	72	93	10	10	2	2	9	0	0	229 \$34,811
	4.01	Develop 50% Documents	12	32	48	2	4	1	1	6			106 \$15,994
	4.02	50% Review Meeting	2	3									5 \$872
	4.03	Develop 90% Documents	8	24	32	2	4	1	1	3			75 \$11,338
	4.04	90% Review Meeting	2	3									5 \$872
	4.05	Develop 100% Documents	2	6	12	2	2						24 \$3,556
	4.06	Coordinate Plan Approval by TCEQ	4	2									6 \$1,240
	4.07	Issue Bid Documents	1	2	1	4							8 \$939
5	---	Task 5 - Bid Phase	33	10	5	4	0	0	0	0	0	0	52 \$10,411
	5.01	Attend Pre-bid Meeting, including Preparation of Minutes	16										16 \$3,952
	5.02	Respond to Questions and Issue Addenda	2	4	1								7 \$1,138
	5.03	Attend Bid Opening	12										12 \$2,964
	5.04	Tabulate and Evaluate Bids and Make Award Recommendation	2	4									6 \$998
	5.05	Produce "Conformed to Bid" Drawings and Specs	1	2	4	4							11 \$1,359
6	---	Task 6 - Construction Phase Services	66	99	8	4	2	1	1	0	0	2	183 \$31,324
	6.01	Attend Pre-construction Meeting	12										12 \$2,964
	6.02	Attend Construction Progress Meetings (assumed 5)	24	36								2	62 \$10,780
	6.03	Review Submittals	6	40			2	1	1				50 \$7,334
	6.04	Review and Respond to RFIs (assumed 2)	2	4									6 \$998
	6.05	Process WCDs / Review C.O. Proposals (1 assumed)	2	4									6 \$998
	6.06	Review Contractor Requests for Payment (assumed 6)	1	3									4 \$625
	6.07	Coordinate Permitting from O&G Company for Pipeline Crossings	2	8	4								14 \$2,062
	6.08	Complete Substantial Completion Inspection and Issue Punh List	16										16 \$3,952
	6.09	Issue "Conformed to Construction" Drawings	1	4	4	4							13 \$1,611
TOTAL JACOBS LABOR			214	244	118	24	17	18	8	10	0	4	665 \$112,824
EXPENSES													\$37,356
													FEE \$150,180

EXPENSE COSTS				
ITEM	ITEM DESCRIPTION	UNIT		BUDGET
		COST		QTY
1	Survey	LS		\$15,000.00
2	SUE	LS		\$6,000.00
3	Geotechnical	LS		\$7,500.00
1	Postage & Freight	LS		\$200.00
2	Printing (assumed to be done in house, cost is for materials only)	LS		\$200.00
3	Travel (assume 1 person x 9 trips)	LS	Air/Lodge/Perdiem	\$4,680.00
4	Miscellaneous	LS		\$200.00
6	Mileage	LS		\$3,396.00
7	Markup (10%)	LS		\$3,396.00
TOTAL DIRECT EXPENSES				\$37,356.00

PACKET

4.24

February 23, 2021



INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Carl Craigo, PE, Utilities Director

SUBJECT: Consider a Resolution approving a contract with Jacobs Engineering Group, Inc. for the design of a wastewater extension to remove the Terrell and Peck lift station and reroute the discharge.

DATE: February 23, 2021

This project will analyze the ability to remove the lift station at the intersection of Terrell and Peck that is in the front yard of a residence. This project will have Jacobs Engineering Group, Inc. an approved on-call engineer (Resolution 2020-091) perform the task.

Wastewater collection mains have been installed along I20 with recent development, which would allow the Terrell-Peck lift station collection system to be transformed into a gravity system.

The scope of services is on a task fee bases with an amount of \$150,180 and a contingency of \$30,036 for a not to exceed amount of \$180,216. This will be paid for with Utilities Admin FY21 Operating Fund.

PROFESSIONAL SERVICES AGREEMENT

#21002206

THIS AGREEMENT is made and effective the 24th day of February 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Jacobs Engineering Group, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform on call engineering services for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".
2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. 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

CITY agrees to pay COMPANY in an amount not to exceed \$ 150,180.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, 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" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 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 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event 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 24, 2021 until March 31, 2022, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole 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 documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY 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

Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City. Company shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. Company shall be solely responsible for the acts and

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

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

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
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Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
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Workers' Compensation:	Statutory limits
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Employers' Liability:	\$500,000.00 per accident or occurrence
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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 Agreement. 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 Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, 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 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.

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 OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION,

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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 BENEFICIARIES

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 OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY

If to COMPANY: Jacobs Engineering Group, Inc.
 1999 Bryan Street, Suite 1200
 Dallas, TX 75201

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 its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-

twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company shall settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

J. **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.

K. **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.

L. To the extent that Section 2270.002 of the Texas Government Code applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Section 2270.002 of the Texas Government Code 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 constitutes a contract described by Section 552.371 of the Texas Government Code, Company

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

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

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 numbered provisions of this Agreement that precede the signature page(s), which evidences the parties' execution.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

PACKET

February 23, 2021

PROJECT BACKGROUND AND SUMMARY

The City of Midland (OWNER) owns and operates a sanitary sewage lift station located on a City-owned site at the northwest corner of the intersection of S. Terrell St. and E. Peck Ave. in Midland, TX. This lift station collects domestic raw wastewater from the nearby areas and receives the discharges from three (3) 6-inch sanitary sewers: (1) One from the north that serves residences along a back alley between E. Peck Ave. and E. Summit Ave., (2) one from the west from a mobile home community located between E. Peck Ave. and E. Longview Ave., and (3) one from the south, which collects discharges along S. Terrell St. and a short area along E. Longview Ave. The existing lift station pumps wastewater into a sanitary force main line (unknown diameter), which discharges into an existing 15-inch sanitary sewer at the intersection of E. Walcott Ave. and S. Terrell St. OWNER desires to eliminate use of the above existing lift station and reroute its flow through a new gravity line towards the south to discharge this flow into an existing 20-inch sanitary sewer line that runs along the north side of Interstate Highway I-20 at a point about 800 feet to the east of the intersection between S. Terrell St. and the I-20 west bound frontage road (the PROJECT).

The scope of this project to be performed by Jacobs Engineering Group Inc. (ENGINEER) will be to evaluate the alignment for the new sanitary sewer line that will reroute the discharges from the existing lift station, design this sewer line, produce drawings and specifications to bid the project, assist OWNER in bidding the Project, and provide engineering services during construction. This will include the following improvement items:

1. Decommission the existing lift station from service and if possible, repurpose the use of the existing lift station wetwell for reconnection of the new sanitary sewer line. If connection of the new sanitary sewer line cannot be retrofitted in the existing wetwell due to hydraulic or constructability issues, a new manhole will need to be built in the existing site where the three (3) discharge lines and the new collection line will be interconnected.
2. Construct new sanitary sewer line to reroute the existing lift station flows towards a receiving point at an existing 20-inch sanitary sewer line at the I-20 westbound frontage road. The following assumptions relate to this improvement:
 - a. From discussions with OWNER, it is assumed that the new sanitary sewer line will approximately follow the alignment shown on Exhibit 1 attached. This alignment involves approximately 1,900 linear feet of new sewer line. This routing is preferable as it makes use of an existing City right-of-way corridor along the north and east ends of an area on the east side of the intersection between S. Terrell St. and I-20 developed for a hotel and an apartment complex.
 - b. From the diameters of the sewer lines that discharge into the existing lift station, it is estimate that the peak flow conveyed by this lift station could be up to about 1,800 gallons per minute total. From ground elevation data at the existing lift station site and the new sewer line point of discharge, it appears that there may be about 8 feet of elevation drop between these two sites. This would produce a slope of about 0.4 percent, which would require a new sewer line diameter of at least 15 inches to convey the necessary flows. Unless unknown site conditions are encountered that may affect the sewer main profile, this is anticipated to be doable and would meet minimum TCEQ sewer design requirements.

The following detailed tasks will constitute the Scope of Work for this project:

A. TASK I – PROJECT START-UP

1. Prepare a PROJECT planning document to define PROJECT team, lines of communications, deliverables, schedule, and budgeting for internal use in executing the PROJECT on schedule and within budget and establishing the contents of the PROJECT start-up meeting;
2. Plan and participate in a virtual (on-line, using Microsoft Teams or other meeting hosting application) PROJECT kickoff/ chartering meeting with OWNER to confirm PROJECT scope, personnel, lines of communication, security protocols, and schedule;
3. Prepare meeting summary (meeting minutes) of the PROJECT start-up meeting and distribute to participants; and
4. ENGINEER'S Project Manager shall be the primary client contact and lead communicator to ENGINEER'S staff.

B. TASK II – PROJECT MANAGEMENT AND QUALITY ASSURANCE

ENGINEER shall manage professional services to complete the PROJECT. These services will include preparation of PROJECT controls including progress reports, action items/ decision log, OWNER/ ENGINEER team meeting agendas and minutes, schedule and invoicing. ENGINEER shall provide professional services in this Task as follows:

1. Schedule and direct regular coordination meetings with the ENGINEER'S team to coordinate PROJECT task assignments, action items, and to prepare for review meetings with the OWNER. ENGINEER will maintain an Action Item/ Decision Log to monitor PROJECT activity.
2. Schedule and conduct up to four (3) review/ progress meetings with the OWNER. These meetings shall be conducted in a virtual (online) setting. In addition to reviewing the below-described deliverables and progress at each meeting, review schedule, outstanding action items and information needs, PROJECT budget status, decisions made, and PROJECT enhancements requested. Prepare agenda and meeting materials, direct and document review meetings, and facilitate the exchange of ideas and information. Prepare draft meeting minutes to include action lists and decision lists within five (5) business days to submit to the OWNER for review and approval. Final minutes will be issued within five (5) business days of receipt of review comments or the draft minutes will become final if there are no comments received;
3. Develop a baseline schedule for the PROJECT, which will be updated throughout completion of the PROJECT to reflect changes;
4. Prepare monthly Project Summary Reports and submit with monthly invoice. The report shall contain the following elements:
 - a. Summary of work completed to date;
 - b. PROJECT budget summary;
 - c. PROJECT schedule changes;
 - d. Summary of pending actions and decisions needed from the OWNER, ENGINEER, or other stakeholders; and
 - e. Upcoming PROJECT activities;
5. Quality Assurance (QA): Develop QA/ quality control (QC) plan and conduct QA/ QC reviews of the deliverables;

6. Schedule and conduct a PROJECT closeout meeting with the OWNER, including providing a summary report and final invoice to the OWNER.
7. Take into account the OWNER'S design and cost estimating standards and adopted codes in the development of design of new facilities.

C. TASK III – PRELIMINARY DESIGN PHASE

The Preliminary Design phase will include development of the project design criteria and preliminary design information that allows the OWNER to review and approve the design criteria. This task will include the following work items:

1. Data collection – ENGINEER will develop a data needs list to be provided by OWNER. Data will consist of, but not be necessarily limited to:
 - a. As-built drawings of the existing Terrel/ Peck Lift Station.
 - b. Current and anticipated future peak flows conveyed by the existing lift station.
 - c. As-built drawings of the discharge receiving segment of the 20-inch sanitary sewer line on the westbound service road of I-20.
 - d. Available information on utilities or buried structures along the desired new sewer line alignment.
 - e. Available information on existing City right-of-way corridor(s) along the proposed new sewer line route and easements.
2. ENGINEER will conduct up to one (1) site visit to observe, review and assess the existing lift station site, walk the proposed alignment, and discuss field questions/ information with OWNER.
3. Topographic Survey and Subsurface Utility Investigation (SUE) – ENGINEER will engage a surveying/ SUE specialty firm through a subcontract to complete the following tasks:
 - a. Perform a topographic survey of the existing lift station site and the new sewer line alignment corridor from the lift station to the receiving point at I-20. It is assumed that topographic information for a 60-foot wide corridor along the pipeline alignment will be collected and included in the plans.
 - b. Collect sewer line elevation and location information at up to two (2) manholes upstream of the lift station for the three (3) 6-inch sanitary sewer lines that discharge into the lift station.
 - c. Collect sewer line elevation and location information at up to two (2) manholes downstream of the connection point at the existing 20-inch sewer line that will receive the rerouted flows at I-20
 - d. Search and establish boundaries for existing right-of-ways and easements along the corridor of the selected new sewer line alignment. It is assumed that OWNER has an existing right-of-way along the east side of S. Terrel St. and an existing right-of-way or easement corridor along the north and east ends of the area on the east side of the intersection between S. Terrell St. and I-20 developed for a hotel and an apartment complex. Based on this understanding, it is assumed that no legal descriptions or plat documents for new right-of-ways or easements will be necessary.
 - e. Complete a SUE at the existing Terrel/ Peck Lift Station site and along the selected new sewer line alignment corridor to identify existing pipelines and utilities that may affect the routing and profile of the line. Identified pipelines and utilities will be determined at Quality Level A as defined by CI/ ASCE 38-02. From preliminary review of the proposed alignment corridor, it appears there are two (2) oil and gas pipelines crossing the proposed alignment at one location and three (3) oil and gas pipelines crossing at another location. Based on this information, the Scope of Work assumes that up to six (6) "pothole" locations will be required, five (5) for the above pipelines and one (1) extra for any other utility identified during SUE.

4. Geotechnical Investigation – ENGINEER will engage a geotechnical firm through a subcontract to complete the below tasks. If OWNER provides geotechnical reports associated with the Peck/ Terrell Lift Station and/ or other project in the PROJECT area near I-20, the proposed scope may be reduced or eliminated.
 - a. Perform a geotechnical field investigation including completion of up to two (2) shallow boreholes along the selected new sewer main alignment and laboratory evaluation of taken samples related to parameters needed for design.
 - b. Generate a geotechnical report that summarizes field and laboratory work and results and provides pipeline design recommendations, including corrosion concerns if any.
5. Basis of Design Determination – ENGINEER shall review all data collected from the OWNER and through its own field investigations and develop a preliminary design of the improvements in a technical memorandum for OWNER's review and approval before proceeding to the detailed design phase. This memorandum will generally include the basis of design of the improvements, including evaluation of the improvements needed at the upstream and downstream connection points, verification of the recommended alignment, hydraulic evaluation of the new sewer line and recommendation of pipe diameter and material, the collected survey/ SUE and geotechnical information, and an initial engineer's opinion of probable construction cost (EOPCC). An 11x17-sized figure showing the field information and preliminary alignment will be included. An electronic copy of this memorandum in PDF format will be provided to OWNER for review.
6. Review Meeting – OWNER and ENGINEER will conduct a Preliminary Design review meeting in a virtual setting (on-line, using Microsoft Teams or other meeting hosting application) to receive comments and approval from OWNER to proceed with detailed design of the proposed improvements.

D. TASK IV – DETAILED DESIGN PHASE

The Scope of Services includes detailed design services and the issuance of contract documents for construction. This phase will include the following work items::

1. ENGINEER will provide 50%, 90% and 100% submittal sets of drawings and specifications. Submittal sets will consist of 3 half-size prints of the drawings and 1 set of specifications and one electronic package in PDF format:
 - a. 50% Design. This includes 50% level drawings (preliminary lift station demo plan and modifications and sewer line plan and profile, without details) and technical specifications and an updated engineer's opinion of probable construction cost (EOPCC).
 - b. 90% Design. This includes complete set of drawings and front-end and technical specifications in pre-final version for review. Jacobs assumes that the City front-end documents (Division 0 documents) will be used and that the Division 1 and technical specifications will consist of Jacobs' standard specifications. This also includes an updated EOPCC.
 - c. 100% Design. This includes complete set of drawings and front-end and technical specifications in final version for regulatory review. This also includes an updated Preliminary Engineering Technical Memo, which will aid the regulators in their review. Further, this task includes assistance in resolving comments from regulators, including TCEQ.
 - d. At the intermediate milestones of 50 and 90 percent completion, OWNER and ENGINEER will conduct a review meeting of the design to gather comments and resolve questions and pending decisions needed to complete the next stage. It is assumed these meetings will be conducted in a virtual setting (on-line, using Microsoft Teams or other meeting hosting application).

- e. At each milestone, ENGINEER will complete a QA/ QC review of the design packages which will follow ENGINEER's guidelines and procedures that have been established to assure the application of industry design practices.
2. It is anticipated that the proposed improvements will generally require the following drawings:
 - a. Cover sheet and general notes, abbreviations and legend drawings (up to 4 drawings).
 - b. New sewer line plan and profile drawings. At a horizontal scale of 1"=50', it is anticipated that two (2) plan and profile drawings will be needed.
 - c. Existing lift station demolition plan and site plan showing recommended improvements (1 drawing).
 - d. Sections and details, up to two (2) drawings.
3. For the 50% and 90% review milestones, ENGINEER will deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format. For the 100% regulatory review package, ENGINEER will deliver 1 half-size print of the of the drawings and 1 hard-copy of the specifications and Preliminary Design Technical Memo and one electronic package in PDF format for use by TCEQ and the OWNER, respectively.
4. Upon regulatory review and approval, finalize drawings and specifications and produce a "For Construction" package ready for bidding and a final EOPCC.
 - a. Jacobs will deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format.
 - b. An electronic copy of the bid drawings will be delivered in either AutoCAD or MicroStation format at the OWNER's option.

E. TASK V – BID PHASE SERVICES

The Scope of Services includes bid phase services to assist the OWNER in bidding and awarding the construction contract. This phase will include the following work items:

1. Upon advertisement of the project bid by the OWNER, it is assumed that ENGINEER will make available to interested bidders copies of the bid documents for a price that will cover the cost of printing. ENGINEER will keep a log of bid document holders.
2. Assist the OWNER in conducting a pre-bid meeting with interested general contractors. Issue meeting minutes.
3. Assist the OWNER in responding to questions from bidders and issue addenda if needed.
4. ENGINEER will NOT attend bid opening and will obtain bid information from OWNER.
5. Assist the OWNER with bid tabulation and provide a bid evaluation and award recommendation letter including a bid tabulation.
6. Produce a set of "Conformed to Bid" plans and specifications and deliver 6 half-size prints of the drawings and specifications for use by the OWNER staff and one electronic package in PDF format. Also, deliver 1 full-size print, 1 half-size print, and one electronic PDF of the documents to the contractor.

F. TASK VI – CONSTRUCTION PHASE SERVICES

The Scope of Services includes construction phase services to assist the OWNER in management PROJECT construction. This phase will include the following work items:

1. Pre-Construction Meeting – ENGINEER will attend one pre-construction meeting with the construction contractor (the “Contractor”) to review the project communication, coordination and other procedures and discuss the Contractor’s general workplan and requirements for the PROJECT.
2. Construction Progress Meetings - ENGINEER will attend monthly construction progress meetings with the Contractor. We have assumed a construction period of 6 months. A longer construction period may require an additional fee.
3. Construction Documentation Processing – ENGINEER’s office-type engineering services during construction will be limited to the following:
 - a. Review of submittals from the Contractor, as indicated in the specifications of the construction contract. It has been assumed that, on average, each submitted item will take two (2) review cycles prior to approval and closing.
 - b. Review and response of requests for information (RFIs) from the Contractor [assumed a total of two (2)].
 - c. Preparation and issuance of work change directives associated with modifications needed due to differing site conditions or conflicting contract document information [assumed a total of one (1)].
 - d. Evaluation of change order cost information and recommendation for approval to TDCJ.
 - e. Review of the Contractor’s requests for payment and recommendation for approval to TDCJ. ENGINEER’s review will be limited to an arithmetic check and a high-level progress review based on its knowledge of construction progress from the site observations and information received from OWNER’s construction inspector.
 - f. Contractor Claims and Disputes - ENGINEER will receive letters and notices from the Contractor concerning claims or disputes between the Contractor and OWNER pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. ENGINEER will review such letters and notices and will discuss them with the Contractor as necessary to understand each such claim or dispute. ENGINEER will advise the OWNER regarding the Contractor’s compliance with the contract requirements for such claims and disputes. ENGINEER’s review and advice will be limited to the requirements of the construction contract and will not involve legal advice.
 - g. Substantial and Final Completion - ENGINEER will assist the OWNER with an inspection at substantial completion, in accordance with the contract for construction. The ENGINEER will prepare the punch list of items requiring completion or correction and make recommendations to the OWNER regarding the work being substantially complete. Based on the limited size of the PROJECT, it is assumed that a final completion inspection and punch list if needed, will be completed by the OWNER’s construction inspector or administrator.
 - h. Produce a set of "Conformed to Construction" plans and specifications and deliver 6 half-size prints of the drawings for use by the OWNER staff and one electronic package in PDF format.
4. Assumptions – The following assumptions apply to the construction phase services Scope of Work:
 - a. ENGINEER’s Scope of Work does NOT include provision of a construction resident or construction inspector. It is assumed OWNER will perform those services.
 - b. Meetings during construction will be led by the OWNER’s construction inspector or administrator, who will be responsible for issuing meeting agendas and minutes.

- c. Factory and Off-Site Tests and Inspections - No tests or inspections of work, materials and equipment for the project at off-site facilities and suppliers are anticipated.
- d. ENGINEER's construction phase services do not include environmental or hazardous materials assessments or remediation. If the event such issues are encountered during construction and ENGINEER is asked by OWNER to assist in any necessary evaluations or remediation, such services would need to be provided under a separate agreement and for additional compensation.
- e. ENGINEER will not, except as part of Additional Services, participate in judicial or alternative dispute resolution procedures for the claims or disputes from the Contractor. Any claims resolution or litigation assistance requested of ENGINEER will constitute additional services.

SCHEDULE

Upon execution of the engineering services contract and receipt of notice to proceed from OWNER, ENGINEER anticipates the following schedule for its services:

Preliminary Design – 2-1/2 months

Detailed Design – 4 months

TCEQ Approval – Up to 2 months

Produce Bid Documents – 2 weeks to 1 month

Bid Period – 1 month

Construction Contract Award – Up to 3 months

Construction Services upon Contractor's Notice to Proceed – 6 months

The above schedule is based on the following assumptions:

1. Jacobs surveying/ SUE and geotechnical subconsultants will be provided with readily access to the existing Peck/ Terrell lift station site, the proposed sewer line alignment corridor, and the manholes where existing pipeline invert elevation information collection is required.
2. It is assumed that if permits are required for crossings across existing oil and gas pipelines, such permits will be granted by the owner of those pipelines and associated easements within the period allowed between mid-Detailed Design and the generation of bid documents (5 months).
3. It is assumed that no environmental issues or hazardous materials exist underground along the proposed sewer line alignment corridor. In the event that such issues are discovered during construction, which cause a construction delay, ENGINEER may need additional compensation due to an extended schedule.

Exhibit 1 – Assumed New Sewer Line Alignment



CLIENT: City of Midland, Texas													
PROJECT: EvaluatiPeck/Terrell Lift Station Elimination and New Sewel Line Installation													
LABOR COSTS				2/10/2021 14:13									
TASK	SUBTASK	TASK DESCRIPTION	Project Manager	Project Engineer	CADD Tech	Admin	Subject Matter Expert and QC	Geotechnical Engineer	Structural Engineer	Cost Estimator	Contracts Specialist	EH&S Tecnologist	LABOR TOTAL HOURS
	NO.		Vallejo	Li, Zhen	TBD	A. Bishop	Pandey, V.	Insa, O.	Firth, Alex	TBD	Trimmer, L.	Mintz, Mike	\$
			\$247.00	\$126.00	\$140.00	\$75.00	\$238.00	\$108.00	\$228.00	\$140.00	\$132.00	\$158.00	
1	Task 1 - Project Start Up		11	6	0	0	0	0	0	0	0	2	19 \$3,789
	1.01	Prepare Project Plan	8	2								2	12 \$2,544
	1.02	Start-Up Meeting	3	4									7 \$1,245
2	Task 2 - Project Management		44	16	3	4	0	5	1	0	0	0	73 \$14,372
	2.01	Project Team Meetings	6	6	3			3	1				19 \$3,210
	2.02	Review Meetings (Assume 3; Virtual)	8	8		2		2					20 \$3,350
	2.03	Monthly Progress Reports and Invoicing (Assume 16)	12										12 \$2,964
	2.04	Project Controls	16										16 \$3,952
	2.05	Project Closeout	2	2		2							6 \$896
3	Task 3 -Preliminary Design		29	41	9	2	5	10	4	1		0	109 \$18,117
	3.01	Coordinate Survey/SUE and Geotechnical Work	4	10				4			8		26 \$3,736
	3.02	Site Visit (Assume 1)	12										12 \$2,964
	3.04	Develop Basis of Design Tech Memo	8	20	8	2	4	6	4				52 \$8,278
	3.05	Develop Initial EOPCC	2	4			1			1			8 \$1,376
	3.06	Review Meeting	2	3									5 \$872
	3.07	Issue Final Basis of Desing Tech Memo	1	4	1								6 \$891
4	Task 4 - Detailed Design		31	72	93	10	10	2	2	9	0	0	229 \$34,811
	4.01	Develop 50% Documents	12	32	48	2	4	1	1	6			106 \$15,994
	4.02	50% Review Meeting	2	3									5 \$872
	4.03	Develop 90% Documents	8	24	32	2	4	1	1	3			75 \$11,338
	4.04	90% Review Meeting	2	3									5 \$872
	4.05	Develop 100% Documents	2	6	12	2	2						24 \$3,556
	4.06	Coordinate Plan Approval by TCEQ	4	2									6 \$1,240
	4.07	Issue Bid Documents	1	2	1	4							8 \$939
5	Task 5 - Bid Phase		33	10	5	4	0	0	0	0	0	0	52 \$10,411
	5.01	Attend Pre-bid Meeting, including Preparation of Minutes	16										16 \$3,952
	5.02	Respond to Questions and Issue Addenda	2	4	1								7 \$1,138
	5.03	Attend Bid Opening	12										12 \$2,964
	5.04	Tabulate and Evaluate Bids and Make Award Recommendation	2	4									6 \$998
	5.05	Produce "Conformed to Bid" Drawings and Specs	1	2	4	4							11 \$1,359
6	Task 6 - Construction Phase Services		66	99	8	4	2	1	1	0	0	2	183 \$31,324
	6.01	Attend Pre-construction Meeting	12										12 \$2,964
	6.02	Attend Construction Progress Meetings (assumed 5)	24	36								2	62 \$10,780
	6.03	Review Submittals	6	40			2	1	1				50 \$7,334
	6.04	Review and Respond to RFIs (assumed 2)	2	4									6 \$998
	6.05	Process WCDs / Review C.O. Proposals (1 assumed)	2	4									6 \$998
	6.06	Review Contractor Requests for Payment (assumed 6)	1	3									4 \$625
	6.07	Coordinate Permitting from O&G Company for Pipeline Crossings	2	8	4								14 \$2,062
	6.08	Complete Substantial Completion Inspection and Issue Punh List	16										16 \$3,952
	6.09	Issue "Conformed to Construction" Drawings	1	4	4	4							13 \$1,611
TOTAL JACOBS LABOR			214	244	118	24	17	18	8	10	0	4	665 \$112,824
EXPENSES													\$37,356
													FEE \$150,180

EXPENSE COSTS				
ITEM	ITEM DESCRIPTION	UNIT	BUDGET	
		COST	QTY	
1	Survey	LS		\$15,000.00
2	SUE	LS		\$6,000.00
3	Geotechnical	LS		\$7,500.00
1	Postage & Freight	LS		\$200.00
2	Printing (assumed to be done in house, cost is for materials only)	LS		\$200.00
3	Travel (assume 1 person x 9 trips)	LS	Air/Lodge/Perdiem	\$4,680.00
4	Miscellaneous	LS		\$200.00
6	Mileage	LS		\$3,396.00
7	Markup (10%)	LS		\$3,396.00
TOTAL DIRECT EXPENSES				\$37,356.00

PACKET

4.44

February 23, 2021



City Council Meeting

Item Number: 5
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Mark Widmann, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF THE FIFTH 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 PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS AND NO ADJUSTMENT TO THE ANNUAL FEE; AND AUTHORIZING PAYMENT (ADMINISTRATIVE SERVICES)

Purpose:

To extend the current Interlocal Management Services Agreement between the City of Midland and Midland Memorial Hospital with no fee increase.

Recommended City Council Action:

Approve

Fiscal Impact:

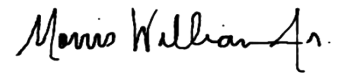
The annual fee for the Health & Wellness Center (Clinic) will remain at the current cost of \$677,854.33.

Discussion:

This amendment will provide continued quality healthcare at the Health & Wellness Center located at 709 W Louisiana Avenue to our plan members. The services provided includes:

- Walk-in services or Appointment basis.
- Episodic Care: Assessment and treatment of medical conditions that are episodic in nature and short duration.

- Management of chronic conditions.
- Routine annual exams and screenings.
- Lab Draws.
- Biometric screenings.
- Flu shot clinics
- Health Maintenance and Disease Prevention Chronic Condition Coaching



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
THE FIFTH 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 PROVIDING FOR THE HOSTING OF
INFLUENZA CLINICS AND NO ADJUSTMENT TO THE
ANNUAL FEE; AND AUTHORIZING PAYMENT**

WHEREAS, the City Council, by Resolution No. 2015-385, authorized the execution of an interlocal management services agreement with Midland County Hospital District, doing business as Midland Memorial Hospital, to provide certain medical and well-being services (the “Agreement”); and

WHEREAS, the City Council, by Resolution No. 2017-057, authorized the execution of the first amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2018-287, authorized the execution of the second amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2019-089, authorized the execution of the third amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2020-063, authorized the execution of the fourth amendment to the Agreement; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a fifth amendment (the “Amendment”) to the Agreement to provide for the hosting of influenza clinics and to maintain the annual fee of \$677,854.33 that was set out in the fourth amendment;

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

SECTION ONE. That the Interim City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, the Amendment to the Agreement with Midland County Hospital District, doing business as Midland Memorial Hospital. Said Amendment

shall be in a form substantially similar to that attached hereto and incorporated herein as Exhibit "A".

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Midland County Hospital District, doing business as Midland Memorial Hospital, pursuant to the terms of the Agreement, as amended, from funds available in the Group Health Fund (701) upon receipt of proper invoices or statements approved by the Administrative Services Director.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Mark Widmann, Administrative Services
Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

FIFTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS FIFTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

("Amendment") is made and entered into as of April 1, 2021, for and in consideration of the covenants and agreements contained herein, and in order to obtain the mutual benefits provided herein, this Amendment is made and entered by and between the City of Midland (hereafter referred to as the "City") and Midland County Hospital District dba Midland Memorial Hospital ("Hospital"), a political subdivision of the State of Texas.

Recitals:

WHEREAS, the City and Hospital entered into that certain Management Services Agreement on the 16th day of December, 2015 ("Agreement"), wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City's qualified health plan; and

WHEREAS, the City and Hospital have amended the Agreement four times: the First Amendment with an Effective Date of February 1, 2017; the Second Amendment with an Effective Date of April 1, 2018; the Third Amendment with an Effective Date of April 1, 2019; and the Fourth Amendment Effective Date of April 1, 2020; and

WHEREAS, the City and Hospital desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the City and Hospital hereby agree to amend the Agreement as follows:

Amendments:

1. **Amendment to Section 2.01.** Section 2.01 "Monthly Fee" of the Agreement is amended to incorporate rate increases as permitted under Section 2.03 "Rate Increases" and shall be replaced in its entirety with the following:

"2.01 Monthly Fee. An annual fee of \$677,854.33 will be billed in twelve (12) equal monthly installments of \$56,487.86. Within thirty (30) days of receipt of the Hospital monthly invoices, City shall pay to Hospital the amount invoiced. Hospital will notify the City immediately in writing if the City fails to pay Hospital as required herein. Failure to pay Hospital will result in loss of Health & Wellness Center access commencing sixty (60) days after the nonpayment from the date of the outstanding invoice. Hospital shall deduct \$2,083.34 per month from April 1, 2021, to March 31, 2022, for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital's employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred

by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

2. **Amendment to Exhibit A – "Scope of Services"**. Exhibit A "Scope of Services" of the Agreement is amended to include the addition of influenza clinics to the listing of primary care services. The following shall be added to the section titled "Primary care" in Exhibit A following the "Travel Medicine" subsection to read as follows:

“ • Influenza Clinics

° Midland Health will conduct two influenza clinics in locations as directed by the City of Midland. The cost of the influenza injections and accompanying costs of conducting clinics will be in addition to monthly costs shown in Section 2.01.”

3. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of the Amendment by facsimile or electronic transmission will be deemed to be an original counterpart of the Amendment so transmitted.

4. **Headings**. The headings contained in this FIFTH Amendment have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions thereof or hereof. Terms used but not defined herein shall have the meanings assigned to them in the Agreement.

5. **Effect of FIFTH Amendment**. The Agreement shall be modified only by the express provisions of this FIFTH Amendment and the Agreement as amended hereby shall otherwise remain in full force and effect.

6. **Entire Agreement**. The Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this FIFTH Amendment constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

[Remainder of page intentionally left blank. Signature pages follow.]

SIGNATURE PAGE OF

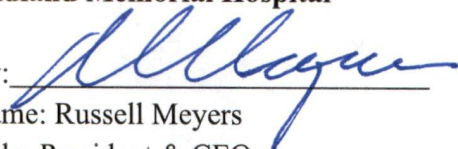
FIFTH Amendment to Management Services Agreement

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first written above.

City of Midland

By: _____
Name: _____
Title: _____

**Midland County Hospital District d/b/a
Midland Memorial Hospital**

By:  _____
Name: Russell Meyers
Title: President & CEO

FIFTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS FIFTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

("Amendment") is made and entered into as of April 1, 2021, for and in consideration of the covenants and agreements contained herein, and in order to obtain the mutual benefits provided herein, this Amendment is made and entered by and between the City of Midland (hereafter referred to as the "City") and Midland County Hospital District dba Midland Memorial Hospital ("Hospital"), a political subdivision of the State of Texas.

Recitals:

WHEREAS, the City and Hospital entered into that certain Management Services Agreement on the 16th day of December, 2015 ("Agreement"), wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City's qualified health plan; and

WHEREAS, the City and Hospital have amended the Agreement four times: the First Amendment with an Effective Date of February 1, 2017; the Second Amendment with an Effective Date of April 1, 2018; the Third Amendment with an Effective Date of April 1, 2019; and the Fourth Amendment Effective Date of April 1, 2020; and

WHEREAS, the City and Hospital desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the City and Hospital hereby agree to amend the Agreement as follows:

Amendments:

1. **Amendment to Section 2.01.** Section 2.01 "Monthly Fee" of the Agreement is amended to incorporate rate increases as permitted under Section 2.03 "Rate Increases" and shall be replaced in its entirety with the following:

"2.01 Monthly Fee. An annual fee of \$677,854.33 will be billed in twelve (12) equal monthly installments of \$56,487.86. Within thirty (30) days of receipt of the Hospital monthly invoices, City shall pay to Hospital the amount invoiced. Hospital will notify the City immediately in writing if the City fails to pay Hospital as required herein. Failure to pay Hospital will result in loss of Health & Wellness Center access commencing sixty (60) days after the nonpayment from the date of the outstanding invoice. Hospital shall deduct \$2,083.34 per month from April 1, 2021, to March 31, 2022, for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital's employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred

by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

2. **Amendment to Exhibit A – "Scope of Services"**. Exhibit A "Scope of Services" of the Agreement is amended to include the addition of influenza clinics to the listing of primary care services. The following shall be added to the section titled "Primary care" in Exhibit A following the "Travel Medicine" subsection to read as follows:

“ • Influenza Clinics

° Midland Health will conduct two influenza clinics in locations as directed by the City of Midland. The cost of the influenza injections and accompanying costs of conducting clinics will be in addition to monthly costs shown in Section 2.01.”

3. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of the Amendment by facsimile or electronic transmission will be deemed to be an original counterpart of the Amendment so transmitted.

4. **Headings**. The headings contained in this FIFTH Amendment have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions thereof or hereof. Terms used but not defined herein shall have the meanings assigned to them in the Agreement.

5. **Effect of FIFTH Amendment**. The Agreement shall be modified only by the express provisions of this FIFTH Amendment and the Agreement as amended hereby shall otherwise remain in full force and effect.

6. **Entire Agreement**. The Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this FIFTH Amendment constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

[Remainder of page intentionally left blank. Signature pages follow.]

SIGNATURE PAGE OF

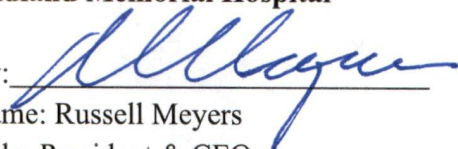
FIFTH Amendment to Management Services Agreement

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first written above.

City of Midland

By: _____
Name: _____
Title: _____

**Midland County Hospital District d/b/a
Midland Memorial Hospital**

By:  _____
Name: Russell Meyers
Title: President & CEO



City Council Meeting

Item Number: 6
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Morris Williams, Assistant City Manager
Subject: *Motion approving an amendment to that certain Location Incentives Agreement between the Midland Development Corporation and Texas Tech University Health Sciences Center for the expansion of the Physician Assistant Studies Program in the City of Midland, Texas.*
(CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on February 1, 2021 a resolution authorizing the execution of an amendment to that certain location incentives agreement between the Midland Development Corporation and Texas Tech University Health Sciences Center for the expansion of the Physician Assistant Studies Program in the City of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

This amendment adjusts the timing of the second disbursement of \$2.5M from MDC to TTUHSC for the expanded Physician Assistant Program facility on the Midland College campus. The previous wording allowed for the disbursement to be made when construction and improvements are 50% complete or January 1, 2021, whichever is sooner. The amended wording provides that the disbursement will be made when construction and improvements are 50% complete.

**AMENDMENT TO THE LOCATION INCENTIVES AGREEMENT
BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER**

THIS AMENDMENT is made and effective February 23, 2021, by and between the Midland Development Corporation ("MDC"), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code and Texas Tech University Health Sciences Center ("TTUHSC"), a Texas public institution of higher education.

WHEREAS, the MDC and TTUHSC entered into that certain Location Incentives Agreement (the "Agreement"), effective March 4, 2020, for the purpose of expanding TTUHSC's School of Health Professions Physician Assistant Studies Program; and

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

WHEREAS, the MDC and TTUHSC desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

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

1. Section 4(a)(2) is hereby amended in its entirety to read as follows:

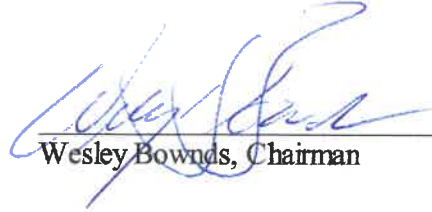
Financial assistance in the amount of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)** within thirty (30) days of architect's or TTUHSC's submission indicating the construction and improvements to the Facility are fifty percent (50%) complete.

2. The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by the MDC and TTUHSC, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Page Follows]

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

MIDLAND DEVELOPMENT
CORPORATION


Wesley Bownds, Chairman

ATTEST:


Berry Simpson, Secretary

TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER

By: _____

Printed Name: _____

Title: _____



City Council Meeting

Item Number: 7
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Morris Williams, 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. (CITY MANAGER)*

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on February 1, 2021 a resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$120,975.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park.

Recommended City Council Action:

Approve

Fiscal Impact:

\$120,975.00

Discussion:

This consulting services agreement will serve to procure new tenants for the MDC-leased properties at the Space Port Business Park. In previous years, InterFlight Global has connected the MDC to current Spaceport Business Park tenants AST & Science, and Kepler Aerospace. Deliverables for this agreement include conducting a third High-Speed Aerospace Instructional and Networking Workshop, and refining business and marketing plans.

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 24th day of February, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (hereinafter called "*MDC*"), and INTERFLIGHT GLOBAL CORPORATION (hereinafter referred to as "*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 (also referred to as 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 \$120,975.00 for the consulting services described in Exhibit A, exclusive of reasonable expenses for required travel that is necessary and appropriate for the performance of said services. MDC agrees to pay Company upon presentation of proper invoice(s). The invoice(s) shall set forth all fees and costs. The MDC's Executive Director or Director of Operations must approve all additional expenses and reimbursable expenses in advance. Within 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

Exhibit A

the grounds therefor within 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:

- 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;
- f. Alcohol is not an allowable reimbursement expense;
- g. Tips for service, i.e. meals, and parking greater than 20% are not an allowable reimbursement expense;
- 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 24th, 2021 until January 31, 2022, 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

This Agreement provides for consulting services, and Company shall not assign this Agreement, in whole or in part, without the prior written consent of MDC. It is understood that the services shall be either self-performed or subcontracted by Company.

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

Any deliverables or reports provided to MDC by Company under this Agreement shall become the sole property of MDC and shall be delivered to MDC. Company may make copies of any and all instruments of service for its files.

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.

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.

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.

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 WILL 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 WILL 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 WILL 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 WILL 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.

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. 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 laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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. Lorraine, Suite 610
 Midland, Texas 79701

If to COMPANY: InterFlight Global Corporation
Miami Center, 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 original and seven 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 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.

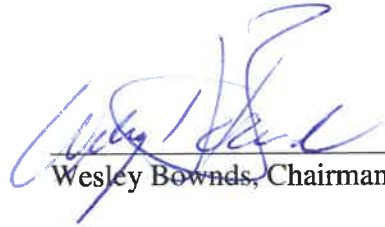
J. Prompt Pay Act. MDC and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

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.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT CORPORATION


Wesley Bownds, Chairman

ATTEST


Berry Simpson, Secretary

[Signature Page Follows]

INTERFLIGHT GLOBAL CORPORATION

By: Yvette Garcia Bordes

Name: Yvette Garcia Bordes

Title: Partner

STATE OF Florida §
§
COUNTY OF Polk §

BEFORE ME, the undersigned authority, on this 28th day of January, 2021, personally appeared, Yvette Garcia Bordes of INTERFLIGHT GLOBAL CORPORATION, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated. Type of ID produced Driver License

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 28th day of January, 2021.



Sage Wilson
Sage M Wilson
Notary Public, State of Florida

Notarized online using audio-video communication



MIDLAND AIR & SPACEPORT BUSINESS PARK DEVELOPMENT
HIGH SPEED AEROSPACE TRANSPORTATION WORKSHOPS
MASTER, BUSINESS AND MARKETING PLANS

~ CONTRACT RENEWAL ~



Tuesday, December 29th, 2020

Presented to: Mr. John Trischitti, Executive Director, Midland Development Corporation



InterFlight Global

Intelligent Aviation & Aerospace Solutions

Tuesday, December 29th, 2020

Mr. John Trischitti, Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, TX 79701

Dear Mr. John Trischitti:

InterFlight Global Corporation (IFG) is pleased to present you with this contract renewal proposal to continue to **augment MDC's efforts to select, attract and retain high quality aerospace tenants as lessees, developers and investors of the available space(s), land and properties.** Our highly specialized aerospace and defense industries approach to marketing and sales allows us to identify, attract and assist MDC to close deals with selected tenants. Our unique consultative-brokerage methodology involves cost effective "inbound" prospects visits to induce leases.

Some of Midland's successes include: IFG was successful in identifying and attracting AST&Science as an anchor tenant for the Hangar and facilities in lots M, N and H in late 2018, AST&Science has insourced its wholly owned subsidiary Nano Avionics to Midland, adding jobs and an industry "magnet" effect. Moreover, AST&Science has recently been valued at \$1.8 Billion on a SPAC path to become a publicly traded company.

In 2019 we were successful in identifying and attracting Kepler Aerospace for Building O and the MACC as well as adjacent lots J, K and L. Kepler has signed MOU's with FAST, a NASA affiliated research leader from Houston, planning on an incremental move to Midland. Kepler has also signed an MOU with O-G Launch, a startup company intending to base Space Jet 757 aircraft in Midland in support of parabolic flights and air-launch services, giving the Spaceport much anticipated space mission flight activities.

We are now fully focused, and have a qualified pipeline of potential tenants, developers and investors, for the remaining land lots, both airside and non-airside, derived from our activities of the last three years. We are careful, yet confident, that we will have two or three more tenants established on the remaining business park land. IFG expects that the remaining land will be fully leased, by year end 2023.

The following renderings show the potential development of new buildings from the prospect pipelines for new tenants or expansion of existing ones, including:

- Calspan
- Kratos Aerospace
- Firehawk Aerospace
- FAST-AMEERT
- NASTAR
- Innoveering
- Starfighters Aerospace
- O-G Launch
- Dawn Aerospace (Spaceport to Spaceport Demo)
- Agile Aerospace
- Virgin Galactic (Spaceport to Spaceport Demo)

Renderings of Potential New Developments and Tenants (courtesy of BRPH):

Includes MRO-Air-Spacecraft Factory, Multi-User R&DTE Campus and Airside facilities and Northeast Airside facility.



We are firmly committed to updating and executing on the marketing and business plan, as always, with demand “pull” as the guiding principle, and in close coordination with the Midland Air and Spaceport Master Plan update due in 2021-22. Some of our planned activities include:

We will collaborate with the MDC with regulatory, legislative and thought-leadership with in-person campaigns in locations such as Washington DC, Texas-New Mexico (Spaceport to Spaceport corridors and flight demos) and with trade associations such as the Commercial Spaceflight Federation, the Global Spaceport Alliance, the Fast Forward-High Speed Flight Think Tanks, and others.

We will produce the 4th annual *High-Speed Aerospace Developmental, Instructional and Networking Workshop (HSAT Workshop)*, building on and growing the already highly regarded and very successful two workshop editions produced in the previous two years of 2018, and 2019 and third to be held in May of 2021 (delayed due to COVID-19).

The 2021, 4th edition is scheduled to take place December 9th and 10th, 2021 and is expected to keep increasing in size, quality and relevance to the industry, government, academia and as before, fully focused on development of UTPB, Midland College and other STEM related local education and community stakeholders.

The 4th edition of the HSAT Workshop will also serve to firmly place the Midland Air and Spaceport as the US leader in high-speed flight transportation technologies and as a hub for related products and services for incubation, acceleration and development.

An important area of development will be the high speed-and-altitude airspace corridors enabling Midland to host supersonic, hypersonic and sub/orbital space flights for R&DTE and Point-To-Point initial demonstrations. A key demonstration will be the world’s first suborbital Spaceport-to-Spaceport return flight linking Spaceport Midland and Spaceport America.

The FAA, and its Center of Excellence for Commercial Space Transportation, will be involved in HSAT and it will further enhance their footprint in Midland. First, by making UTPB Colleges of Business and Engineering Center of Excellence affiliate research Members and second, by giving the Midland Air and Spaceport added gravitas at the FAA and FAA AST headquarters in DC.

We are working closely with the UTPB College of Engineering and Business’ Deans, faculty, and consultants to add aerospace, aviation and space startups to setup base in the new, MDC funded, incubator center located at the College of Engineering’s CEED building.

The Workshop will remain a two-day event carefully prepared over several months, with various precursor “inbound” prospects visits and familiarization trips to the Business Park. In the workshop, highly qualified industry-respected presenters and leaders will again deliver locally relevant and compelling content including technical, industrial, financial, academic and commercial aspects around the workshop theme.

The first day will include presentations, panels, keynote speeches as well as a welcome cocktail and a dinner event. The second day will be open for one-on-one meetings among the participants, MDC and other Midland political, economic and supply chain stakeholders. Like the UTPB, Midland College and others.

For the 2021 HSAT edition, we will work on three new areas; first, adding ground based technologies (i.e telemetry and operations control equipment), second, flight demonstrations (i.e. supersonic and experimental) ✓

aircraft models and flying articles), and third, bringing in media and international participants. We intend to bring between three and six airport, spaceport and related developers, investors and business re-location consultants, to bring in revenues for other facilities and land available.

The workshop's main themes remain the same, with an intense focus on airspace corridors and Spaceport to Spaceport Demonstration flights:

- **Commercial Supersonic, Hypersonic and Orbital Air and Space Transportation**
 - **Midland Air and Spaceport as the US Center of Excellence and Hub for high speed aerospace transportation research, development, training, testing and evaluation.**

The workshop will be held in the Auditorium at the UTPB (The University of Texas of the Permian Basin) again. The workshop targets between 50-75 attendees representing highly qualified prospective new tenants. Prospect tenants will come from top tier, private and public aerospace, space and aviation industries, both established and "well-heeled" new aerospace entrants.

During the preparations, IFG and MDC will market, sell and promote the properties available for lease. IFG's efforts will effectively serve to augment Midland's Air & Spaceport Business Park business development, marketing and sales activities, as a temporary outsourced Directorship in close coordination with the MDC Executive Director (John Trischitti) and Director of Operations/CFO (Sara Harris) as well as the Airport Director (Justine Ruff) and IFG will also serve in the airport's Spaceport Subcommittee.

At IFG, we have domestic and international reach in both the public and private segments of both the air and space transportation industries, and very importantly in this case: at their intersection. We are fully engaged in these fast-evolving sectors and prepared to apply our expertise to your needs.

For the project, our Professional Fees are:

1. Midland Air and Spaceport Business Development – Workshops - \$105,125 (Exhibit A)
2. Midland Air and Spaceport Master, Business & Marketing Plans Development and Execution- \$15,850 (Exhibit B)

\$120,975 total (contract length of 12 months: February through January 2022), excludes travel costs.

The project will be billed in four (4) bi-monthly stages of \$30,244 each.

Thank you for the opportunity to submit this proposal. We look forward to continuing work on this important "momentum building" and financial climb for the Spaceport and the Spaceport Business Park.

Midland Spaceport, success is the only option!

Sincerely,



Oscar S. Garcia, Chairman & CEO
InterFlight Global Corporation



PACKET

EXHIBIT A TASK LISTS AND COSTS – WORKSHOP

Full Project Task List and Costs:

PROJECT NAME: MIDLAND AIR AND SPACEPORT BUSINESS DEVELOPMENT-WORKSHOPS												
	PROJECT ACTIVITY	Oscar S. Garcia Project Officer (Principal)		Oscar S. Garcia Project Manager		Yvette A. Garcia Marketing Executive (Planner)		Edward Ellegood Project Coordinator/QC/Writer		Basic Activity	Man Hrs	
		Man hrs	Hourly Rate	Man hrs	Hourly Rate	Man hrs	Hourly Rate	Man hrs	Hourly Rate	\$ AMOUNT	by Activity	
Element	Air and Spaceport Business Development-Workshop		275		200		200		150			
1.1	Alignment with MAF General Business Dev Mission/Vision/Values Statemen	5	\$ 275	10	\$ 200	15	\$ 200	5	\$ 150	\$7,125	35	
1.2	Workshop Design and Integration MAF Master-Business Plan	5	\$ 275	5	\$ 200	15	\$ 200	5	\$ 150	\$6,125	30	
1.3	Workshop Attendance One on One Promotion, Sales and Marketing	10	\$ 275	20	\$ 200	15	\$ 200	5	\$ 150	\$10,500	50	
1.4	Workshop Attendees Preparations for Visit MAF-Logistics	5	\$ 275	8	\$ 200	15	\$ 200	2	\$ 150	\$6,275	30	
1.5	Workshop Contents-Leading to sales, leasing and investment in MAF	5	\$ 275	10	\$ 200	15	\$ 200	2	\$ 150	\$6,675	32	
1.6	Workshop Marketing Collaterals, Promotion and PR	5	\$ 275	5	\$ 200	15	\$ 200	1	\$ 150	\$5,525	26	
1.7	Final Preparations-Logistics	5	\$ 275	7	\$ 200	15	\$ 200	5	\$ 150	\$6,525	32	
1.8	Post Workshop Reports and Materials to Attendees and MAF	5	\$ 275	15	\$ 200	15	\$ 200	5	\$ 150	\$8,125	40	
1.9	Meetings/Workshop Delivery	20	\$ 275	20	\$ 200	25	\$ 200	5	\$ 150	\$15,250	70	
		65	17875	100	20000	145	29000	35	5250	72,125		
	Other Costs					SUB-TOTAL HOURLY COST				\$72,125	345	
		Per Day	Days	People		Out-of-Pocket Expenses				\$5,500		
1	5 Days 2 people	500	5	2								
		Per Trip	Trips			Production and Travel Expenses				\$27,500		
2	Travel from Denver, CO	750	3	2								
		One-Off				TOTAL LUMP SUM COST				\$105,125		
3	Workshop Production Costs	27,500										



EXHIBIT B TASK LISTS AND COSTS – MASTER, BUSINESS AND MARKETING PLAN REVIEW ~CONTINUED

PROJECT NAME: MIDLAND AIR AND SPACEPORT BUSINESS DEVELOPMENT-BUSINESS PLAN REVIEW											
	PROJECT ACTIVITY	Oscar S. Garcia Project Officer (Principal)		Oscar S. Garcia Project Manager		Yvette A. Garcia Marketing Executive(Planner)		Edward Ellegood Project Coordinator/QC/Writer		Basic Activity \$ AMOUNT	Man Hrs by Activity
		Man hrs	Hrly Rate	Man hrs	Hrly Rate	Man hrs	Hrly Rate	Man hrs	Hrly Rate		
		\$275		\$200		\$200		\$150			
Element 1	Air and Spaceport Business Development-Workshop										
1.1	Marketing Plan Execution	15	\$275	10	\$200	10	\$200	4	\$150	\$8,725	36
1.2	Workshop Design / Integration MAF Master-W/Master, Business & Marketing Plan	5	\$275	10	\$200	15	\$200	5	\$150	\$7,125	31
		20	\$5,500	20	\$4,000	25	\$5,000	9	\$1,350	\$15,850	67
										TOTAL COST	\$15,850



Oscar S. Garcia



Oscar S. Garcia is the founding Partner, Chairman and CEO of InterFlight Global Corporation (IFG), an international aerospace, aviation and space expert consulting firm in business since 1992. At the firm, he serves clients as a Senior Consultant, Board Advisor and Project Leader

in the areas of Private-Public Asset, Properties and Investments Economic Development, Strategic Planning, Finance, Marketing and Strategy. He has over twenty years of experience advising and consulting for Senior Management and Governance Boards of startup companies, joint ventures, public entities- governments and large aerospace conglomerates. His expertise includes, but it no limited to the design, set up, growth and expansion of aerospace, aviation and space related properties, assets and companies.

Oscar serves on the FAA/AST COMSTAC as a full member and Standards Working Group Chairman. He is the Chairman and of the FastForward Group and a UN-ICAO Point of Contact and Space Transportation Leader. In addition, he serves in the Commercial Spaceflight Federation (CSF) Standards, Air & Space Ports and Operations Committees. He has served in the Space Florida Board Advisory Committee, Beacon Council Action Committee Board. He serves on Embry Riddle Aeronautical University's Business School Industrial Advisory Board and Alumni Advisory Council to the President and Board of Trustees.

He is a past (2006-2007) President and current Chairman of the Aerospace Committee for the prestigious Greater Miami Aviation Association (GMAA) Board of Directors. The GMAA is today the dorsal spine of the aviation and aerospace industries socio-economic affairs in Southern Florida.

Registrations:

United Nations International Civil Aviation Organization- ICAO- Office of Outer Space Affairs (UNOOSA) USA Member and Point of Contact Suborbital Space Transportation Learning Group

US Department of Transportation-Federal Aviation Administration-Office of Commercial Space- Advisor-Commercial Space Transportation Advisory Committee (COMSTAC) Member and Chair of the Standards Working Group

Commercial Spaceflight Federation- Industry Standards Technical Committee Member

Chairman, FastForward -Global High-Speed Aerospace Transportation Think Tank (2008-Present)

Greater Miami Aviation Association (GMAA), Board Director-Committee Chair (2004-Present)

Space Florida, Business Development Advisory Committee to the Board (2006-2010)

Embry-Riddle Aeronautical University, Industry Advisory Board, College of Business, Alumni Advisory Board to the President and Trustees (2007-Present)

FAA Airline Transport Pilot License, rated on B747-400, B777 200/300 and SF340B aircraft and flight experience in a variety of simulators and general aviation aircraft

MBA, Embry-Riddle Aeronautical University, 2002

MBA, Embry-Riddle Aeronautical University, 2002

B.S. in Applied Science, Specialization in Aviation Technology and Aerospace Engineering, Thomas Edison State College/San Diego State University, 1995

International Experience

2014-2019 Transportation Research Board (TRB) and United Nations-International Civil Aviation Organization Space Learning Group-Point of Contact and Space Transportation Leader

- TRB member of commercial space, airspace integration-new users and high speed flight committees and research groups
- UN-ICAO's Space Learning Group is a UN-OOSA (Office of Outer Space Affairs) entity charged with the development of future suborbital international space transportation industry [2014-Present Commercial Space Flight Federation \(CSF\)](#)
- Associate Member and Committee Member; Standards, Air & Space Ports and Operations. CSF is the world's foremost commercial space trade association and an industry leader in front of public and private entities.

2010-2020 FAA-AST COMSTAC Working Groups: Operations, Suborbital Reusable Vehicles, Chairman Safety and Standards Working Group

- Full Committee Member (three terms) and Safety Standards Working Group Chairman in support of the Commercial Space Transportation Advisory Committee to the FAA Administrator; developing the international rulemaking, technical, regulatory, operational and commercial feasibility of suborbital vehicles, infrastructure and commerce chain wide space transportation capabilities.

2010-Present Fast Forward Project-High Speed Flight and Sub/Orbital Transportation Industry Research Group

- Project Member in support of strategic areas of research, economic, business, environmental, political, civic and technological development of the commercial suborbital transportation industry worldwide. The group is broadly supported across the aerospace industry, with key members from flight system providers (both entrepreneurial and traditional aerospace hardware companies), future operators, government agencies, commercial aero Air & Space Ports, academic organizations, and specialist consultants. Members have background ranging from traditional aviation to space applications. Reference: Dr. John Olds, President

2006-2015 Flight Research Associates-NASA AMES

- Board Advisory and Consulting Services for the development of Human Factors, Operational simulations (aircraft and ATC), Air Traffic Control (ATC) systems and technologies in support of commercial suborbital space transportation. Reference: James Miller, President

2008-2010 Space Florida-Miami Dade Aviation Department (MDAD)

- Feasibility Study for a Commercial Aero Air & Space Port in South Florida. References include: Frank DiBello, President, Space Florida; Bernie McShea, VP Business Development, Space Florida; Jose Abreu, Director MDAD; Miguel Southwell, Director Business Development, MDAD; Greg Owens, Director Real Estate and Properties, MDAD

2006-Present Rocketplane Global, Rocketcrafters, SpaceJett, 0-G Launch and Other Suborbital Initiatives



IFG

InterFlight Global
Intelligent Aviation & Aerospace Solutions



20/20 FORESIGHT

SINCE 1992

AIR & SPACE TRANSPORTATION

Economic & Financial Development
Strategic & Business Planning
Market Intelligence
Research & Forecasting

Advisory
Brokerage
Consulting
Finance

TRUST-EXPERTISE-RESULTS-PROFITS-SUCCESS

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+1 305 400 6789

February 23, 2021

www.InterFlightGlobal.com



City Council Meeting

Item Number: 8
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Robert Patrick, Interim City Manager
Subject: Request from the YMCA of Midland Texas to be granted \$241,000 of CARES Act funding for expenditures directly associated with COVID-19. (CITY MANAGER)

Purpose:

This item was requested to be placed on the agenda by Councilmember Trost. The YMCA has requested \$241,000 of assistance utilizing CARES act funding . Please see attachments.

Recommended City Council Action:

Approve

Fiscal Impact:

\$241,000 of CARES Act funding.

Discussion:

The YMCA of Midland has identified necessary expenditures incurred due to the public health emergency with respect to COVID-19.

City Manager's Office



Re: **Request for \$241,000 funding consideration from the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funds**

Date: February 16, 2021

From: Christine R Bearden, President/CEO, YMCA of Midland Texas

The YMCA of Midland Texas would like to request funding from the CARES Act made available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). This funding request is based on the "Coronavirus Relief Fund - Guidance for State, Territorial, Local, and Tribal Governments" dated April 22, 2020.

Our non-profit organization offers services to governmental entities such as the County, City, and independent school districts. We are one of those community agencies that has a long history of partnering with local governments to ensure that the necessary functions of those government bodies are delivered. The CARES Act provides and allows for funding to agencies like the YMCA that perform in this role.

YMCA of Midland has identified necessary expenditures incurred due to the public health emergency with respect to COVID-19. A great number of Midland county residents benefit from YMCA programs and activities. The YMCA has suffered significant financial impact as a result of COVID-19.

It is our hope that funding be granted in the amount of \$241,000 to the YMCA of Midland through the Coronavirus Aid, Relief, and Economic Security Act to underwrite these unanticipated expenditures directly associated with COVID-19 to help ensure the long term viability, continued growth and level of service of the YMCA truly depends on.

YMCA of Midland Texas

PO Box 954, Midland TX 79702
432-682-2551

Emergency Childcare

Many childcare centers in Midland opted to close during the initial shutdown leaving many essential workers without childcare options. For over two months, the Y provided emergency childcare for essential workers to over 150 children with an average daily attendance of over 50 children (infant-12 years old). Our working parents held essential jobs across the community ranging from the medical field and first responders, all parts of the energy sector, city or county employees, and grocery store or foodbank workers.

Virtual Learning Care

When MISD announced their plans for 4-weeks of virtual learning, working parents across the community scrambled to balance the demands of online school and their everyday jobs. The YMCA offered all-day care with virtual learning support to nearly 200 MISD students and families. With over 75 kids in attendance each day, we were proud to provide care and help children navigate through their school assignments and live lessons with their teachers.

Children's Learning Center

Along with our school-age childcare programs, our infant through pre-school care did not close even one day this year. While some of our parents faced job loss and reduced hours, we had the capacity to provide scholarships to these families so parents could begin searching for another job. With minimal childcare options in Midland, our center consistently maintains a healthy waiting list. Assisting these parents in keeping their sought-after spot will ensure uninterrupted services to the child and allow parents to return to work. Despite a reduction in CLC staff hours due to decreased children attendance, we were able to continue full-pay for all full-time staff in the center during the shutdown when emergency childcare was available. The center saw an average of 20 children of essential workers attend each day – with several of these new families who were not enrolled in the center prior to the shutdown and depended on the Y's services to continue working to provide for their family.

Increased Child Care Staffing Requirements

Minimum Standard Health Protocols issued by Governor Abbott called for decreased group sizes and increased staff to child ratio. This resulted in increased staffing costs and decreased revenue. Staff salaries & wages specific to COVID 19 Emergency Child Care (offered between April – May) as well as Virtual Learning Child Care (offered in September) are illustrated on page 3.

Self-Funded Unemployment

The Midland Y is a self-funded reimbursable employer specific to unemployment insurance, meaning instead of paying a set amount of unemployment tax to the state every year regardless of how many of employees file claims, we reimburse the state only for unemployment claims the state actually pays on former employees. On March 18, 2020, due to mandated shutdowns, the YMCA of Midland furloughed 126 employees. Approximately 95% of these employees were part-time. We are very grateful that the CARES Act includes a provision to offset 50% of the anticipated cost for the 126 furloughed employees, however, the cost of covering the remaining 50% is one of our largest unanticipated financial hurdles specific to COVID-19. Total unemployment cost for Q2 and Q3 of 2020 totaled (without 50% Cares) \$95,684. We are currently waiting for the Q4 unemployment invoice. To compare, in 2016 the Y paid \$0 in unemployment, \$13 in 2017, \$690 in 2018. One of our peer YMCAs, Williamson County, has received additional governmental assistance for the remaining 50% not covered by the CARES Act.

PPE, Supplies and Related Equipment

Minimum Standard Health Protocols issued by Governor Abbott equated to unanticipated costs such as increased janitorial needs, sanitation supplies, thermometers, temporary facility alterations, masks, gloves, and signage. These unexpected costs have also had a negative effect on our organization.

Financial Assistance

As a result of higher unemployment and reduced family income related to COVID 19, our YMCA is seeing an increase in scholarship requests. From April 2020 – November 2020 the Y has awarded \$131,751 in financial assistance. Of the total awarded, 64% or \$84,461 went to provide vital childcare services to families. The Y is known for providing scholarship assistance during hardship, and we know there will always be individuals in need regardless of the health or economic status of our community.

Itemized Funding Request for COVID-19 Related Expenditures:

Net Loss Specific to COVID-19 Emergency Infant – Preschool Care <i>(April – May)*</i>	\$37,094
2020 2nd & 3rd Quarter Self-Funded Unemployment Cost (Unreimbursed expense for 2nd and 3rd quarter; DO NOT HAVE 4th quarter report)	\$47,842
Supplies, PPE, and Related Equipment (Sneeze guards, temporary walls in locker rooms, masks and gloves, fogger machines, hand sanitizer, other)	\$25,000
Total Financial Assistance awarded April - December 2020 <i>(Child Care = \$84,461)</i>	\$131,751
TOTAL REQUESTED	\$241,687

**The Midland YMCA received \$582,725 in PPP loan funding and exhausted those funds within 11 weeks of the 24 weeks allotted. The Covered Period for this loan was April 24, 2020 to October 8, 2020. We have submitted application for loan forgiveness.*

Major Revenue Loss Due to COVID-19

September 2018 – August 2019 Comparison to September 2019 – August 2020

• Membership Revenue Loss	\$655,980
• Program Revenue Loss	\$502,599
TOTAL 12 MONTH REVENUE LOSS	\$1,158,579

September 2019 – December 2019 Comparison to September 2020 – December 2020

• Membership Revenue Loss	\$402,955
• Program Revenue Loss	\$175,264
TOTAL REVENUE LOSS IN NEW FISCAL YEAR COMPARED TO LAST YEAR (4 months)	\$578,219

RESOLUTION NO. _____

RESOLUTION APPROVING A GRANT OF CARES ACT FUNDS TO THE YMCA OF MIDLAND, TEXAS FOR CERTAIN COVID-19 COMMUNITY SERVICES IN THE AMOUNT OF \$241,687.00; AUTHORIZING THE EXECUTION OF ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS

WHEREAS, the YMCA has provided community services to aid those affected by the Covid-19 pandemic, as stated in its funding request letter to the City of Midland, dated February 16, 2021; and

WHEREAS, the City Council finds it to be in the public interest to approve a grant of CARES Act funds to the YMCA for said services;

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

SECTION ONE. That a grant of funds to the YMCA in the amount of \$241,687.00 for said services is hereby approved.

SECTION TWO. That the execution of all related documents necessary and appropriate to effectuate the administration of said funds is hereby authorized.

SECTION THREE. That the City Comptroller is hereby authorized and directed to make payment to the YMCA in the amount of \$241,687.00, in accordance with this resolution and any documents executed in accordance with Section Two.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 9
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Tina Jauz, Director
Subject: RESOLUTION REAPPOINTING BARRY BEAL JR. TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE INTERIM CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (COMMUNITY SERVICES)

Purpose:

A resolution reappointing Barry Beal, Jr. to the Midland Downtown Park Conservancy Board of Directors.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

In August of 2018, the Midland City Council appointed three (3) directors to the Midland Downtown Park Conservancy Board of Directors. The three directors all have staggered terms. Mr. Beal's is the third to expire and he has the desire 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 includes a total of seven (7) members. Three appointed by the city, one

by the Scharbauer Foundation, one by Concho, one by the Downtown Midland Management District, and one at-large. The current city appointed directors include: Beal, Sharla Hotchkiss, and David Byrd.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION REAPPOINTING BARRY BEAL JR. TO
THE MIDLAND DOWNTOWN PARK CONSERVANCY
BOARD OF DIRECTORS; AND DIRECTING THE
INTERIM 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 Barry Beal Jr. 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 Barry Beal Jr. is hereby reappointed to the Board of Directors of the Midland Downtown Park Conservancy.

SECTION TWO. That the Interim 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., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 10
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Ron Jenkins, Oil and Gas Coordinator
Subject: RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PARSLEY ENERGY OPERATIONS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 1, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,840 FEET NORTH OF EAST LOOP 250 NORTH AND 1,381 FEET WEST OF THE NORTH FAIRGROUNDS ROAD EXTENSION); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permits to Parsley Energy Operations, LLC for the drilling of the oil and gas well: Hogan 1-24-H-2415HZ; said well being generally located 1,840 feet north of East Loop 250 North and 1,381 feet west of North Fairgrounds Road Extension. The required 30-day public comment has passed, and the Council may consider this request. Currently 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 the addition of one exhibit. Parsley Energy Operations is the surface owner and will be using 24 ft. tall sound walls on the north and west sides of the pad site during drilling and fracing. In addition, a quiet frac fleet system will be used as on previous wells at this pad

site. The tank battery for this well is located approximately 2 miles to the east in the county. Receiving support of the Oil & Gas Advisory Committee, Parsley Energy Operations, LLC is requesting the following variances:

- (1) Requests variance for twenty-four-hour fracing operations and use of a workover rig during the completion process directly following the fracing operation.
- (2) Requests a variance from landscaping. Stating the proposed fencing plan provides adequate screening from adjacent roads and parcels.
- (3) 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.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PARSLEY ENERGY OPERATIONS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 1, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 1,840 FEET NORTH OF EAST LOOP 250 NORTH AND 1,381 FEET WEST OF THE NORTH FAIRGROUNDS ROAD EXTENSION); 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 12, 2021; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's 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:

Hogan 1-24-H-2415HZ

located in Section 1, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That 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., 2021, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

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 23, 2021, considered the application of Parsley Energy Operations, LLC (“Operator”) dated November 2, 2020 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 Hogan 1-24-H-2415HZ oil and gas well shall be 2,281 feet from the south line and 1,381 feet from the east line, Section 1, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator’s application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, “Oil and Gas Well Permits Issued On or After January 1, 2010” (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 23, 2021 through February 23, 2022, 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 process directly following the fracing operations.
2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.
3. No road repair agreement 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, 2021.

CITY OF MIDLAND, TEXAS

By: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2021.

Parsley Energy Operations, LLC

By: _____

Mark Timmons

Vice President- Field Operations



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/2/2020	Operator Name (must match W-1) Parsley Energy Operations, LLC	Operator Address 1703 ECR 120, Midland, TX 79703
Representative Name Mark Timmons	Representative Address (within Midland City Limits) 1703 ECR 120, Midland, TX 79703	Rep. Tele. (432) 704-2500
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Rep. Fax 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) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Justin Smith (432) 528-1994 1703 ECR 120 Midland, TX 79703 Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Attached as Exhibit "C" 2. 3.		
<i>ATTACHED AS EXHIBIT C</i> is (a <i>Title Opinion</i> by Bryan A. Shores, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): -Undeveloped and existing oil and gas facilities		
<i>ATTACHED AS EXHIBIT D</i> is Current Tax Roll from Midland Central Appraisal District), which lists		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Hogan 1-24-H-2415HZ

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 2281' FSL and 1381' FEL-Situated in Section 1, A-11, Block X,H.P. Hilliard Survey, Midland County, TX

BHL - 2121' FNL and 340' FEL-Situated in Section 24, A-561,Block 39, T-1-S,T& P RR Co,Midland County,TX

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:

None.

(2) Operations:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Parsley will use a closed loop mud circulating system, not open reserve pits.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

PARSLEY ENERGY
[NAME OF COMPANY]

By [Signature] MARK TIMMONS
Its VICE PRESIDENT - FIELD OPERATIONS

State of TEXAS)

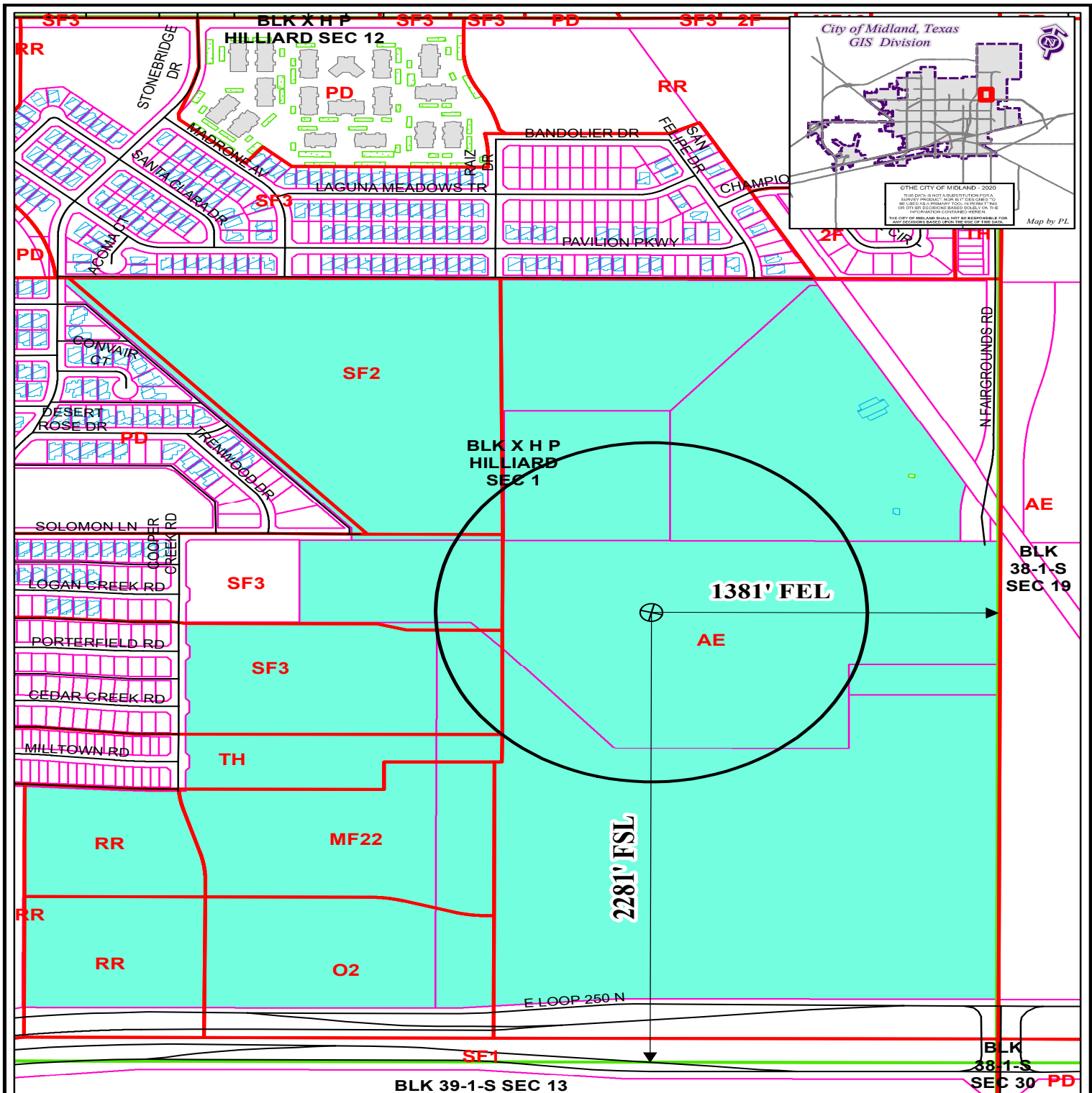
County of MIDLAND)

, 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.

[Signature]
Notary Public, State of TEXAS

[SEAL]





LOCATION AND ZONING MAP

Oil-029764-2020

Scale: 1" = 550'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2,281' FSL and 1,381' FEL, Section 1, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,840 feet north of E Loop 250 N and 1,381 feet north of N Fairgrounds Road extension.

PACKET

Hogan 1-24-H-2415HZ

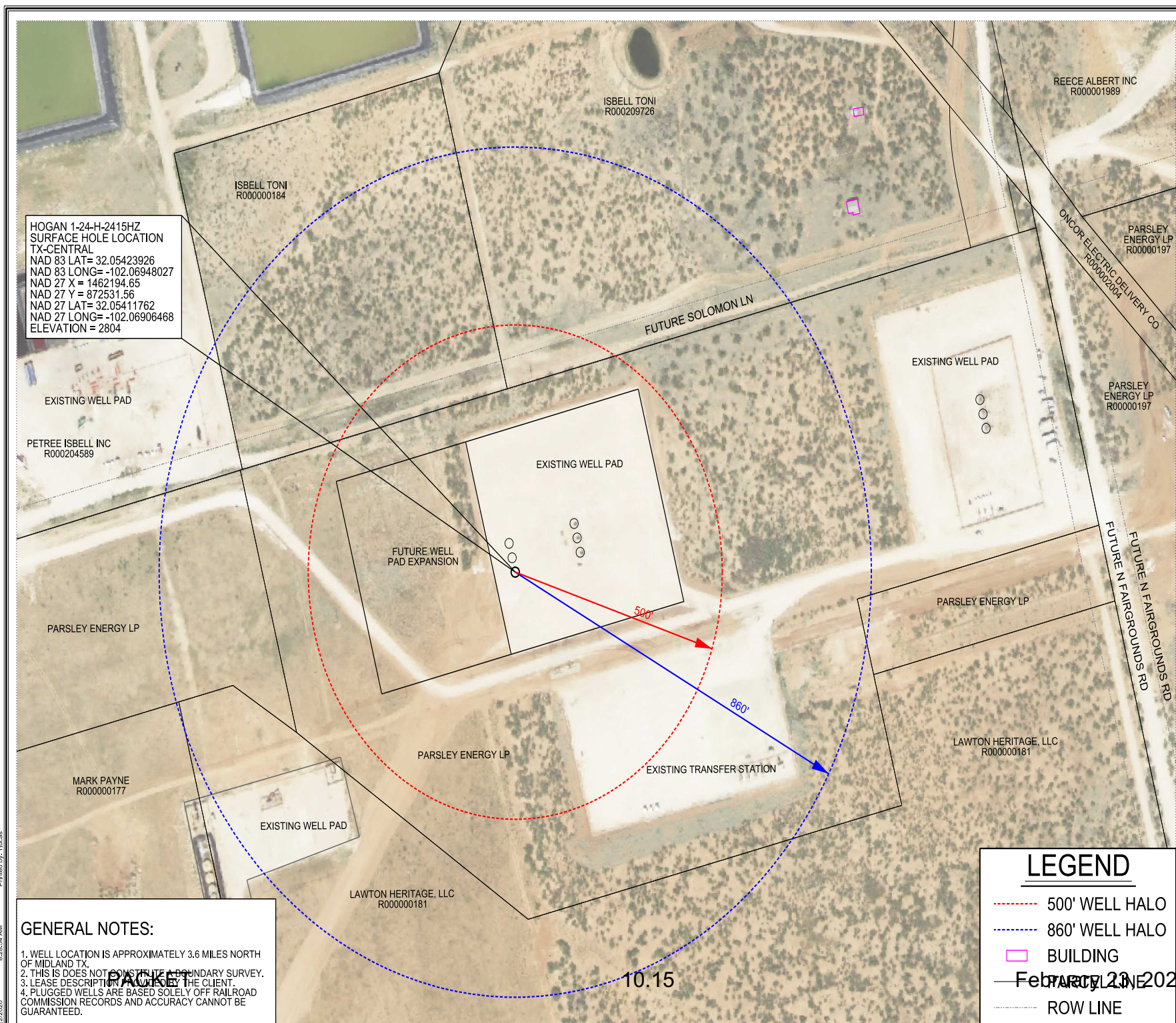
LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
10.14	COUNTRY ESTATE	03	NEIGHBORHOOD SERVICE
MF1, MF2	ONE-FAMILY DWELLING	C1, C2, C3	RETAIL
	MOBILE HOME DWELLING	IP, JP1, IP2, IP3	COMMERCIAL
	TOWNHOUSE DWELLING	LI	INDUSTRIAL PARK
	TWO-FAMILY DWELLING	HI	LIGHT INDUSTRY
	MULTIPLE FAMILY DWELLING		HEAVY INDUSTRY

February 23, 2021



HOGAN 1-24-H-2415HZ
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.05423926
NAD 83 LONG= -102.06948027
NAD 27 X = 1462194.65
NAD 27 Y = 872531.56
NAD 27 LAT= 32.05411762
NAD 27 LONG= -102.06906468
ELEVATION = 2804

EXISTING WELL PAD

PETREE ISBELL INC
R000204589

PARSLEY ENERGY LP

MARK PAYNE
R000000177

ISBELL TONI
R000000184

ISBELL TONI
R000209726

FUTURE SOLOMON LN

EXISTING WELL PAD

FUTURE WELL
PAD EXPANSION

PARSLEY ENERGY LP

LAWTON HERITAGE, LLC
R000000181

EXISTING WELL PAD

EXISTING WELL PAD

PARSLEY ENERGY LP

LAWTON HERITAGE, LLC
R000000181

REECE ALBERT INC
R000001989

PARSLEY
ENERGY LP
R00000197

ONCOR ELECTRIC DELIVERY CO
R000002004

PARSLEY
ENERGY LP
R00000197

FUTURE N FAIRGROUNDS RD
FUTURE N FAIRGROUNDS RD

EXISTING TRANSFER STATION

10.15

LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- ROW LINE

February 23, 2021

GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 3.6 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. LEASE DESCRIPTION IS BASED ON THE CLIENT.
4. PLUGGED WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.

HOGAN

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:
PARSLEY ENERGY OPERATIONS LLC.
1703 ECR 120
MIDLAND, TX 79703



303 COLORADO ST.
#3000
AUSTIN, TX 78701
PHONE: 737-704-2300

SITE PLAN PREPARED BY:



9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 1017700

WELLS AND PADS STAKED BY:



LUCHINI & MERTZ LAND SURVEYING CO.
P.O. BOX 1963
MIDLAND, TX 79702
PHONE: (432) 684-6728
TBPLS FIRM NO. 10086500

PROJECT NO: PEI 17002

FILE PATH: Petro/Exhibits/BaseSheets

DRAWN BY: CH

REVIEWED BY: AH

DATE: OCTOBER 2020

REV:



NORTH



GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'E'

AERIAL SITE PLAN
Hogan 1-24-H-2415HZ

Situated in Section 1, A-11
Block X, H.P. Hilliard Survey,
Midland County, Texas

HOGAN 1-24-H-2415HZ
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.05423926
NAD 83 LONG= -102.06948027
NAD 27 X = 1462194.65
NAD 27 Y = 872531.56
NAD 27 LAT= 32.05411762
NAD 27 LONG= -102.06906468
ELEVATION = 2804

GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 3.6 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. LEASE DESCRIPTION PROVIDED BY THE CLIENT.
4. PLUGGED WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.

LEGEND

- E — EXISTING OVERHEAD ELETRIC
- - - E - - EXISTING UNDERGROUND ELETRIC
- G — EXISTING PIPELINE
- - - G - - PROPOSED UNDERGROUND ELECTRIC
- G — PROPOSED GATHERING LINE
- G — PROPOSED ACCESS ROAD
- EXISTING ROW
- - - FUTURE ROW
- - - EXISTING EASEMENT

HOGAN

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:
PARSLEY ENERGY OPERATIONS LLC.
1703 ECR 120
MIDLAND, TX 79703



303 COLORADO ST.
#3000
AUSTIN, TX 78701
PHONE: 737-704-2300

SITE PLAN PREPARED BY:



9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 1017700

WELLS AND PADS STAKED BY:



LUCHINI & MERTZ LAND SURVEYING CO.
P.O. BOX 1963
MIDLAND, TX 79702
PHONE: (432) 684-6728
TBPLS FIRM NO. 10086500

PROJECT NO: PEI 17002
FILE PATH: Petrol/Exhibits/BaseSheets
IG-Location/SitePlan
DRAWN BY: CH
REVIEWED BY: AH
DATE: OCTOBER 2020
REV:



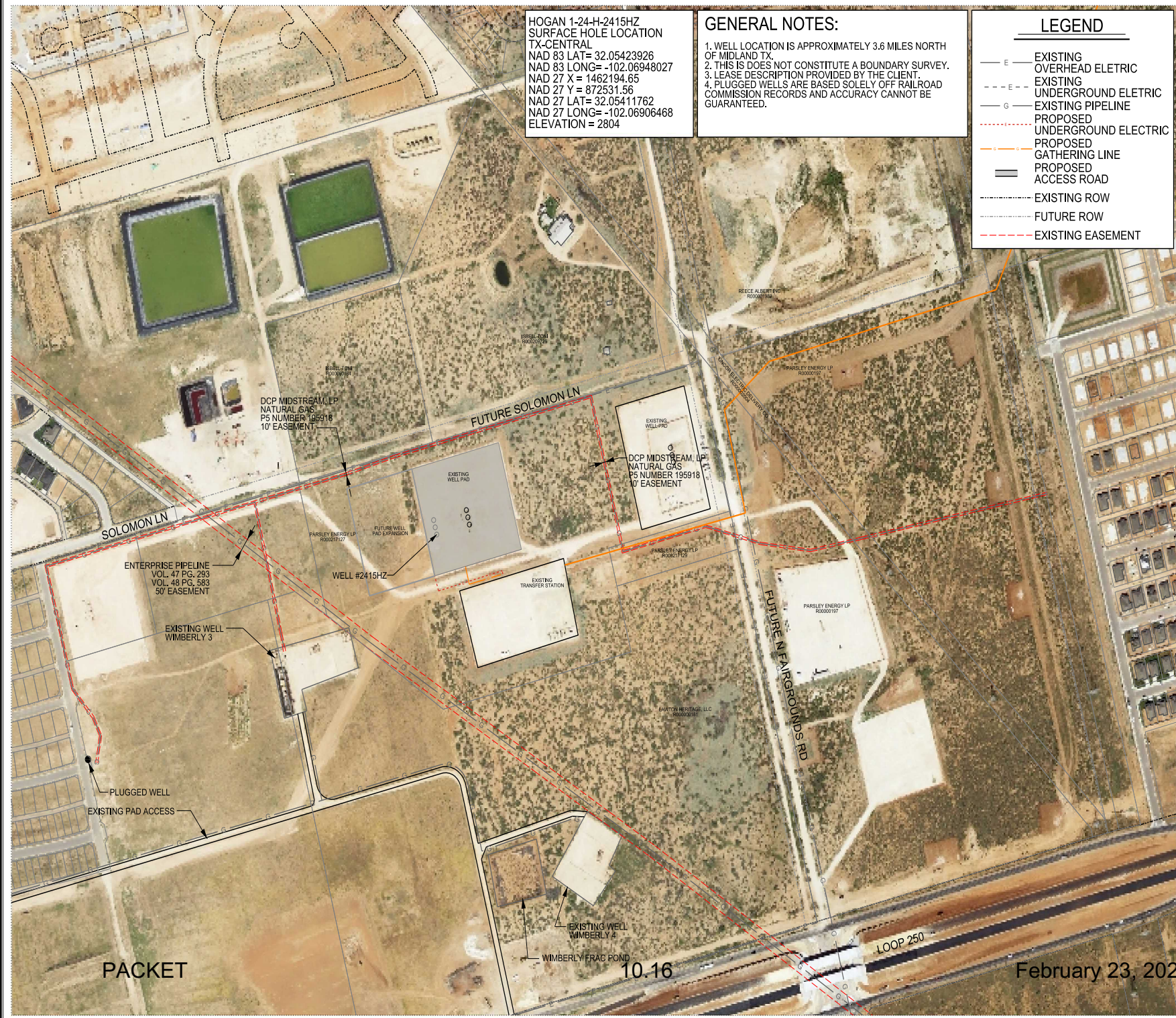
SHEET CONTENT

EXHIBIT 'G' - 1

DRILL SITE, GATHERING LINES,
ACCESS ROAD, ELECTRIC

Hogan 1-24-H-2415HZ

Situated in Section 1, A-11
Block X, H.P. Hillard Survey,
Midland County, Texas



OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 23, 2021, considered the application of Parsley Energy Operations, LLC (“Operator”) dated November 2, 2020 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 Hogan 1-24-H-2415HZ oil and gas well shall be 2,281 feet from the south line and 1,381 feet from the east line, Section 1, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator’s application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, “Oil and Gas Well Permits Issued On or After January 1, 2010” (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 23, 2021 through February 23, 2022, 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 process directly following the fracing operations.
2. No landscaping and irrigation due to adequate screening from adjacent roads and parcels.
3. No road repair agreement 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, 2021.

CITY OF MIDLAND, TEXAS

By: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February, 2021.

.

Parsley Energy Operations, LLC

By: _____

Mark Timmons

Vice President- Field Operations



City Council Meeting

Item Number: 11
Meeting Date: February 23, 2021
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a right-of-way license amendment between the City of Midland and Beta Crude Connector, LLC, regarding city-owned property described as Section 44, Block 38, Township 1 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

This amendment will allow Beta Crude Connector to shorten their approved routing from 137.59 rods to 105.38 rods to accommodate new pipeline connection points off City property. Existing route was approved by council 08/26/2020 as per ROW License # 096-2020 granting a Thirty foot (30) wide right of way on City Plant Farm property for a 16" common carrier crude oil pipeline.

Recommended City Council Action:

Approve

Fiscal Impact:

The following fees have been collected:

Application fee paid (one time): \$1,000

Amended Annual Lease Rate (105.38 rods x \$20/rod): \$2,107.60

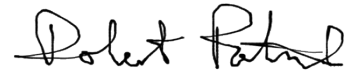
Surface Damages: collected with ROW License 096-2020

Discussion:

Right of Way remains for a common carrier, steel construction crude oil line will be sixteen inches (16) in diameter and buried forty-two inches (42) deep. The requested temporary Construction ROW will be thirty feet (30) and will terminate after construction.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement

A handwritten signature in black ink, appearing to read "Robert Patrick". The signature is fluid and cursive, with the first name "Robert" and last name "Patrick" clearly distinguishable.

City Manager's Office

**AMENDMENT TO THE RIGHT OF WAY LICENSE
BETWEEN BETA CRUDE CONNECTOR, LLC
AND
THE CITY OF MIDLAND, TEXAS**

THIS AMENDMENT is made and effective this 2nd day of February, 2021, by and between Beta Crude Connector, LLC ("Company"), and the City of Midland ("City"), a home-rule municipality.

WHEREAS, Company and City entered into that certain Right of Way License dated August 26, 2020 (the "License"), for the right to enter upon certain City-owned property for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing a sixteen (16) inch common carrier crude oil pipeline on and across City's property which was approved by the Midland City Council by Motion #096-2020; and

WHEREAS, the License has been in full force and effect since its effective date and has not been allowed to lapse; and

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

WITNESSETH:

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

- 1) The License is hereby amended so as to replace the original exhibit (referred to in the License as **Exhibit A**) in its entirety with **Exhibit "A"**, attached hereto and incorporated herein for all purposes.
- 2) Section II(A) and (C) of the License are hereby amended to read in their entirety as follows:

A. License Fee. The first year's license fee in the amount of TWO THOUSAND ONE HUNDRED SEVEN and 60/100 Dollars (\$2,107.60) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

C. Annual Fee. Licensee shall pay to the Licensor an annual fee in the amount of TWO THOUSAND ONE HUNDRED SEVEN and 60/100 Dollars (\$2,107.60) which shall be payable each year on or before the anniversary of the Commencement Date of this License.

- 3) The License, inclusive of this Amendment, is hereby ratified and affirmed by

Company and City, and the License shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

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

CITY OF MIDLAND

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

BETA CRUDE CONNECTOR, LLC

Kenny Benton, V.P. of Engineering

THE STATE OF Texas §
COUNTY OF Martin §

BEFORE ME, William Dean Newton, a notary public, on this day personally appeared Kenny Benton an officer of Beta Crude Connector, 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 company for the purposes and consideration therein expressed and in the capacity therein stated.

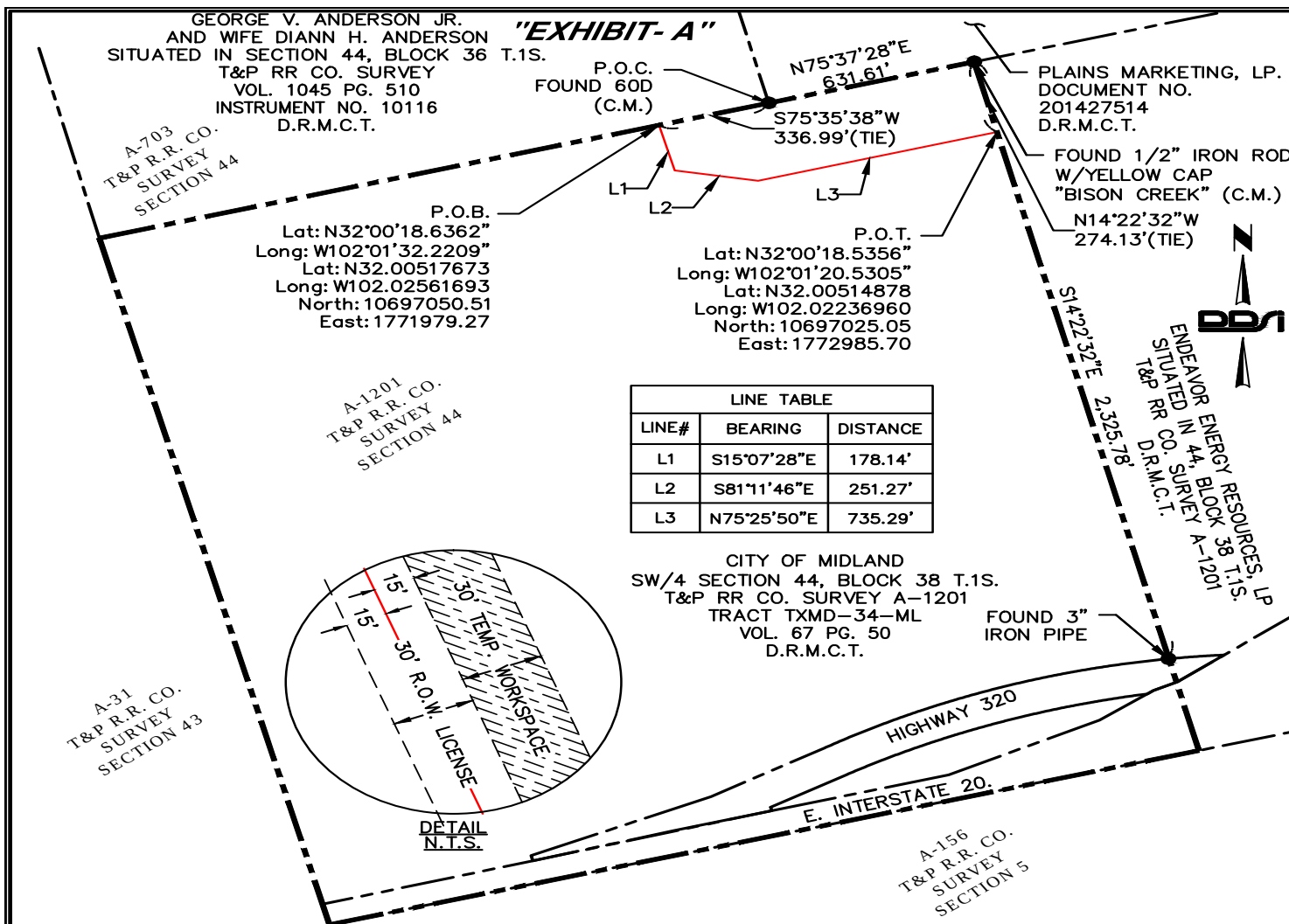
GIVEN UNDER MY AND SEAL OF OFFICE this the 2nd day of February, 2021.



Notary Public, in and for
The State of Texas

Printed Name: William Dean Newton

My Commission Expires: 06-16-2021



CENTERLINE DESCRIPTION OF A PROPOSED PIPELINE RIGHT OF WAY LICENSE

BEING A 30' WIDE PROPOSED PIPELINE RIGHT OF WAY LICENSE, HAVING SIDELINES THAT ARE 15' EACH SIDE OF THE DESCRIBED CENTERLINE ARE TO BE PROLONGED OR SHORTENED TO CONFORM TO GRANTORS PROPERTY LINES AND BEING SITUATED IN THE T&P RR CO. SURVEY, ABSTRACT NO. 1201, SOUTHWEST QUARTER OF SECTION 44, BLOCK 38, TOWNSHIP 1 SOUTH, MIDLAND COUNTY, TEXAS, AND BEING A PORTION OF A TRACT OF LAND AS DESCRIBED IN DEED TO CITY OF MIDLAND, IN VOLUME 67, PAGE 50, DEED RECORDS, MIDLAND COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 60D NAIL AT THE SOUTHWEST CORNER OF THE PARCEL DESCRIBED IN DOCUMENT NUMBER 2014-27514, DEED RECORDS MIDLAND COUNTY, TEXAS, THENCE SOUTH 75°35'38" WEST, 336.99 FEET TO THE POINT OF BEGINNING THENCE SOUTH 15°07'28" EAST, 178.14 FEET; THENCE SOUTH 81°11'46" EAST, 251.27 FEET; THENCE NORTH 75°25'50" EAST, 735.29 FEET TO THE POINT OF TERMINATION, FROM WHICH A FOUND 1/2" IRON ROD WITH YELLOW CAP STAMPED "BISON CREEK" AT THE NORTHEAST CORNER OF THE SAID SOUTHWEST QUARTER OF SECTION 44, BEARS NORTH 14°22'32" WEST 274.13 FEET.

SAID RIGHT OF WAY LICENSE CENTERLINE HAVING A TOTAL LENGTH OF 1,164.70 FEET (70.59 RODS) AND THE RIGHT OF WAY LICENSE CONTAINING 0.80 ACRES (39,941 SQUARE FEET) OF LAND MORE OR LESS.

BASIS OF BEARING: BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE, CENTRAL ZONE, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.

NOTES:

- RESEARCH HAS BEEN PROVIDED BY OTHERS.
- THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS FOR RIGHT OF WAY LICENSE PURPOSES ONLY.
- EASEMENTS, SETBACKS, AND OTHER ENCUMBRANCES ARE NOT SHOWN BY AGREEMENT WITH CLIENT.
- (CM)= CONTROLLING MONUMENT
- D.R.M.C.T. FOR "DEED RECORDS, MIDLAND COUNTY, TEXAS"

SURVEYOR'S CERTIFICATE

I, JASON S SCYOC, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6686, STATE OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED EXHIBIT WAS PREPARED FROM AN ACTUAL ON THE GROUND SURVEY UNDER MY DIRECT SUPERVISION AND WAS PREPARED FROM PUBLIC RECORDS WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE.

DATE OF SIGNATURE: 06-17-2020
JASON S. SCYOC R.P.L.S. NO. 6686

DOWNTOWN DESIGN SERVICES, INC.
1127 AURARIA PARKWAY, STE. 203
DENVER, CO 80204
TEL: 303-248-7722 FAX: 918-221-3940
TEXAS FIRM NO. 10194459
www.ddsiglobal.com



LEGEND:

- A- = ABSTRACT
- C.M. = CONTROL MONUMENT
- TEMP. = TEMPORARY
- PERM. = PERMANENT
- P.O.B. = POINT OF BEGINNING
- P.O.T. = POINT OF TERMINATION
- P.O.C. = POINT OF COMMENCEMENT
- = DENOTES PROPERTY BOUNDARY
- = DENOTES C/L RIGHT OF WAY LICENSE
- = DENOTES FOUND MONUMENT

0 250' 500'
SCALE 1"= 500'



BCC
BETA CRUDE CONNECTOR, LLC

THE CITY OF MIDLAND
SW/4 SECTION 44, BLOCK 38 T.1S.
T & P RR CO SURVEY A-1201
MIDLAND COUNTY, TEXAS

SURVEY DATE: MAY 14, 2020 SHEET 1 OF 1 SHEETS

DRAWN: JUNE 17, 2020

February 23, 2021

DRAWN BY: DMB

TRACT: TXMD-34-ML

LINE NAME: MIDLAND MAINLINE

"EXHIBIT- A"

PLAINS MARKETING, L.P.
TRACT TXMD-30-ML
DOCUMENT NO. 2014-27514
D.R.M.C.T.

A-703
T&P R.R. CO.
SURVEY
SECTION 44

PLAINS MARKETING, L.P.
TRACT TXMD-37-ML
DOCUMENT NO. 2014-27514
D.R.M.C.T.

PLAINS MARKETING, L.P.
TRACT TXMD-30-ML
DOCUMENT NO. 2014-27514
D.R.M.C.T.

A-32
T&P R.R. CO.
SURVEY
SECTION 45

P.O.B.
Lat: N32°00'25.6687"
Long: W102°01'01.8183"
Lat: N32.00713020
Long: W102.01717174
North: 10697721.41
East: 1774607.82

FOUND 1/2" IRON ROD
W/YELLOW CAP
"BISON CREEK" (C.M.)

N13°54'49"W
156.07'(TIE)

P.O.T.
Lat: N32°00'23.0927"
Long: W102°01'06.0378"
Lat: N32.00641464
Long: W102.01834382
North: 10697466.60
East: 1774240.57

A-1201
T&P R.R. CO.
SURVEY
SECTION 44

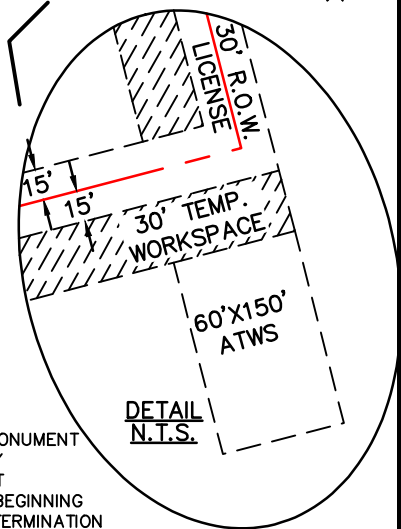
THE CITY OF MIDLAND
PART OF SECTION 44,
BLOCK 38 T.1S.
T&P RR CO. SURVEY A-1201
TXMD-36-ML
VOLUME 2308, PAGE 3
(TRACT FOUR)
D.R.M.C.T.

P.O.C.
FOUND 4x4
CONCRETE
MONUMENT (C.M.)

FOUND 1/2"
IRON ROD

SOUTH COUNTY ROAD 1150

INTERSTATE
HIGHWAY 20



LINE TABLE		
LINE#	BEARING	DISTANCE
L1	S14°47'53"E	153.95'
L2	S75°23'34"W	420.15'

ENDEAVOR ENERGY RESOURCES, L.P.
T&P RR CO. SURVEY A-1201
TRACT TXMD-35-ML
DOCUMENT NO. 2018-29712
D.R.M.C.T.

SEE SHEET 2 FOR LEGAL DESCRIPTION

NOTES:

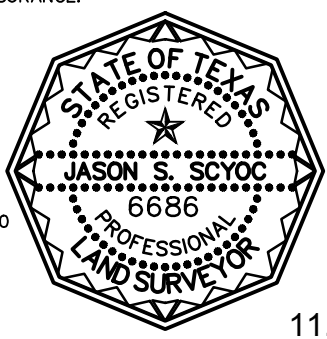
- RESEARCH HAS BEEN PROVIDED BY OTHERS.
- THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS FOR RIGHT OF WAY LICENSE PURPOSES ONLY.
- RIGHT OF WAY LICENSES, SETBACKS, AND OTHER ENCUMBRANCES ARE NOT SHOWN BY AGREEMENT WITH CLIENT.
- (CM)= CONTROLLING MONUMENT
- D.R.M.C.T. FOR "DEED RECORDS, MIDLAND COUNTY, TEXAS"

SURVEYOR'S CERTIFICATE

I, JASON S SCYOC, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6686, STATE OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED EXHIBIT WAS PREPARED FROM AN ACTUAL ON THE GROUND SURVEY UNDER MY DIRECT SUPERVISION AND WAS PREPARED FROM PUBLIC RECORDS WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE.

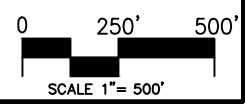

DATE OF SIGNATURE: 01-29-2021
JASON S. SCYOC R.P.L.S. NO. 6686

DOWNTOWN DESIGN SERVICES, INC.
1127 AURARIA PARKWAY, STE. 203
DENVER, CO 80204
TEL: 303-248-7722 FAX: 918-221-3940
TEXAS FIRM NO. 10194459
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- P.O.C. = POINT OF COMMENCEMENT
- = DENOTES PROPERTY BOUNDARY
- = DENOTES C/L RIGHT OF WAY LICENSE
- = DENOTES FOUND MONUMENT



BCC
BETA CRUDE CONNECTOR, LLC

CITY OF MIDLAND
PART OF SECTION 44, BLOCK 38 T.1S.
T & P RR CO SURVEY A-1201
MIDLAND COUNTY, TEXAS

SURVEY DATE: JAN. 27, 2021	SHEET 1 OF 2
DRAWN: JAN. 29, 2021	DRAWN BY: DMB
TRACT: TXMD-36-ML	LINE NAME: MIDLAND MAINLINE



"EXHIBIT- A"

CENTERLINE DESCRIPTION OF A PROPOSED PIPELINE RIGHT OF WAY LICENSE

BEING A 30' WIDE PROPOSED PIPELINE RIGHT OF WAY LICENSE, HAVING SIDELINES THAT ARE 15' EACH SIDE OF THE DESCRIBED CENTERLINE ARE TO BE PROLONGED OR SHORTENED TO CONFORM TO GRANTORS PROPERTY LINES AND BEING SITUATED IN THE T&P RR CO. SURVEY, ABSTRACT NO. 1201, SECTION 44, BLOCK 38, MIDLAND COUNTY, TEXAS, AND BEING A PORTION OF A TRACT OF LAND AS DESCRIBED IN DEED TO THE CITY OF MIDLAND, IN VOLUME 2308, PAGE 3, DEED RECORDS, MIDLAND COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 4X4 CONCRETE MONUMENT BEING THE SOUTHEAST CORNER OF THE PARCEL DESCRIBED IN VOLUME 2308 AT PAGE 3, DEED RECORDS, MIDLAND COUNTY TEXAS, THENCE NORTH 51°02'33" WEST, 1,367.40 FEET TO THE POINT OF BEGINNING THENCE SOUTH 14°47'53" EAST, 153.95 FEET; THENCE SOUTH 75°23'24" WEST, 420.15 FEET; POINT OF TERMINATION, FROM WHICH A FOUND 1/2" IRON ROD WITH YELLOW CAP STAMPED "BISON CREEK" AT THE NORTHWEST CORNER OF SAID PARCEL BEARS NORTH 13°54'49" WEST 156.07 FEET.

SAID RIGHT OF WAY LICENSE CENTERLINE HAVING A TOTAL LENGTH OF 574.10 FEET (34.79 RODS) AND THE RIGHT OF WAY LICENSE CONTAINING 0.40 ACRES (17,223 SQUARE FEET) OF LAND MORE OR LESS.

BASIS OF BEARING: BEARINGS SHOWN HEREON ARE BASED UPON TEXAS STATE PLANE, CENTRAL ZONE, US SURVEY FEET, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES ARE GRID.

NOTES:

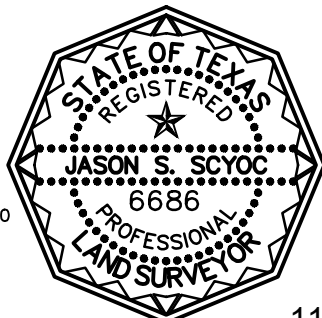
1. RESEARCH HAS BEEN PROVIDED BY OTHERS.
2. THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS FOR RIGHT OF WAY LICENSE PURPOSES ONLY.
3. RIGHT OF WAY LICENSES, SETBACKS, AND OTHER ENCUMBRANCES ARE NOT SHOWN BY AGREEMENT WITH CLIENT.
4. (CM)= CONTROLLING MONUMENT
5. D.R.M.C.T. FOR "DEED RECORDS, MIDLAND COUNTY, TEXAS"

SURVEYOR'S CERTIFICATE

I, JASON S SCYOC, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6686, STATE OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED EXHIBIT WAS PREPARED FROM AN ACTUAL ON THE GROUND SURVEY UNDER MY DIRECT SUPERVISION AND WAS PREPARED FROM PUBLIC RECORDS WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE.


DATE OF SIGNATURE: 01-29-2021
JASON S. SCYOC R.P.L.S. NO. 6686

DOWNTOWN DESIGN SERVICES, INC.
1127 AURARIA PARKWAY, STE. 203
DENVER, CO 80204
TEL: 303-248-7722 FAX: 918-221-3940
TEXAS FIRM NO. 10194459
www.ddsiglobal.com



11.7



BCC

BETA CRUDE CONNECTOR, LLC

CITY OF MIDLAND
PART OF SECTION 44, BLOCK 38 T.1S.
T & P RR CO SURVEY A-1201
MIDLAND COUNTY, TEXAS

SURVEY DATE: JAN. 27, 2021

SHEET 2 OF 2

DRAWN: JAN. 29, 2021

DRAWN BY: DMB

TRACT: TXMD-36-ML

February 23, 2021

LINE NAME: MIDLAND MAINLINE

DDSi PACKET



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/10/2020

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

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

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 1300 S. Main Tulsa OK 74119		CONTACT NAME: Denise Bergschneider PHONE (A/C, No, Ext): 918-884-2900 FAX (A/C, No): 918-884-2999 E-MAIL ADDRESS: Denise_Bergschneider@ajg.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Scottsdale Insurance Company	41297
		INSURER B: Mid-Continent Casualty Company	23418
		INSURER C: National American Insurance Company (OK)	23663
		INSURER D:	
		INSURER E:	
		INSURER F:	

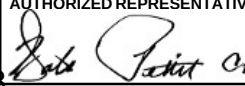
COVERAGES **CERTIFICATE NUMBER:** 1742975502 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	ENS0005527	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	04-CA-002839459	6/14/2020	6/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	XNS0005674	4/8/2020	4/8/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	Y	OW23880535	1/1/2020	1/1/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 General Liability Policy includes Additional Insured Endorsement CG2010 10 01, Additional Insured Endorsement (completed operations) CG2037 10 01, Waiver of Subrogation Endorsement CG4 04 05 09, in favor of Certificate Holder as required by written contract. Excess Policy is follow form per CX00 01 04 13. Automobile Policy includes Additional Insured Endorsement MA2004 and Waiver of Subrogation Endorsement MA2003 in favor of Certificate Holder as required by written contract.

CERTIFICATE HOLDER **CANCELLATION**

City of Midland 300 N. Loraine Midland TX 79701 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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PACKET

11.8

February 23, 2021

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City Council Meeting

Item Number: 12
Meeting Date: February 23, 2021
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License between the City of Midland and Targa Pipeline Mid-Continent Westex L.L.C.; the pipeline is located in section 10, Block 38, Township 2 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

This ROW License will replace License # 2011-099 effective April 27, 2011, which granted a 30' wide right of way to Atlas Pipeline Mid-Continent Westex L.L.C now known as Targa Pipeline Mid-Continent Westex LLC. This Right of Way License updates and replaces the previously granted license and terms for the continued operation of said pipeline.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000

Annual Lease Rate (181.71 rods x \$20/rod): \$3,634.20

Surface Damages: existing pipeline, no new surface damage

Total Collected: \$4,634.20

Discussion:

This private use, poly construction gas line is six inches (4) in diameter and buried thirty-six inches (36) deep and does not interfere with the City Plant Farm operations in this area. Attached plat is the "As Built" survey of the existing pipeline. Annual fees are up to date.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement



City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: February 24, 2020

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Targa Pipeline Mid-Continent WestTex LLC

Licensee's Representative: **Norman L. Winter**

Licensee's Mailing Address: 811 Louisiana Suite 2100, Houston, Texas 77002

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of THREE THOUSAND SIX HUNDRED THIRTY-FOUR and 20/100 Dollars (\$3,634.20) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of THREE THOUSAND SIX HUNDRED THIRTY-FOUR and 20/100 Dollars (\$3,634.20), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the 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 last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702.

The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being thirty (30) feet in width of the pipeline 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 pipeline locations, a poly construction pipeline, not to exceed four (4) inches in diameter, for the transportation of gas, to have the right of ingress and egress at convenient points for such purpose.

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's

system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original

condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$100,000.00 per occurrence

<i>Business Automobile Liability:</i>	\$1,000,000.00 combined single limit-- Personal Injury and Property Damage
<i>Workers' Compensation:</i>	Statutory limits
<i>Employers' Liability:</i>	\$1,000,000.00 per accident or occurrence
<i>Umbrella Liability:</i>	\$10,000,000.00 each occurrence \$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR

OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES

OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental

immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensors 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 Licensors but is providing a service to Licensee's customers. Licensee is paying Licensors 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 Licensors 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 Licensors. 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 Licensors and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensors or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Robert Patrick, Interim City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
TARGA PIPELINE MID-CONTINENT
WESTTEX LLC

By: _____
Printed Name: Norman L. Winter
Title: VP of Land and Right of Way

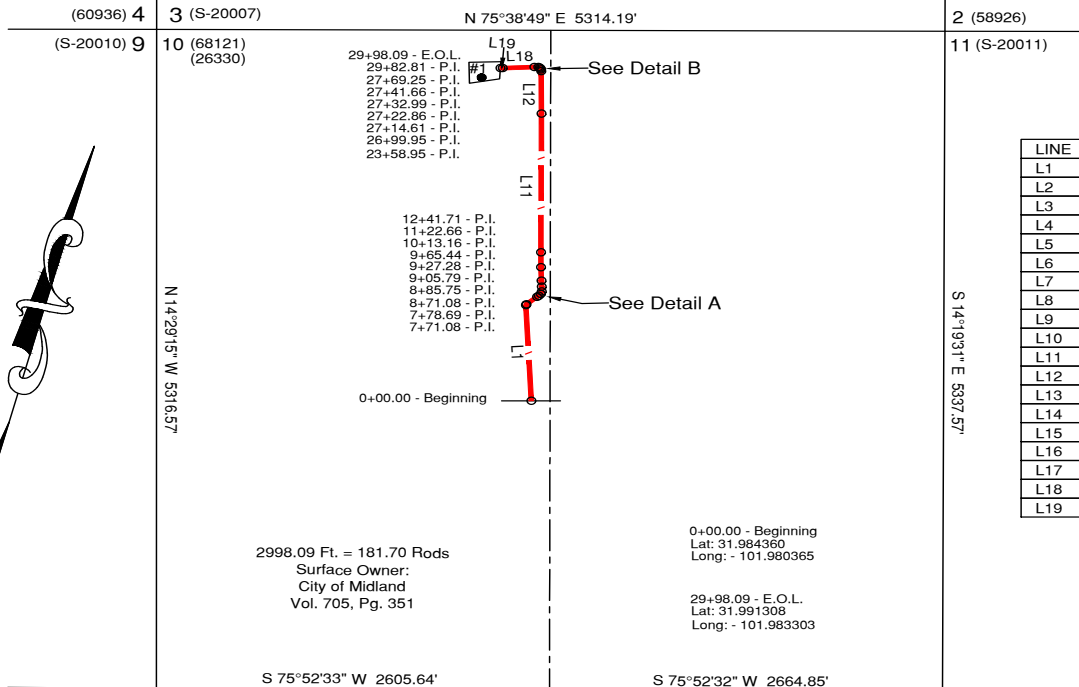
THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021 personally appeared Norman L. Winter an officer of Targa Pipeline Mid-Continent WestTex LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

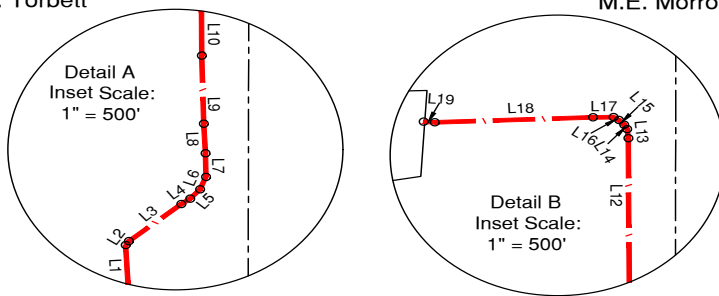
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

Notary Public, State of _____

Block 38, T-2-S, T. & P. RR. Co. Survey Midland County, Texas



LINE	BEARING	DISTANCE
L1	N 17°17'20" W	771.08'
L2	N 20°04'21" E	7.61'
L3	N 35°16'47" E	92.39'
L4	N 39°22'35" E	14.67'
L5	N 27°21'57" E	20.03'
L6	N 07°17'08" E	21.50'
L7	N 15°12'32" W	38.15'
L8	N 17°27'41" W	47.73'
L9	N 15°50'47" W	109.50'
L10	N 14°51'41" W	119.05'
L11	N 14°16'22" W	1117.23'
L12	N 14°47'08" W	341.01'
L13	N 20°38'41" W	14.66'
L14	N 44°46'45" W	8.25'
L15	N 58°01'20" W	10.14'
L16	N 71°57'36" W	8.67'
L17	S 75°17'14" W	27.59'
L18	S 73°17'43" W	213.55'
L19	S 79°49'20" W	15.29'



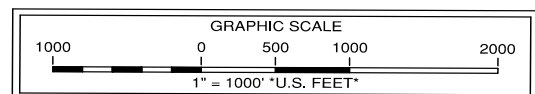
CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 10, Block 38, T-2-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 0+00.00 for the beginning of this existing pipeline right-of-way from which a calculated corner for the Southwest corner of Section 10, Block 38 bears S 32°50'56" W, 3435.63 feet.

Thence with the centerline of this existing pipeline and its meanders as follows: N 17°17'20" W, 771.08' to pipeline station P.I. 7+71.08; N 20°04'21" E, 7.61' to pipeline station P.I. 7+78.69; N 35°16'47" E, 92.39' to pipeline station P.I. 8+71.08; N 39°22'35" E, 14.67' to pipeline station P.I. 8+85.75; N 27°21'57" E, 20.03' to pipeline station P.I. 9+05.79; N 07°17'08" E, 21.50' to pipeline station P.I. 9+27.28; N 15°12'32" W, 38.15' to pipeline station P.I. 9+65.44; N 17°27'41" W, 47.73' to pipeline station P.I. 10+13.16; N 15°50'47" W, 109.50' to pipeline station P.I. 11+22.66; N 14°51'41" W, 119.05' to pipeline station P.I. 12+41.71; N 14°16'22" W, 1117.23' to pipeline station P.I. 23+58.95; N 14°47'08" W, 341.01' to pipeline station P.I. 26+99.95; N 20°38'41" W, 14.66' to pipeline station P.I. 27+14.61; N 44°46'45" W, 8.25' to pipeline station P.I. 27+22.86; N 58°01'20" W, 10.14' to pipeline station P.I. 27+32.99; N 71°57'36" W, 8.67' to pipeline station P.I. 27+41.66; S 75°17'14" W, 27.59' to pipeline station P.I. 27+69.25; S 73°17'43" W, 213.55' to pipeline station P.I. 29+82.81;

Thence S 79°49'20" W, a distance of 15.29 feet to pipeline station 29+98.09 being the E.O.L. (End of Line) of this existing pipeline right-of-way from which a calculated corner for the Northwest corner of Section 10, Block 38 bears S 83°07'28" W, 2337.16 feet.

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9999012 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.



12.15

October 02, 2020
201002JR-KRM

USGS Quadrangle Sheet: Stephenson Lake, Tex.
Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
2011-099 City of Midland Renewal
AFE No. OPEX
Existing Pipeline Survey
In and Through
Section 10, Block 38, T-2-S
& P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/25/2020

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

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

PRODUCER Marsh USA Inc. 2929 Allen Parkway, Suite 2500 Houston, TX 77019		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #	
CN101831123-WT-JV-20-21		INSURER A : Westchester Surplus Lines Insurance Co 10172	
INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119		INSURER B : ACE American Insurance Company 22667	
		INSURER C : Everest Indemnity Insurance Company 10851	
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** HOU-003723083-04 **REVISION NUMBER:** 2

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			G71783595001	02/07/2020	03/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			ISA H25308207	10/31/2020	10/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☒ CLAIMS-MADE			G717836001001	02/07/2020	03/31/2021	EACH OCCURRENCE \$ 10,000,000
C	☐ DED ☐ RETENTION \$			XC9EX00064201	02/07/2020	03/31/2021	AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLR C6781020A	10/31/2020	10/31/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: Right of Way
The Certificate Holder is included as additional insured (except workers' compensation) where required by written contract. Waiver of subrogation is applicable where required by written contract.

CERTIFICATE HOLDER **CANCELLATION**

City of Midland, Texas Attn: Robert Patrick, Asst. City Manager P.O. Box 1152 Midland, TX 79702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee
--	---

PACKET

12.16

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

As respects \$10MM Umbrella/Excess Liability Limits:

Westchester Surplus Lines Insurance Co. - Policy G71783600100

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001

Everest Indemnity Insurance Company - Policy XC9EX00064201

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001 & Umbrella Liability Policy
 G71783600100

PACKET

12.17

February 23, 2021



City Council Meeting

Item Number: 13
Meeting Date: February 23, 2021
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License between the City of Midland and Targa Pipeline Mid-Continent Westex L.L.C., regarding City owned property described as section 2, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

This ROW License will replace License # 2011-101 effective April 27, 2011, which granted a 30' wide right of way to Atlas Pipeline Mid-Continent Westex L.L.C now known as Targa Pipeline Mid-Continent Westex LLC. This Right of Way License updates and replaces the previously granted license and terms for the continued operation of said pipeline.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000

Annual Lease Rate (33.87 rods x \$20/rod): \$677.40

Surface Damages: existing pipeline, no new surface damage

Total Collected: \$1,677.40

Discussion:

This private use, poly construction gas line is four inches (4) in diameter and buried thirty-six inches (36) deep and does not interfere with the City Plant Farm operations in this area. Attached plat is the "As Built" survey of the existing pipeline. Annual fees are up to date.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement



City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: February 24, 2020

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Targa Pipeline Mid-Continent WestTex LLC

Licensee's Representative: **Norman L. Winter**

Licensee's Mailing Address: 811 Louisiana Suite 2100, Houston, Texas 77002

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of SIX HUNDRED SEVENTY-SEVEN and 40/100 Dollars (\$677.40) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of SIX HUNDRED SEVENTY-SEVEN and 40/100 Dollars (\$677.40), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the 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 last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702.

The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being thirty (30) feet in width of the pipeline 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 pipeline locations, a poly construction pipeline, not to exceed four (4) inches in diameter, for the transportation of gas, to have the right of ingress and egress at convenient points for such purpose.

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's

system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original

condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$100,000.00 per occurrence

<i>Business Automobile Liability:</i>	\$1,000,000.00 combined single limit-- Personal Injury and Property Damage
<i>Workers' Compensation:</i>	Statutory limits
<i>Employers' Liability:</i>	\$1,000,000.00 per accident or occurrence
<i>Umbrella Liability:</i>	\$10,000,000.00 each occurrence \$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR

OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES

OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental

immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensors 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 Licensors but is providing a service to Licensee's customers. Licensee is paying Licensors 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 Licensors 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 Licensors. 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 Licensors and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensors or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Robert Patrick, Interim City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
TARGA PIPELINE MID-CONTINENT
WESTTEX LLC

By: _____
Printed Name: Norman L. Winter
Title: VP of Land and Right of Way

THE STATE OF _____

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021 personally appeared Norman L. Winter an officer of Targa Pipeline Mid-Continent WestTex LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

Notary Public, State of _____

3 2

N 75°42'06" E 5363.96'

Block 37, T-3-S, T. & P. RR. Co. Survey Midland County, Texas

LINE	BEARING	DISTANCE
L1	S 06°32'06" E	69.25'
L2	N 82°26'35" E	343.53'
L3	N 76°48'30" E	146.12'

558.91 Ft. = 33.87 Rods

Surface Owner:
City of Midland
Vol. 760, Pg. 465

0+00.00 - Beginning
Lat: 31.912057
Long: - 101.825240

5+58.91 - E.O.L.
Lat: 31.912102
Long: - 101.823660

0+00.00 - Beginning
0+69.25 - P.I.

5+58.91 - E.O.L.
5+34.05 - Hwy 1379 E. ROW
4+15.17 - Hwy 1379 W. ROW
4+12.78 - P.I.

Calc. Cor. from
which a fnd. I/R w/
Yellow cap at fnc.
cor. N-S-W for the
SWc of Sec. 43,
Blk. 36 bears N
75°42'54" E,
5281.58'.

1

S 14°24'59" E 5302.95'

S 75°45'31" W 5351.07'

10 11

12

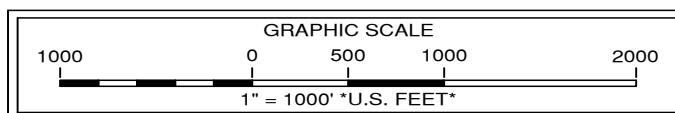
CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 2, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 0+00.00 for the beginning of this existing pipeline right-of-way from which a calculated corner for the Northeast corner of Section 2, Block 37 bears N 7°07'48" W, 3766.14 feet from which a found iron rod with Yellow cap at fence corner N-S-W for the Southwest corner of Section 43, Block 36 bears N 75°42'54" E, 5281.58 feet.

Thence S 06°32'06" E, a distance of 69.25 feet to pipeline station 0+69.25 being a P.I.;

Thence N 82°26'35" E, a distance of 343.53 feet to pipeline station 4+12.78 being a P.I.;

Thence N 76°48'30" E, a distance of 146.12 feet to pipeline station 5+58.91 being the E.O.L. (End of Line) of this existing pipeline right-of-way from which a calculated corner for the Northeast corner of Section 2, Block 37 bears N 14°24'59" W, 3848.47 feet from which a found iron rod with Yellow cap at fence corner N-S-W for the Southwest corner of Section 43, Block 36 bears N 75°42'54" E, 5281.58 feet.



Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.

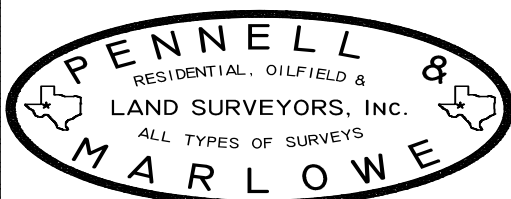
Latitudes and Longitudes shown are on NAD'83 Datum.

Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.

A combined grid factor of 0.9998859 must be divided into all distances to obtain surface distances.

Note: Example: (S-99999) indicates General Land Office file number.

Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.



October 13, 2020

201001JR-KRM

USGS Quadrangle Sheet: Spraberry, Tex.

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
2011-101 City of Midland Renewal
AFE NO.

Existing Pipeline Survey

In and Through

Section 2, Block, 37, T-3-S

T. & P. RR. Co. Survey

Midland County, Texas

Scale: 1" = 1000'

P.O. Box 51887, Midland, Texas 79710 (432) 262-0901 Fax (432) 262-0679 Firm #100201-00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/25/2020

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

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

PRODUCER Marsh USA Inc. 2929 Allen Parkway, Suite 2500 Houston, TX 77019		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #	
CN101831123-WT-JV-20-21		INSURER A: Westchester Surplus Lines Insurance Co 10172	
INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119		INSURER B: ACE American Insurance Company 22667 INSURER C: Everest Indemnity Insurance Company 10851 INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

HOU-003723083-04

REVISION NUMBER: 2

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			G71783595001	02/07/2020	03/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			ISA H25308207	10/31/2020	10/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A C	☒ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☒ CLAIMS-MADE DED RETENTION \$			G717836001001 XC9EX00064201	02/07/2020 02/07/2020	03/31/2021 03/31/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☐ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WLR C6781020A	10/31/2020	10/31/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: Right of Way

The Certificate Holder is included as additional insured (except workers' compensation) where required by written contract. Waiver of subrogation is applicable where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Midland, Texas Attn: Robert Patrick, Asst. City Manager P.O. Box 1152 Midland, TX 79702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee
--	---

PACKET

13.16

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

As respects \$10MM Umbrella/Excess Liability Limits:

Westchester Surplus Lines Insurance Co. - Policy G71783600100

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001

Everest Indemnity Insurance Company - Policy XC9EX00064201

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001 & Umbrella Liability Policy
 G71783600100

PACKET

13.17

February 23, 2021



City Council Meeting

Item Number: 14
Meeting Date: February 23, 2021
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License between the City of Midland and Targa Pipeline Mid-Continent Westex L.L.C., regarding City owned property described as section 4, Block 38, Township 2 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

This ROW License will replace License # 2011-104 effective April 27, 2011, which granted a 30' wide right of way to Atlas Pipeline Mid-Continent Westex L.L.C now known as Targa Pipeline Mid-Continent Westex LLC. This Right of Way License updates and replaces the previously granted license and terms for the continued operation of said pipeline.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000

Annual Lease Rate (40.95 rods x \$20/rod): \$819.00

Surface Damages: existing pipeline, no new surface damage

Total Collected: \$1,819.00

Discussion:

This private use, poly construction gas line is four inches (4) in diameter and buried thirty-six inches (36) deep and does not interfere with the City Plant Farm operations in this area. Attached plat is the "As Built" survey of the existing pipeline. Annual fees are up to date.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement



City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: February 24, 2021

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, Assistant City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Targa Pipeline Mid-Continent WestTex LLC

Licensee's Representative: **Norman L. Winter**

Licensee's Mailing Address: 811 Louisiana Suite 2100, Houston, Texas 77002

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition,

restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of EIGHT HUNDRED NINETEEN and 00/100 Dollars (\$819.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of EIGHT HUNDRED NINETEEN and 00/100 Dollars (\$819.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars (\$1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the 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 last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702.

The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being thirty (30) feet in width of the pipeline 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 pipeline locations, a poly construction pipeline, not to exceed four (4) inches in diameter, for the transportation of gas, to have the right of ingress and egress at convenient points for such purpose.

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's

system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original

condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall be promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$100,000.00 per occurrence

<i>Business Automobile Liability:</i>	\$1,000,000.00 combined single limit-- Personal Injury and Property Damage
<i>Workers' Compensation:</i>	Statutory limits
<i>Employers' Liability:</i>	\$1,000,000.00 per accident or occurrence
<i>Umbrella Liability:</i>	\$10,000,000.00 each occurrence \$10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR

OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES

OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental

immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensors 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 Licensors but is providing a service to Licensee's customers. Licensee is paying Licensors 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 Licensors 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 Licensors. 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 Licensors and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensors or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Robert Patrick, Interim City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
TARGA PIPELINE MID-CONTINENT
WESTTEX LLC

By: _____
Printed Name: Norman L. Winter
Title: VP of Land and Right of Way

THE STATE OF _____

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021 personally appeared Norman L. Winter an officer of Targa Pipeline Mid-Continent WestTex LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

Notary Public, State of _____

(54160)
(102892) 44 45 (S-20004)

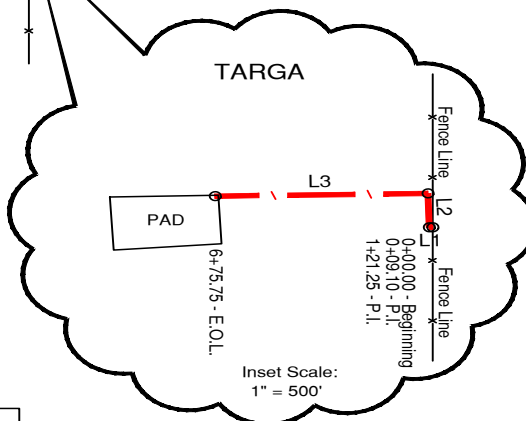
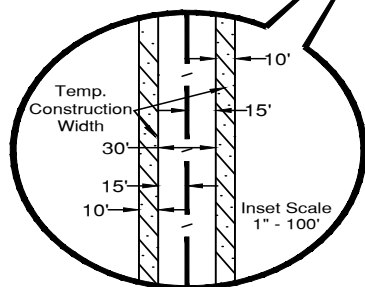
46 (58927)
3 (S-20007)

675.75 Ft. = 40.95 Rods
Surface Owner:
City of Midland
Vol. 37, Pg. 298

N 75°40'00" E 5383.86'

S 14°19'28" E 5314.93'

N 14°19'13" W 5314.60'



LINE	BEARING	DISTANCE
L1	S 75°04'27" W	9.10'
L2	N 15°59'14" W	112.16'
L3	S 74°51'32" W	554.50'

Block 38, T-2-S, T. & P. RR. Co. Survey Midland County, Texas

(S-20008) 5 Found 1/2" I.R.
(72871) 8

S 75°40'13" W 5384.26'

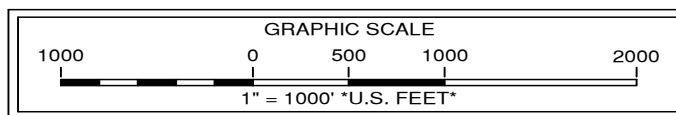
(60936) 4
(S-20010) 9 10 (68121)
(26330)

CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 4, Block 38, T-2-S
T. & P. RR. Co. Survey
Midland County, Texas

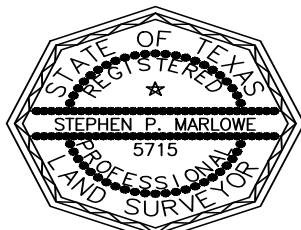
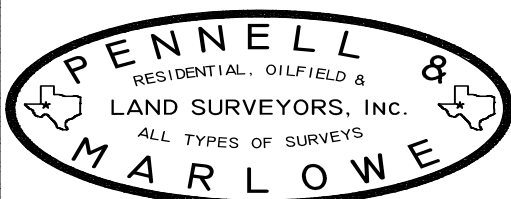
Beginning at pipeline station 0+00.00 for the beginning of this existing pipeline right-of-way from which a found 1/2" iron rod for the Southwest corner of Section 4, Block 38, T-2-S, bears S 15°37'27" W, 5267.10 feet.

Thence S 75°04'27" W, a distance of 9.10 feet to pipeline station P.I. 0+09.10;
Thence N 15°59'14" W, a distance of 112.16 feet to pipeline station P.I. 1+21.25;

Thence S 74°51'32" W, a distance of 554.50 feet to pipeline station 6+75.75 being the E.O.L. (End of Line) of this existing pipeline right-of-way from which a found 1/2" iron rod for the Southwest corner of Section 4, Block 38, T-2-S, bears S 9°30'55" W, 5103.34 feet.



Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9999022 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex, LLC.



October 14, 2020
201006M1-BCL

USGS Quadrangle Sheet: Northeast Midland, Tex.

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WEST TEX, LLC.
2011-102 COM Renewal
AFE No.
Existing Pipeline Survey
In and Through
Section 4, Block 38, T-2-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

P.O. Box 51887, Midland, Texas 79710 (432) 262-0901 Fax (432) 262-0679 Firm #100201-00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/25/2020

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

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

PRODUCER Marsh USA Inc. 2929 Allen Parkway, Suite 2500 Houston, TX 77019		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #	
CN101831123-WT-JV-20-21		INSURER A: Westchester Surplus Lines Insurance Co 10172	
INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119		INSURER B: ACE American Insurance Company 22667 INSURER C: Everest Indemnity Insurance Company 10851 INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

HOU-003723083-04

REVISION NUMBER: 2

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			G71783595001	02/07/2020	03/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			ISA H25308207	10/31/2020	10/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A C	☒ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☒ CLAIMS-MADE DED RETENTION \$			G717836001001 XC9EX00064201	02/07/2020 02/07/2020	03/31/2021 03/31/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLR C6781020A	10/31/2020	10/31/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: Right of Way

The Certificate Holder is included as additional insured (except workers' compensation) where required by written contract. Waiver of subrogation is applicable where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Midland, Texas Attn: Robert Patrick, Asst. City Manager P.O. Box 1152 Midland, TX 79702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee
--	---

PACKET

14.16

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

As respects \$10MM Umbrella/Excess Liability Limits:

Westchester Surplus Lines Insurance Co. - Policy G71783600100

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001

Everest Indemnity Insurance Company - Policy XC9EX00064201

Each Occurrence \$5,000,000

Aggregate \$5,000,000

Is Excess of General Liability Policy G71783595001 & Umbrella Liability Policy
G71783600100

PACKET

14.17

February 23, 2021



City Council Meeting

Item Number: 15
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Carl Craigo, Director
Subject: Motion authorizing the execution of a Surface Use Agreement between the City of Midland and Endeavor Energy Resources, L.P., regarding City-owned property described as Section 24, Block 37, Township 3 South, T&P R.R. Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

Motion authorizing the execution of Surface Use Agreement with Endeavor Energy Resources, L.P. regarding City-owned property described as Sections, 24 and 13, both in Block 37, T3S, T&P RR Co. survey, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Initial Fee of \$1000
Damage fees based on University Lands damage rates.

Discussion:

Surface Owner hereby grants to Operator the non-exclusive right to drill, complete, construct, install, operate, produce, repair, maintain, replace, abandon and/or remove, all in accordance with the terms of this Agreement

Dolet Patel

City Manager's Office

EXECUTION VERSION

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (this “Agreement”) is made and entered into effective as of the _____ day of _____, 20__ (the “Effective Date”), by and between the **CITY OF MIDLAND, TEXAS**, a home rule municipal corporation, whose address is 300 N. Loraine, Midland, Texas, 79701 (“Surface Owner”), and **ENDEAVOR ENERGY RESOURCES, L.P.**, a Texas limited partnership, whose address is 110 North Marienfeld, Midland, Texas 79701 (“Operator”).

WHEREAS, Surface Owner owns an undivided interest in the surface of property located in Midland County, Texas, being **Section 24, Block 37, Township 3 South, T&P R.R. Co. Survey, Midland County, Texas** (hereafter referred to as the “Surface Premises”); and

WHEREAS, Operator is a party to that or those certain Oil and Gas Lease(s) described in **Exhibit A** attached hereto and made a part hereof for all purposes (collectively, the “Lease”), to which reference is hereby made for all purposes, which cover(s), among other lands, the mineral rights underlying **Sections 24 and 13, both in Block 37, Township 3 South, T&P R.R. Co. Survey, Midland County, Texas** (such specifically described Sections being hereafter referred to as the “Leased Premises”); and

WHEREAS, Surface Owner and Operator desire to enter into an agreement regarding Operator’s use of the Surface Premises for its proposed oil and gas operations thereon for the purpose of providing for the protection of the surface estate and water resources of the Leased Premises and Surface Premises in connection with oil and gas exploration, development, and production under the Lease;

NOW, THEREFORE, in consideration of the premises and the covenants set forth below, Surface Owner and Operator agree as follows:

1. GRANT OF RIGHT TO USE SURFACE PREMISES:

(a) Surface Owner hereby grants to Operator the non-exclusive right to drill, complete, construct, install, operate, produce, repair, maintain, replace, abandon and/or remove, all in accordance with the terms of this Agreement, those certain wells, equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities enumerated, described and located as specifically set forth in **Exhibit B** attached hereto and made a part hereof for all purposes upon the Surface Premises for the purposes of drilling for, equipping, operating and producing oil, gas and other minerals from the Leased Premises (the “Well Plans”). Notwithstanding anything to the contrary contained in this Agreement, this Agreement is not a waiver for, nor does it grant permission for any future development not included in the Well Plans.

(b) Unless otherwise agreed to in writing by Surface Owner, except as specifically provided in the Well Plans, no other wells, equipment, fixtures, structures, improvements, roads,

pipelines, electric lines or other facilities, including, without limitation, tank batteries, pits, heater treaters, dehydrators, compressors, or gas treatment facilities, shall be located on the Surface Premises.

(c) After the completion of any well located on the Surface Premises, Operator agrees to notify in writing within thirty (30) days after such completion, Surface Owner and all applicable taxing authorities of the location of such well and to provide any and all information reasonably requested by such taxing authorities as to any taxes applicable to or to be assessed with respect to such well and/or the lands from which such well is producing.

(d) Surface Owner expressly reserves the full right to grant other licenses, easements and/or rights-of-way in, upon and across the Surface Premises, provided that any such grants do not materially interfere with Operator's rights hereunder. Surface Owner expressly reserves the right to use and to grant to third parties the right to use the Surface Premises and the subsurface below and airspace above the Surface Premises for any purpose, provided that any such grants do not materially interfere with Operator's rights hereunder. Without limiting the foregoing, (i) Operator shall not interfere with any activities of Surface Owner deemed by Surface Owner to be for legitimate public purposes on the Surface Premises, and (ii) Surface Owner expressly reserves the right to install in or on the Surface Premises any streets or alleys and all ancillary public uses usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures and public utilities, provided that any such uses do not materially interfere with Operator's then-existing uses hereunder. Utilities and appurtenances as referenced in the immediately preceding sentence, shall include, without limitation, pipelines, conduits, and pole lines, which may be installed on, above or below ground by Surface Owner.

(e) Without limiting the provisions of subparagraph (a) above, Operator agrees that it shall not be entitled to use any more of the surface of the Surface Premises than is reasonably necessary and that all surface installations shall be kept to a reasonable minimum consistent with good operating practices. Additionally, Operator hereby acknowledges and agrees that notwithstanding any implied right of use under the laws of the State of Texas that might otherwise apply relating to exploitation of the mineral estate under the Surface Premises or the Leased Premises, all operations conducted on the Surface Premises pursuant to the Lease will be conducted in compliance with the terms of this Agreement.

2. TERM AND TERMINATION:

(a) This Agreement shall be for a term of fifteen (15) years (the "Initial Term"), commencing on the Effective Date of this Agreement, unless terminated earlier as provided hereafter. This Agreement shall renew at the end of the Initial Term for one (1) additional term of five (5) years (the "Extended Term"), upon the written request of Operator to the City Manager of the City of Midland, Texas ("City Manager") received not more than one (1) year and not less than ninety (90) days prior to the expiration of the Initial Term and subject to the express written consent of the City Manager. The granting of consent for the Extended Term is in the sole discretion of the City Manager, subject to any approval of the City Council of the City of Midland, Texas or other applicable governmental approval that may be required.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, subparagraph (a) above, in the event the Lease terminates as to all of the Leased Premises prior to the expiration or termination of the Initial Term or the Extended Term (if the Extended Term is in effect pursuant to subparagraph (a) above) this Agreement shall automatically terminate.

(c) Surface Owner may terminate this Agreement if Operator fails to pay, when due, any amount owing under this Agreement and that failure continues for sixty (60) days. Surface Owner may also terminate this Agreement if Operator commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this Agreement, and the breach or default continues for a period of sixty (60) days after Surface Owner delivers notice to Operator reasonably detailing the breach or default.

(d) Notwithstanding anything to the contrary contained in this Agreement, it is specifically provided that as an express condition of this Agreement, and not as a mere covenant, if none of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises enumerated, described and located as specifically set forth in the Well Plans or as otherwise permitted under the terms of this Agreement have been used by Operator for the purposes enumerated herein for any period of twelve (12) months or longer, then and in that event, this Agreement shall terminate at Surface Owner's option, as evidenced by Surface Owner's written notice to Operator of such termination.

(e) Notwithstanding anything to the contrary contained in this Agreement, upon termination of this Agreement, at its option, Surface Owner may either: (i) allow all or portions (specified by Surface Owner) of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises that were used or constructed by Operator to remain; or (ii) require Operator to comply with the applicable provisions of subparagraph (g) below and Paragraphs 5(c), 5(d), 6(g), 7(b), 8(c), 9(b) and 24.

(f) If, upon termination of this Agreement, Surface Owner elects to allow all or portions (specified by Surface Owner) of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises that were used or constructed by Operator to remain, such equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities, or portions thereof specified by Surface Owner, that are not removed by Operator under the terms of this Agreement shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign, to Surface Owner, its successors and assigns, said equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities, or portions thereof specified by Surface Owner, by such instruments in form and substance reasonably required by Surface Owner.

(g) Upon termination of this Agreement, as to all or the portions of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities

on the Surface Premises that were used or constructed by Operator which Surface Owner elects not to allow to remain, then Operator shall comply with the applicable provisions of Paragraphs 5(c), 5(d), 6(g), 7(b), 8(c), 9(b) and 24. Except as specifically provided in such Paragraphs, Operator shall, at its sole cost and expense, restore the Surface Premises to its original condition as nearly as reasonably practicable and shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner. If Operator fails to take such removal and restoration actions, Surface Owner may do so at the sole expense of Operator. Without limiting the foregoing, said work shall meet minimum requirements under all applicable local, state or federal laws, rules or regulations, and shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within ninety (90) days after the effective date of termination of this Agreement, except as otherwise provided for herein or where such performance is delayed for reasons beyond the reasonable control of Operator.

(h) All of the terms, provisions and requirements of subparagraphs (e), (f) and (g) immediately above and this subparagraph (h) shall survive the termination or expiration of this Agreement.

3. FINANCIAL CONSIDERATIONS:

As compensation for the surface use and operations of Operator during the term of this Agreement, Operator agrees to pay Surface Owner the following fees:

(a) **Initial Fee.** For the Initial Term, an initial fee in the amount of ONE THOUSAND and No/100 Dollars (\$1,000.00) shall be due and payable on or prior to the Effective Date of this Agreement (the "Initial Fee").

(b) **Surface Damage Fees.** For the following items, Operator shall pay surface damage fees to Surface Owner in the amounts stated below:

- (i) Facilities pads - \$0.18 per square foot;
- (ii) Reserve pits - \$0.28 per square foot;
- (iii) Fresh water frac pit sites - \$0.28 per square foot; and
- (iv) Produced water pits - \$0.48 per square foot.

The total amount of surface damage fees for the items described in subparagraphs (b)(i)-(iv) above shall be payable in five (5) equal payments, with the first payment being due and payable on or prior to the one-year anniversary of the Effective Date of this Agreement and with subsequent payments in the same amount being due and payable on or before each subsequent anniversary date of the Effective Date for the following four (4) years.

Except for the items described in subparagraphs (b)(i)-(iv) above, Operator shall pay surface damage fees to Surface Owner as provided in Paragraph 23 below.

At the end of the Initial Term of this Agreement, for any renewal period thereafter, a renewal fee equal to the amount of the Initial Fee shall be payable by Operator to Surface Owner.

All payments due to Surface Owner under this Agreement shall be made to Surface Owner at the office of the City of Midland Right-of-Way Manager, P.O. Box 1152, Midland, Texas, 79702.

The payments required as part of this Agreement 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.

4. NOTICE BETWEEN SURFACE OWNER AND OPERATOR:

(a) Prior to commencing any road, pipeline, electric line or other construction on the Surface Premises, Operator shall notify Surface Owner in writing of the specific activity that is to be conducted and the approximate date and location of such activity, such notice to be given no later than ten (10) days prior to the commencement of construction. Except as provided in Paragraph 6(c), Operator will provide to Surface Owner at least three (3) days' written notice prior to the arrival of any drilling equipment on the Surface Premises, except in an emergency situation in which case Operator will provide written notice as soon as reasonably available. Notice under this subparagraph (a) shall be provided as specified in subparagraph (d) below, and to the City of Midland's Utilities Director at the contact information provided to Operator by Surface Owner.

(b) Operator shall provide to Surface Owner within ten (10) days after such filing is made or such document is prepared, as applicable, unless a different time period is specified below, copies of the following:

- (i) Groundwater Protection Determination Letter provided to the Texas Commission of Environmental Quality.
- (ii) Email notification of Form W-1, Applications to Drill, at the time the application is filed with the Texas Railroad Commission.
- (iii) Email notification of Form W-1, Approved Permit to Drill.
- (iv) Wellbore schematic through the freshwater zones.
- (v) Copy of the Spill Prevention Control and Countermeasure ("SPCC") Plan, including phone numbers of company personnel.
- (vi) Any other documents filed with the Railroad Commission of Texas regarding the Surface Premises or the Leased Premises.

(c) Operator agrees to designate in writing the name of the person or persons with whom Surface Owner may communicate about the activities being conducted on the surface and with whom Surface Owner may resolve issues that arise.

(d) Except as otherwise provided in this Agreement, all communications by Operator to Surface Owner shall be directed to:

Name: John Simmons, Right-of-Way Manager
Address: P.O. Box 1152
Midland, Texas 79702
Phone: 432-685-7200
Email: jsimmons@midlandtexas.gov

5. ROADS, GATES, AND FENCES:

(a) Operator agrees to use existing gates and roadways where available, to enter, leave and cross the Surface Premises; provided that Operator shall not use any road marked "Closed to Oilfield Traffic." Operator and all persons entering or leaving the Surface Premises in connection with Operator's operations hereunder shall keep all outside and interior gates securely closed except during drilling and completion operations, plus a period of thirty (30) days after completion of such operations. Operator shall keep all outside gates, and all other gates designated by Surface Owner, securely locked except during drilling and completion operations, plus a period of thirty (30) days after completion of such operations. At any gate that is to be locked, Surface Owner may install its own lock in addition to Operator's lock.

(b) The location of all new roads installed by Operator shall be at mutually agreeable locations between Operator and Surface Owner. Except as to any new roads included in the Well Plans, Operator shall not commence to construct any new roads upon the Surface Premises without the prior written consent of Surface Owner, which consent shall be in the sole discretion of Surface Owner. Once the road location is determined, all mesquite and cactus along the road location shall first be dozed or grubbed and piled in intervals along the route and then promptly removed from the Surface Premises. Roads shall not exceed thirty feet (30') in width. All roads used or constructed by Operator shall be topped and crowned with a minimum of nine (9) inches of caliche. All large rocks (having a diameter greater than three (3) inches) remaining from road construction shall be removed from the Surface Premises. While under construction, roads will be kept wet down to avoid excessive dust. Notwithstanding that Surface Owner may use all roads used by Operator for any and all purposes, Operator shall maintain all roads used by Operator in good repair, and all roads shall be maintained as all-weather caliche or paved roads, as applicable, at all times. All holes and ruts in roads used by Operator shall be filled as soon as practical by Operator. Operator shall install adequate culverts wherever any road constructed or used by Operator crosses a natural drainage, and except as provided below all roads and any pipelines laid by Operator shall be so constructed and laid as not to interfere with the natural flow of surface waters or with drainage. Operator shall place water diversions along any road constructed or used by Operator as necessary to prevent excessive washing out of the road. All material for such diversions will be constructed using

materials purchased from Surface Owner, provided that Surface Owner can provide such materials in the quantity and quality reasonably required by Operator and at a rate competitive with the prevailing market rate in the area, and Operator shall not use materials pushed up from the roadside, unless Surface Owner agrees otherwise. The maximum thirty (30) foot width of each road is to be measured from edge to edge of the caliche or paved road surface, and shall be exclusive of any area adjacent to the roadway surface utilized as (i) ditches or other reasonable water diversions, or (ii) brush clearance along the roadway. Unless otherwise agreed by Surface Owner, such adjacent area shall not exceed a width of five (5) feet on each side of the roadway surface.

(c) Unless otherwise requested in writing by Surface Owner, within ninety (90) days of the cessation of use of any road by Operator or the termination of this Agreement, whichever is earlier, Operator shall, at its sole cost and expense, remove any caliche or pavement on roads built by Operator, shall restore the surface to its original condition as nearly as reasonably practicable, and shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner. If Operator fails to take such removal and restoration action, Surface Owner may do so at the sole expense of Operator. The terms, provisions and requirements of this subparagraph (c) shall survive the termination or expiration of this Agreement.

(d) Operator agrees that Operator shall not cut or go over any fence at any time or in connection with any operations on the Surface Premises without first obtaining Surface Owner's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Operator and Surface Owner and shall be constructed as reasonably required by Surface Owner. Upon the termination of this Agreement, at Surface Owner's election, gates in fences shall be left in place and shall thereafter be owned by Surface Owner or Operator shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this subparagraph (d) shall survive the termination or expiration of this Agreement.

6. DRILL SITE LOCATIONS; FACILITIES; WELLBORES:

(a) All drill site locations and pads shall be at such locations, of such maximum sizes and in accordance with such specifications, in each case as are included in the Well Plans. In the event Operator desires to drill a well located on the Surface Premises which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such well, including, without limitation, as to the location, size and specifications therefor, which consent shall be in the sole discretion of Surface Owner. In construction of such sites, Operator agrees to first doze or grub all mesquite, brush and cactus and push such material to one side of the pad. All such mesquite, brush and cactus shall then be removed from the Surface Premises. Operator shall then remove and stack to the other side of the location, the first eight (8) inches of top soil from the location.

(b) All casing, pipe and other materials used by Operator in the wells drilled in, on or under the Surface Premises (the "Subject Wells") shall be of a type and quality meeting Railroad Commission of Texas standards. In addition, the wellbores of the Subject Wells shall be constructed in accordance with the specifications set forth on **Exhibit C** attached hereto and such that no fresh

water source will be contaminated. When total depth is reached in each Subject Well, Operator shall provide Surface Owner with casing integrity tests promptly upon Operator's receipt of same showing that the Subject Well has been satisfactorily cemented and cemented in compliance with the terms of this Agreement and applicable governmental laws, rules and regulations.

(c) Operator shall provide to Surface Owner at least twenty-one (21) days' advance written notice of the scheduled drilling date of each Subject Well. In the event such scheduled drilling date changes, Operator shall provide notice of the rescheduled drilling date to Surface Owner as soon as possible.

(d) The locations and specifications for any and all fixtures, structures, improvements and/or other facilities, including, without limitation, tank batteries (collectively, "Facilities"), shall be included in the Well Plans. In the event Operator desires to construct or install any Facilities which are not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such Facilities, including, without limitation, as to the location, size and specifications therefor, which consent shall be in the sole discretion of Surface Owner. Without limiting the foregoing, any tank battery or batteries to be installed on the Surface Premises shall include (i) lightning protection using a Petro Guardian static dissipation system, (ii) gas control with Enardo Vent valves, (iii) a concrete or steel lined containment structure around the storage tanks, of a size sufficient to contain no less than one hundred fifty percent (150%) of the volumetric capacity of all storage vessels, (iv) SCADA electronic monitoring system, and (v) such other safeguards required by the Railroad Commission of Texas and/or as reasonably requested by Surface Owner. Operator shall at all times maintain all equipment and permitted Facilities located on the Surface Premises in good repair and condition, in a properly painted condition through use of paint color(s) approved by Surface Owner, and kept free of rust, stains, weeds and trash. All firewalls and retaining walls will be kept reasonably free of weeds and brush.

(e) In construction of any Facility location, Operator agrees to first doze or grub all mesquite, brush and cactus and push such material to one side of the location. All such mesquite, brush and cactus shall then be removed from the Surface Premises. Operator shall then remove and stack to the other side of the location, the first eight (8) inches of top soil from the location. Within sixty (60) calendar days after construction of any Facilities, Operator will clean up the area surrounding such Facilities and remove any and all spills, junk materials, concrete platforms, pieces of iron, pipes, steel and other debris and foreign materials and will level all mounds, fill all temporary pits and other excavations (in accordance with any requirements set forth herein) and will remove all deleterious materials and substances that might cause injury to person, wildlife, or livestock. All such materials, trash, junk, etc. shall not be burned or buried on the Surface Premises or any other portion of Surface Owner's lands, but shall be removed therefrom.

(f) Operator shall provide trash trailers at drilling sites while drilling, completion and workover operations are in progress.

(g) Unless otherwise requested in writing by Surface Owner and subject to Paragraph 24, within ninety (90) days after abandonment of any well located on the Surface Premises, abandonment of any Facility, or the termination of this Agreement, whichever is earlier, Operator

shall, at its sole cost and expense, (i) remove all caliche from the applicable drill site(s) and/or Facility location(s), (ii) level the applicable drill site(s) and/or Facility location(s), (iii) spread uniformly over the drill site location(s) and/or Facility location(s) the top soil which was previously removed and stacked, (iv) plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition, and (v) clean the drill site(s) and/or Facility location(s) and remove all oil and/or gas waste materials, junk, pieces or iron, pipes and other debris. The terms, provisions and requirements of this subparagraph (g) shall survive the termination or expiration of this Agreement.

(h) All producing well locations and pits located on the Surface Premises will be fenced with four strand barb wire fencing as required by Surface Owner. Permanent internal combustion engines on pumping units (artificial lift equipment) are expressly prohibited from use on the Surface Premises. Operator shall install an electric motor to operate any pumping unit placed by Operator on the Surface Premises to produce any well.

(i) Drilling rigs and pulling unit rigs shall not be painted, steam cleaned or cleaned with solvents while on the Surface Premises unless provisions have been made to collect the effluent(s) of the operation for disposal off the Surface Premises. All rig waste shall be removed from the Surface Premises. Demobilization operations shall commence promptly for any drilling rig or workover rig located on the Surface Premises (in no event later than fourteen (14) days after the drilling or workover operations have been completed, except in the event of a heavy rain event that prevents the removal of said rig) unless the rig is to be used to drill or workover another well located on the Leased Premises within thirty (30) days following the completion of its use on a prior operation.

7. RESERVE PITS AND DISPOSAL OF DRILLING FLUIDS AND MUD:

(a) Each reserve pit, mud circulation pit, completion pit, workover pit, or other pit shall be at such locations, of such maximum sizes and in accordance with such specifications, in each case as are included in the Well Plans, and, without limiting the foregoing, shall be lined with a non-permeable liner prior to use. In the event Operator desires to construct a pit which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such pit, including, without limitation, as to the location, size and specifications therefor, which consent shall be in the sole discretion of Surface Owner.

(b) Upon the cessation of the use of any such pit, Operator shall, at its election and at its sole cost and expense, either (i) within sixty (60) days of cessation of the use of any such pit, remove the liquids and dispose of them off of the Surface Premises and allow the pit to dry, and within ninety (90) days of cessation of the use of such pit, weather permitting, (A) remove the liner and the remaining dried solid wastes and dispose of such liner and wastes off of the Surface Premises, (B) backfill, compact and level the pit, and the top soil, which was previously removed and stacked, shall be spread uniformly over the pit location, and (C) plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition, or (ii) within sixty (60) days of cessation of the use of any such pit, (A) begin and diligently proceed until completion with the process of disposing

of the pit contents on site using bio-organic catalysts to detoxify and break down the pit contents, causing them to decompose, and biodegrading them to carbon dioxide and water as the primary end products with hydrocarbons being reduced to less than 3%, and (B) after such process is complete, cover the pit with a minimum of thirty-six inches (36") of clean, compactable soil. Without limiting the foregoing, all pit cleanup operations shall be conducted in accordance with all applicable laws, including, without limitation, the rules and regulations of the Railroad Commission of Texas and the Texas Commission on Environmental Quality.

(c) Unless otherwise required by Surface Owner, the only wastes authorized to be stored in the pits are (i) drilling fluids, (ii) drill cuttings, sands, and silts separated from the circulating drilling fluids, (iii) wash water used for cleaning drill pipe and other equipment at the well site, (iv) drill stem test fluids; and (v) blowout preventer test fluids.

(d) Except as authorized by this Agreement, there shall be no landfarming or disposal of drilling fluids or muds or other wastes from oil and gas operations on the Surface Premises or into any wellbore located on the Surface Premises without prior written consent of Surface Owner, which consent shall be in the sole discretion of Surface Owner.

8. PIPELINES:

(a) All pipelines and flowlines on the Surface Premises shall be at such locations, of such maximum diameters and in accordance with such specifications, in each case as are included in the Well Plans. Within twenty (20) days of the completion of installation of any pipeline or flowline on the Surface Premises, Operator (i) shall furnish to Surface Owner, in accordance with Paragraph 4(d), such records of such installation as may be reasonably acceptable to Surface Owner, including, without limitation, as-built plats of such pipelines and plats of such flowlines, with the locations of all such pipelines clearly marked on such as-built plats and the locations of all such flowlines clearly marked on such plats, and (ii) shall report the locations of all such pipelines and all underground flowlines to Texas 811. In the event Operator desires to construct or install any pipeline or flowline which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such pipeline or flowline, including, without limitation, as to the location, size and specifications therefor, which consent shall be in the sole discretion of Surface Owner. Except with respect to temporary water lines utilized in the drilling and completion of any oil and/or gas wells on the Surface Premises, all pipelines and flowlines on the Surface Premises shall be buried at least forty-eight (48) inches below the surface unless otherwise agreed in writing by Surface Owner and the location of such lines shall be properly marked by Operator with signage approved by Surface Owner. Once the route for any pipeline or flowline has been determined, Operator shall doze or grub and pile all mesquite, brush and cactus along the route. All mesquite, brush and cactus shall then be removed from the Surface Premises. All trash and debris from construction of pipelines and flowlines shall be removed from the Surface Premises.

(b) During any construction, repair, removal or other operations, all ditching or trenching shall be done in such a manner so that the top soil will be separated from the balance of the dirt removed in making the ditch or trench. In backfilling after any such operation, the top soil first removed shall be used as cover soil in such a manner as to result in it being returned to the top of the

ditch as top soil. The top soil which was previously removed and stacked shall be spread uniformly over the pipeline location, then leveled and Operator shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. All large rocks (any rock over three (3) inches in diameter) removed from any ditch or trench by Operator shall be buried in such ditch or trench or otherwise removed from the Surface Premises. The pipeline or flowline located on the Surface Premises shall be adequately marked at all times by Operator at all road or fence crossings and as required by applicable laws.

(c) Except with respect to temporary water lines utilized in the drilling and completion of any oil and/or gas wells on the Surface Premises, if Operator constructs any pipeline or flowline on the Surface Premises, Operator agrees that before the abandonment or removal of any such pipeline or flowline, or upon the termination of this Agreement, whichever occurs first, it will offer the same to Surface Owner, without compensation. If Surface Owner elects to accept such pipeline or flowline, said pipeline or flowline shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign, to Surface Owner, its successors and assigns, said pipeline or flowline by such instruments in form and substance reasonably required by Surface Owner. If Surface Owner elects not to accept any such pipeline or flowline, then Operator shall, at its sole cost and expense, remove such pipeline or flowline promptly following abandonment in accordance with the applicable provisions of subparagraph (b) immediately above. A pipeline or flowline shall be deemed to be abandoned for purposes of this Agreement if it has not been used to transport products for a period of twelve (12) months. If Operator fails to remove any pipeline or flowline within ninety (90) days of the first to occur of abandonment of such pipeline or flowline or upon the termination of this Agreement, Surface Owner may do so at the sole expense of Operator. Notwithstanding anything to the contrary contained herein, Operator shall remove any and all temporary water lines utilized in the drilling and/or completion of any oil and/or gas wells on the Surface Premises within sixty (60) days of the completion of the applicable well(s), and if Operator fails to remove any such temporary water line, Surface Owner may do so at the sole expense of Operator. The terms, provisions and requirements of this subparagraph (c) shall survive the termination or expiration of this Agreement.

(d) Unless otherwise agreed to in writing by Surface Owner or specified in the Well Plan, no pipeline may be constructed hereunder that will carry any oil, gas, water or other substances which are not produced from the Leased Premises.

(e) Notwithstanding anything to the contrary in this Agreement, Surface Owner hereby grants Operator a temporary easement and right-of-way to lay temporary fresh water supply lines ("Fast Lines") to bring and transport fresh water onto, over and/or across the Surface Premises from locations off of the Surface Premises in connection with Operator's operations on the Surface Premises, at the Operator's sole expense, provided that: (a) Operator has received prior written consent from Surface Owner for the routes of such Fast Lines, such consent not to be unreasonably withheld, conditioned or delayed; (b) Operator has paid Surface Owner a sum equal to the then-applicable per-rod charge for temporary surface lines under the Rate and Damage Schedule set

forth by The University of Texas System, University Lands for the length of each Fast Line; and (c) no Fast Line shall remain in place for more than 180 days.

(f) In connection with the construction and installation of pipelines and Facilities on the Surface Premises, Operator shall install at its cost and expense such flow and pressure surveillance devices to constantly monitor any discharged pressure and/or volume changes leaving the Facilities and/or within the pipelines on a real-time basis. Without limiting the foregoing, (i) any pressure and/or volume changes within the pipelines shall be monitored by a SCADA electronic monitoring system using high resolution data with readings taken no less frequently than once per minute; (ii) pressure transmitters shall be installed by Operator to monitor discharge pressure into each pipeline regardless of the length of such pipeline; (iii) Operator shall install meters or obtain meter readings at each entrance and exit point to Operator's pipeline system located on the Surface Premises; (iv) in connection with such monitoring Operator shall immediately notify Surface Owner at the phone number and email address set forth in Paragraph 4(d) of any readings indicating low pressure and/or sudden and abnormal changes in pressure or volume within the pipeline system; (v) Operator shall perform liquid balances monthly or when sudden or abnormal changes in pressure or volume readings are indicated; (vi) Operator shall install cathodic protection in accordance with the highest industry standards on all of Operator's welded steel or alloy crude oil carrying pipelines and flowlines on the Surface Premises and shall inspect such cathodic protection at least once per calendar quarter to ensure that such pipeline and flowline system is fully operational and that such pipelines and flowlines are protected from external corrosion; and (vii) all steel or alloy crude oil carrying pipelines and flowlines shall be designed to allow pigging to ensure that no internal corrosion is present, and Operator shall inspect all such pipelines and flowlines at least once per calendar quarter to ensure that no internal corrosion is present in such pipeline and flowline system.

9. ELECTRIC LINES:

(a) All electric lines on the Surface Premises shall be at such locations and in accordance with such specifications, in each case as are included in the Well Plans. In the event Operator desires to construct or install any electric line which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such electric line, including, without limitation, as to the location and specifications therefor, which consent shall be in the sole discretion of Surface Owner. Once any electric line route has been determined, Operator shall doze or grub and pile all mesquite and cactus along the route. All mesquite, brush and cactus shall then be removed from the Surface Premises by Operator.

(b) If Operator constructs any electric line on the Surface Premises, Operator agrees that before abandonment or removal of any such electric line or upon the termination of this Agreement, whichever occurs first, it will offer the same to Surface Owner, without compensation. If Surface Owner elects to accept such electric line, said electric line shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign, to Surface Owner, its successors and assigns, said electric line by such instruments in form and substance reasonably required by Surface Owner. If Surface Owner elects not to accept such electric line, then Operator shall, at its sole cost and expense, remove such electric line and plant the disturbed area with the type and quantity

of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. An electric line shall be deemed to be abandoned for purposes of this Agreement if it has not been used to deliver electricity for a period of twelve (12) months. If Operator fails to remove any electric line within ninety (90) days of the first to occur of abandonment of such electric line or upon the termination of this Agreement, Surface Owner may do so at the sole expense of Operator.

(c) Unless otherwise agreed to in writing by Surface Owner, electric lines may only be constructed hereunder for the purpose of providing electricity to Operator's Subject Wells, permitted Facilities and equipment located on the Surface Premises.

10. STORAGE OF MACHINERY AND EQUIPMENT:

Operator shall not use any part of the Surface Premises to store any machinery, rigs, equipment, pipe, tanks or other property of Operator, or for any other purpose not expressly contemplated by this Agreement.

11. HOUSING OF EMPLOYEES:

Operator shall not use any part of the Surface Premises to house employees or other personnel except temporarily at well sites during drilling or completion operations.

12. USE OF WATER:

Unless otherwise agreed to in writing by Surface Owner, (i) Operator may not use water located on or under the Surface Premises, including, without limitation, in any existing wells or tanks located on the Surface Premises, and (ii) Operator shall not drill water wells on the Surface Premises. In the event Surface Owner consents to Operator's use of water located on the Surface Premises and/or to Operator's drilling of water wells on the Surface Premises, which consent shall be in the sole discretion of Surface Owner, (x) any and all fresh water wells that may be drilled by Operator on the Surface Premises shall be at mutually agreeable locations between Operator and Surface Owner, shall be cased, gravel packed and left intact for Surface Owner's use when such is not being used by Operator in drilling, completing or reworking wells drilled under the provisions of the Lease, and shall be drilled in compliance with such specifications required by Surface Owner in its sole discretion, and (y) whether Operator utilizes an existing well of Surface Owner or drills a water well, Operator shall meter at the water well all such water used and shall pay to Surface Owner the reasonable going rate in the area (but in no event less than the rate set forth in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands) for any such water so used.

13. DISPOSAL OF SALT WATER:

Operator shall not dispose of salt water or other produced substances on or into the Surface Premises without the prior written consent of Surface Owner, which consent shall be in the sole discretion of Surface Owner. In the event Operator seeks to complete a salt water disposal well or

wells on the Surface Premises, Surface Owner may consent in its sole discretion; provided, that if Surface Owner does consent, such consent shall be subject to Surface Owner and Operator entering into a mutually agreed upon form of Produced Water Disposal Site Lease Agreement, or similar agreement.

14. TRASH:

Operator will keep the Surface Premises free of trash and debris at all times. Under no circumstances will Operator be allowed to bury any trash, debris or foreign material of any kind on or under the Surface Premises. Surface Owner shall have the right to expel and permanently ban from the Surface Premises any person observed disposing of trash on the Surface Premises. Upon the completion of any operation, all ribbons, flags, stakes and similar items shall be promptly removed from the Surface Premises.

15. CALICHE:

Operator shall not mine any sand, gravel, caliche or similar material in or on the Surface Premises without the express prior written consent of Surface Owner. In the event Surface Owner so consents, which consent shall be in Surface Owner's sole discretion, Operator shall pay Surface Owner for such materials based on the rate set forth in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands. All caliche shall be taken from a location or locations designated by Surface Owner. Operator shall properly dress all caliche excavation sites used by Operator on the Surface Premises.

16. HUNTING, FISHING AND ALCOHOL PROHIBITED:

No agent, employee, representative, contractor or subcontractor of Operator or any other person allowed to enter the Surface Premises by Operator shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Surface Premises, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Surface Premises 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. Surface Owner shall have the right to expel and permanently ban from the Surface Premises any person observed on the Surface Premises in violation of this provision.

17. SEISMIC OPERATIONS:

Operator may conduct seismic operations on the Surface Premises only with the prior written consent of Surface Owner, which consent shall be in Surface Owner's sole discretion. Any such permitted seismic operations shall be conducted by Operator at date(s) and time(s) mutually agreeable between Operator and Surface Owner. In conducting seismic operations there shall be no holes drilled in the ground and there shall be no explosive charges. No seismic operations shall be conducted during wet conditions. In conducting seismic operations Operator will not use or allow the use of a dozer, grader or similar equipment without express written permission from Surface Owner,

and then only to the extent of such approval. If Operator encounters a fence while conducting any seismic operations, it shall pass through the nearest gate to resume its operations.

18. LOCATION AND CONDUCT OF OPERATIONS:

Notwithstanding anything herein to the contrary, Operator and Surface Owner acknowledge and agree that:

(a) without express written permission from Surface Owner, no well location, new road, pipeline, electric line, or permitted Facility shall be located, nor shall any operation of any kind be conducted, within five hundred (500) feet of any structure located on the Surface Premises at the time of such operation; and

(b) Operator shall comply in all its operations with all applicable ordinances, laws, rules and regulations of each governmental, municipal and/or regulatory authority having jurisdiction over such operations.

19. NOXIOUS VEGETATION:

Operator shall take all reasonable precautions to keep the Surface Premises free of bitterweed, African rue, tumbleweeds, cockleburs and other noxious vegetation (being native and non-native toxic plants). In the event any such noxious vegetation is encountered around any of Operator's equipment or permitted Facilities, Operator agrees to promptly spray herbicide to eliminate such vegetation. If Operator fails to take such action, Surface Owner may have such vegetation sprayed at the sole expense of Operator. At the request of Surface Owner, Operator shall weedwash all vehicles and equipment entering upon the Surface Premises at the entrance to the Surface Premises prior to their entry thereon.

20. SPEED LIMIT:

Except as to roads upon which a speed limit has been posted by the applicable governmental authorities, a speed limit of 25 miles per hour on the Surface Premises will be observed by Operator and its agents, employees, representatives, contractors, subcontractors and invitees. At the request of Surface Owner, Operator shall place speed limit signs approved by Surface Owner at entrances onto the Surface Premises. Surface Owner shall have the right to expel and permanently ban from the Surface Premises any person observed exceeding any applicable speed limit.

21. PORTABLE TOILET FACILITIES:

Operator or its contractors shall provide its employees with portable toilet facilities during drilling, completion, reworking, pipeline construction, seismic survey operations and any other similar or related operations.

22. LANDSCAPING AND IRRIGATION:

At the election of Surface Owner, prior to the commencement of any operations on the Surface Premises, Operator and Surface Owner shall develop and agree upon an ongoing plan for reasonable and appropriate landscaping and irrigation of the Surface Premises in order to minimize the impact of Operator's operations upon the appearance of the Surface Premises and upon the flow and drainage of water across the Surface Premises. All costs of the installation and maintenance of such landscaping and irrigation shall be paid by Operator, and unless otherwise agreed by Surface Owner, Operator shall be responsible for the installation and maintenance of all such landscaping and irrigation in accordance with such plan. In the event Surface Owner consents to any wells, equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other Facilities not included in the original Well Plans, Surface Owner and Operator agree that reasonable modifications to the landscaping and irrigation plan may be made by Surface Owner from time to time in order to account for such new installations, and Operator agrees that all costs of the installation and maintenance of such modified landscaping and irrigation shall be paid by Operator, and unless otherwise agreed by Surface Owner, Operator shall be responsible for the installation and maintenance of all such landscaping and irrigation in accordance with such modified plan during the term of this Agreement.

23. DAMAGE TO PROPERTY IN GENERAL AND DAMAGE SCHEDULE:

Operator agrees to pay for actual damages resulting to the Surface Premises, improvements thereon and to personal property thereon caused by Operator's operations. Except for the items specifically described in Paragraphs 3(b)(i)-(iv), to the extent such damages are of a type covered by the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, compensation for such damages to property shall be calculated and paid in accordance with the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, including, without limitation, in connection with the following items:

- Well location (new location and re-entry)
- Caliche sales
- Geophysical permits
- Roads
- Pipelines
- Utility line easements
- Temporary fresh water lines

Solely for purposes of calculating damages under the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, (i) the Leased Premises and the Surface Premises shall be classified as "University Lands" under such Schedule, (ii) any road, pipeline, or utility line used or constructed by Operator on the Surface Premises shall be classified under such Schedule as requiring a "new" easement, and (ii) any flowlines (other than and excluding temporary surface pipelines) installed by Operator on the Surface Premises shall be classified as "pipelines" under such Schedule.

Compensation for all other damages to property shall be based on the prevailing market rates for similar damages in the area at the time the damage occurs.

Payments for damages described in this Paragraph 23 (for clarification, excluding the items specifically described in Paragraphs 3(b)(i)-(iv) above) shall be payable within thirty (30) days after the completion of installation or construction of the applicable item or the purchase of such applicable materials (for example, caliche).

24. ABANDONMENT OF WELLS:

As to any oil and/or gas well drilled by Operator and located on the Surface Premises, Operator agrees that before the abandonment or removal of any such wellbore, or upon the termination of this Agreement, whichever occurs first, it will offer such wellbore to Surface Owner, without compensation. If Surface Owner elects to accept such well, it shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign to Surface Owner, its successors and assigns, said wellbore, by such instruments in form and substance reasonably required by Surface Owner, and Surface Owner shall assume any and all plugging liability in connection with such wellbore.

If, however, Surface Owner elects not to accept such wellbore, then Operator, at its sole expense, may draw and remove all casing and shall plug such well within ninety (90) days after such election by Surface Owner in accordance with all requirements of the Railroad Commission of Texas and Operator shall, at its sole cost and expense, restore the Surface Premises surrounding such wellbore to its original condition as nearly as reasonably practicable. Operator agrees to plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner. If Operator fails to take such removal, plugging and restoration actions within said ninety (90) days, Surface Owner may do so at the sole expense of Operator. Without limiting the foregoing, said work shall meet minimum requirements under all applicable local, state or federal laws, rules or regulations, and shall be subject to the approval the City Manager, which approval shall not be unreasonably withheld. The terms, provisions and requirements of this Paragraph 24 shall survive the termination or expiration of this Agreement.

25. INDEMNIFICATION AND ENVIRONMENTAL PROTECTION:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OPERATOR, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS SURFACE OWNER AND SURFACE OWNER'S REPRESENTATIVES, AGENTS, ATTORNEYS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT

LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) THIS AGREEMENT, OPERATOR'S OPERATIONS ON, USE OF OR ACTIVITIES ON THE SURFACE PREMISES, OR ANY ACT OR OMISSION OF OPERATOR, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO THE EXTENT RELATED TO THIS AGREEMENT OR THE INDEMNIFYING PARTIES' (AS DEFINED BELOW) OPERATIONS ON, USE OF, AND/OR ACTIVITIES ON THE SURFACE PREMISES (COLLECTIVELY, "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF ANY INDEMNITEE. OPERATOR SHALL PROMPTLY ADVISE SURFACE OWNER OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THIS INDEMNIFICATION MAY APPLY, AND OF WHICH OPERATOR HAS RECEIVED NOTICE, AND OPERATOR, AT OPERATOR'S EXPENSE, SHALL ASSUME ON BEHALF OF SURFACE OWNER (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL REASONABLY SATISFACTORY TO SURFACE OWNER; PROVIDED, HOWEVER, THAT ANY INDEMNITEE SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY OPERATOR TO ASSUME THE DEFENSE OF SURFACE OWNER IN ACCORDANCE WITH THIS INDEMNIFICATION, SURFACE OWNER, AT ITS OPTION, AND WITHOUT RELIEVING OPERATOR OF ITS OBLIGATION HEREUNDER, MAY ASSUME SUCH DEFENSE, AFTER WRITTEN NOTICE THEREOF TO OPERATOR AND OPERATOR'S FAILURE TO RESPOND THERETO WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE (SAID TEN (10) DAY PERIOD SHALL NOT APPLY IN ANY CASE WHERE IMMEDIATE ANSWERS, RESPONSES, OR OTHER AFFIRMATIVE ACTION IS REQUIRED TO PRESERVE THE RIGHTS OF SURFACE OWNER) BUT ALL REASONABLE COSTS AND EXPENSES SO INCURRED BY SURFACE OWNER IN THAT EVENT SHALL BE REIMBURSED BY OPERATOR TO SURFACE OWNER, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE WAS PAID BY SURFACE OWNER UNTIL REIMBURSED BY OPERATOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAWS OF THE STATE OF TEXAS.

WITHOUT LIMITING THE ABOVE PARAGRAPH, OPERATOR, ITS SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY, DEFEND AND HOLD INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL

INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) (i) FAILURE OF OPERATOR, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, THE "INDEMNIFYING PARTIES"), 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 INDEMNIFYING PARTY'S OPERATIONS OR ACTIVITIES ON THE SURFACE PREMISES, OR (ii) ANY INDEMNIFYING PARTY'S HANDLING, STORING, RELEASING OR TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE SURFACE PREMISES OR ANY OTHER LANDS OF SURFACE OWNER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE PROVISIONS OF THIS INDEMNIFICATION SHALL APPLY TO AND PROTECT EACH INDEMNITEE FROM THE CONSEQUENCES OF STRICT LIABILITY IMPOSED OR THREATENED TO BE IMPOSED ON SUCH INDEMNITEE, AS WELL AS FROM THE CONSEQUENCES OF THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS PARAGRAPH 25.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHICH TERMS SHALL NOT BE CONSTRUED TO INCLUDE DIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, UNLESS SAME ARE A PART OF A THIRD PARTY CLAIM FOR WHICH A PARTY IS SEEKING INDEMNIFICATION HEREUNDER. FURTHERMORE, IN NO EVENT SHALL OPERATOR'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SURFACE OWNER OR ANY INDEMNITEE.

THE TERMS, PROVISIONS, REQUIREMENTS AND OBLIGATIONS OF THIS PARAGRAPH 25 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT, AND SHALL NOT BE LIMITED BY OR TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

26. INSURANCE:

At all times during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement, Operator shall maintain adequate insurance to cover any and all damages arising in connection with its operations on the Surface Premises pursuant to the Lease and this Agreement, and Operator shall in any event maintain insurance meeting the following minimum requirements:

Comprehensive 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 a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name Surface Owner as an additional insured and all insurance shall waive subrogation in favor of Surface Owner.

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

The Business Automobile Liability insurance provided by Operator 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 Agreement.

All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name Surface Owner as an additional insured. All insurance required pursuant to this Agreement, including Workers' Compensation Insurance, shall provide for a waiver of subrogation as to Surface Owner.

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

“The City of Midland is included as an additional insured on all policies except for Workers’ Compensation. Operator and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance.”

Operator shall cause its insurance provider(s) to provide written notice to Surface Owner not later than thirty (30) days prior to any reduction or termination of such coverage. Surface Owner shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Operator 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 minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Surface Owner and policies that name Surface Owner as an additional insured (except workers' compensation). Operator 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. Operator shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Operator.

27. WAIVER; GOVERNMENTAL IMMUNITY:

No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Likewise, the failure of Surface Owner to enforce any provision of this Agreement shall not be deemed nor shall constitute a waiver of the right of Surface Owner to enforce such provision.

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

28. ENFORCEMENT:

Except as otherwise specifically provided for herein, in the event Operator fails to take the actions required under this Agreement, Surface Owner shall notify Operator and Operator shall have thirty (30) days to remedy such failure. If Operator fails to remedy such failure and Surface Owner conducts the required action on behalf of Operator, Operator agrees to pay all reasonable costs incurred by Surface Owner related to such required action within thirty (30) days of receipt of an invoice for such action. Any amount not paid within said thirty (30) day period shall bear interest at a rate of eighteen (18) percent per annum or the highest interest rate allowed by law, whichever is less, from its due date until paid.

29. ATTORNEY'S FEES:

SHOULD SURFACE OWNER BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS AGREEMENT, OR ANY OF ITS RIGHTS UNDER THIS AGREEMENT, SURFACE OWNER SHALL BE ENTITLED TO REIMBURSEMENT FROM OPERATOR FOR SURFACE OWNER'S REASONABLE ATTORNEYS' FEES. OPERATOR SHALL REIMBURSE SURFACE OWNER FOR SURFACE OWNER'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS AGREEMENT, SUCH FEES IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS AGREEMENT NOT TO EXCEED \$10,000.

BY EXECUTING THIS AGREEMENT, OPERATOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST SURFACE OWNER REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, OPERATOR SPECIFICALLY AGREES THAT IF OPERATOR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT OR TO 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, OPERATOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OPERATOR MIGHT OTHERWISE BE ENTITLED.

OPERATOR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. OPERATOR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT. OPERATOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER

BETWEEN SURFACE OWNER AND OPERATOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

OPERATOR AND SURFACE OWNER ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

30. RELEASE:

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES SURFACE OWNER AND SURFACE OWNER'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 WITH REGARDS TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, OR SURFACE OWNER'S NEGLIGENCE; 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 SURFACE OWNER.

31. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:

Without limiting the provisions of Paragraph 30 of this Agreement, as a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Operator or Operator's legal representative, shall give the City Manager, or any other reasonable official of Surface Owner, 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 eighty (180) days after the same has been sustained. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Operator will settle, the physical and mailing addresses of Operator at the time and date the claim was presented and the physical and mailing addresses of Operator for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Operator relies to establish its claim; and a failure to so notify the City Manager or other such official of Surface Owner within the time and manner provided herein shall exonerate, excuse and except Surface Owner from any liability whatsoever. Surface Owner is under no obligation to provide notice to Operator that Operator's notice is insufficient. Surface Owner 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, Operator's failure to comply with the requirements herein shall perpetually bar Operator's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Surface Owner has actual or constructive notice or knowledge of said claim or alleged damages. Operator agrees that the requirements of this entire Agreement are reasonable.

32. NO WAIVER OF GOVERNMENTAL IMMUNITY; CHAPTER 271, TEX. LOC. GOV'T CODE:

The parties hereto agree that this Agreement does not constitute a "Contract" for providing goods and/or services to Surface Owner as set forth in Subchapter I of Chapter 271 of the Texas Local Government Code, and Surface Owner 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. Surface Owner expressly does not consent to be sued or be liable. To the maximum extent allowed by law, nothing in this Agreement constitutes a waiver of Surface Owner's governmental immunity and the parties hereto expressly agree that this Agreement shall not constitute, nor be interpreted as a waiver of Surface Owner'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 Surface Owner's governmental immunity for the benefit of any third party lacking privity to this Agreement.

This Agreement does not obligate Operator to use the Surface Premises to construct, repair, operate, replace, or maintain equipment, structures, improvements, and/or facilities associated with Operator's activities described herein, rather, it merely prohibits Operator from using the Surface Premises for any other purpose. This Agreement restricts the use of the Surface Premises to a specific purpose but does not require the use of property for a specific purpose. Operator is not providing a service to Surface Owner. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Operator's use of the Surface Premises in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Surface Owner's governmental immunity.

33. THIRD-PARTY BENEFICIARY:

Except as provided in Paragraph 25 with respect to Indemnitees, this Agreement is intended solely for the use and benefit of the parties hereto and shall not constitute or be construed as a contract for the benefit of any third party.

34. SUCCESSORS AND ASSIGNS:

The provisions of this Agreement shall inure to the benefit of and be binding upon Surface Owner and Operator, their respective heirs, successors, representatives and permitted assigns. Any amendment of this Agreement must be made in a writing executed by Surface Owner and Operator. Operator shall not have the right to assign any of its rights or obligations under this Agreement without the prior written consent of Surface Owner, which consent shall be in the sole discretion of Surface Owner. Any permitted assignee shall expressly assume all of Operator's covenants,

responsibilities and obligations under this Agreement in writing. Without limiting the foregoing, no permitted assignment of Operator's interests in this Agreement shall be effective until Operator has notified Surface Owner of the assignment and identified the assignee's name, address and contact information. Upon assignment hereof in whole or in part by Operator, Operator shall remain fully liable for any breach of any obligation hereunder accruing prior to such assignment. Surface Owner shall be furnished a true and correct copy of any permitted assignment within thirty (30) days after the execution thereof.

35. COVENANTS RUNNING WITH THE LAND:

The covenants and obligations of the parties under this Agreement shall be binding upon and shall run with the land and burden the Surface Premises.

36. COUNTERPART EXECUTION:

This Agreement may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

37. 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.

38. NO RELEASE OF LIABILITY:

Notwithstanding anything to the contrary contained in this Agreement, the termination or expiration of this Agreement shall not relieve Operator of any liability, duty or obligation, including, without limitation, any plugging, removal or restoration obligation, under this Agreement, nor shall it preclude Surface Owner from asserting any right to specific performance, damages or any other rights or remedies to which Surface Owner may be entitled. Upon termination or expiration of this Agreement for any reason, Operator shall execute and deliver a recordable release of this Agreement to Surface Owner in form and substance reasonably satisfactory to Surface Owner.

39. TEXAS HISTORICAL COMMISSION SURVEY:

Operator agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this Agreement, Operator 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 Operator commences operations on the Surface Premises, as contemplated herein. Operator agrees that it shall complete or cause to be

completed an archaeological survey before commencing any operations on the Surface Premises if the Commission so requests and deliver the same to Surface Owner. 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 Agreement, Operator will immediately notify Surface Owner and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Surface Owner or the Commission.

40. CONSIDERATION:

The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

41. MEMORANDUM OF SURFACE USE AGREEMENT:

Surface Owner and Operator have executed a Memorandum of Surface Use Agreement in the form attached hereto as **Exhibit D**, dated of even date herewith, for recording in the records of the County in which the Surface Premises are situated, to give record notice of this Surface Use Agreement. This Surface Use Agreement shall not be recorded except with the prior written consent of Surface Owner.

42. COMPLIANCE:

Operator agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this Agreement. Operator agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this Agreement.

[Remainder of page intentionally left blank; signature pages follow.]

EXECUTED by each party hereto as of the date indicated underneath its respective signature,
to be effective for all purposes as of the Effective Date.

SURFACE OWNER:

CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

Date: _____

ATTEST:

Amy M. Turner, City Secretary

[Signature Page Follows]

OPERATOR:

ENDEAVOR ENERGY RESOURCES, L.P.

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me this _____ day of _____, 20__, by _____, _____ of Endeavor Energy Resources, L.P., a Texas limited partnership, on behalf of said limited partnership.

Notary Public – State of Texas

EXHIBIT A

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as "Surface Owner"
and
Endeavor Energy Resources, L.P., as "Operator"

Lease

Oil, Gas and Mineral Lease dated December 6, 1967, recorded in Volume 494, Page 32 of the Deed Records of Midland County, Texas, from Alice L. Childers, a widow, and Helen Fields Harkins, a single woman, as lessor, to A. N. Hendrickson, as lessee, covering the NE/4 of the SE/4 of Sec. 13, Block 37, Township 3 South, T&P Railway Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated April 29, 1963, recorded in Volume 406, Page 429 of the Deed Records of Midland County, Texas, from Annie Myrtle Corbin and husband, Harold D. Corbin, as lessor, to C. O. Puckett, as lessee, covering the N/2 of the SE/4 of Sec. 13, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated May 15, 1963, recorded in Volume 406, Page 428 of the Deed Records of Midland County, Texas, from Ina Ruth Corbin, a widow, as lessor, to C. O. Puckett, as lessee, covering the NW/4 of the SE/4 of Sec. 13, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated September 14, 1950, recorded in Volume 127, Page 509 of the Deed Records of Midland County, Texas, from Harold H. Kendrick, a bachelor, as lessor, to A. N. Hendrickson, as lessee, covering the E/2 of the SE/4 of Sec. 24, Block 37, Township 3 South, T&P Ry. Co. Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated March 28, 1966, recorded in Volume 494, Page 35 of the Deed Records of Midland County, Texas, from May H. Davenport, a widow, et al., as lessor, to A. N. Hendrickson, as lessee, covering the N/2 of the SE/4 of Sec. 13, Block 37, Township 3 South, T&P Railway Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated July 1, 1950, recorded in Volume 124, Page 254 of the Deed Records of Midland County, Texas, from J. R. Gentry, as lessor, to A. N. Hendrickson, as lessee, covering Sec. 24, Block 37, Township 3 South, T&P Ry. Co. Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated July 19, 1950, recorded in Volume 124, Page 258 of the Deed Records of Midland County, Texas, from W. B. Gentry, as lessor, to A. N. Hendrickson, as lessee, covering Sec. 24, Block 37, Township 3 South, T&P Ry. Co. Survey, Midland County, Texas.

Oil, Gas and Mineral Lease dated February 12, 1948, recorded in Volume 99, Page 298 of the Deed Records of Midland County, Texas, from Mrs. B. W. Floyd (the same person as Mabel M. Floyd), individually and as independent executrix of the Estate of B. W. Floyd, Deceased, et al., as lessor, to Ted Weiner, as lessee, covering Section 13, except the N/2 SE/4, all of Section 24, except E/2 SE/4

thereof, Block 37, Township 3 South, NW/4 of Section 19, E/2 of Section 30, Block 36, Township 3 South, T&P Ry. Co. Survey, Midland County, Texas.

EXHIBIT B

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
Endeavor Energy Resources, L.P., as “Operator”

Well Plans

(see attached)

EXHIBIT C

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
Endeavor Energy Resources, L.P., as “Operator”

Wellbore Specifications

(see attached)

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
Endeavor Energy Resources, L.P., as “Operator”

[illegible]

WITNESSETH:

Surface Owner and Operator are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Surface Owner and/or Operator of the existence of the Surface Use Agreement and of the rights and obligations contained therein. Surface Owner and Operator give notice that the Surface Use Agreement may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Surface Use Agreement, the terms of the Surface Use Agreement shall control.

D-1

OPERATOR:

ENDEAVOR ENERGY RESOURCES, L.P.

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

 This instrument was acknowledged before me this _____ day of _____,
2019, by _____, _____ of Endeavor
Energy Resources, L.P., a Texas limited partnership, on behalf of said limited partnership.

Notary Public – State of Texas

MEMORANDUM OF SURFACE USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This Memorandum of Surface Use Agreement (this “Memorandum”) is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas 79701, Attention: Right of Way Manager (herein “Surface Owner”) and ENDEAVOR ENERGY RESOURCES, L.P., whose address is 110 North Marienfeld, Midland, Texas 79701 (herein “Operator”), covering the surface estate of **Section 24, Block 37, Township 3 South, T&P R.R. Co. Survey, Midland County, Texas** (herein the “Surface Premises”).

WITNESSETH:

Surface Owner and Operator have entered into that certain Surface Use Agreement dated effective as of _____, 20__ (the “Surface Use Agreement”) which provides for protection of the surface estate and water resources of the Surface Premises in connection with oil and gas exploration, development and production of mineral rights underlying **Sections 24 and 13, both in Block 37, Township 3 South, T&P R.R. Co. Survey, Midland County, Texas** (the “Leased Premises”).

Surface Owner and Operator are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Surface Owner and/or Operator of the existence of the Surface Use Agreement and of the rights and obligations contained therein. Surface Owner and Operator give notice that the Surface Use Agreement may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Surface Use Agreement, the terms of the Surface Use Agreement shall control.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____, 20__.

SURFACE OWNER:

CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this _____ day of _____, 20__, by Robert Patrick, Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

OPERATOR:

ENDEAVOR ENERGY RESOURCES, L.P.

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

 This instrument was acknowledged before me this _____ day of _____,
2019, by _____, _____ of Endeavor
Energy Resources, L.P., a Texas limited partnership, on behalf of said limited partnership.

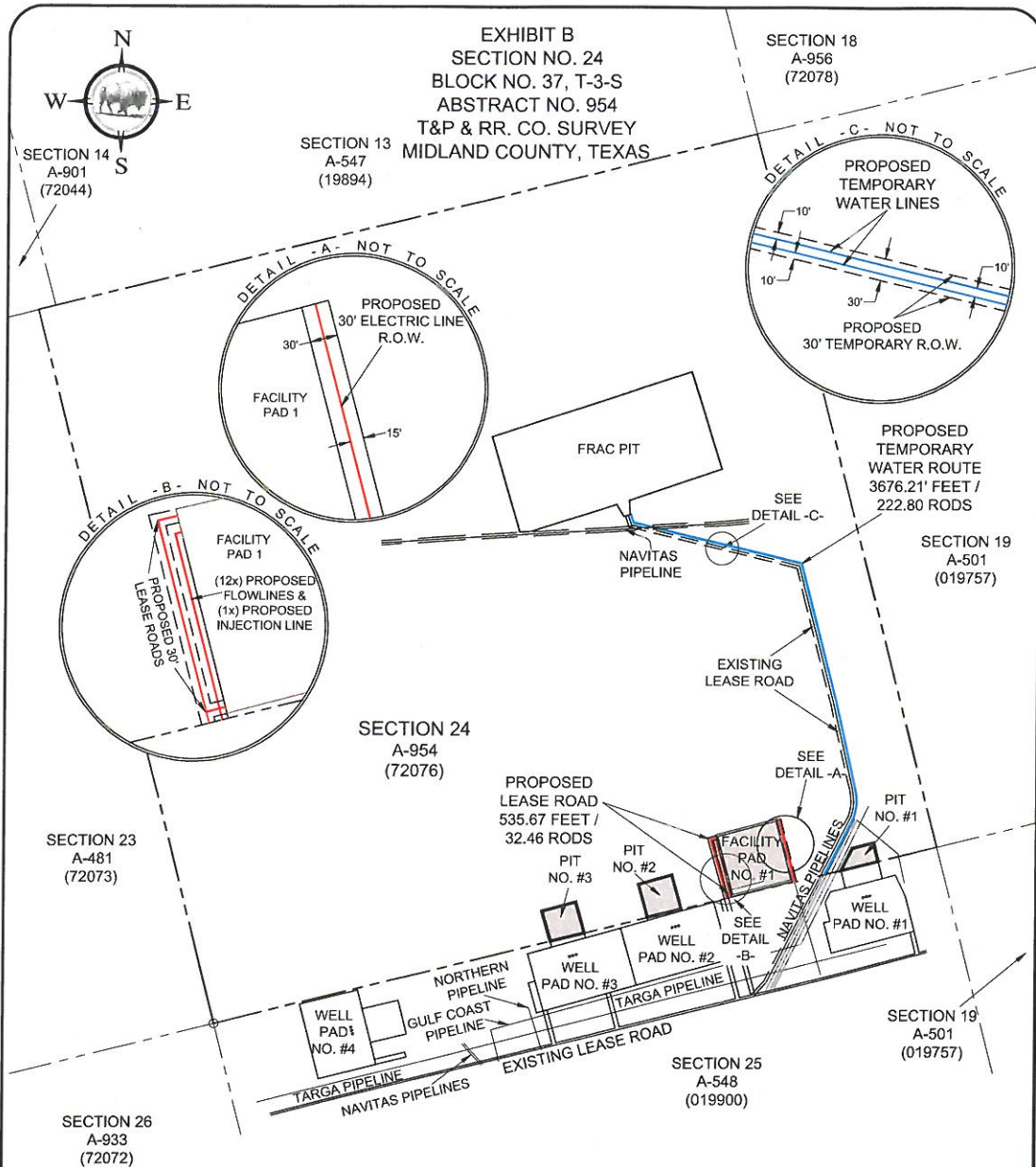
Notary Public – State of Texas

EXHIBIT B

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
Endeavor Energy Resources, L.P., as “Operator”

Well Plans

(see attached)

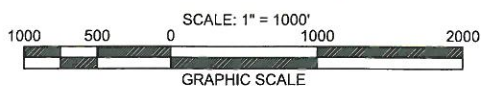


PROPOSED TEMPORARY WATER LINE QUANTITIES		
SECTION 24	FEET (GRID)	RODS (GRID)
(2x) TEMPORARY WATER	3676.21'	222.80
TOTAL	7352.42'	445.60

PROPOSED FLOWLINE & INJECTION LINE QUANTITIES		
SECTION 24	FEET (GRID)	RODS (GRID)
(12x) FLOWLINES	426.33'	25.83
(1x) INJECTION LINE	426.33'	25.83
TOTAL	5542.29'	335.79

PROPOSED ELECTRIC LINE QUANTITIES		
SECTION	FEET (GRID)	RODS (GRID)
SECTION 24	426.89'	25.87

(EXHIBIT ONLY)



DESCRIPTION	SQUARE FOOTAGE	ACREAGE
PIT #1	30,416	0.698
FACILITY #1	202,500	4.648
PIT #2	63,971	1.468
PIT #3	58,140	1.334
TOTAL	355,027	8.148



1-800-245-4545

WWW.TEXASONECALL.COM

TEXAS ONE CALL SYSTEM
 CONSTRUCTION NOTE: UNDER GROUND UTILITIES MUST
 BE VERIFIED BY CONTRACTOR PRIOR TO EXCAVATING.

FIELD DATE: 02/26/20	DATE: 01/08/21
SCALE: 1" = 1000'	DATE: 01/08/21
DRWN: BEM	APPVD: JPK
PROJ. NO. 16-02490-S25B37-EXHIBIT	CREW: DC

ENDEAVOR ENERGY
RESOURCES, L.P.
 (WITH 24-13)
 EXHIBIT OF PROPOSED IMPROVEMENTS
 LOCATED IN
 SECTION 24, BLOCK 37, T-3-S
 T&P & RR. CO. SURVEY
 MIDLAND COUNTY, TEXAS

BISON CREEK
LAND SERVICES, LLC

WWW.BISON-CREEK.COM

COPYRIGHT 2021

FIRM LICENSE NO. 10193880

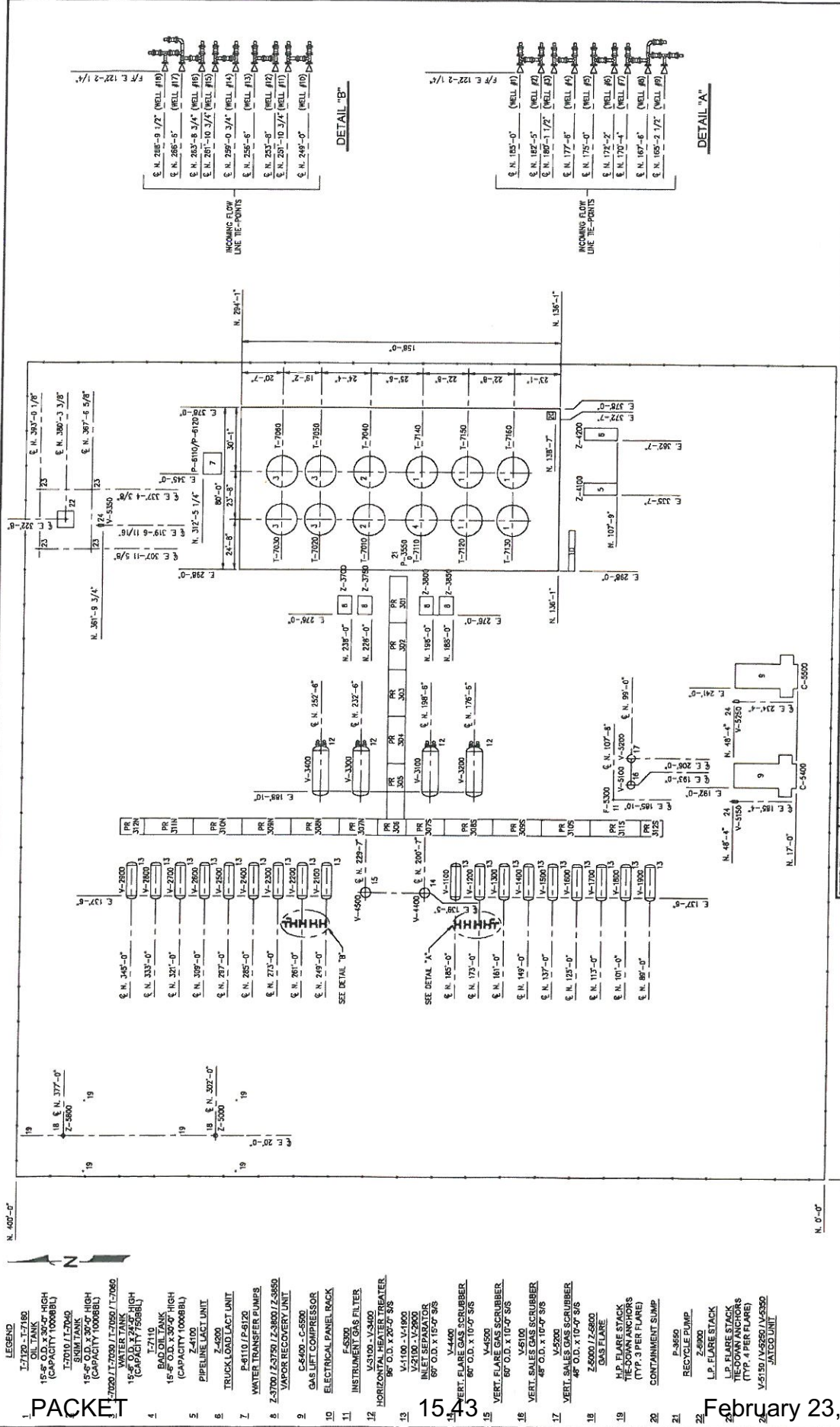


PACKET

BISON CREEK LAND SERVICES, LLC 24443 I-20, BLDG. 9, WILLS POINT, TEXAS 75169 PHONE: (903) 873 - 3600

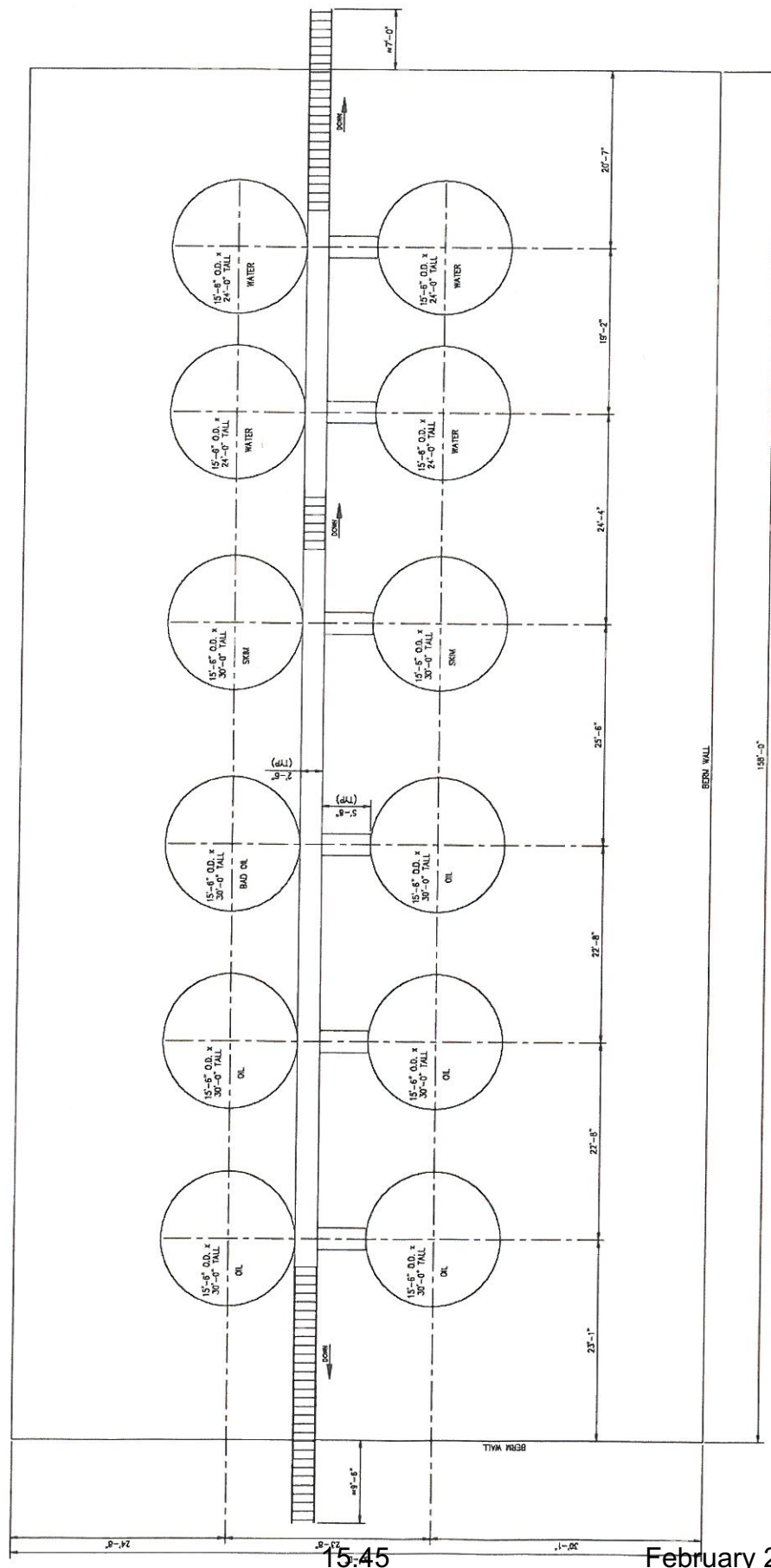
February 23, 2021

B - 2



STANDARD 2.2-18 WELL PRODUCTION FACILITY									
SITE EQUIPMENT ARRANGEMENT									
DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20	DATE: 11/1/20
PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254	PROJECT: 110254
NO. 4	NO. 4	NO. 4	NO. 4	NO. 4	NO. 4	NO. 4	NO. 4	NO. 4	NO. 4

RE-ISSUED FOR CONSTRUCTION
11/1/20



15:45

February 23, 2021

B - 5

[illegible]

RE-ISSUED FOR
CONSTRUCTION

Additional Surface infrastructure included in well plans

1. Process and measurement equipment.
2. Flow back and artificial lift equipment as needed by well head, including temporary equipment on well pads during work overs.
3. Auxiliary pumps and equipment.

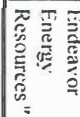
EXHIBIT C

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
Endeavor Energy Resources, L.P., as “Operator”

Wellbore Specifications

(see attached)

AFE# 0
EER# 0



Rig: TBD
Target: WCA
AOI: WTH

WITH 24-13 A #212

Well Type: Horizontal
GL: 2.591 ft
RKB: 25.5 ft
Elevation (RKB): 2.617 ft

AFE# 0
EER# 0
EST. Spud Date: 1/10/00
Engineer: TBD
Date: 1/27/21

C - 3

PACKET
15.49
February 23, 2021

Notes:
 KEY TO SPAN/NOTABLE CHANGES:

Vertical Step-Out
 BUILT ID: 1317-2021 MD
 HOLE ID: 1317-2021 MD
 DDCOP: 2468-3138 MD
 1.5'
 NISP 1187'

Directional Plan # 1 Plan 1

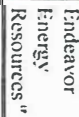
KOP
 ΔR Below Shoe: 8,300 TWD
 BUR: 10,001.7 TWD

Landing
 LOG: 8,328 TWD
 TWD: 8,328 TWD
 INC: 90.0°

Direction to Location
 Starting at Intersection of T20 and T55 in Midland TX. Travel east ca. 158 for 1.3 miles. Turn left onto FM1370 headed south for 4.2 miles. Turn left onto WY1124-13 location. (Location entrance is the first one south of Jeters Clayco)

Section
 Surface 1717'
 Int 5 12.12'
 Int 3 12.12'
 P Vent 7.718'
 P Curve 7.718'
 P Astere 7.718'
 15,500' MD

Formation Name
 Base of Red Beds 1,460 TWD
 Graveling 4,111 TWD
 San Andres 4,222 TWD
 Upper Carbonat. LS 6,078 TWD
 Upper Serranberry 7,058 TWD
 Middle Serranberry Sh 7,418 TWD
 Lower Serranberry Sh 7,818 TWD
 Lower Serranberry Sh 7,883 TWD
 Wolfcamp (A) 8,888 TWD
 Wolfcamp (B) 8,888 TWD
 Wolfcamp (C) 9,332 TWD
 Wolfcamp (D) 9,332 TWD
 Wolfcamp (E) 9,332 TWD
 Wolfcamp (F) 9,332 TWD
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 Wolfcamp (GI) 9,332 TWD
 Wolfcamp (GJ) 9,332 TWD
 Wolf



SHL Lat: N: 31.8684886
SHL Long: W: -101.7937704
AFE/BCT Days: 14/10.5

WTH 24-1
Rig: TBD
Target: WGB
AOI: WTH

Version: 1
Permit #: 0
API: 00-000-00000
State: TX
County: Midland

Permit Approval Date: 1/0/00
Well Type: Horizontal
GL: 2,591 ft
RKB: 25.5 ft
Elevation (RKB): 2,617 ft

AFE# 0
EER# 0
EST. Spud Date: 1/0/00
Engineer: TBD
Date: 1/27/21

WITH 24-13 B #2221

Permit Approval Date: 1/10/00
Well Type: Horizontal

AE# 0
EER# 0

Notes:

KEY TOPICS/NOTABLE CHANGES:

Section	Size	Bottom Depth
Surface	17 1/2"	1,210 TWD
Int 1	12 3/4"	6,329 TWD
Int 2	9 7/8"	8,133 TWD
P Vert	7 7/8"	8,450 TWD
P Curve	7 7/8"	9,002 MD
P Lateral	7 7/8"	19,700 MD

Formation Name	WV Top (R/B)
SHARP SH	1:40 TD
Gravel	4:17 WD
SH Rocks	4:52 WD
Upper Clinton, US	6:09 WD
Upper Spradley	7:09 WD
Lower Spradley Sh	7:18 WD
Lower Spradley Sh	7:18 WD
do Hill	7:13 WD
Lower Spradley Sh	7:48 WD
do Hill	8:55 WD
Working (C)	8:55 WD
Working (B)	8:55 WD
Working (A)	8:55 WD
Stream	9:32 WD
Prior Hole, Panned D	

ITEM/NAME	SYNTH	STOCK	WEIGHT	NOTES
Substrate	Spd-Med	105 TAD	0.4-0.9 ppb	
Intermediate (1)	Staphen-BW	5,000 TAD	8.6-10.2 ppb	Fully saturated BW
Intermediate (1)	Spd-Med	1,200 TAD	9.9-10.2 ppb	FW, gel and dilute to maintain under 8.0 ppb
Intermediate (2)	FW+H ₂ O	6,325 TAD	8.4-8.6 ppb	Blot off FW, pump 200-300 gal and sweep every stand
Production (year)	OBM 7525	6,335 TAD	9.5-9.6 ppb	as needed
Production (year)	OBM 7525	8,460 TAD	9.5-9.6 ppb	OBM
Production (year)	OBM 7525	19,700 MD	9.5-9.6 ppb	OBM

Material	Top	Shoe	OD	Weight	Grade	Comm.
Conductor	Surf	106 TWD	106 MD	20,000 in	.55	STC
Surfline	Surf	1,210' TWD	1,317' MD	13,375 in	1.55	HCI-80
Intermediate 1	Surf	6,333' TWD	6,121 MD	10,780 in	1.55	HCI-80
Intermediate 2	Surf	7,732' TWD	7,732 MD	37,000 in	1.55	HCI-80
Production	Surf	8,133' TWD	8,133 MD	5,350 in	1.00	Glad.com
				19,700 MD		

Interval	Lead		Trail	
	OH XS	Top	OH XS	Top
Surface	12.8	Surface	14.8	91° WD
Intermediate Sig 1	105%	1,710' WD	20%	5,621' MD
Low	11.5	N/A	0%	6,021' MD
Production	N/A	N/A	0%	7,425' MD
	11.0	4,222' WD	10%	

NOF	0.252 MD
ΔT Below Shoe:	8.460° TVD
BUR:	327° TVD
	10.00° / 100

Landing	EOG:	5.002° MD
	TVD:	8.910° TVD
	INC:	80.0°

Open Hole Log	N
Mud Logging	N/A
Mud Logging Interval	N/A
Prelim Target:	WCS

TD	19,700' MD	
EOI	8,910'	
TVD	10,920'	
VS	90.0°	INC
INC		

Directions to Location
Starting at intersection of I20 and I58 in Midland TX, Travel east on I58 for 13.1mi. Turn left onto FM1379 headed south for 4.2 miles. Turn left onto WTH 24-13 location. (location entrance is the first one south of Jakes Clays,

C - 4

NOTE: ALL TOPICS AND TABLE CHANGES

Section	Size	From Depth
Surface	17/2"	1,310' TVD
Int 1	32/16"	6,313' TVD
P. Vent.	17/16"	8,200' TVD
P. Curve	17/16"	8,200' TVD
P. Lateral	17/16"	13,500' MD

Formation Name	TVD Top (RKB)
Base of Rag Beds	1,460' TVD
Nugget (Salt)	4,110' TVD
San Andres	4,222' TVD
Gardiner	6,356' TVD
Upper G. Bk. 1.5	7,026' TVD
Lower G. Bk. 1.5	7,343' TVD
Lower G. Bk. 1.5	7,619' TVD
Lower G. Bk. 1.5	7,883' TVD
Lower G. Bk. 1.5	8,200' TVD
Lower G. Bk. 1.5	8,481' TVD
Lower G. Bk. 1.5	8,763' TVD
Lower G. Bk. 1.5	9,045' TVD
Lower G. Bk. 1.5	9,327' TVD
Lower G. Bk. 1.5	9,609' TVD
Lower G. Bk. 1.5	9,891' TVD
Lower G. Bk. 1.5	10,173' TVD
Lower G. Bk. 1.5	10,455' TVD
Lower G. Bk. 1.5	10,737' TVD
Lower G. Bk. 1.5	11,019' TVD
Lower G. Bk. 1.5	11,301' TVD
Lower G. Bk. 1.5	11,583' TVD
Lower G. Bk. 1.5	11,865' TVD
Lower G. Bk. 1.5	12,147' TVD
Lower G. Bk. 1.5	12,429' TVD
Lower G. Bk. 1.5	12,711' TVD
Lower G. Bk. 1.5	12,993' TVD
Lower G. Bk. 1.5	13,275' TVD
Lower G. Bk. 1.5	13,557' TVD
Lower G. Bk. 1.5	13,839' TVD
Lower G. Bk. 1.5	14,121' TVD
Lower G. Bk. 1.5	14,403' TVD
Lower G. Bk. 1.5	14,685' TVD
Lower G. Bk. 1.5	14,967' TVD
Lower G. Bk. 1.5	15,249' TVD
Lower G. Bk. 1.5	15,531' TVD
Lower G. Bk. 1.5	15,813' TVD
Lower G. Bk. 1.5	16,095' TVD
Lower G. Bk. 1.5	16,377' TVD
Lower G. Bk. 1.5	16,659' TVD
Lower G. Bk. 1.5	16,941' TVD
Lower G. Bk. 1.5	17,223' TVD
Lower G. Bk. 1.5	17,505' TVD
Lower G. Bk. 1.5	17,787' TVD
Lower G. Bk. 1.5	18,069' TVD
Lower G. Bk. 1.5	18,351' TVD
Lower G. Bk. 1.5	18,633' TVD
Lower G. Bk. 1.5	18,915' TVD
Lower G. Bk. 1.5	19,197' TVD
Lower G. Bk. 1.5	19,479' TVD
Lower G. Bk. 1.5	19,761' TVD
Lower G. Bk. 1.5	20,043' TVD
Lower G. Bk. 1.5	20,325' TVD
Lower G. Bk. 1.5	20,607' TVD
Lower G. Bk. 1.5	20,889' TVD
Lower G. Bk. 1.5	21,171' TVD
Lower G. Bk. 1.5	21,453' TVD
Lower G. Bk. 1.5	21,735' TVD
Lower G. Bk. 1.5	22,017' TVD
Lower G. Bk. 1.5	22,299' TVD
Lower G. Bk. 1.5	22,581' TVD
Lower G. Bk. 1.5	22,863' TVD
Lower G. Bk. 1.5	23,145' TVD
Lower G. Bk. 1.5	23,427' TVD
Lower G. Bk. 1.5	23,709' TVD
Lower G. Bk. 1.5	23,991' TVD
Lower G. Bk. 1.5	24,273' TVD
Lower G. Bk. 1.5	24,555' TVD
Lower G. Bk. 1.5	24,837' TVD
Lower G. Bk. 1.5	25,119' TVD
Lower G. Bk. 1.5	25,401' TVD
Lower G. Bk. 1.5	25,683' TVD
Lower G. Bk. 1.5	25,965' TVD
Lower G. Bk. 1.5	26,247' TVD
Lower G. Bk. 1.5	26,529' TVD
Lower G. Bk. 1.5	26,811' TVD
Lower G. Bk. 1.5	27,093' TVD
Lower G. Bk. 1.5	27,375' TVD
Lower G. Bk. 1.5	27,657' TVD
Lower G. Bk. 1.5	27,939' TVD
Lower G. Bk. 1.5	28,221' TVD
Lower G. Bk. 1.5	28,503' TVD
Lower G. Bk. 1.5	28,785' TVD
Lower G. Bk. 1.5	29,067' TVD
Lower G. Bk. 1.5	29,349' TVD
Lower G. Bk. 1.5	29,631' TVD
Lower G. Bk. 1.5	29,913' TVD
Lower G. Bk. 1.5	30,195' TVD
Lower G. Bk. 1.5	30,477' TVD
Lower G. Bk. 1.5	30,759' TVD
Lower G. Bk. 1.5	31,041' TVD
Lower G. Bk. 1.5	31,323' TVD
Lower G. Bk. 1.5	31,605' TVD
Lower G. Bk. 1.5	31,887' TVD
Lower G. Bk. 1.5	32,169' TVD
Lower G. Bk. 1.5	32,451' TVD
Lower G. Bk. 1.5	32,733' TVD
Lower G. Bk. 1.5	33,015' TVD
Lower G. Bk. 1.5	33,297' TVD
Lower G. Bk. 1.5	33,579' TVD
Lower G. Bk. 1.5	33,861' TVD
Lower G. Bk. 1.5	34,143' TVD
Lower G. Bk. 1.5	34,425' TVD
Lower G. Bk. 1.5	34,707' TVD
Lower G. Bk. 1.5	34,989' TVD
Lower G. Bk. 1.5	35,271' TVD
Lower G. Bk. 1.5	35,553' TVD
Lower G. Bk. 1.5	35,835' TVD
Lower G. Bk. 1.5	36,117' TVD
Lower G. Bk. 1.5	36,399' TVD
Lower G. Bk. 1.5	36,681' TVD
Lower G. Bk. 1.5	36,963' TVD
Lower G. Bk. 1.5	37,245' TVD
Lower G. Bk. 1.5	37,527' TVD
Lower G. Bk. 1.5	37,809' TVD
Lower G. Bk. 1.5	38,091' TVD
Lower G. Bk. 1.5	38,373' TVD
Lower G. Bk. 1.5	38,655' TVD
Lower G. Bk. 1.5	38,937' TVD
Lower G. Bk. 1.5	39,219' TVD
Lower G. Bk. 1.5	39,501' TVD
Lower G. Bk. 1.5	39,783' TVD
Lower G. Bk. 1.5	40,065' TVD
Lower G. Bk. 1.5	40,347' TVD
Lower G. Bk. 1.5	40,629' TVD
Lower G. Bk. 1.5	40,911' TVD
Lower G. Bk. 1.5	41,193' TVD
Lower G. Bk. 1.5	41,475' TVD
Lower G. Bk. 1.5	41,757' TVD
Lower G. Bk. 1.5	42,039' TVD
Lower G. Bk. 1.5	42,321' TVD
Lower G. Bk. 1.5	42,603' TVD
Lower G. Bk. 1.5	42,885' TVD
Lower G. Bk. 1.5	43,167' TVD
Lower G. Bk. 1.5	43,449' TVD
Lower G. Bk. 1.5	43,731' TVD
Lower G. Bk. 1.5	44,013' TVD
Lower G. Bk. 1.5	44,295' TVD
Lower G. Bk. 1.5	44,577' TVD
Lower G. Bk. 1.5	44,859' TVD
Lower G. Bk. 1.5	45,141' TVD
Lower G. Bk. 1.5	45,423' TVD
Lower G. Bk. 1.5	45,705' TVD
Lower G. Bk. 1.5	45,987' TVD
Lower G. Bk. 1.5	46,269' TVD
Lower G. Bk. 1.5	46,551' TVD
Lower G. Bk. 1.5	46,833' TVD
Lower G. Bk. 1.5	47,115' TVD
Lower G. Bk. 1.5	47,397' TVD
Lower G. Bk. 1.5	47,679' TVD
Lower G. Bk. 1.5	47,961' TVD
Lower G. Bk. 1.5	48,243' TVD
Lower G. Bk. 1.5	48,525' TVD
Lower G. Bk. 1.5	48,807' TVD
Lower G. Bk. 1.5	49,089' TVD
Lower G. Bk. 1.5	49,371' TVD
Lower G. Bk. 1.5	49,653' TVD
Lower G. Bk. 1.5	49,935' TVD
Lower G. Bk. 1.5	50,217' TVD
Lower G. Bk. 1.5	50,499' TVD
Lower G. Bk. 1.5	50,781' TVD
Lower G. Bk. 1.5	51,063' TVD
Lower G. Bk. 1.5	51,345' TVD
Lower G. Bk. 1.5	51,627' TVD
Lower G. Bk. 1.5	51,909' TVD
Lower G. Bk. 1.5	52,191' TVD
Lower G. Bk. 1.5	52,473' TVD
Lower G. Bk. 1.5	52,755' TVD
Lower G. Bk. 1.5	53,037' TVD
Lower G. Bk. 1.5	53,319' TVD
Lower G. Bk. 1.5	53,601' TVD
Lower G. Bk. 1.5	53,883' TVD
Lower G. Bk. 1.5	54,165' TVD
Lower G. Bk. 1.5	54,447' TVD
Lower G. Bk. 1.5	54,729' TVD
Lower G. Bk. 1.5	55,011' TVD
Lower G. Bk. 1.5	55,293' TVD
Lower G. Bk. 1.5	55,575' TVD
Lower G. Bk. 1.5	55,857' TVD
Lower G. Bk. 1.5	56,139' TVD
Lower G. Bk. 1.5	56,421' TVD
Lower G. Bk. 1.5	56,703' TVD
Lower G. Bk. 1.5	56,985' TVD
Lower G. Bk. 1.5	57,267' TVD
Lower G. Bk. 1.5	57,549' TVD
Lower G. Bk. 1.5	57,831' TVD
Lower G. Bk. 1.5	58,113' TVD
Lower G. Bk. 1.5	58,395' TVD
Lower G. Bk. 1.5	58,677' TVD
Lower G. Bk. 1.5	58,959' TVD
Lower G. Bk. 1.5	59,241' TVD
Lower G. Bk. 1.5	59,523' TVD
Lower G. Bk. 1.5	59,805' TVD
Lower G. Bk. 1.5	60,087' TVD
Lower G. Bk. 1.5	60,369' TVD
Lower G. Bk. 1.5	60,651' TVD
Lower G. Bk. 1.5	60,933' TVD
Lower G. Bk. 1.5	61,215' TVD
Lower G. Bk. 1.5	61,497' TVD
Lower G. Bk. 1.5	61,779' TVD
Lower G. Bk. 1.5	62,061' TVD
Lower G. Bk. 1.5	62,343' TVD
Lower G. Bk. 1.5	62,625' TVD
Lower G. Bk. 1.5	62,907' TVD
Lower G. Bk. 1.5	63,189' TVD
Lower G. Bk. 1.5	63,471' TVD
Lower G. Bk. 1.5	63,753' TVD
Lower G. Bk. 1.5	64,035' TVD
Lower G. Bk. 1.5	64,317' TVD
Lower G. Bk. 1.5	64,599' TVD
Lower G. Bk. 1.5	64,881' TVD
Lower G. Bk. 1.5	65,163' TVD
Lower G. Bk. 1.5	65,445' TVD
Lower G. Bk. 1.5	65,727' TVD
Lower G. Bk. 1.5	66,009' TVD
Lower G. Bk. 1.5	66,291' TVD
Lower G. Bk. 1.5	66,573' TVD
Lower G. Bk. 1.5	66,855' TVD
Lower G. Bk. 1.5	67,137' TVD
Lower G. Bk. 1.5	67,419' TVD
Lower G. Bk. 1.5	67,701' TVD
Lower G. Bk. 1.5	67,983' TVD
Lower G. Bk. 1.5	68,265' TVD
Lower G. Bk. 1.5	68,547' TVD
Lower G. Bk. 1.5	68,829' TVD
Lower G. Bk. 1.5	69,111' TVD
Lower G. Bk. 1.5	69,393' TVD
Lower G. Bk. 1.5	69,675' TVD
Lower G. Bk. 1.5	69,957' TVD
Lower G. Bk. 1.5	70,239' TVD
Lower G. Bk. 1.5	70,521' TVD
Lower G. Bk. 1.5	70,803' TVD
Lower G. Bk. 1.5	71,085' TVD
Lower G. Bk. 1.5	71,367' TVD
Lower G. Bk. 1.5	71,649' TVD
Lower G. Bk. 1.5	71,931' TVD
Lower G. Bk. 1.5	72,213' TVD
Lower G. Bk. 1.5	72,495' TVD
Lower G. Bk. 1.5	72,777' TVD
Lower G. Bk. 1.5	73,059' TVD
Lower G. Bk. 1.5	73,341' TVD
Lower G. Bk. 1.5	73,623' TVD
Lower G. Bk. 1.5	73,905' TVD
Lower G. Bk. 1.5	74,187' TVD
Lower G. Bk. 1.5	74,469' TVD
Lower G. Bk. 1.5	74,751' TVD
Lower G. Bk. 1.5	75,033' TVD
Lower G. Bk. 1.5	75,315' TVD
Lower G. Bk. 1.5	75,597' TVD
Lower G. Bk. 1.5	75,879' TVD
Lower G. Bk. 1.5	76,161' TVD
Lower G. Bk. 1.5	76,443' TVD
Lower G. Bk. 1.5	76,725' TVD
Lower G. Bk. 1.5	77,007' TVD
Lower G. Bk. 1.5	77,289' TVD
Lower G. Bk. 1.5	77,571' TVD
Lower G. Bk. 1.5	77,853' TVD
Lower G. Bk. 1.5	78,135' TVD
Lower G. Bk. 1.5	78,417' TVD
Lower G. Bk. 1.5	78,699' TVD
Lower G. Bk. 1.5	78,981' TVD
Lower G. Bk. 1.5	79,263' TVD
Lower G. Bk. 1.5	79,545' TVD
Lower G. Bk. 1.5	79,827' TVD
Lower G. Bk. 1.5	80,109' TVD
Lower G. Bk. 1.5	80,391' TVD
Lower G. Bk. 1.5	80,673' TVD
Lower G. Bk. 1.5	80,955' TVD
Lower G. Bk. 1.5	81,237' TVD
Lower G. Bk. 1.5	81,519' TVD
Lower G. Bk. 1.5	81,801' TVD
Lower G. Bk. 1.5	82,083' TVD
Lower G. Bk. 1.5	82,365' TVD
Lower G. Bk. 1.5	82,647' TVD
Lower G. Bk. 1.5	82,929' TVD
Lower G. Bk. 1.5	83,211' TVD
Lower G. Bk. 1.5	83,493' TVD
Lower G. Bk. 1.5	83,775' TVD
Lower G. Bk. 1.5	84,057' TVD
Lower G. Bk. 1.5	84,339' TVD
Lower G. Bk. 1.5	84,621' TVD
Lower G. Bk. 1.5	84,903' TVD
Lower G. Bk. 1.5	85,185' TVD
Lower G. Bk. 1.5	85,467' TVD
Lower G. Bk. 1.5	85,749' TVD
Lower G. Bk. 1.5	86,031' TVD
Lower G. Bk. 1.5	86,313' TVD
Lower G. Bk. 1.5	86,595' TVD
Lower G. Bk. 1.5	86,877' TVD
Lower G. Bk. 1.5	87,159' TVD
Lower G. Bk. 1.5	87,441' TVD
Lower G. Bk. 1.5	87,723' TVD
Lower G. Bk. 1.5	88,005' TVD
Lower G. Bk. 1.5	88,287' TVD
Lower G. Bk. 1.5	88,569' TVD
Lower G. Bk. 1.5	88,851' TVD
Lower G. Bk. 1.5	89,133' TVD
Lower G. Bk. 1.5	89,415' TVD
Lower G. Bk. 1.5	89,697' TVD
Lower G. Bk. 1.5	89,979' TVD
Lower G. Bk. 1.5	90,261' TVD
Lower G. Bk. 1.5	90,543' TVD
Lower G. Bk. 1.5	90,825' TVD
Lower G. Bk. 1.5	91,107' TVD
Lower G. Bk. 1.5	91,389' TVD
Lower G. Bk. 1.5	91,671' TVD
Lower G. Bk. 1.5	91,953' TVD
Lower G. Bk. 1.5	92,235' TVD
Lower G. Bk. 1.5	92,517' TVD
Lower G. Bk. 1.5	92,799' TVD
Lower G. Bk. 1.5	93,081' TVD
Lower G. Bk. 1.5	93,363' TVD
Lower G. Bk. 1.5	93,645' TVD
Lower G. Bk. 1.5	93,927' TVD
Lower G. Bk. 1.5	94,209' TVD
Lower G. Bk. 1.5	94,491' TVD
Lower G. Bk. 1.5	94,773' TVD
Lower G. Bk. 1.5	95,055' TVD
Lower G. Bk. 1.5	95,337' TVD
Lower G. Bk. 1.5	95,619' TVD
Lower G. Bk. 1.5	95,901' TVD
Lower G. Bk. 1.5	96,183' TVD
Lower G. Bk. 1.5	96,465' TVD
Lower G. Bk. 1.5	96,747' TVD
Lower G. Bk. 1.5	97,029' TVD
Lower G. Bk. 1.5	97,311' TVD
Lower G. Bk. 1.5	97,593' TVD
Lower G. Bk. 1.5	97,875' TVD
Lower G. Bk. 1.5	98,157' TVD
Lower G. Bk. 1.5	98,439' TVD
Lower G. Bk. 1.5	98,721' TVD
Lower G. Bk. 1.5	99,003' TVD
Lower G. Bk. 1.5	99,285' TVD
Lower G. Bk. 1.5	99,567' TVD
Lower G. Bk. 1.5	99,849' TVD
Lower G. Bk. 1.5	100,131' TVD

NOTES:
 RETRO-INFORMABLE CHANGES:

Vertical Step-Out

Directional Plan #:	Plan 1
Vertical Step-Out	BUILD: 1311-2021 MD
	HOLD: 10.0'
	DRIFT: 0.9-0.195 MD
	1.5'
	DISP: 187'

Formation Name

Formation Name	Top (KFB)	Top (KFB)
Base of Red Beds	1,480' TVD	
San Juan (G)	4,100' TVD	
San Andres	4,222' TVD	
Upper Gorda	5,136' TVD	
Upper Spraberry	7,059' TVD	
Lower Spraberry Sh	7,843' TVD	
Lower Spraberry Sh	7,813' TVD	
Lower Spraberry Sh	7,853' TVD	
Base (A)	8,421' TVD	
Workcenter (B)	8,388' TVD	
Workcenter (C)	8,332' TVD	
Workcenter (D)		
Plug Hole Planned TD		

Open Hole Log

AN Below Shoe:	8,400' TVD
BUR:	67' TVD
	10,001' TVD

EOG: 8,223' MD
TVD: 8,670' TVD
INC: 89.0'

Drilling Fluids Summary

Interval	Type	Start	Stop	Weight	Notes
Surfline	Spud Mud	106' TVD	1,210' TVD	8.4-9.0 PPg	Susp. sap. PHFA
Intermediate (1)	Saturated BW	1210' TVD	6,000' TVD	9.8-10.2 PPg	Fully saturated BW
Intermediate (1)	Spud Mud	5,000' TVD	6,329' TVD	8.6-9.0 PPg	PX, gel and lime. Pump and dilute to maintain under 8.0 PPg
Intermediate (2)	Fresh Water	6,329' TVD	8,133' TVD	8.4-8.6 PPg	Drill out PVG a Pump 20-30 bbl/g mud swaps every stand or as needed.
Production (var)	OBM 75/25	6,133' TVD	8,200' TVD	9.5 - 9.6 PPg	OBM
Production (curve test)	OBM 75/25	8,200' TVD	19,500' MD	9.5 - 9.6 PPg	OBM

Casing Summary

Interval	Type	Size	OD	Weight	Grade	Conn.
Surfline	Surf	106' TVD	106' MD	20' in	4.5	SIG
Intermediate 1	Surf	1,210' TVD	1,210' MD	13.375 in	HCL80	BTC SIGC
Intermediate 2	Surf	6,329' TVD	6,329' MD	10.76 in	HCL80	BTC SIGC
Production	Surf	8,133' TVD	8,133' MD	9.552 in	P110	SIGC

Cement Summary

Interval	WT	Loss	Type	WT	Yd
Surfline	12.8	100%	Surfline	14.8	310' TVD
Intermediate Sig 1	12.5	150%		12.5	6,102' MD
Intermediate Sig 2	11.0	0%		12.5	9,505' MD
Production	11.0	0%	4,222' TVD	12.5	

TD

ROD:	19,507' MD
TVD:	8,670'
VS:	10.898'
INC:	99.0' INC

Directions to Location

Starting at intersection of 120 and 155 in Midland TX, Travel East on 158 for 13.171m. Turn left onto FM1375 headed South for 4.2 miles. Turn left onto WTH 24.31m. (Location entrance is the first one south of Jakes Clays)

WITH 24-13 E #251

Directions to Location
Starting at Intersection

	Lead		Tail	
	OHXS	Top	OHXS	Top
Interval	WT	WT	WT	WT
12.8	100%	100%	20%	310 TWD
Interval Sg 1	180%	5.760 TWD	0%	5.651 TWD
Lead	N/A	1.170 TWD	12.5%	6.023 TWD
Position	0%	4.222 TWD	10%	1.453 TWD
	11.0		12.5	

TD	
EOL	19,700' MD
TVD:	8,910'
VS:	10,920'
INC:	90.0° INC

Permit Approval Date: 1/10/00
Well Type: Horizontal[illegible]

Production (wt%)	OBM 75/25	E.133 ¹ TYD	A.200 ² TYD	9.5 - 9.6 ppg	OBM	or as needed
Production (cur/water/ml)	OBM 75/25	E.200 ² TYD	B.500 ³ MD	9.5 - 9.6 ppg	OBM	

Interval	Top	Shore	OD	Weight	Grade	Comm.
Control/250'	Surf	106' T/D	20,000 m	44.50" J5	STC	BTC
Shore # 1	Surf	1,210' T/D	13,312 m	45.50" HCl80	STC	STC
Shore # 2	Surf	6,402' T/D	19,750 m	46.50" HCl80	STC	STC
Impregnated 2' Intvl	Surf	6,130' T/D	6,525 m	32.00" P-10	HCl80	STC
Production	Surf		19,830' MD	3,300 m	17.00" G80/GCM	

	L84S			Tall		
	WT	OHXS	Top	WT	OHXS	Top
Integral	12.6	100%	Same	14.8	20%	91° TD
Starches	12.6	100%	Same	12.5	0%	6.102 MD
Interf. Sol	11.0	100%	Same	12.5	0%	6.552 MD
Low	11.0	100%	Same	12.5	0%	7.005 MD
Production	11.0	0%	4.222 TD	12.5	10%	

TD	FOL: 19,500 MD
	T VD: 8,670
	VS: 10,898

Directions to Location
(Starting at intersection of I20 and 158 in Midland TX. Travel east on 158 for 13.1mi. Turn left onto FM1379 headed south for 4.2 miles. Turn left onto WTH 24-13 location. (Location entrance is the first one south of Jakes Clay))

AFEE# 0
EER# 0

WTH 24-13 - surface damage fees due under the EER-COM SUA										
Item	Acres	Square footage	Square footage allowed under UT D&R Schedule	Excess square footage	Amount due for square footage allowed under UT D&R Schedule	Excess square footage amount due	Roddage	Damage schedule rate per SUA	Damage rates per UL Damage & Rate Schedule	Amount due
Facility Pad #1	4.468	202,500						\$0.18/sq. ft.		\$36,450.00
Reserve Pit #1	0.698	30,416						\$0.28/sq. ft.		\$8,516.48
Reserve Pit #2	1.468	63,971						\$0.28/sq. ft.		\$17,911.88
Reserve Pit #3	1.334	58,140						\$0.28/sq. ft.		\$16,279.20
2 aboveground temporary lay flat fresh water lines not to exceed 16" in inside diameter							445.6		\$10.00	\$4,456.00
12 flowlines							309.96	\$28.00		\$8,678.88
1 injection line							25.83	\$28.00		\$723.24

[illegible]

WTH 24-13 - surface damage fees due under the EER-COM SUA										
Item	Acres	Square footage	Square footage allowed under UT D&R Schedule	Excess square footage	Amount due for square footage allowed under UT D&R Schedule	Excess square footage amount due	Roddage	Damage schedule rate per SUA	Damage rates per UL Damage & Rate Schedule	Amount due

Remarks

Remarks



City Council Meeting

Item Number: 16
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Carl Craig, Director
Subject: Motion authorizing the execution of a First Amendment to Right of Way License between the City of Midland and OLC Kermit, LLC, regarding City-owned property described as Section 5, Block C24, PSL Survey, Winkler and Loving Counties, Texas, and Sections 7, 12, 13, 19, 20, and 27, Block C23, PSL Survey, Winkler County, Texas. (UTILITIES)

Purpose:

Motion authorizing the execution of a First Amendment to Right of Way License between the City of Midland and OLC Kermit, LLC, regarding City-owned property described as Section 5, Block C24, PSL Survey, Winkler and Loving Counties, Texas, and Sections 7, 12, 13, 19, 20, and 27, Block C23, PSL Survey, Winkler County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

One-time surface damage fee of \$157,027.36

Discussion:

This amendment allows for construction of the overhead bridge for the conveyor belt. More land was needed for the construction and to maintain.

FIRST AMENDMENT TO RIGHT OF WAY LICENSE

This FIRST AMENDMENT TO RIGHT OF WAY LICENSE (this "Amendment"), dated as of _____, 2021, but effective as of July 31, 2019 (the "Effective Date"), is by and between the **CITY OF MIDLAND, TEXAS**, a home rule municipal corporation, whose address is P.O. Box 1152, Midland, Texas 79702 ("Licensor"), and **OLC KERMIT, LLC**, a Texas limited liability company, whose address is 5918 West Courtyard, Suite 500, Austin, Texas 78730 ("Licensee"). Licensor and Licensee are sometimes referred to herein individually as a "Party" and collectively as the "Parties". Any capitalized term used but not defined in this Amendment shall have the meaning assigned to such term in the Right of Way License (as defined below).

WHEREAS, Licensor and Licensee are Parties to that certain Right of Way License dated effective as of July 31, 2019 (the "Right of Way License"), under which Licensor granted to Licensee a right-of-way for the purpose of placing and constructing a belt conveyor system, including all equipment and facilities, for the transportation of sand and other materials, along with a road and not more than two (2) electric power lines, on, over, across, along and through certain portions of the following described property, all as more particularly described in the Right of Way License:

**Section 5, Block C24, PSL Survey, Winkler and Loving Counties, Texas;
Section 27, Block C23, PSL Survey, Winkler County, Texas;
Section 20, Block C23, PSL Survey, Winkler County, Texas;
Section 19, Block C23, PSL Survey, Winkler County, Texas;
Section 13, Block C23, PSL Survey, Winkler County, Texas;
Section 12, Block C23, PSL Survey, Winkler County, Texas; and
Section 7, Block C23, PSL Survey, Winkler County, Texas.**

WHEREAS, the Parties desire to amend the Right of Way License as more fully set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Paragraph B. of Article II of the Right of Way License is hereby amended and restated in its entirety as follows:

"B. Surface Damage Fee. Licensee shall pay (1) a one-time surface damage fee to the Licensor in the amount of One Hundred Fifty-Seven Thousand Twenty-Seven and 36/100 Dollars (\$157,027.36) in connection with Surface Site "A" (4.430 acres) and Surface Site "B" (7.985 acres) located in Sections 13 and 19, Block C23, PSL Survey, Winkler County, Texas, as depicted in the survey included in Exhibit "A" attached hereto, and (2) a one-time surface damage fee to the Licensor in the amount of Eight Hundred Ninety-Six Thousand and No/100 Dollars (\$896,000.00) in connection with the Property covered by this License other than the Property described in the immediately preceding clause (1), with such surface damage fees payable on or prior to the Construction Date. The "Construction Date"

shall be that date construction of the conveyor first commences on Licensor's Property."

2. Paragraph A. of Article III of the Right of Way License is hereby amended and restated in its entirety as follows:

"A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being (i) seventy-five (75) feet temporary in width on each side of the centerline locations shown on Exhibit "A" attached hereto and incorporated herein with said width to automatically reduce to thirty-seven and one-half (37.5) feet on each side of said centerline locations after the belt system described below is constructed, and (ii) those certain 4.430-acre and 7.985-acre tracts of land located in Sections 13 and 19, Block C23, PSL Survey, Winkler County, Texas, respectively referenced as Surface Site "A" and Surface Site "B", as depicted in the survey included in Exhibit "A" attached hereto, in each case for the purpose of placing and constructing a belt conveyor system, including all equipment and facilities, for the transportation of sand and other materials on, over, across, along and through the Property, along with a road and not more than two (2) electric power lines, and for operating, repairing, maintaining, replacing and removing the same, and to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the belt conveyor system and facilities described herein. Provided that the construction of the belt conveyor system complies with the specifications set forth in this License, Licensor shall provide Licensee with written notice of its approval of such as-built survey and upon the sending of such written notice, Exhibit "A" to this License shall automatically be amended and replaced with such as-built survey.**"

3. Exhibit A attached hereto and made a part hereof for all purposes is hereby added to Exhibit "A" to the Right of Way License for all purposes.
4. Upon Licensor's approval of the as-built survey of the belt conveyor system as provided under the terms of the Right of Way License, Licensor and Licensee shall execute a Memorandum of Right of Way License and First Amendment to Right of Way License (the "Memorandum") in the form attached hereto as Exhibit B for recording in the records of the counties in which the Property is located, to give record notice of the Right of Way License and this Amendment. The as-built survey of the belt conveyor system shall be attached as Exhibit "A" to the Memorandum. Neither the Right of Way License nor this Amendment shall be recorded except with the prior written consent of Licensor.
5. Except as expressly modified and amended hereby, the Right of Way License shall continue in full force and effect and the Parties hereby ratify and confirm the Right of Way License as modified and amended hereby.
6. This Amendment shall be governed by and construed under the laws of the State of Texas.

EXECUTED by each party hereto as of the date first set forth above, to be effective for all purposes as of the Effective Date.

LICENSOR:

CITY OF MIDLAND, TEXAS

By: _____

Name: _____

Title: _____

ATTEST:

Amy M. Turner, City Secretary

**APPROVED AS TO CONTENT AND
COMPLETENESS:**

Name: _____

Title: _____

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

[Signature Page Follows]

LICENSEE:

OLC KERMIT, LLC

By: _____

Name: _____

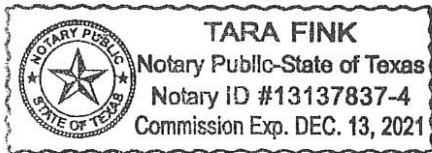
Title: _____

John Turner
John Turner
CEO

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Travis §

This instrument was acknowledged before me this 10th day of February, 2021, by John Turner, CEO of OLC Kermit, LLC, a Texas limited liability company, on behalf of said limited liability company.



Tara Fink
Notary Public – State of Texas

EXHIBIT A

Attached to that certain First Amendment to Right of Way License
between the City of Midland, Texas, as “Licensor”
and
OLC Kermit, LLC, as “Licensee”

(see attached)

EXHIBIT B

Attached to that certain First Amendment to Right of Way License
between the City of Midland, Texas, as "Licensor"
and
OLC Kermit, LLC, as "Licensee"

MEMORANDUM OF RIGHT OF WAY LICENSE AND FIRST AMENDMENT TO RIGHT OF WAY LICENSE

STATE OF TEXAS §
 §
COUNTIES OF LOVING §
AND WINKLER §

This Memorandum of Right of Way License and First Amendment to Right of Way License (this "Memorandum") is made and entered into by and between the **CITY OF MIDLAND, TEXAS**, a home rule municipal corporation, whose address is 300 N. Loraine, Midland, Texas, 79701 (herein "Licensor") and **OLC KERMIT, LLC**, a Texas limited liability company, whose address is 5918 West Courtyard, Suite 500, Austin, Texas 78730 (herein "Licensee").

WITNESSETH:

Licensor and Licensee are parties to that certain Right of Way License dated effective as of July 31, 2019 (the "Right of Way License"), as amended by that certain First Amendment to Right of Way License dated on or about _____, 2021, but effective as of July 31, 2019 (the "First Amendment"), under which Licensor granted to Licensee the right to enter upon certain property of Licensor depicted on Exhibit "A" attached hereto and incorporated herein, being (i) seventy-five (75) feet temporary in width on each side of the centerline locations shown on Exhibit "A" attached hereto and incorporated herein with said width to automatically reduce to thirty-seven and one-half (37.5) feet on each side of said centerline locations after the belt system described below is constructed, and (ii) those certain 4.430-acre and 7.985-acre tracts of land located in Sections 13 and 19, Block C23, PSL Survey, Winkler County, Texas, respectively referenced as Surface Site "A" and Surface Site "B", as depicted in the survey included in Exhibit "A" attached hereto, in each case for the purpose of placing and constructing a belt conveyor system, including all equipment and facilities, for the transportation of sand and other materials on, over, across, along and through Licensor's property depicted on Exhibit "A", along with a road and not more than two (2) electric power lines, and for operating, repairing, maintaining, replacing and removing the same, and to have the right of ingress and egress at convenient points for such purpose, in all cases subject to the terms of the Right of Way License, as amended by the First Amendment, and as more particularly described in the Right of Way License and the First Amendment.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced Counties, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License

and the First Amendment and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be further amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License or the First Amendment, the terms of the Right of Way License, as amended by the First Amendment, shall control.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of July 31, 2019.

LICENSOR:

CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 2021, by _____ of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

LICENSEE:

OLC KERMIT, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me this ____ day of _____, 2021, by _____, _____ of OLC Kermit, LLC, a Texas limited liability company, on behalf of said limited liability company.

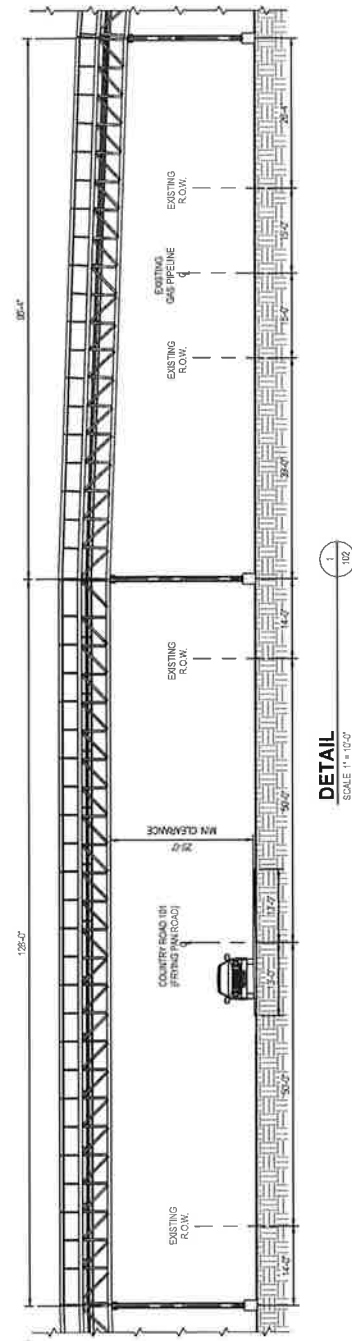
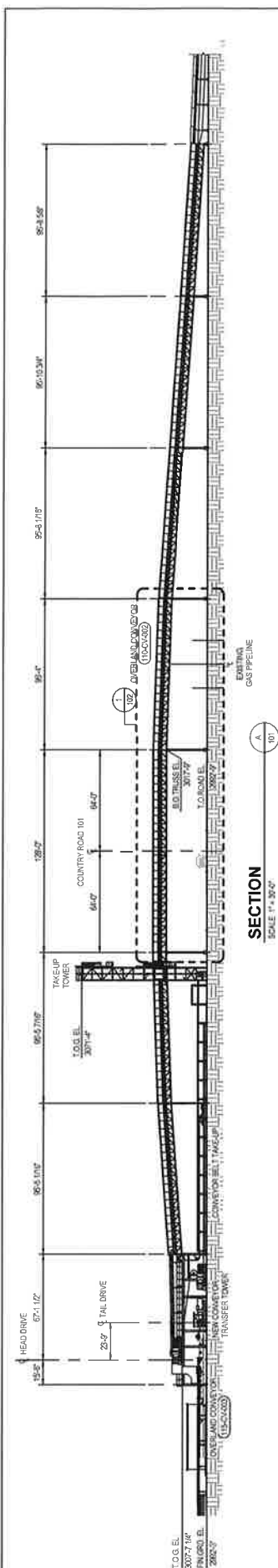
Notary Public – State of _____

EXHIBIT "A"

Attached to that certain Memorandum of Right of Way License and
First Amendment to Right of Way License
between the City of Midland, Texas, as "Licensor"
and
OLC Kermit, LLC, as "Licensee"

(see attached)

[As-Built Survey of Belt Conveyor System to be Attached]



30'15'0'15'30'

1"=30'

10'5'0'5'10'

1"=10'

PRELIMINARY

NOT FOR CONSTRUCTION

60'30'15'0'15'30'45'60'

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SECTION: 115-GA-102

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PROJECT: 115-GA-102

SECTION: 115-GA-102

DATE: 03/07/2021

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SECTION: 115-GA-102

DATE: 03/07/2021

SURFACE SITE "A"
TOTAL AREA = 192,981 SQ. FEET
(4.430 ACRES)

SURFACE SITE "A"

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 13, BLOCK C23, PUBLIC SCHOOL LAND SURVEY, ABSTRACT NO. 1386, WINKLER COUNTY, TEXAS, SAID SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10703175.37, E:1386973.17) IN SAID SECTION 13, FROM WHICH A 2" CONCRETE MONUMENT FOUND FOR THE NORTHWEST CORNER OF SAID SECTION 13 BEARS N 76°36'32" W, A DISTANCE OF 549.28 FEET (TIE);

THENCE S 88°29'47" E, A DISTANCE OF 68.35 FEET TO A POINT;
THENCE S 76°41'08" E, A DISTANCE OF 51.22 FEET TO A POINT;
THENCE S 88°41'42" E, A DISTANCE OF 502.78 FEET TO A POINT;
THENCE S 56°19'06" E, A DISTANCE OF 63.29 FEET TO A POINT;
THENCE S 50°53'35" W, A DISTANCE OF 287.10 FEET TO A POINT;
THENCE N 88°15'22" W, A DISTANCE OF 548.21 FEET TO A POINT, FROM WHICH A 2" CONCRETE MONUMENT FOUND FOR
THE SOUTHEAST CORNER OF SECTION 19, BLOCK C23, PUBLIC SCHOOL LAND SURVEY, ABSTRACT NO. 1390, BEARS
S 19°50'44" W, A DISTANCE OF 850.50 FEET (TIE);
THENCE N 17°13'10" W, A DISTANCE OF 170.94 FEET TO A POINT;
THENCE N 72°18'19" W, A DISTANCE OF 19.84 FEET TO A POINT;
THENCE N 85°15'41" W, A DISTANCE OF 9.45 FEET TO A POINT;
THENCE N 17°20'14" W, A DISTANCE OF 28.48 FEET TO A POINT;
THENCE N 73°09'44" E, A DISTANCE OF 7.97 FEET TO A POINT;
THENCE N 31°07'22" E, A DISTANCE OF 21.12 FEET TO A POINT;
THENCE N 11°04'40" W, A DISTANCE OF 56.47 FEET TO A POINT;
THENCE N 58°30'55" W, A DISTANCE OF 35.40 FEET TO A POINT;
THENCE N 79°08'35" W, A DISTANCE OF 3.62 FEET TO A POINT;
THENCE N 11°12'38" W, A DISTANCE OF 39.03 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 192,981 SQUARE FEET OR 4.430 ACRES IN SAID SECTION 13.

SURFACE SITE "B"

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 13, BLOCK C23, PUBLIC SCHOOL LAND SURVEY, ABSTRACT NO. 1386 AND SECTION 19, BLOCK C23, PUBLIC SCHOOL LAND SURVEY, ABSTRACT NO. 1390, WINKLER COUNTY, TEXAS. SAID SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10703190.36, E:1386385.55) IN SAID SECTION 19, FROM WHICH A 2" CONCRETE MONUMENT FOUND FOR THE NORTHEAST CORNER OF SAID SECTION 19 BEARS N 25°23'40" E, A DISTANCE OF 124.22 FEET (TIE);

THENCE S 88°32'28" E, A DISTANCE OF 560.68 FEET TO A POINT;
THENCE S 11°03'21" E, A DISTANCE OF 39.58 FEET TO A POINT;
THENCE S 79°34'22" W, A DISTANCE OF 6.53 FEET TO A POINT;
THENCE S 69°28'24" W, A DISTANCE OF 11.11 FEET TO A POINT;
THENCE S 35°54'39" W, A DISTANCE OF 16.27 FEET TO A POINT;
THENCE S 22°09'06" W, A DISTANCE OF 15.70 FEET TO A POINT;
THENCE S 16°04'38" E, A DISTANCE OF 48.81 FEET TO A POINT;
THENCE S 31°04'01" E, A DISTANCE OF 7.99 FEET TO A POINT;
THENCE S 53°49'57" E, A DISTANCE OF 26.89 FEET TO A POINT;
THENCE S 72°46'57" E, A DISTANCE OF 15.95 FEET TO A POINT;
THENCE N 81°46'09" E, A DISTANCE OF 6.47 FEET TO A POINT;
THENCE S 16°31'52" E, A DISTANCE OF 2.44 FEET TO A POINT;
THENCE S 18°16'27" E, A DISTANCE OF 22.21 FEET TO A POINT;
THENCE S 71°43'33" W, A DISTANCE OF 5.13 FEET TO A POINT;
THENCE S 57°07'57" W, A DISTANCE OF 11.93 FEET TO A POINT;
THENCE S 18°29'00" E, A DISTANCE OF 204.89 FEET TO A POINT;
THENCE N 88°39'30" W, A DISTANCE OF 623.27 FEET TO A POINT, FROM WHICH A 2" CONCRETE MONUMENT FOUND FOR
THE SOUTHEAST CORNER OF SAID SECTION 19 BEARS S 26°37'33" E, A DISTANCE OF 866.87 FEET (TIE);
THENCE N 02°19'44" W, A DISTANCE OF 91.52 FEET TO A POINT;
THENCE N 88°03'51" W, A DISTANCE OF 231.06 FEET TO A POINT;
THENCE N 03°17'18" E, A DISTANCE OF 113.84 FEET TO A POINT;
THENCE N 88°24'55" W, A DISTANCE OF 114.05 FEET TO A POINT;
THENCE N 00°00'59" W, A DISTANCE OF 87.02 FEET TO A POINT;
THENCE S 88°47'53" E, A DISTANCE OF 1102.45 FEET TO A POINT;
THENCE N 05°13'22" W, A DISTANCE OF 47.53 FEET TO A POINT;
THENCE S 89°47'03" E, A DISTANCE OF 125.66 FEET TO A POINT;
THENCE N 83°07'41" E, A DISTANCE OF 54.82 FEET TO A POINT;
THENCE N 63°58'49" E, A DISTANCE OF 66.08 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 347,831 SQUARE FEET OR 7.985 ACRES IN SAID SECTION 13 & 19.

SURFACE SITE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L31	S 57°07'57" W	11.93'
L32	S 18°29'00" E	204.89'
L33	N 88°39'30" W	623.27'
L34	N 02°19'44" W	91.52'
L35	N 88°03'51" W	231.06'
L36	N 03°17'18" E	113.64'
L37	N 88°24'55" W	114.105'
L38	N 00°05'56" W	67.02'
L39	S 88°47'53" E	1102.45'
L40	N 05°13'22" W	47.53'
L41	S 89°47'03" E	125.66'
L42	N 83°07'41" E	54.82'
L43	N 63°58'49" E	66.08'

TOTAL SURFACE SITE AREA
540,812 SQ. FEET
(12.415 ACRES)

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE AND LONGITUDE ARE IN DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

I HEREBY STATE THAT THIS SURVEY WAS
PERFORMED UNDER MY DIRECT SUPERVISION.

 11/09/2020
 LON E. WHITTEN TEXAS R.P.L.S. NO. 5893 DATE



THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
10 MILES NORTHWEST OF MAGWALT, TEXAS

LEGEND

- — — SECTION LINE
- OHE — OVERHEAD ELECTRIC
- SURFACE SITE "A" & "B"
- | — EXISTING PIPELINE
- X — FENCE LINE
- ♂ POWER POLE
- FOUND MONUMENT
- CALCULATED CORNER
- BEARING CHANGE

KERMIT OLC, LLC

TRANSFER STATION # 2 FRYING PAN/CR 101
CITY OF MIDLAND
PROPOSED SURFACE SITE

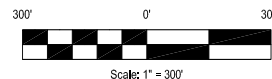
SITUATED IN

SECTION 13, BLOCK C23 PUBLIC SCHOOL LAND SURVEY ABSTRACT NO. 1386	SECTION 19, BLOCK C23 PUBLIC SCHOOL LAND SURVEY ABSTRACT NO. 1390
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February 23, 2021

DRAWN BY: MAC	DATE: 11/05/20	DWG. NO. 1811138_KERMIT CONVEYOR_SEC 13 & 19 BLK C23 SS	REV. 0
CHECKED BY: LEW	DATE: 11/09/20		
SCALE: 1"=300'	PAGE 1 OF 1		

PACKET
 TBPCLS FIRM# 10193740 / 19148
 1100 Macon Street
 Fort Worth, Texas 76102
 (817) 529-1180 ~ Fax (817) 529-1181



16.15

#	DATE	BY:	DESCRIPTION		CH
PROJECT NO. 1811138					



City Council Meeting

Item Number: 17
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Joseph Marynak, Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Midland (Fairgrounds) DTP, LLC, is requesting a special exception to City of Midland Zoning Ordinance, 6.01.A - Screening Required Between Nonresidential and Residential to allow a wood screening wall with a reduced height.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located southeast of the intersection of North Fairgrounds Road and Maple Avenue and the location of vacant land. The applicant is requesting a special exception to the required screening wall material and height for the property's northern boundary. The property is currently in the process of being rezoned to LR, Local Retail District to allow for the development of a retail establishment, which would require an eight-foot masonry screen wall along the property line shared with existing development in a residential zone. The property to the north is zoned SF-2, Single Family Dwelling District and the location of a church.

As shown on the proposed site plan, the length of the wall would be approximately 480 feet. The applicant is proposing to replace this wall with a six-foot tall, wooden fence.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection to zone change.

Fire: (Approved)

No objection.

Code Compliance: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Building: (Approved)

No objections

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, *6.01.A - Screening Required Between Nonresidential and Residential* to allow a wood screening wall with a reduced height.

This request was approved at the February 9, 2021 City Council meeting.

Should the City Council approve this request, the property shall be subject to condition A:

Conditions:

- A. That the screening wall required along the northern property line shall be allowed to be a six-foot tall, wood fence as shown in Exhibit B.**

Letters of Objection:

As of February 3, 2021, staff has not received any letters of objection

Attachments:

Metes and Bounds (Exhibit A)
Site Plan (Exhibit B)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR A 1.58-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH FAIRGROUNDS ROAD AND MAPLE AVENUE), BY PERMITTING A NON-MASONRY SCREENING WALL OF A REDUCED HEIGHT ALONG THE NORTHERN BOUNDARY OF THE PROPERTY IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO LR, LOCAL RETAIL DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 (“Section 11-1-7”) of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the

purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as a 1.58-acre tract of land out of Section 31, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (the “Property”), said Property being more fully described in Exhibit “A”, which is attached hereto and incorporated herein for all purposes. Said special exception shall allow a non-masonry screening wall of a reduced height along the northern boundary of the Property (the “Wall”) in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from PD, Planned Development District for a Housing Development to LR, Local Retail District.

SECTION TWO. That said special exception is subject to the following special conditions:

- A. That the Wall shall be at least six feet in height, but not more than 10 feet in height.
- B. That the Wall shall be constructed of wood or masonry materials.
- C. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

FIRM REGISTRATION No:
10025500

10147 CR 135
FLINT, TEXAS 75762

903.581.2238
TXSURVEYS.COM

FIELD NOTES FOR GBT REALTY

Southwest Quarter of Section 31, Block 38
Township 1 South, T&P R.R. Co. Survey, Abstract No. 25
Midland County, Texas

All that certain lot, tract, or parcel of land, being part of the Southwest Quarter of Section 31, Block 38, Township 1 South, T&P R.R. Co. Survey, Abstract No. 25, Midland County, Texas, and being part of that certain called 119.47 acre tract described in a deed from Professional Lazer Graphix, LTD to the Chase W. Gardaphe 2012 Trust on July 18, 2014, recorded in Document No. 2014-18367 of the Official Public Records of Midland County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod (found) for the Northwest corner of the above mentioned 119.47 acre tract, the Southwest corner of Block 1 of Colonial Hills, Section 1, as shown by plat of same recorded in Volume 294, Page 399 of the Plat Records of Midland County, Texas, in the East right of way of North Fairgrounds Road;

THENCE North 75 deg. 29 min. 55 sec. East with the South line of Block 1, the North line of the 119.47 acre tract, distance of 345.00 ft. to a ½" iron rod (set) for corner;

THENCE South 14 deg. 36 min. 09 sec. East a distance of 200.00 ft. to a ½" iron rod (set) for corner;

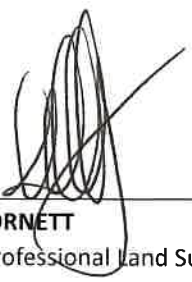
THENCE South 75 deg. 29 min. 55 sec. West a distance of 345.00 ft. to a ½" iron rod (set) for corner in the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road;

THENCE North 14 deg. 36 min. 09 sec. West with the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road a distance of 200.00 ft. to the place of beginning, containing 1.584 acres of land.

Bearing oriented to Grid North of the Texas State Plane Coordinate System, NAD83, Central Zone 4203.

I, PHILIP W. CORNETT, Registered Professional Land Surveyor No. 5515, do hereby certify that the above field notes were prepared from an actual survey made on the ground under my direction and supervision.

GIVEN UNDER MY HAND AND SEAL, this the 10th day of December, 2020.



PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres



JOHN COWAN & ASSOCIATES, INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
SINCE 1946

FIRM REGISTRATION No:
10025500

10147 CR 135
FLINT, TEXAS 75762

903.581.2238
TXSURVEYS.COM

FIELD NOTES FOR GBT REALTY

Southwest Quarter of Section 31, Block 38
Township 1 South, T&P R.R. Co. Survey, Abstract No. 25
Midland County, Texas

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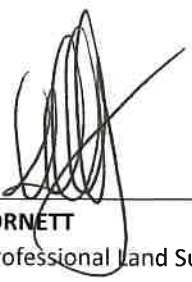
THENCE South 75 deg. 29 min. 55 sec. West a distance of 345.00 ft. to a ½" iron rod (set) for corner in the West line of the 119.47 acre tract, the East right of way of North Fairgrounds Road;

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Bearing oriented to Grid North of the Texas State Plane Coordinate System, NAD83, Central Zone 4203.

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GIVEN UNDER MY HAND AND SEAL, this the 10th day of December, 2020.


PHILIP W. CORNETT
Registered Professional Land Surveyor No. 5515
T20-251 1.584 acres



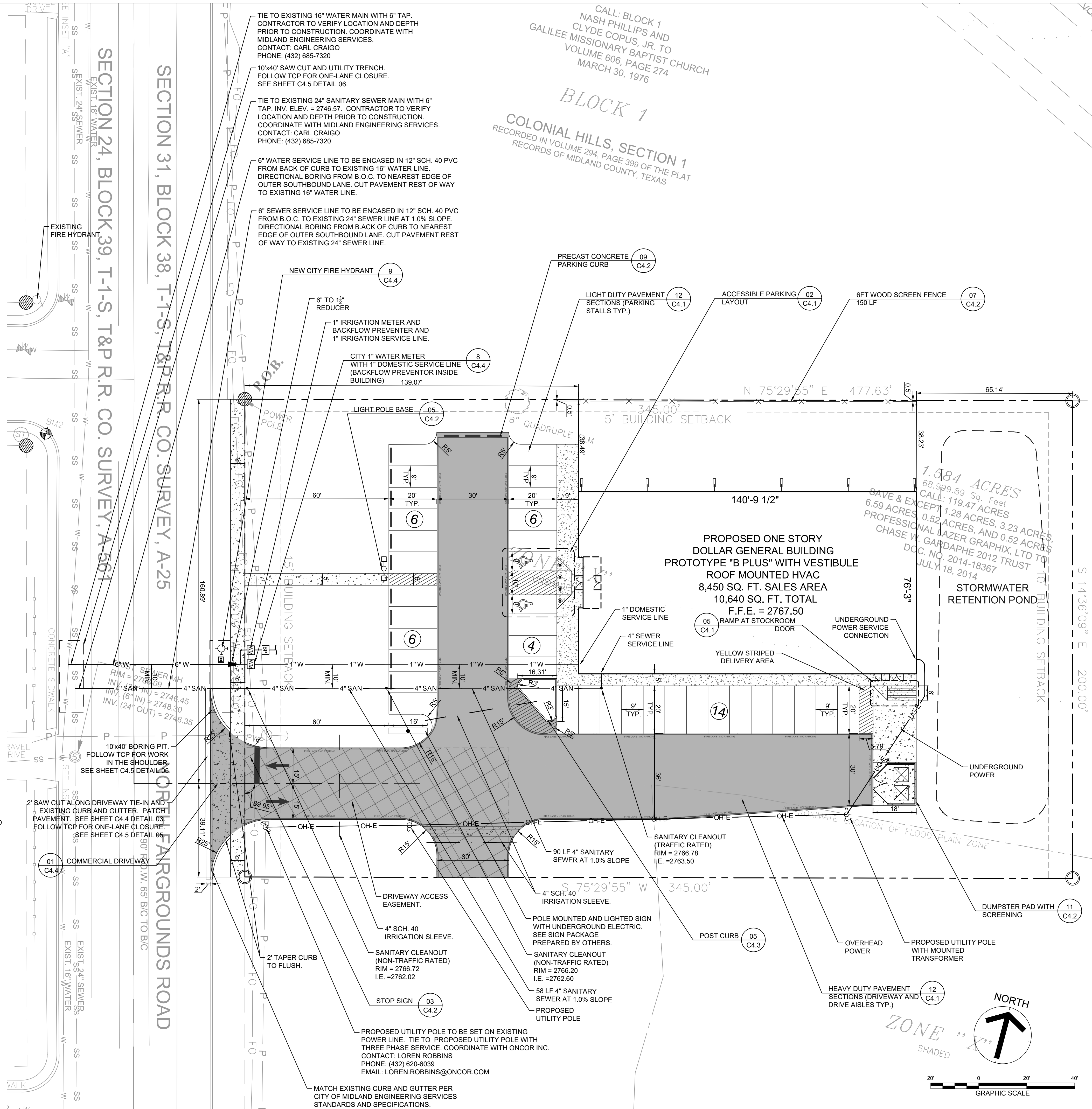
1. ALL EXISTING STRUCTURES, CONCRETE PADS/WALKS/DRIVES AND UTILITY SERVICES ON THE SITE SHALL BE REMOVED TO FULL DEPTH PRIOR TO CONSTRUCTION.
2. THE CONTRACTOR SHALL CHECK EXISTING GRADES, DIMENSIONS, AND INVERTS IN THE FIELD AND REPORT ALL DISCREPANCIES TO THE ENGINEER PRIOR TO BEGINNING WORK.
3. THE CONTRACTOR SHALL COMPLY WITH ALL LOCAL CODES, GIVE ALL NECESSARY NOTIFICATIONS, OBTAIN ALL PERMITS AND PAY ALL FEES PRIOR TO BEGINNING WORK.
4. PROVIDE A SMOOTH TRANSITION BETWEEN EXISTING PAVEMENT AND NEW PAVEMENT. FIELD ADJUSTMENT OF FINAL GRADES MAY BE NECESSARY.
5. THE CONTRACTOR SHALL PROTECT ALL TREES DESIGNATED TO REMAIN, DO NOT OPERATE OR STORE HEAVY EQUIPMENT OR MATERIALS WITHIN THE DRIPLINES OF TREES OR OUTSIDE THE LIMIT OF DISTURBANCE.
6. CONCRETE WALKS AND PADS SHALL HAVE A BROOM FINISH WITH NO EXPOSED AGGREGATE ON ANY FACE. ALL CONCRETE TO BE MINIMUM 4,000 PSI COMPRESSIVE STRENGTH WITH 5% (+/-1%) AIR ENTRAINMENT. MIXTURES WITH WATER/CEMENT RATIOS AT 0.5 OR BELOW ARE RECOMMENDED. CURB RAMPS, SIDEWALK SLOPES, AND DRIVEWAY RAMPS SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL CURRENT LOCAL REQUIREMENTS. IF APPLICABLE, THE CONTRACTOR SHALL REQUEST INSPECTION OF SIDEWALK AND RAMP FORMS PRIOR TO PLACEMENT OF CONCRETE. NO FLY ASH PERMITTED.
7. SIDEWALK EDGES ABUTTING SAME COLORED CONCRETE PAVEMENT SHALL BE PAINTED SAFETY YELLOW.
8. CONCRETE PAVEMENT CONTRACTION JOINTS SHALL BE CONSTRUCTED TO A DEPTH OF AT LEAST 1/4 THE CONCRETE THICKNESS, AND SHALL DIVIDE CONCRETE ROUGHLY INTO SQUARES WITH MAXIMUM 10' SEGMENTS. JOINTS CAN BE SAWCUT, FORMED OR TOOLED.
9. CONSTRUCTION OF REINFORCED CONCRETE PAVEMENT SHALL BE IN ACCORDANCE WITH ACI 330 STANDARD SPECIFICATIONS. CURING COMPOUND SHALL BE APPLIED TO ALL CONCRETE SURFACES IMMEDIATELY AFTER BROOM FINISH. CONTRACTOR SHALL REJECT CONCRETE IF IT CANNOT BE PLACED WITHIN 90 MINUTES OF BATCH TIME OR WITHIN 75 MINUTES DURING SUMMER HIGH TEMPERATURE CONDITIONS.
10. ALL DAMAGE TO EXISTING ASPHALT PAVEMENT TO REMAIN RESULTING FROM NEW CONSTRUCTION SHALL BE REPLACED WITH LIKE MATERIALS AT CONTRACTOR'S EXPENSE.
11. DIMENSIONS ARE TO THE FACE OF CURB, EXPOSED FACE OF WALL, EDGE OF CONCRETE OR TO THE FACE OF BUILDING, UNLESS OTHERWISE NOTED.
12. SCREENED ITEMS INDICATE A PRE-CONSTRUCTION TOPOGRAPHIC SURVEY PROVIDED BY JOHN COWEN & ASSOCIATES INC., DATED NOVEMBER 5, 2020.
13. MAINTAIN ONE SET OF MARKED-UP AS-BUILT DRAWINGS ON THE JOB SITE FOR DISTRIBUTION TO THE ENGINEER UPON COMPLETION.
14. CONTRACTOR SHALL PROVIDE AS-BUILT SURVEY FOR COMPLETED SITE. CONSULT ENGINEER FOR SPECIFIC REQUIREMENTS.
15. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING POSTAL DELIVERY METHOD WITH THE LOCAL JURISDICTION. IF A PHYSICAL MAILBOX IS REQUIRED, THE GENERAL CONTRACTOR IS RESPONSIBLE FOR THE PURCHASE, LOCATION PLACEMENT, AND INSTALLATION.

1. CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL EXISTING UTILITIES WITHIN 14 DAYS OF MOBILIZATION. TAKE CARE TO PROTECT UTILITIES THAT ARE TO REMAIN. REPAIR DAMAGE ACCORDING TO LOCAL STANDARDS AND AT THE CONTRACTOR'S EXPENSE. COORDINATE ALL CONSTRUCTION WITH THE APPROPRIATE UTILITY COMPANY.
2. WATER AND SEWER CONSTRUCTION SHALL BE PERFORMED IN ACCORDANCE WITH ALL LOCAL CODES AND SPECIFICATIONS.
3. THE CONTRACTOR SHALL PAY ALL FEES AND OBTAIN ALL PERMITS.
4. ALL EXISTING UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE AND ARE BASED ON BEST INFORMATION AVAILABLE. ADDITIONAL UTILITIES MAY BE PRESENT. SHOULD UNCHARTED UTILITIES BE ENCOUNTERED DURING EXCAVATION OPERATIONS, THE CONTRACTOR SHALL NOTIFY THE ENGINEER AS SOON AS POSSIBLE FOR INSTRUCTIONS.
5. NOTIFY LOCAL UTILITY LOCATOR SERVICE (CALL 811) OF INTENDED EXCAVATION/UTILITY OPERATION
6. MAINTAIN 10-FOOT HORIZONTAL AND 18-INCH VERTICAL SEPARATION BETWEEN SANITARY SEWER AND WATER SUPPLY LINES.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING THE SEQUENCING OF CONSTRUCTION FOR ALL UTILITY LINES SO THAT WATER LINES AND UNDERGROUND ELECTRIC DO NOT CONFLICT WITH SANITARY SEWERS OR STORM SEWERS.
8. ADJUST ALL EXISTING CASTINGS TO MATCH PROPOSED FINISH GRADE.
9. ALL SANITARY SEWER PIPE SHALL BE SCHEDULE 40 PVC UNLESS NOTED OTHERWISE.
10. WATER SERVICE PIPE SHALL BE SDR21 PVC. PRESSURE RATING 200 PSI.
11. THE CONTRACTOR SHALL BEGIN APPLICATION FOR TELEPHONE SERVICE IMMEDIATELY UPON RECEIPT OF THE BUILDING PERMIT. COORDINATE WITH THE ARCHITECT AND A/T&T ON COMPLETING THE SERVICE ORDER FORM, AND COPY THE DOLLAR GENERAL PROJECT MANAGER AND CONSTRUCTION COORDINATOR, AS WELL AS THE DEVELOPER.
12. INSTALL ALL UTILITIES AND IRRIGATION SLEEVES PRIOR TO INSTALLATION OF PAVEMENT.
13. CONTRACTOR IS RESPONSIBLE FOR ALL PUBLIC UTILITY CONNECTIONS (ELECTRIC, WATER, GAS, SEPTIC, SEWER) AS WELL AS PROVIDING ALL INFRASTRUCTURE REQUIRED BY UTILITY COMPANY.

1.	CURRENT ZONING: COMMERCIAL	
	SETBACKS:	FRONT = 15' LEFT SIDE = 0' RIGHT SIDE = 5' REAR = 10'
2.	SITE AREA: 68,825 S.F. = 1.58 ACRES	
3.	BUILDING AREA:	10,640 S.F. GROSS AREA 8,450 S.F. SALES AREA ONE-STORY, MAX HEIGHT = 18'-0"
4.	PARKING REQUIRED : 36 SPACES (1 PER 300 SF GROSS) PARKING PROVIDED : 36 SPACES	
5.	EXISTING IMPERVIOUS AREA EXISTING PAVEMENT AREA	= 0.00 ACRES = 00.00% = 1.58 ACRES = 100.00%
6.	PROPOSED IMPERVIOUS AREA PROPOSED LANDSCAPE AREA	= 0.77 ACRES = 48.7% = 0.81 ACRES = 51.3%

<u>ELECTRIC</u> ONCOR CONTACT: LOREN ROBBINS PHONE: (432)-620-6039	<u>SEWER</u> CITY OF MIDLAND CONTACT: CARL CRAIG PHONE: (432)-685-7320
<u>WATER</u> CITY OF MIDLAND CONTACT: CARL CRAIG PHONE: (432)-685-7320	<u>TELEPHONE</u> AT&T CONTACT: BUSINESS CUSTOMER CARE DEPARTMENT PHONE: (800)-499-7928

STRIPING LEGEND	
YELLOW CURBING AND BOLLARDS - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY AND METAL SURFACES FREE OF RUST - 2 COATS SHERWIN WILLIAMS - KEM 4000 ACRYLIC ALKYD ENAMEL SAFETY YELLOW B55Y300
STRIPING - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT YELLOW TM5495
ADA/ACCESSIBLE STRIPING - PARKING LOT	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT "H.C." BLUE AND WHITE
STRIPING AND LETTERING - FIRE LANE	SURFACES SHOULD BE CLEAN, DRY. TOP COAT SHERWIN WILLIAMS - PRO MAR TRAFFIC MARKING PAINT STRIPING RED AND LETTERING WHITE



GreshamSmith.com

222 Second Avenue South
Suite 1400
Nashville, TN 37201

615.770.8100

GRESHAM SMITH AND PARTNERS
TEXAS REGISTERED
ENGINEERING FIRM
F-3629

DOLLAR GENERAL®

**MIDLAND
(FAIRGROUNDS)
DTP, LLC**

**9010 Overlook Boulevard
Brentwood, TN 37027
615-370-0670**

STORE #22969
NORTH FAIRGROUNDS ROAD
MIDLAND, TEXAS

NOT FOR
CONSTRUCTION

[illegible]

SITE LAYOUT AND UTILITY PLAN

C2.1

Project Number: 44117.39
Project Issue Date: 01/12/2021

This Line Is 3 Inches When Printed Full Size
 PACKET
 17.10
 February 23, 2021



Special Exception Application

Project Number:

E-21-0046

Case Number:

Applicant (if acting as Agent, see affidavit on page 2)		Phone (615) 370-0670	
Printed Name: MIDLAND (FAIRGROUNDS) DTP, LLC		Email: GGLASER@GBTRENTY.COM	
Address: 9010 Overlook Blvd.	City: Brentwood	State: TN	Zip: 37027

Property Owner		Phone (832) 766-3656	
Printed Name: Gardaphe Chase W 2012 Trust		Email: GARDAPHE@GMAIL.COM	
Address: 1320 N. Fairgrounds Road	City: Midland	State: TX	Zip: 79706

Representative (if different from Applicant or Property Owner)		Phone (615) 370-0670	
Firm: Midland (Fairgrounds) DTP, LLC		Email: BGAGE@GBTRENTY.COM	
Printed Name: BOB GAGE			
Address: 9010 Overlook Blvd.	City: Brentwood	State: TN	Zip: 37027

Street Address: TBD

Legal Description

Lot: Block: 38 Subdivision: SE Qtr. Section 31, Twp. 1 S, T&P RR Co. Survey, Abstract # 25

Current Zoning: PD - Planned Development, Developer has requested LR - Local Retail

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☒ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

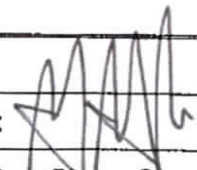
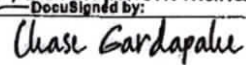
Reason for Request: The adjoining lot to the north is Zoned SF-2. Midland's zoning ordinance requires a 8' masonry wall when commercial development is adjacent to residential. In our case the existing use of the adjacent lot is not residential. This lot has an abandoned church that is 250' north of our lot line.

We would like to request a variance to install a 6' wood screen fence vs. 8' masonry wall.

Submittal and Fees

Items to be submitted with this application form:

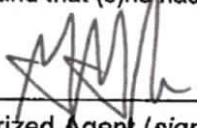
- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
 - Parking
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature): 	Date: 01/14/21
Applicant (printed): Greg Glaser, Development Manager	
Property Owner (signature): 	Date: 1/13/2021
Property Owner (printed): Gardaphe Chase W 2012 Trust, Chase Gardaphe, Manager	
<i>The Special Exception shall be considered officially received in the Planning office <u>only</u> 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.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

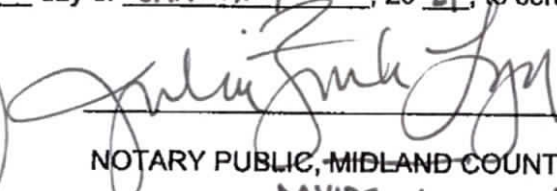
STATE OF ~~TEXAS~~ **TENNESSEE**
COUNTY OF ~~MIDLAND~~ **DAVIDSON**

Before me, the undersigned authority, on this day personally appeared GREG GLASER who, being by me duly sworn, upon oath says: That (s)he is authorized by GARDAPHE CHASE W 2012 TRUST the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.


Authorized Agent (signature)

Subscribed and sworn to before me, this 14TH day of JANUARY, 20 21, to certify which witness my hand and seal of office.




NOTARY PUBLIC, MIDLAND COUNTY, TEXAS
DAVIDSON TENNESSEE

FOR OFFICE USE ONLY

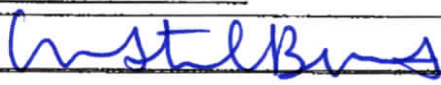
☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

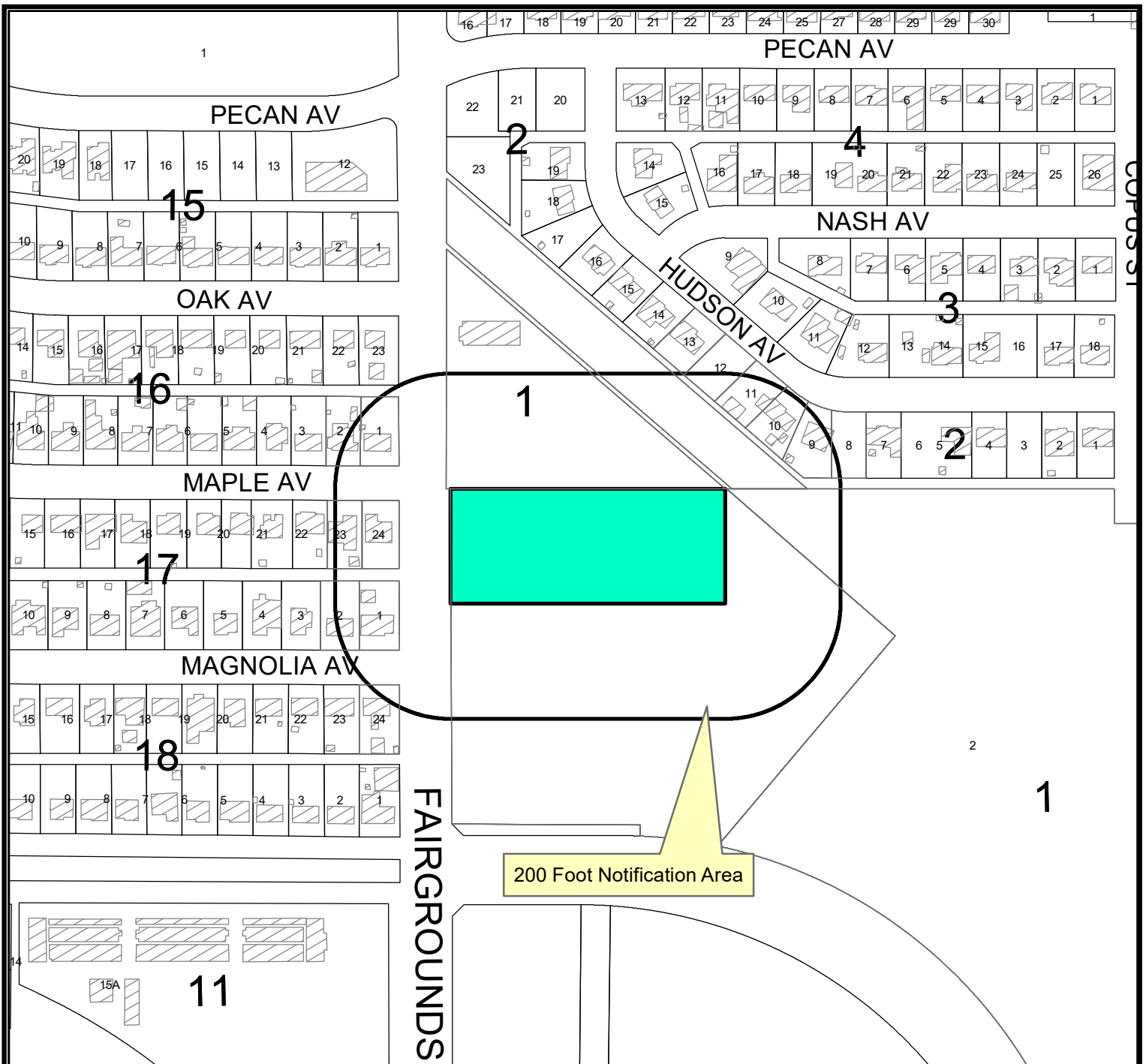
Check # 024234

Received By: 

Date:

JAN 15 2021

BY:



LOCATION MAP

E-21-0046

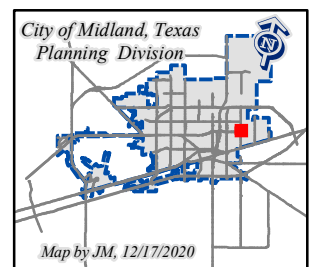
Scale: 1" = 250'

Consider a request by Midland (Fairgrounds) DTP, LLC for a Special Exception from the City of Midland Zoning Ordinance, 6.01.A - Screening Required Between Nonresidential and Residential to allow a wood screening wall with a reduced height on a 1.58 acre tract of land located in Section 31, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located northeast of the intersection of North 17.13 Fairgrounds Road and Maple Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

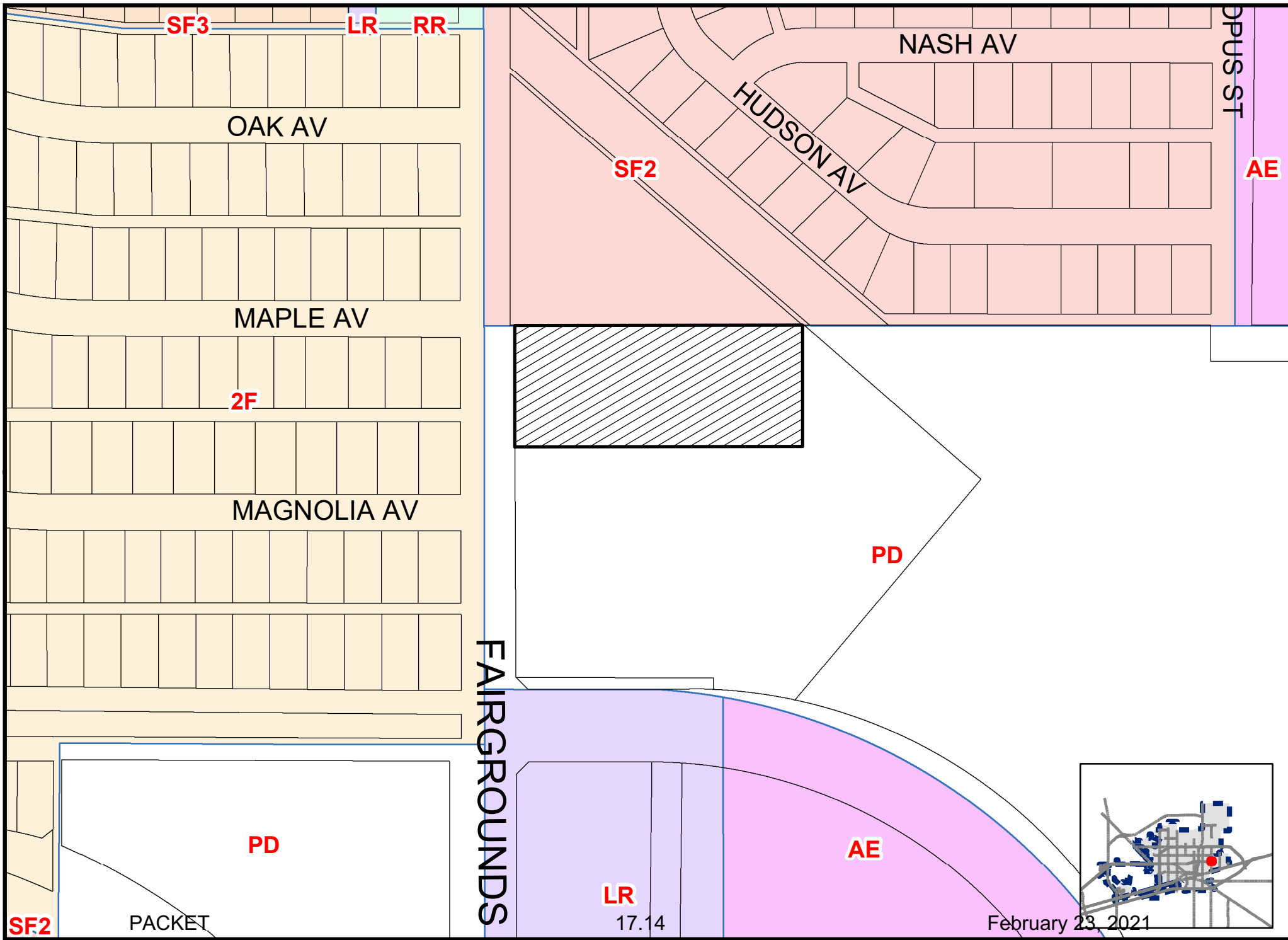


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING. NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 23, 2021













City Council Meeting

Item Number: 18
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Elizabeth Shaughnessy, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 30, SKYLINE TERRACE WEST, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF STILLMEADOW DRIVE AND FARGO AVENUE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE SOUTH 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jason Dan Hudson, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 4.09.A.1. Table 5 Residential Accessory Building Requirements, concerning the minimum setbacks for corner lots to enclose an existing 435 square foot metal structure, which is currently being used as a carport, to be used as a garage.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 4500 Stillmeadow Drive, which is zoned SF-2, Single-Family Dwelling District and has a lot size of 11,151 square foot.

Per our City of Midland Zoning Ordinance, *Section 4.09.A.1. Table 5 Residential Accessory*

Building Requirements:

Lots 7,500 SF up to 21,999 SF
Minimum Setbacks for corner Lots:
15 Feet

Since the applicant's property is a corner lot, the minimum side yard setback of 15-feet as listed in the zoning ordinance would need to be met.

A building permit for the existing carport was issued on February 25, 2014; however, since the applicant is now proposing to enclose the carport and turn it into a garage, the current zoning ordinance requirements must be met.

The applicant is requesting to reduce the required minimum setback for the accessory building on the proposed lot to be approximately 0-feet to be able to proceed with the modification of the existing metal structure into a 435 square foot garage.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

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 Compliance: (Approved)

No Oil or Gas issues.

Building: (Approved)

By enclosing the carport, it is by definition a garage which invokes the building code requirements for dwelling/garage fire separations. There must be a 1 hour fire rating between the proposed garage enclosure and any other flammable feature of the residence including exposed wood and trim work. There are multiple methods of achieving this but it must meet the 2018 International Residential Code requirements for a 1 hour separation.

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 4.09.A.1. Table 5 Residential Accessory Building Requirements concerning the minimum setbacks for corner lots.*

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

- A. That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**
- B. That the minimum setback for the accessory building on this property shall be 0-feet.**

Letters of Objection:

As of February 17, 2021, staff has not received any letters of objection

Attachments:

Site Plan (Exhibit A)
Application
Maps



ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, BLOCK 30, SKYLINE TERRACE WEST, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF STILLMEADOW DRIVE AND FARGO AVENUE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE SOUTH 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 8, Block 30, Skyline Terrace West, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the south 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 south side of the lot shall be zero feet.
- B. That the property shall significantly conform to Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

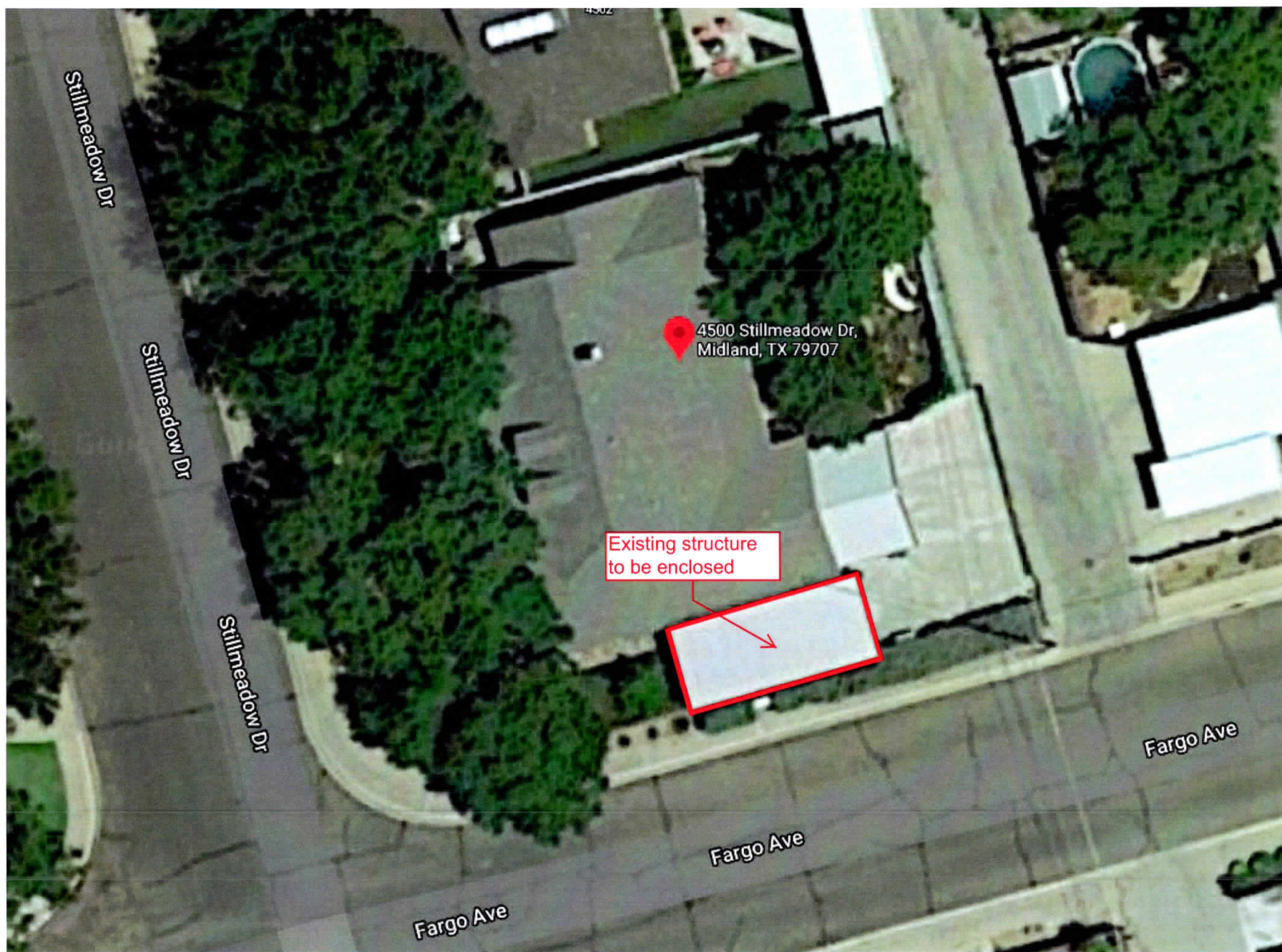
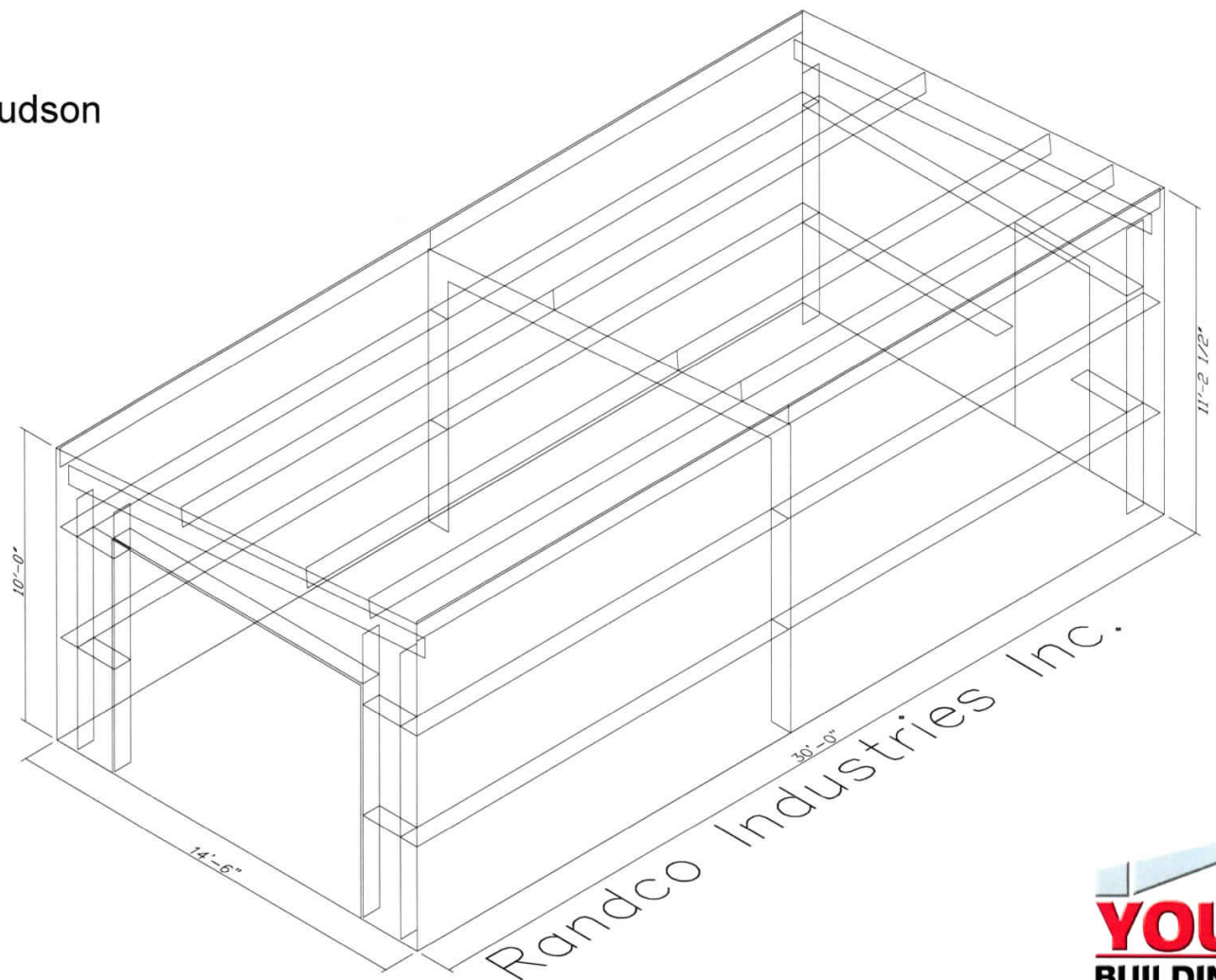


EXHIBIT "A"

Jason Hudson



NOTES FOR REACTIONS

Building reactions are based on the following building data:

Width (ft)	= 14.5
Length (ft)	= 30.0
Frame Height (ft)	= 10.0/ 11.2
Roof Slope (rise/run)	= 1/5
Dead Load (psf)	= 5.5
Collateral Load (psf)	= 0.0
Live Load (psf)	= 20.0
Snow Load (psf)	= 3.5
Wind Speed (mph)	= 100.0
Wind Code	= ASCE 10
Exposure	= C
Closed/Open	= C
Importance Wind	= 1.00
Importance Seismic	= 1.00
Seismic Zone	= 2
Seismic Coeff. (F _{max})	= 0.29

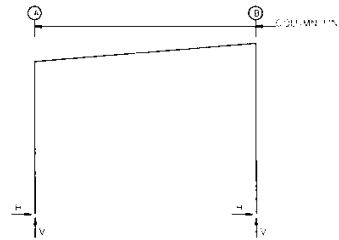
1) Description

1. Dead+Collateral+Live
2. Dead+Collateral+0.75Live+0.45Wind Left
3. Dead+Collateral+0.75Live+0.45Wind Right
4. 0.5Dead+0.5Wind Left
5. 0.5Dead+0.5Wind Right
6. 0.5Dead+0.5Wind Left
7. 0.5Dead+0.5Wind Right
8. 0.5Dead+0.5Wind Suction+0.5Wind Long/L
9. 0.5Dead+0.5Wind Pressure+0.5Wind Long/L
10. 0.5Dead+0.5Wind Left+0.5Wind Suction
11. 0.5Dead+0.5Wind Right+0.5Wind Suction

BUILDING BRACING REACTIONS

Loc.	Line	Col. Line	Reactions (k)		Panel Area (sq/ft)	Wind Dir.	Seis.
			Horz.	Vert.			
L	EW	1	177	13			
R	EW	1	59	13			
B	SW	A	13	5			

FRAME LINES



RIGID FRAME: MAXIMUM REACTIONS, ANCHOR BOLTS, & BASE PLATES

Frame Line	Loc. Line	Column Reactions (k)				Bottom Cty.	Base Plate (in)	Grout (in)
		Load	Horz.	V	Load			
1	A	3	1.1	0.5	1.4	1.1	4 0.750	6.500
2	B	1	0.5	1.2	1.1	1.1	4 0.750	6.500

RIGID FRAME: BASIC COLUMN REACTIONS (k)

Frame Line	Loc. Line	Dead		Live		Snow	Wind		Seismic	Left	Right
		Horz.	Vert.	Horz.	Vert.		Horz.	Vert.			
1	A	0.1	0.5	0.4	1.7	0.1	0.5	1.4	1.1	1.1	1.1
2	B	0.1	0.5	0.4	1.1	0.1	0.5	1.4	1.1	1.1	1.1

ENDWALL COLUMN: BASIC COLUMN REACTIONS (k)

Frame Line	Loc. Line	Dead		Live		Snow	Wind		Seismic	Left	Right
		Horz.	Vert.	Horz.	Vert.		Horz.	Vert.			
1	A	0.2	1.1	0.2	1.1	0.2	0.1	0.5	1.1	1.1	1.1
2	B	0.1	1.1	0.2	1.1	0.2	0.1	0.5	1.1	1.1	1.1

Frame Line	Loc. Line	Dead		Seis
		Horz.	Vert.	
1	A	0.0	0.0	0.0
2	B	0.0	0.0	0.0

ENDWALL COLUMN: MAXIMUM REACTIONS, ANCHOR BOLTS, & BASE PLATES

Frame Line	Loc. Line	Column Reactions (k)				Bottom Cty.	Base Plate (in)	Grout (in)
		Load	Horz.	V	Load			
1	A	8	0.4	0.6	2	0.3	0.6	2 0.750
2	B	10	0.4	0.6	2	0.4	0.6	2 0.750
3	A	11	0.4	0.6	2	0.4	0.6	2 0.750
4	B	11	0.4	0.6	2	0.4	0.6	2 0.750

ANCHOR BOLT SUMMARY

Qty	Locate	Size (in)	Type	Prod. (in)
0 4	Jamb	3/4"		
0 8	Endwall	3/4"		
0 8	Frame	3/4"	4507	2.00

PROJECT: Jason Hudson

ADDRESS: 4500 Stillmeadow

Milford, TX

JOB ID: Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems

Phone: (409) 620-6620
Fax: (409) 620-0062
E-Mail: young@randoindustries.com



Date

12/16/20

Building Size

14' 0" x 30' 0" x 10' 0" x 11' 0" 1/2"

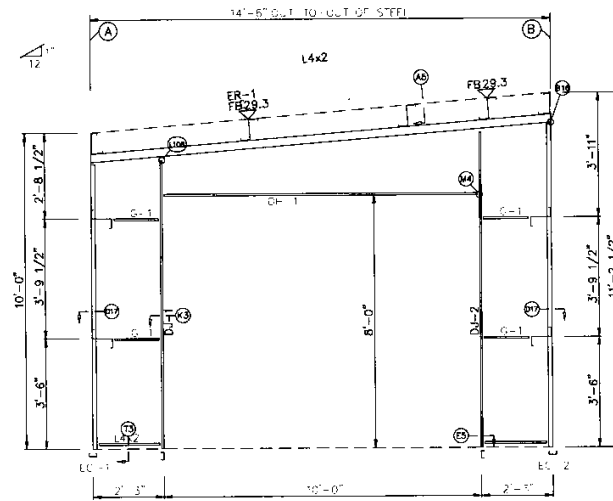
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ANCHOR BOLT REACTIONS

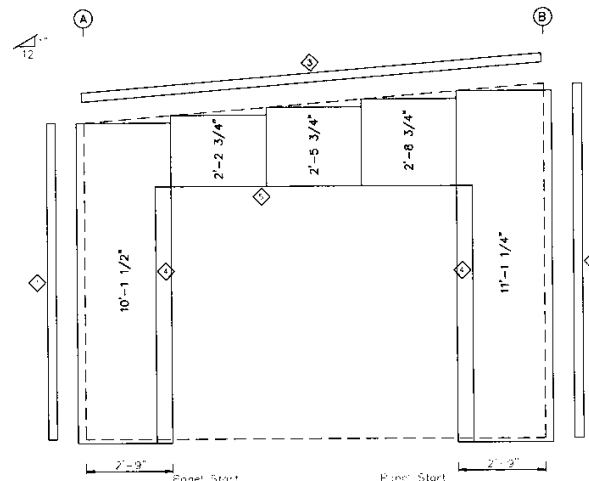
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DET: SY

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ENDWALL FRAMING: FRAME LINE 1



ENDWALL SHEETING & TRIM: FRAME LINE 1
PANELS: 26 Ga. PBR - NEED WALL COLOR

BOLT TABLE FRAME LINE 1			
LOCATION	QUAN	TYPE	DIA
20 mins/Row	4	A325	5/8"
Jamb	2	A325	1/2"

MEMBER TABLE FRAME LINE 1		
MARK	PART	LENGTH
EC-1	8x25C16	8'-8 5/8"
EC-2	8x25C16	9'-10 7/16"
ER-1	8x25C16	14'-6 1/8"
EL-1	8x25C16	5'-9 3/16"
EL-2	8x25C16	9'-7 3/16"
CH-1	8x25W10	10'-0"
CH-2	8x25Z16	10'-4"

TRIM TABLE FRAME LINE 1		
QTY	PART	LENGTH
1	CRNTR243	10'-1"
2	PRN1-243	11'-3 1/2"
3	RAKER243	14'-1"
4	JMR1H243	8'-1 1/2"
5	HEAD243	10'-4"

FLANGE BRACE TABLE FRAME LINE 1	
QTY	MARK
1	FB29.3

PROJECT: Jason Hudson
ADDRESS: 4500 Stillmeadow
Midland, TX
JOB ID: Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems
Phone: (432) 650-0620
Fax: (432) 650-0620
E-Mail: ejyoung@randoindustries.com



Date

12/18/20

Building Size

14'-6" x 30'-0" x 10'-0" x 11'-2 1/2"

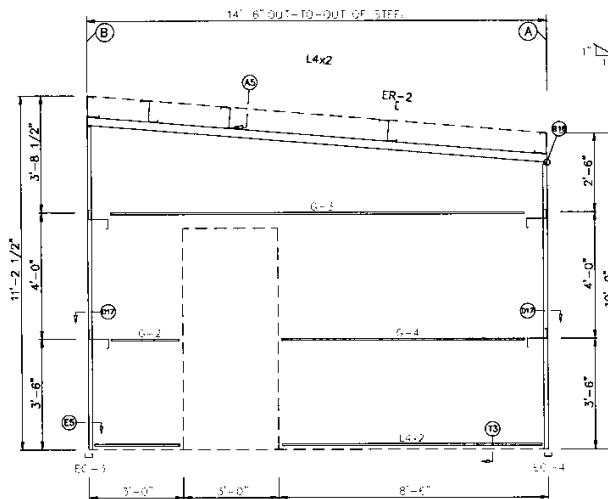
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ENDWALL FRAMING

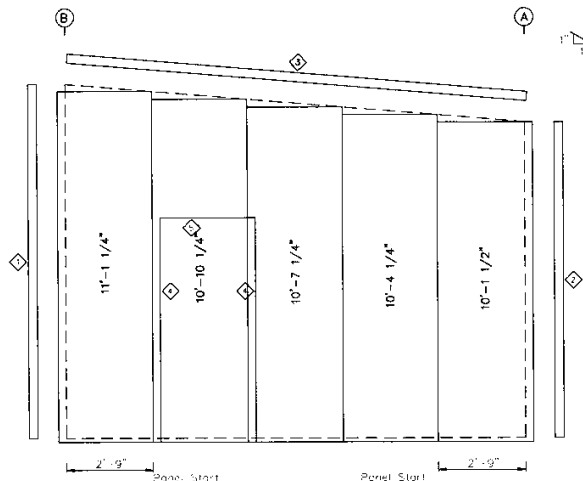
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DET: SY

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ENDWALL FRAMING: FRAME LINE 3



ENDWALL SHEETING & TRIM: FRAME LINE 3
PANELS: 26 Ga. PBR - NEED WALL COLOR

BOUY TABLE				
FRAME LINE 3				
LOCATION	PLAN	TYPE	DIA.	LENGTH
Columns/Foot	4	A325	5/8"	3"

MEMBER TABLE			
FRAME LINE 3			
MAR.	PAR.	LENGTH	
EC-3	8x25C16	9'-10 7/16"	
EC-4	8x25C16	8'-8 5/8"	
ER-2	8x25C16	14'-6 1/8"	
G-1	8x25Z16	5'-3 1/2"	
G-3	8x25Z16	13'-1 7/8"	
G-4	8x25Z16	10'-9 1/2"	

TRIM TABLE			
FRAME LINE 3			
ID	PART	LENGTH	
1	CORNER243	5'-3 1/2"	
2	CORNER243	10'-10 7/16"	
3	RAKER243	15'-10 7/16"	
4	JVHTR243	7'-3 1/2"	
5	HEADR243	3'-4"	

PROJECT:	Jason Hudson
ADDRESS:	4500 Stillmeadow
	Midland, TX
JOB ID:	Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems
Phone: (409) 820-0820
Fax: (409) 820-0792
E-Mail: young@randobuilding.com



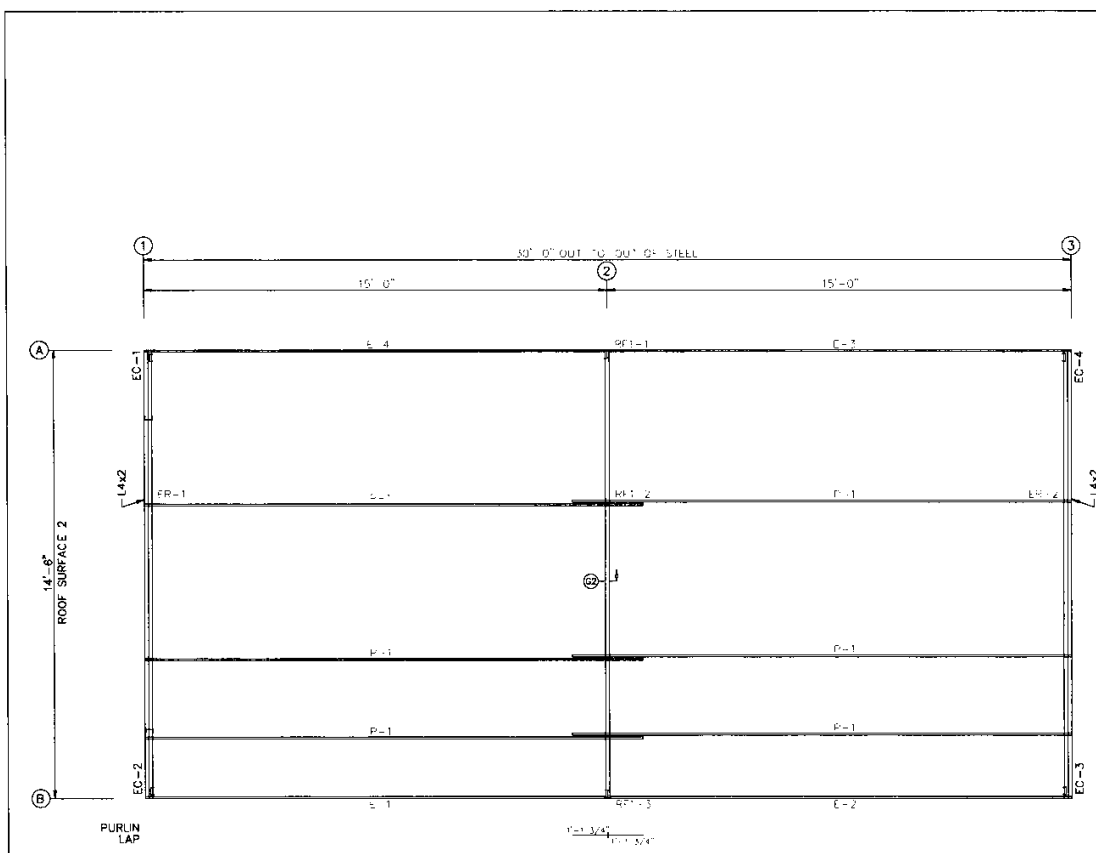
Date
12/18/20

Building Size

Drawing
ENDWALL FRAMING

DES: SY DET: SY

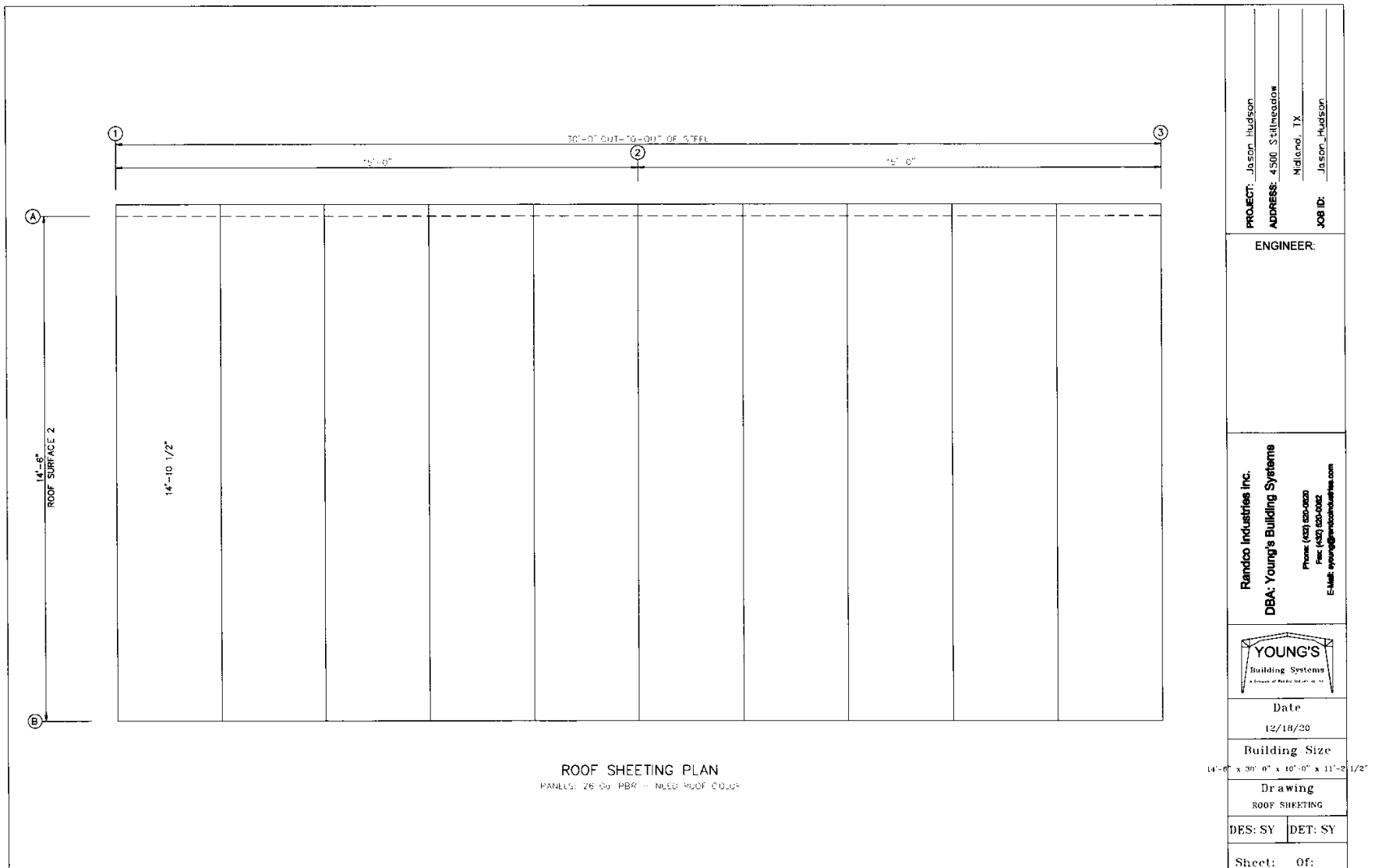
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ROOF FRAMING PLAN

MEMBER TABLE		
ROOF PLAN		
MARK	PART	LENGTH
P-1	8x75x216	15'-1 1/2"
E-1	8LED514	15'-0"
E-2	8LED514	15'-0"
E-3	8LED514	15'-0"
E-4	8LED514	15'-0"

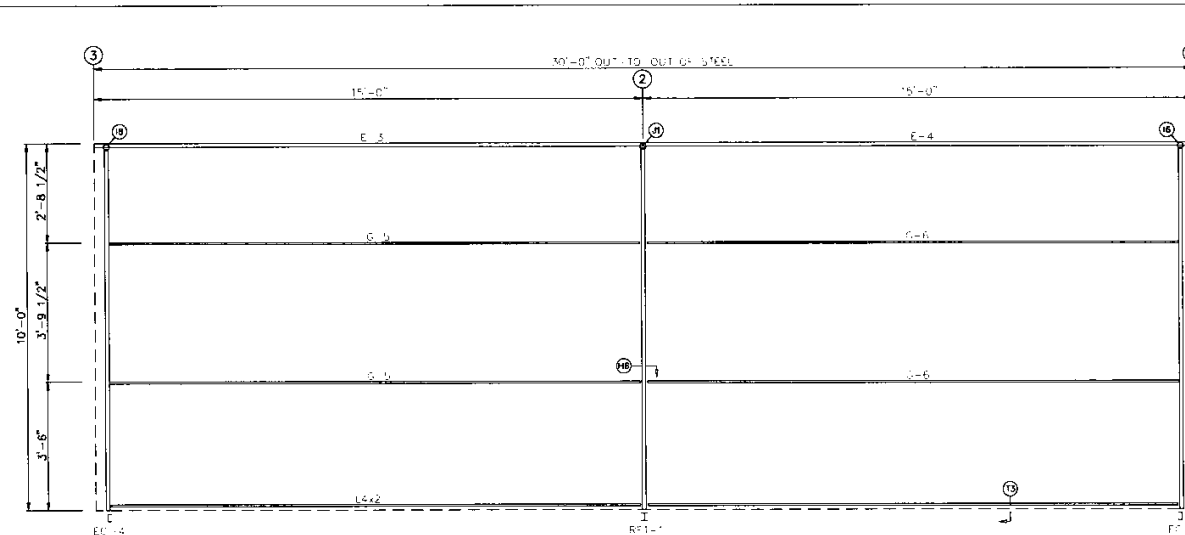
PROJECT: Jason Hudson	
ADDRESS: 4500 Stillmeadow	
Midland, TX	
JOB ID: Jason Hudson	
ENGINEER:	
Rando Industries Inc. DBA: Young's Building Systems Phone: (409) 850-0820 Fax: (409) 850-0822 E-Mail: ryoung@randoindustries.com	
	
Date: 12/18/20	
Building Size: 14'-0" x 30'-0" x 10'-0" x 11'-2 1/2"	
Drawing: ROOF FRAMING	
DES: SY	DET: SY
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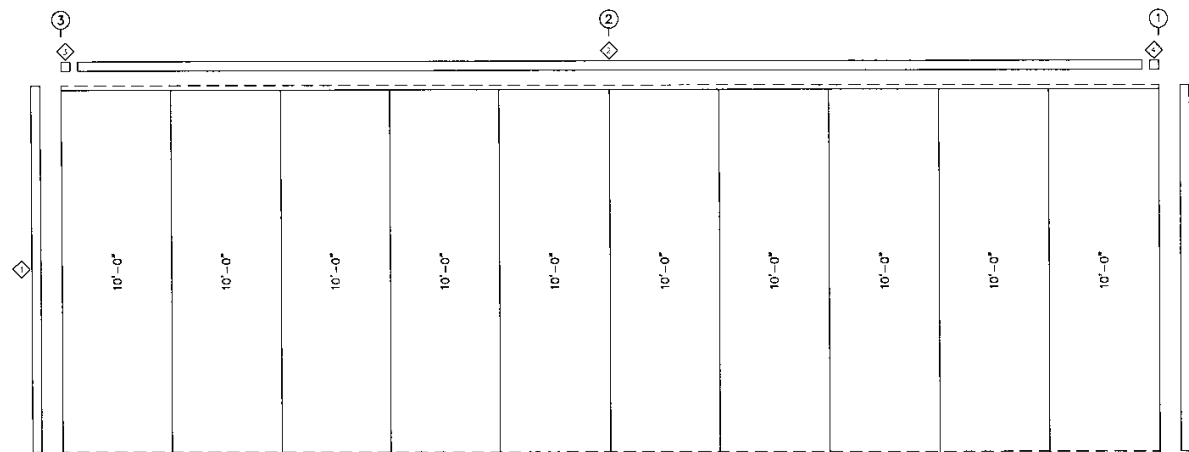
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February 23, 2021



SIDEWALL FRAMING: FRAME LINE A



SIDEWALL SHEETING & TRIM: FRAME LINE A
PANELS: 26 G6. PBR - NEED WALL COLOR

MEMBER TABLE		
FRAME LINE A		
MEMBER	PART	LENGTH
1-3	8-20S-2	15'-0"
1-4	8-20S-4	15'-0"
1-5	8-20S-16	14'-3 1/4"
1-6	8-20S-16	14'-3 1/4"

TRIM TABLE		
FRAME LINE A		
TRIM	PART	LENGTH
1	CRACK BOARD	10'-1"
2	CAVERTECH	10'-1"
3	RAKES-TH	6'-0"
4	RAKES-TH	6'-0"

PROJECT: Jason Hudson
ADDRESS: 4500 Stillmeadow
Midland, TX
JOB ID: Jason_Hudson

ENGINEER:

Randco Industries Inc.
DBA: Young's Building Systems
Phone: (409) 690-0030
Fax: (409) 690-0032
E-Mail: young@randcoindustries.com



Date
12/18/20

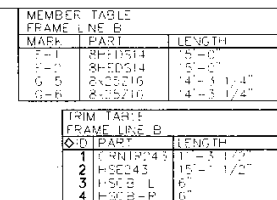
Building Size

14'-6" x 30'-0" x 10'-0" x 11'-2" 1/2"

Drawing
SIDEWALL FRAMING

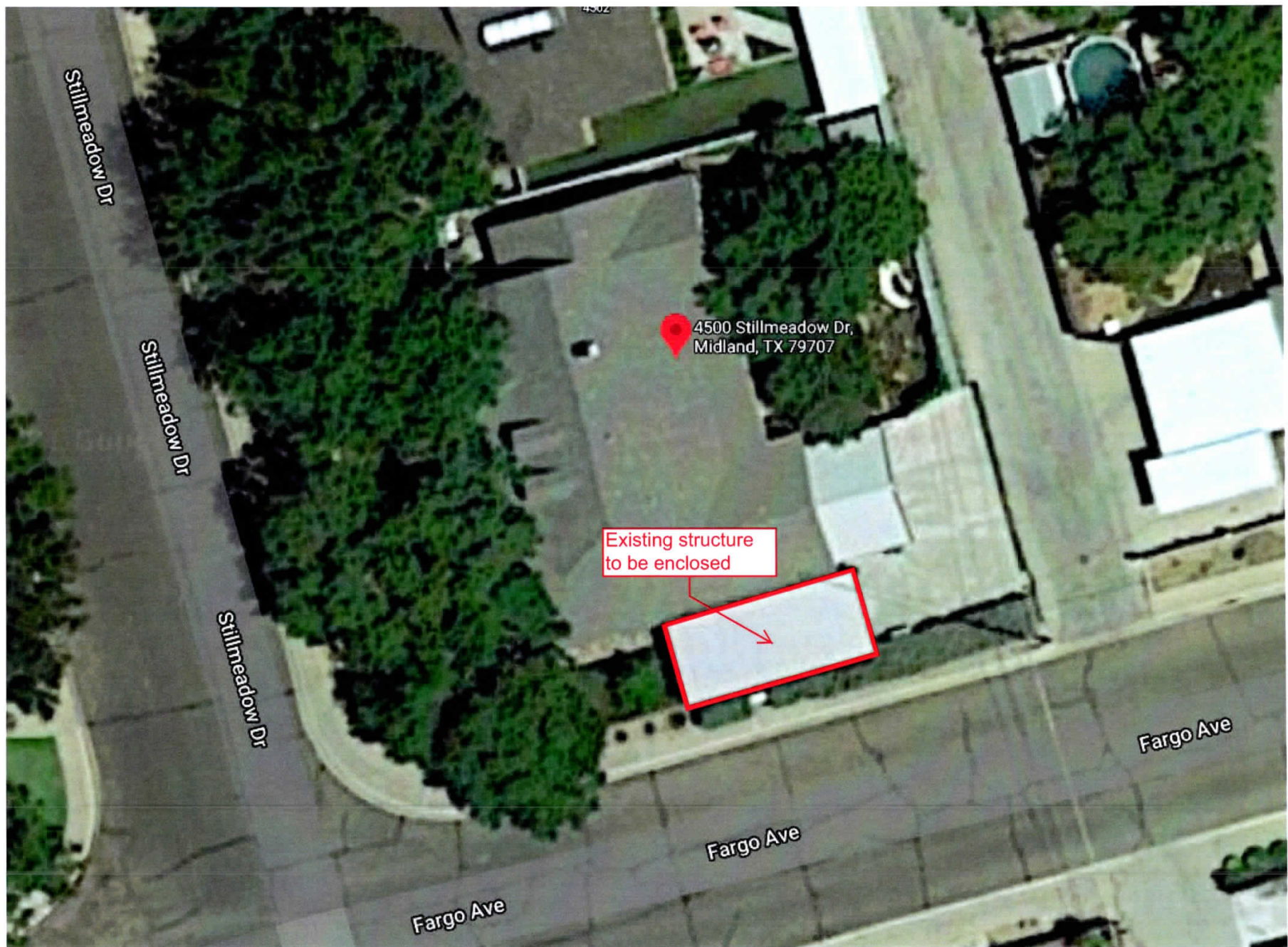
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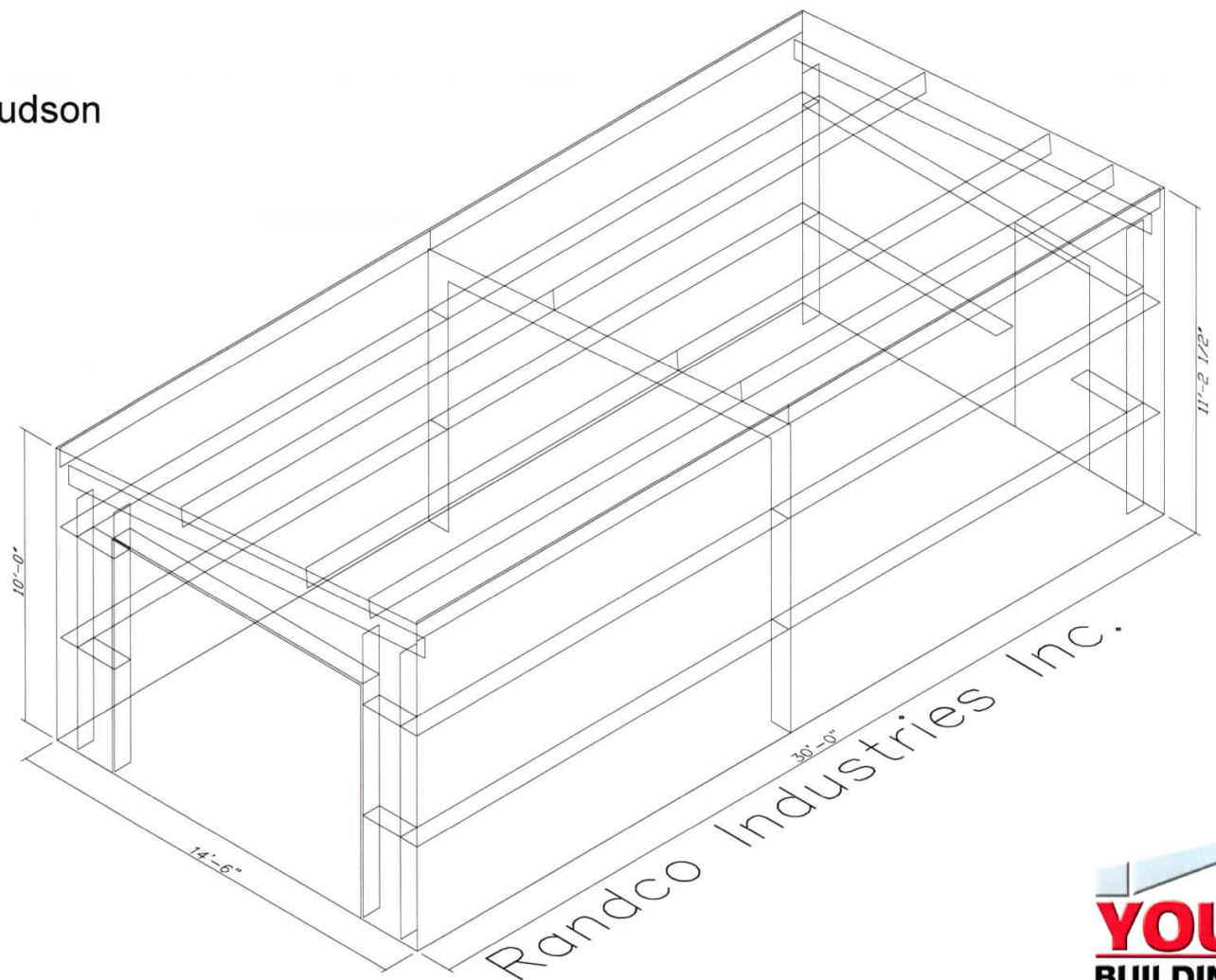


Floor plan of a 10' x 10' room. The room is divided into 10 vertical sections by 9 dividers. Each divider is labeled "11'-2 1/2"". The room has a top wall with three windows labeled 1, 2, and 3, and a bottom wall with a door labeled 4. The left and right walls are labeled 5 and 6 respectively.

Sheet: Of:



Jason Hudson



NOTES FOR REACTIONS

Building reactions are based on the following building data:

Width (ft)	= 14.5
Length (ft)	= 30.0
Frame Height (ft)	= 10.0/ 11.2
Roof Slope (rise/run)	= 1/5
Dead Load (psf)	= 5.5
Collateral Load (psf)	= 0.0
Live Load (psf)	= 20.0
Snow Load (psf)	= 3.5
Wind Speed (mph)	= 100.0
Wind Code	= ASCE 10
Exposure	= C
Closed/Open	= C
Importance Wind	= 1.00
Importance Seismic	= 1.00
Seismic Zone	= 2
Seismic Coeff. (F _{max})	= 0.29

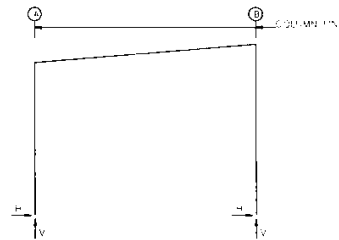
1) Description

1. Dead+Collateral+Live
2. Dead+Collateral+0.75Live+0.45Wind Left
3. Dead+Collateral+0.75Live+0.45Wind Right
4. 0.5Dead+0.5Wind Left
5. 0.5Dead+0.5Wind Right
6. 0.5Dead+0.5Wind Left
7. 0.5Dead+0.5Wind Right
8. 0.5Dead+0.5Wind Suction+0.5Wind Long/L
9. 0.5Dead+0.5Wind Pressure+0.5Wind Long/L
10. 0.5Dead+0.5Wind Left+0.5Wind Suction
11. 0.5Dead+0.5Wind Right+0.5Wind Suction

BUILDING BRACING REACTIONS

Elev.	Wind Line	Col Line	Reactions (k)				Panel Area (sq/ft)
			Horz	Vert	Horz	Vert	
L EW 1							177
R EW 1							59
L SW A							13

FRAME LINES



RIGID FRAME: MAXIMUM REACTIONS, ANCHOR BOLTS, & BASE PLATES

Frame Line	Col Line	Column Reactions (k)				Base Plate (in)	Grout (in)
		Load	Max	V	Min		
1	A	3	1.1	0.5	1.4	4	0.750
2	B	1	0.5	3.2	1.1	4	0.750

RIGID FRAME: BASIC COLUMN REACTIONS (k)

Frame Line	Column Line	Dead				Live				Snow				Wind				Seismic			
		Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert
1	A	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7
2	B	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7	0.1	0.6	0.4	1.7

ENDWALL COLUMN: BASIC COLUMN REACTIONS (k)

Frame Line	Column Line	Dead				Live				Snow				Wind				Seismic			
		Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert	Horz	Vert
1	A	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1
1	B	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1
2	A	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1
2	B	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1	0.2	1.1

Frame Line	Col Line	Seis
1	A	0.0
1	B	0.0
2	A	0.0
2	B	0.0

ENDWALL COLUMN: MAXIMUM REACTIONS, ANCHOR BOLTS, & BASE PLATES

Frame Line	Col Line	Column Reactions (k)				Base Plate (in)	Grout (in)
		Load	Max	V	Min		
1	A	8	0.4	0.6	0.3	2	0.750
1	B	10	0.4	0.6	0.4	2	0.750
2	A	1	0.4	0.6	0.4	2	0.750
2	B	11	0.4	0.6	0.4	2	0.750

ANCHOR BOLT SUMMARY

Qty	Locate	dia (in)	Type	Prct (in)
0 4	Jamb	3/4"		
0 8	Endwall	3/4"		
0 8	Frame	3/4"	4507	2.00

PROJECT: Jason Hudson

ADDRESS: 4500 Stillmeadow

Milford, TX

JOB ID: Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems

Phone: (409) 620-6620
Fax: (409) 620-0062
E-Mail: young@randoindustries.com



Date

12/16/20

Building Size

14' 0" x 30' 0" x 10' 0" x 11' 0" 1/2"

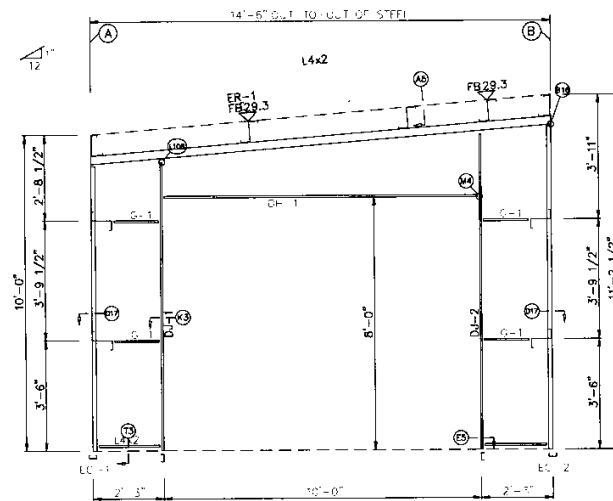
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ANCHOR BOLT REACTIONS

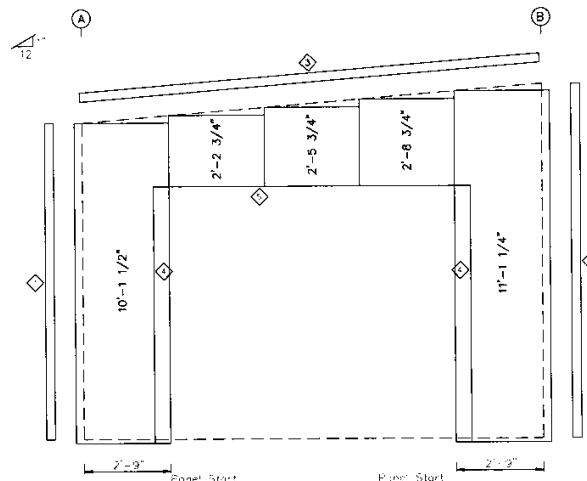
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ENDWALL FRAMING: FRAME LINE 1



ENDWALL SHEETING & TRIM: FRAME LINE 1
PANELS: 26 Ga. PBR - NEED WALL COLOR

BOLT TABLE			
FRAME LINE 1			
LOCATION	QUANT	TYPE	DIA
20 mins/rot	4	A325	5/8"
Jamb	2	A325	1/2"

MEMBER TABLE		
FRAME LINE 1		
MARK	PART	LENGTH
EC-1	8x25C16	8'-8 5/8"
EC-2	8x25C16	9'-10 7/16"
ER-1	8x25C16	14'-6 1/8"
ER-2	8x25C16	9'-9 3/16"
ER-3	8x25C16	9'-7 3/16"
CH-1	8x25W10	10'-0"
CH-2	8x25Z16	10'-4"

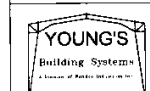
TRIM TABLE		
FRAME LINE 1		
MARK	PART	LENGTH
1	CRNTR243	10'-1"
2	PRNTR243	11'-3 1/2"
3	RAKER243	14'-1"
4	JMRIR243	8'-1 1/2"
5	HEAD243	10'-4"

FLANGE BRACE TABLE	
FRAME LINE 1	
MARK	LENGTH
1	FB29.3

PROJECT: Jason Hudson
ADDRESS: 4500 Stillmeadow
Midland, TX
JOB ID: Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems
Phone: (432) 650-0620
Fax: (432) 650-0620
E-Mail: ejyoung@randoindustries.com



Date

12/18/20

Building Size

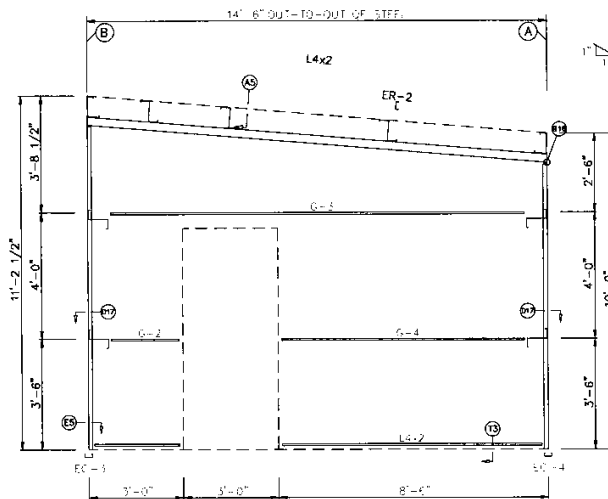
14'-6" x 30'-0" x 10'-0" x 11'-2 1/2"

Drawing

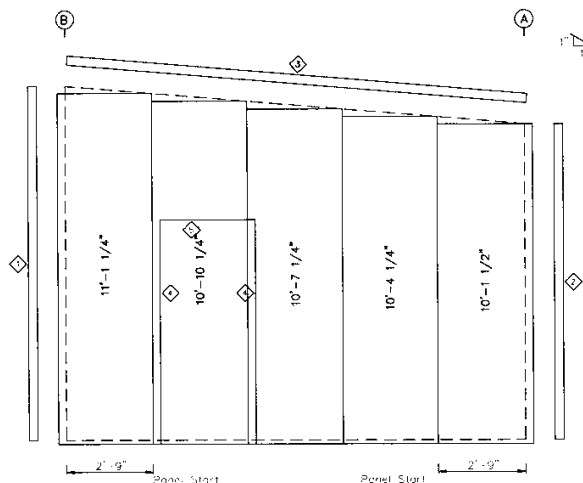
ENDWALL FRAMING

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ENDWALL FRAMING: FRAME LINE 3



ENDWALL SHEETING & TRIM: FRAME LINE 3
PANELS: 26 Ga. PBR - NEED WALL COLOR

BOUY TABLE				
FRAME LINE 3				
LOCATION	QUAN	TYPE	DIA	LENGTH
Columns/Foot	4	A325	5/8"	3'

MEMBER TABLE			
FRAME LINE 3			
MAR	PAR	LENGTH	
EC-3	8x25C16	9'-10 7/16"	
EC-4	8x25C16	8'-8 5/8"	
ER-2	8x25C16	14'-6 1/8"	
G-3	8x25Z16	5'-3 1/2"	
G-4	8x25Z16	13'-1 7/8"	
G-4	8x25Z16	10'-9 1/2"	

TRIM TABLE			
FRAME LINE 3			
ID	PART	LENGTH	
1	CRNTR243	11'-3 1/2"	
2	CRNTR243	10'-10"	
3	PAKER243	15'-0"	
4	JVHTR243	7'-0 1/2"	
5	HEADR243	3'-4"	

PROJECT:	Jason Hudson
ADDRESS:	4500 Stillmeadow
	Midland, TX
JOB ID:	Jason Hudson

ENGINEER:

Rando Industries Inc.
DBA: Young's Building Systems
Phone: (409) 820-0820
Fax: (409) 820-0792
E-Mail: young@randobuilding.com



Date

12/18/20

Building Size

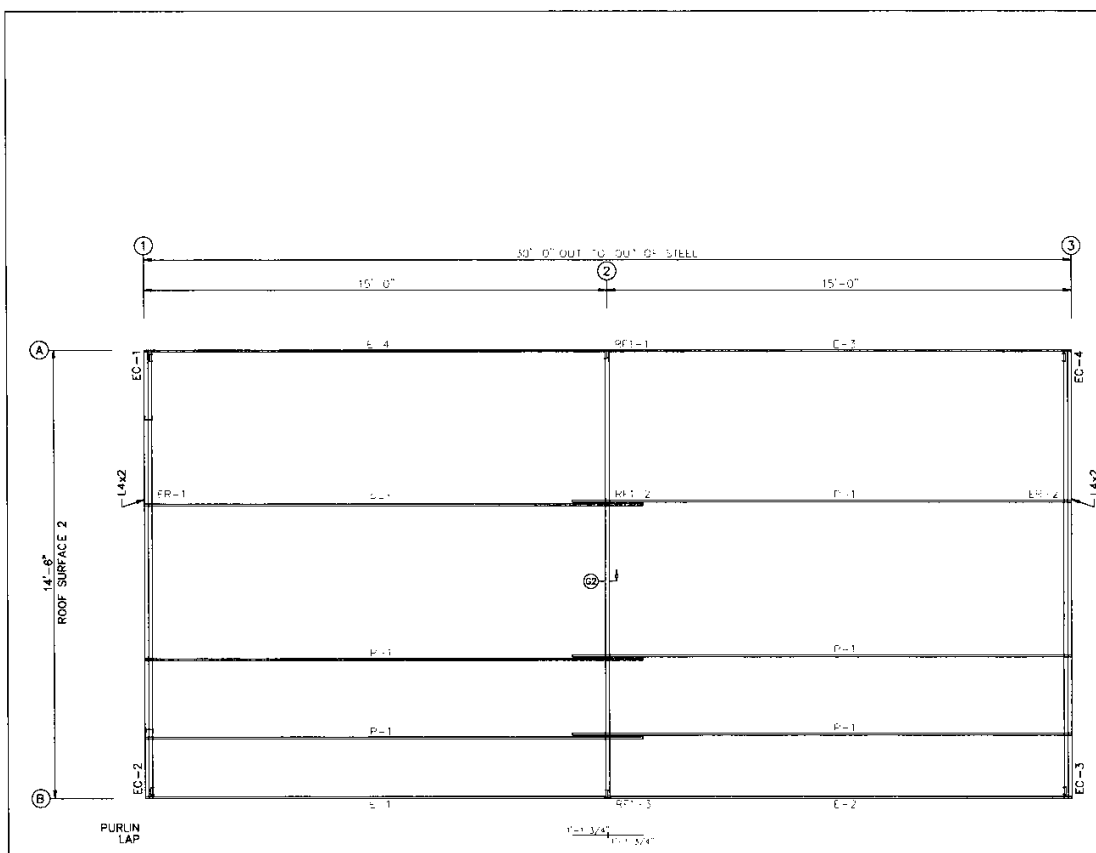
14' 0" x 30'-0" x 10'-0" x 11' 2 1/2"

Drawing

ENDWALL FRAMING

DES: SY DET: SY

Sheet: Of:



ROOF FRAMING PLAN

MEMBER TABLE		
ROOF PLAN		
MARK	PART	LENGTH
P-1	8x75x216	15'-1 1/2"
E-1	8LED514	15'-0"
E-2	8LED514	15'-0"
E-3	8LED514	15'-0"
E-4	8LED514	15'-0"

PROJECT: Jason Hudson
 ADDRESS: 4500 Stillmeadow
 Midland, TX
 JOB ID: Jason Hudson

ENGINEER:

Rando Industries Inc.
 DBA: Young's Building Systems
 Phone: (409) 850-0820
 Fax: (409) 850-0822
 E-Mail: ryoung@randoindustries.com



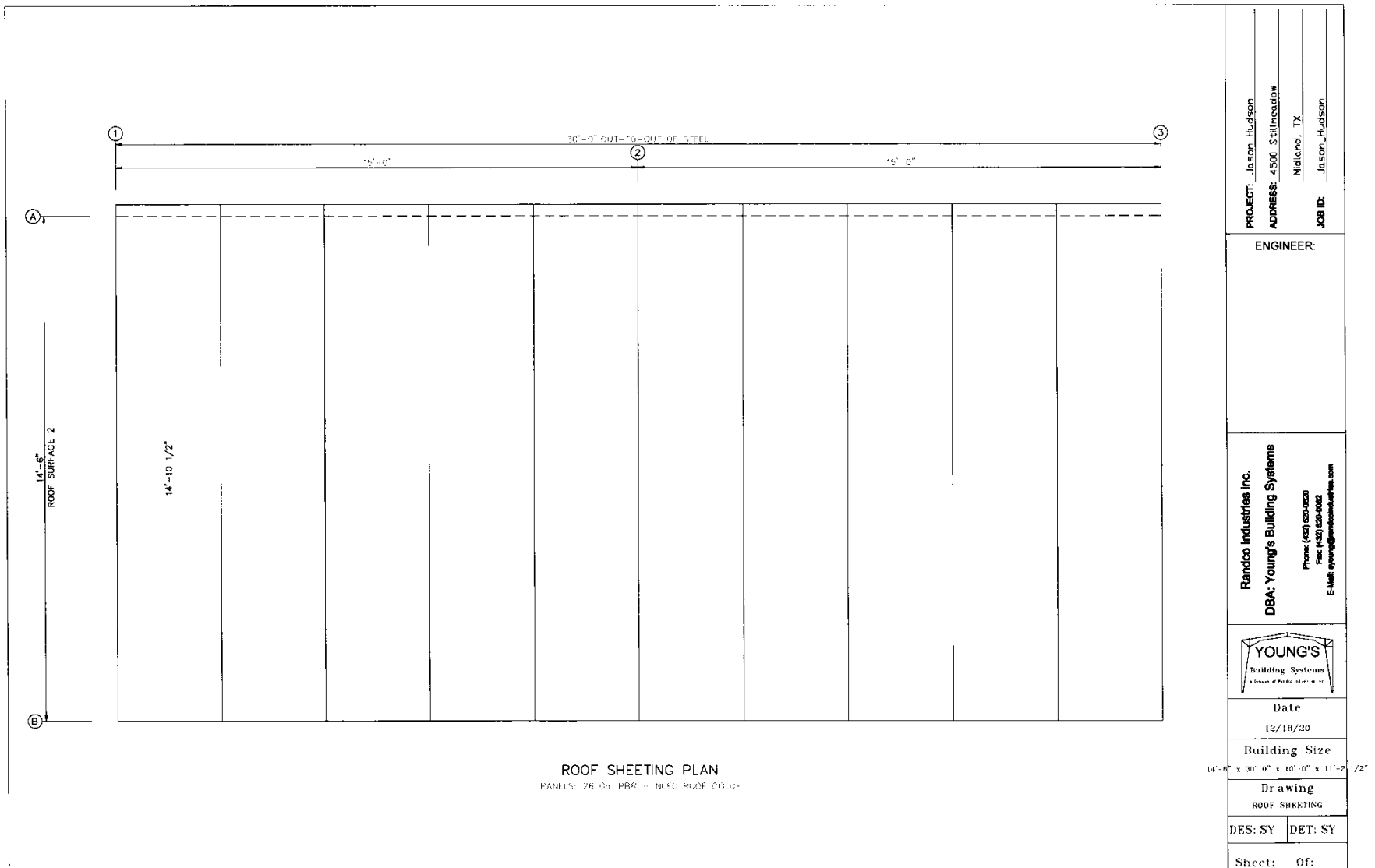
Date
 12/18/20

Building Size
 14' 0" x 30' 0" x 10' 0" x 11' 2 1/2"

Drawing
 ROOF FRAMING

DES: SY DET: SY

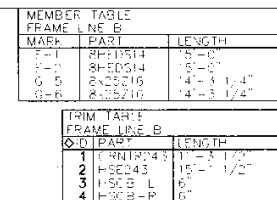
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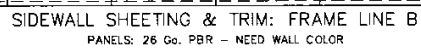
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18.26

February 23, 2021



SIDEWALL FRAMING: FRAME LINE B



PROJECT: Jason Hudson

ADDRESS: 4500 Stillmeadow

JOB ID: Jason_Hudson

DBA: Young's Building Systems

Phone: (432) 520-0820

FAC: (432) 520-0012



Date
12/18/20

Building Size

Drawing
SIDEWALL FRAMING

DES: SY	DET: SY
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Sheet: Of:



Special Exception Application

Project Number: E-21-0047

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Jason Dan Hudson

Phone (432) 559-2280

Email jhudson26@yahoo.com

Address 4500 Stillmeadow Drive

City Midland

State TX

Zip 79707

Property Owner

Printed Name: Jason Dan Hudson

Phone (432) 559-2280

Email jhudson26@yahoo.com

Address 4500 Stillmeadow Drive

City Midland

State TX

Zip 79707

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: Jason Dan Hudson

Phone (432) 559-2280
Email

jhudson26@yahoo.com

Address 4500 Stillmeadow Drive

City Midland

State TX

Zip 79707

Street Address: 4500 Stillmeadow Drive

Legal Description

Lot: 008

Block: 030

Subdivision: Skyline Terrace, West

Current Zoning: Residential

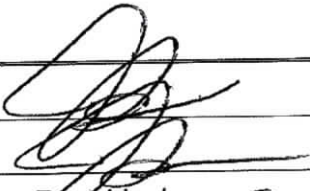
This property qualifies as an exception to the City Code because:

- ☐ 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 have an existing metal structure with metal roof and metal sides that extend almost to the ground. I want to extend the metal to the ground and put a garage door to enclose the structure

Submittal and Fees**Items to be submitted with this application form:**

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
 - Parking
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature): 	Date: 1/21/2021
Applicant (printed): Jason Dan Hudson	
Property Owner (signature): 	Date: 1/21/2021
Property Owner (printed): Jason Dan Hudson	
<i>The Special Exception shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

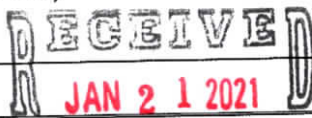
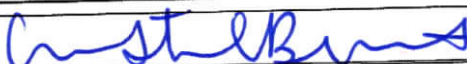
STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

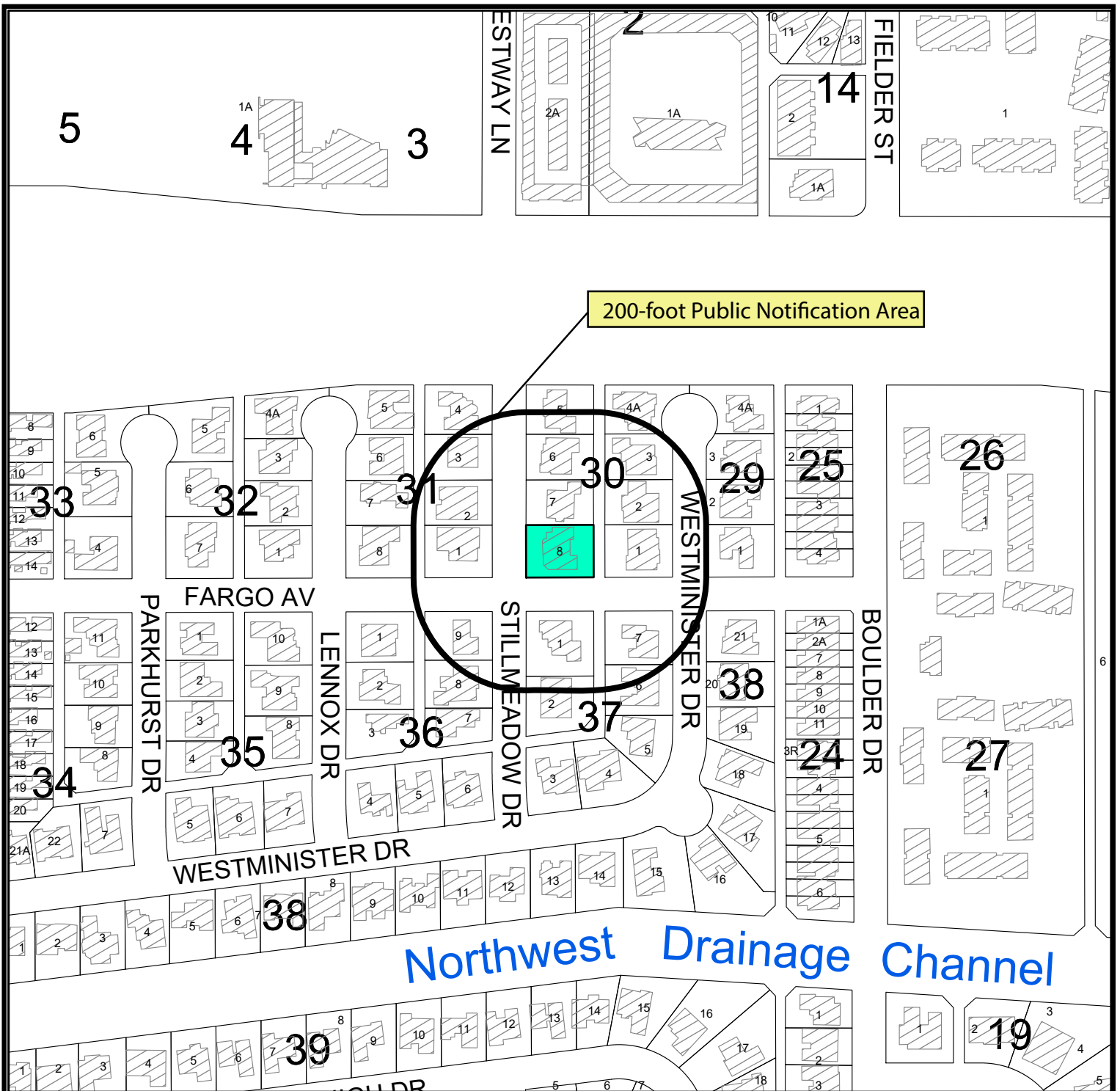
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # <u>CC</u>	
Received By: 	

BY:



LOCATION MAP

E-21-0047

Scale: 1" = 250'

Consider a request by Jason Dan Hudson for a Special Exception from the City of Midland Zoning Ordinance, Section 4.09.A.1. Table 5 Residential Accessory Building Requirements, concerning the minimum setbacks for corner lots on Lot 8, Block 30, Skyline Terrace West, City and County of Midland, Texas.

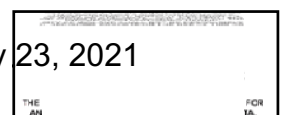
Generally located at the northeast corner of the intersection of Stillmeadow Drive and Fargo Avenue (Council District 1)

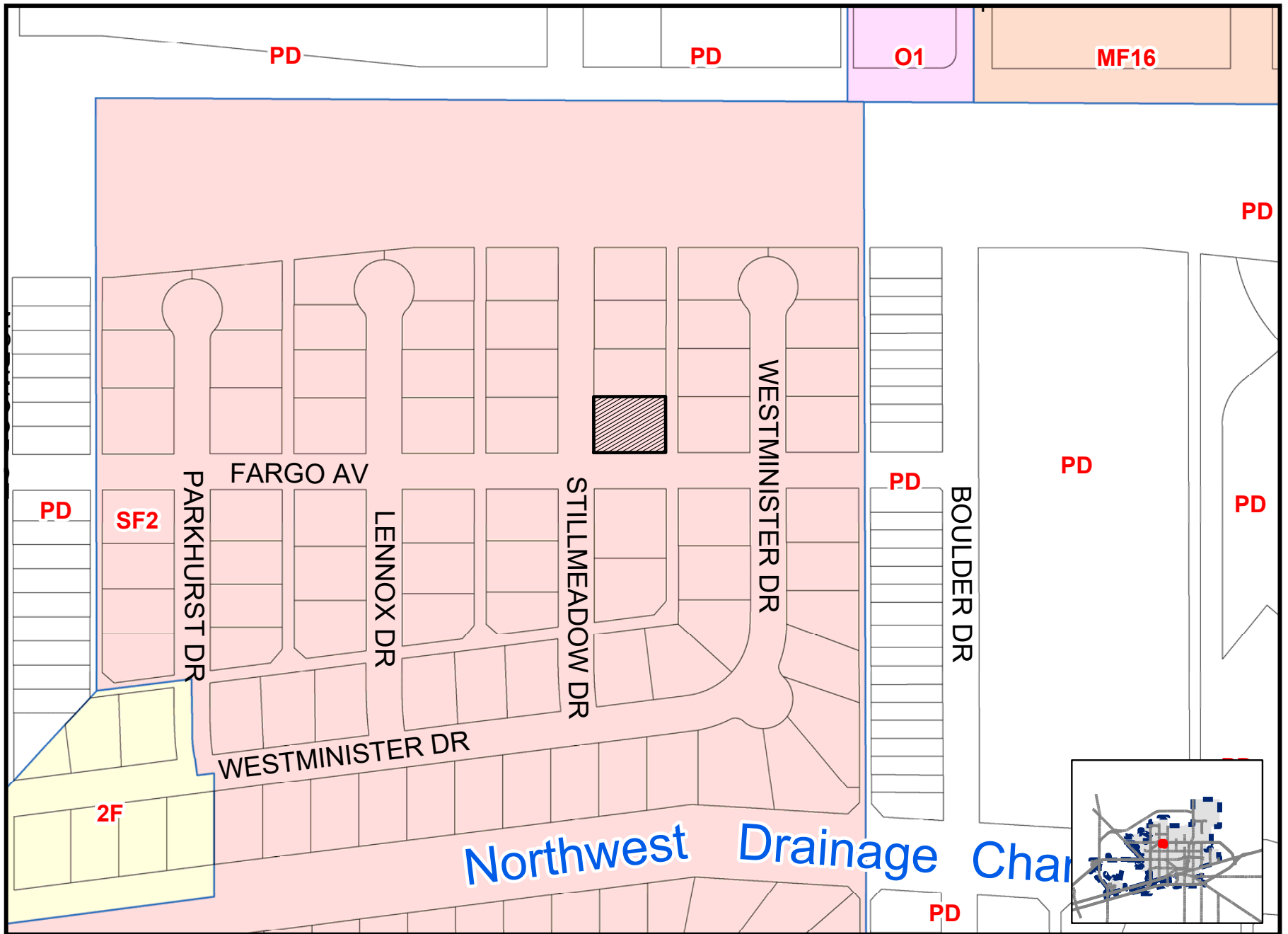
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 23, 2021















City Council Meeting

Item Number: 19
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Elizabeth Shaughnessy, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR TRACT 15, NORTH ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOLOMON LANE AND ACORN LANE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE TRACT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Cory Rylander, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback for a corner lot to add 600 square feet for a master bedroom suite and powder room.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 221 Solomon Lane, which is zoned AE, Agricultural Estate District.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District*

Dimensional Regulations Chart:

AE, Agricultural Estate District

Lot dimensions

Minimum Side Yard Setback:

Corner Lot: 15 Feet

The applicant's property is a corner lot and would have to meet the required minimum 15-foot side yard setbacks for a corner lot as listed in the zoning ordinance.

The applicant is requesting to reduce the required minimum side yard setback for a corner lot for the proposed lot to be approximately 8-feet to be able to proceed with the addition of a 600 square feet for a master bedroom suite and powder room.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance and no hardships have been shown, 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 yard setback for a corner lot.

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

- A. That the property shall significantly conform to the site plan 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 this property shall be 8-feet.**

Letters of Objection:

As of February 17, 2021, staff has not received any letters of objection

Attachments:

Proposed Site Plan (Exhibit A)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR TRACT 15, NORTH ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOLOMON LANE AND ACORN LANE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE TRACT; 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
PACKET 19.4 February 23, 2021

described as Tract 15, North Estates, City and County of Midland, Texas. Said special exception shall allow a reduced minimum side yard setback on the west side of the tract.

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 tract shall be eight feet.
- B. That the property shall significantly conform to Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

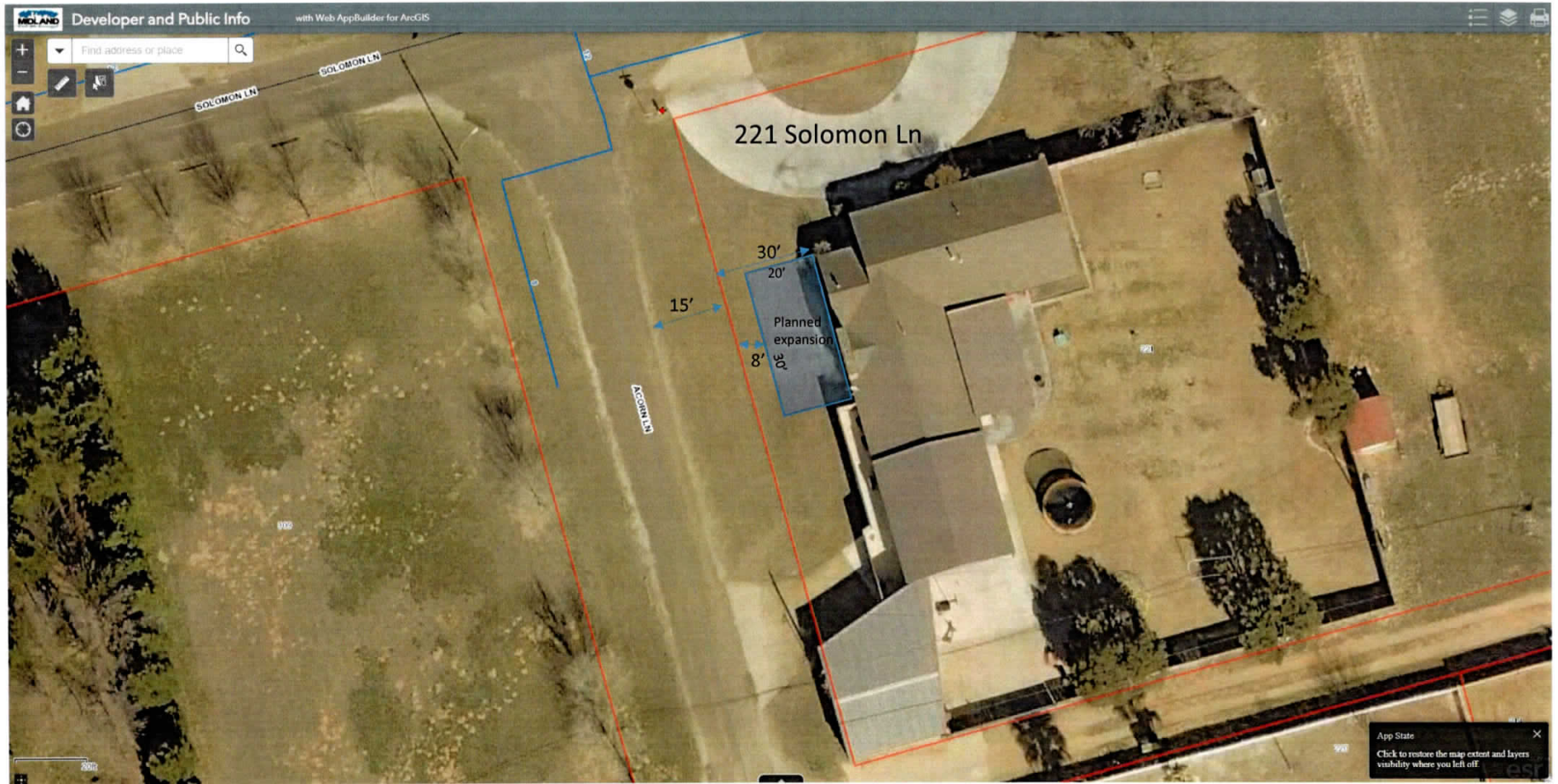
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

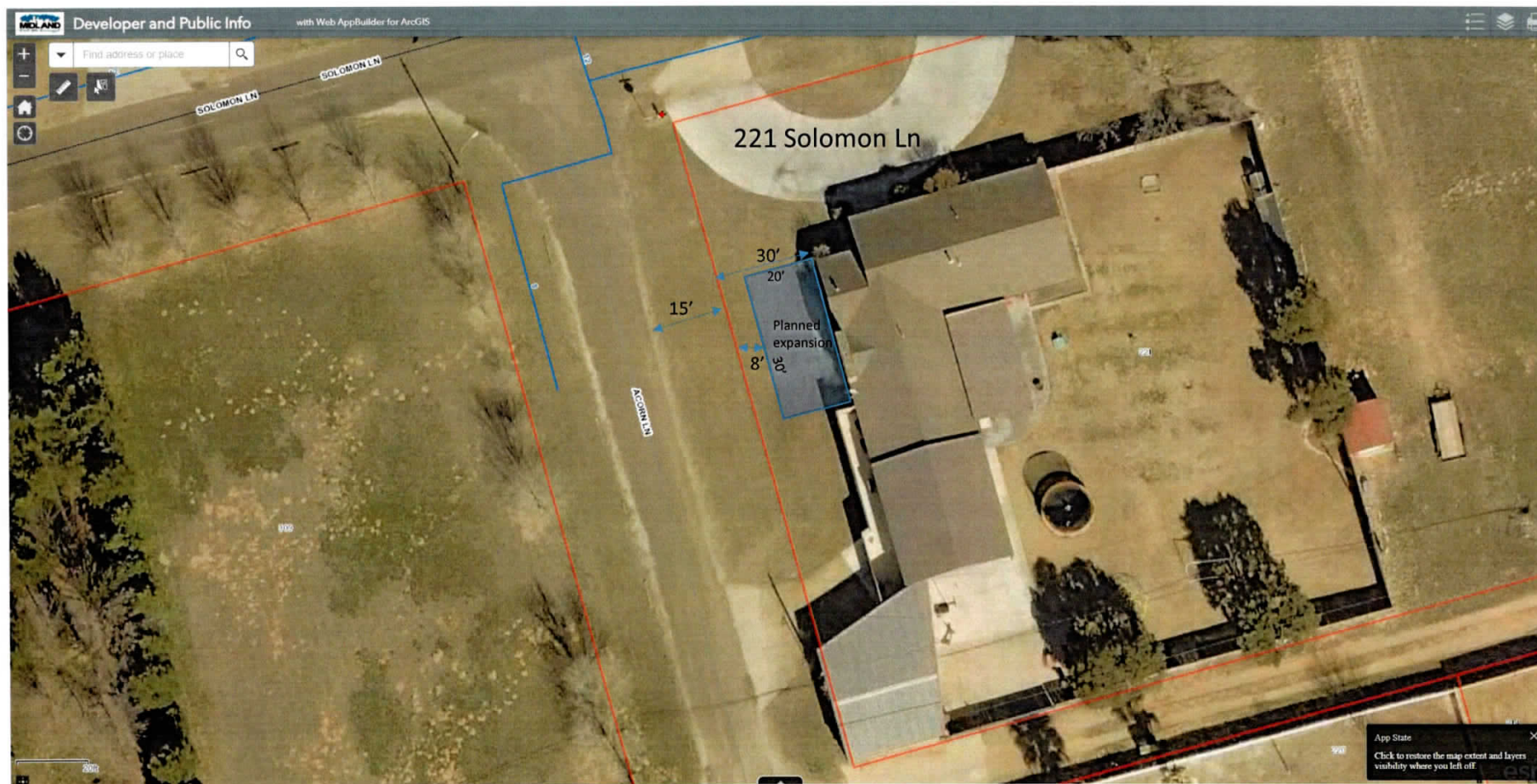
John Ohnemiller, City Attorney

EXHIBIT "A"

1702 T 2 NWP
JAN 2 1 2021



1702 1 2 NOV
JAN 2 1 2021





Special Exception Application

Project Number: E-21-0048
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Cory Rylander</u>		Phone (432) 312-0206 Email <u>crylander@summitpetroleumllc.com</u>	
Address <u>221 Solomon Ln</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79705</u>

Property Owner Printed Name: <u>Cory Rylander</u>		Phone (432) 312-0206 Email <u>crylander@summitpetroleumllc.com</u>	
Address <u>221 Solomon Ln</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79705</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email _____	
Address _____	City _____	State _____	Zip _____

Street Address: <u>221 Solomon Ln</u>			
Legal Description <u>Tract 15, First Section</u>			
Lot: <u>-</u>	Block: <u>-</u>	Subdivision: <u>North Estates</u>	

Current Zoning: <u>AE</u>
This property qualifies as an exception to the City Code because: ☐ It is an expansion of a nonconforming use. ☒ There are existing nonconforming structures in the area. ☐ The addition of architectural or other projections of a minor extent.
Reason for Request: <u>We are planning to remodel/expand our home to add 600ft² for a master bedroom suite and powder bathroom. Due to plumbing and the current floor plan of our home, this is the only option for expansion at this time. I</u>

Submittal and Fees <u>am requesting an exception that will allow us to build this addition 8' from the property line as shown on the attached plan.</u>
Items to be submitted with this application form: • Application Fee – Payable to the 'City of Midland' • Dimensioned Site Plan showing: • Parking • Building Footprint • Digital Copies of Site Plan (PDF/JPEG)

Signatures

Applicant (signature):



Date: 1/21/21

Applicant (printed):

Cory Rylander

Property Owner (signature):



Date: 1/21/21

Property Owner (printed):

Cory Rylander

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 # 1326

Received By:

V. Sherman

Date:



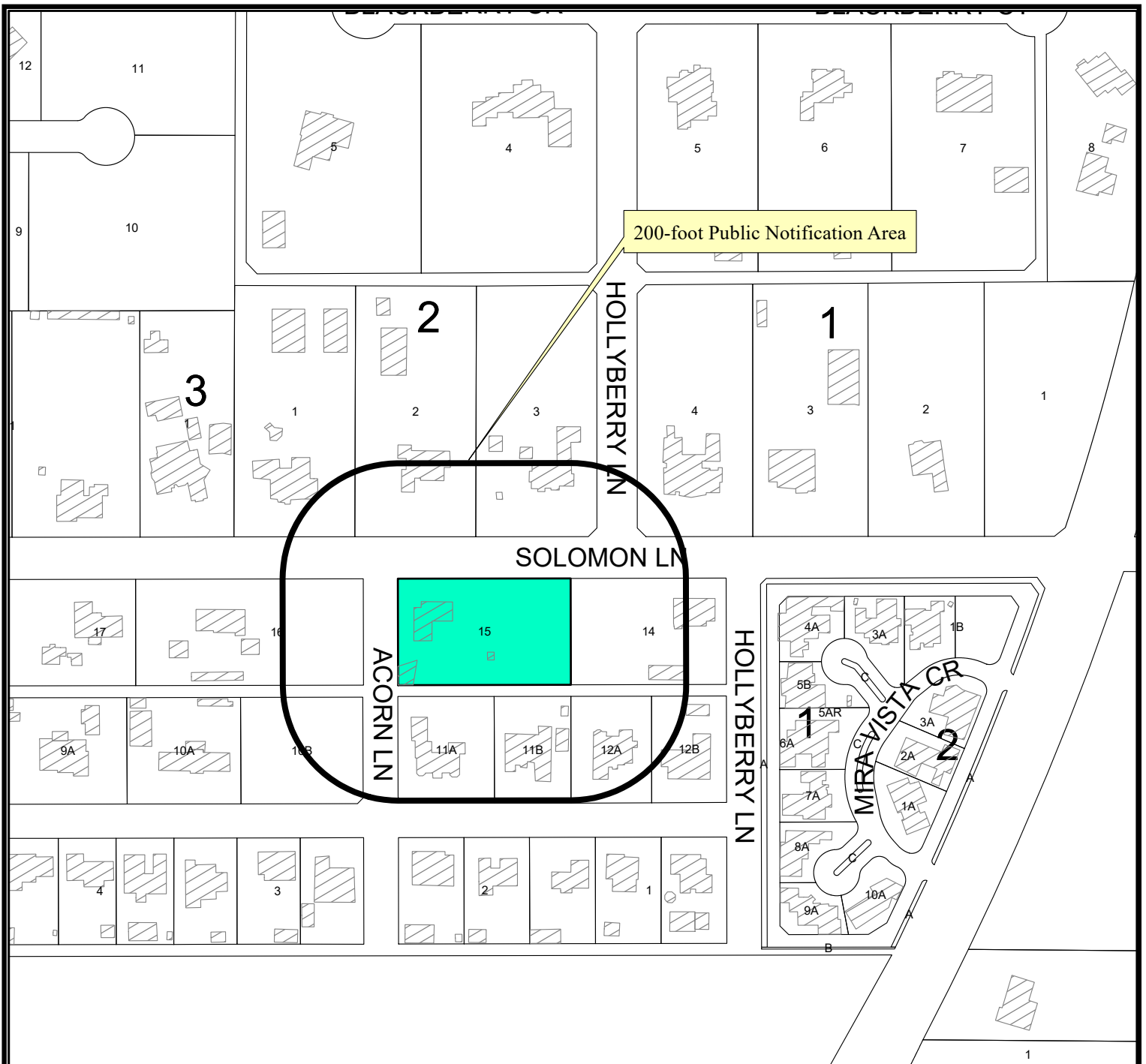
BY: V.S.

*PACKET

19.11

February 23, 2021

Application will not be considered for scheduling until reviewed by a planner.



LOCATION MAP

E-21-0048

Scale: 1" = 250'

Consider a request by Stephen Sample for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum side yard setback for a corner lot on Tract 15, North Estates, City and County of Midland, Texas.

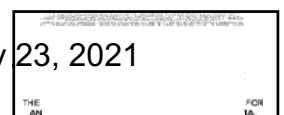
Generally located on the southeast corner of the intersection of Solomon Lane and Acorn Lane. 19.12
(Council District 1)

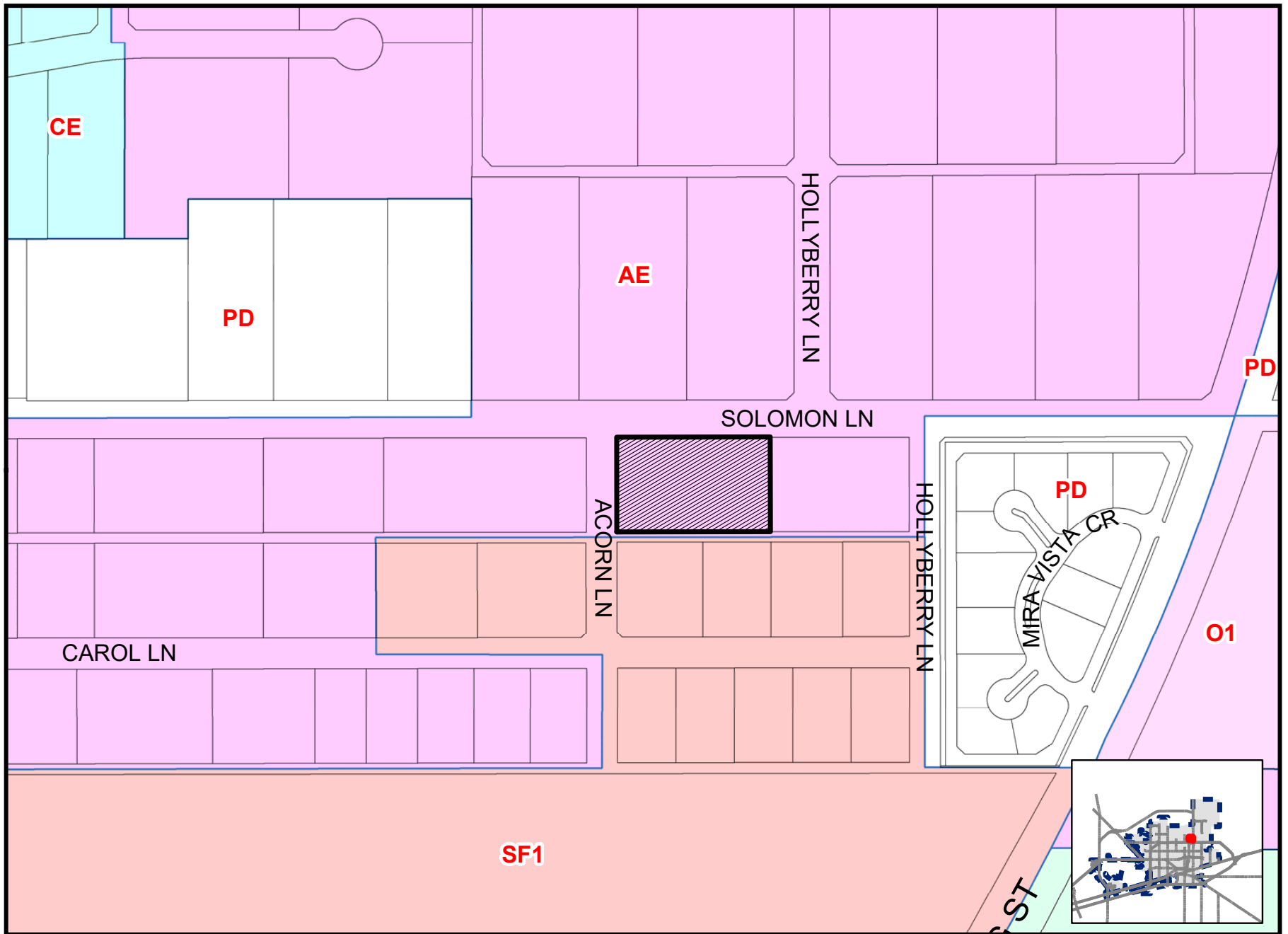
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 23, 2021















City Council Meeting

Item Number: 20
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Valerie A. Sherman, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF HENRY KOONTZ BOULEVARD, APPROXIMATELY 535 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Home Depot U.S.A., Inc., is requesting a zone change from PD, Planned District for a Shopping Center to amended PD, Planned Development District for a Shopping Center to restripe the existing equipment rental stalls to angled parking and add an additional 12 equipment rental stalls, for a total of 22 equipment rental stalls.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Shopping Center and the location of restaurants. The property to the east is zoned PD, Planned District for a Shopping Center and the location of a retail establishment. The properties to the south are zoned SF2, Single-Family Dwelling District and the location of residences. The property to the west is zoned PD, Planned District for a Shopping Center and the location of a storage center.

Analysis:

The property is located at 4009 N. Midland Drive and is the location of the Home Depot. The applicant is proposing to re-stripe the existing equipment rental stalls to angled parking and add an additional 12 equipment rental stalls, for a total of 22 equipment rental stalls. No additional changes or modifications of the property are being proposed. The property will still exceed the parking requirement with the proposed amendment.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No objection.

Engineering: (Approved)

No objection to zone change

Code: (Approved)

No Oil or Gas issues.

Transportation: (Approved)

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Regional Commercial; which calls for a broad range of retail services, including large-scale stores and services; therefore, this zone change complies with the Future Land Use plan.

This request has been recommended for approval by a unanimous vote at the February 1, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from PD, Planned District for a Shopping Center to amended PD, Planned Development District for a Shopping Center, subject to conditions A and B.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District, except as stated below.**
- B. That this property shall conform to the site plan, which is attached hereto and incorporated herein as Exhibit A.**

Letters of Objection:

Staff has not received any objections as of February 17, 2021.

Attachments:

Site Plan (Exhibit A)
Application
Maps
Ordinance No. 10008



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF HENRY KOONTZ BOULEVARD, APPROXIMATELY 535 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 6, Block 45, Fairmont Park, Section 15, City and County of Midland, Texas (the “Property”) to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit “A” and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following condition and restrictions:

That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____

_____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

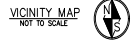
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



LARS ANDERSEN & ASSOCIATES, INC.
CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS
4694 WEST JACQUELYN AVENUE - FRESNO, CALIFORNIA 93722
TEL: 559 276-2790 FAX: 559 276-0850 WWW.LARSANDERSEN.COM



PROJECT INFORMATION

ZONING INFORMATION	
APN:	R0000-19-018
ZONING:	PDSC
LAND USE:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
HOME DEPOT SITE DATA	
HOME DEPOT AREA	12.96 AC
HOME DEPOT BUILDING AREAS	
EXISTING HOME DEPOT BUILDING	101,500 SF
EXISTING GARDEN CENTER	28,000 SF
PROPOSED TOOL RENTAL CENTER	+ 2,225 SF
TOTAL HD BUILDING AREA	131,725 SF
PARKING REQUIRED PER CITY CODE	
HOME DEPOT (8) 3.3 PER 1,000 SF	
PER ORDINANCE NO. 8893	
(INCLUDING GARDEN CENTER & TRC)	487 STALLS
PARKING PROVIDED	
FRONT FIELD PARKING	536 STALLS
SIDE FIELD PARKING	23 STALLS
REAR FIELD PARKING	+ 9 STALLS
TOTAL PARKING PROVIDED	568 STALLS
INCLUDED WITHIN PARKING PROVIDED	
ACCESSIBLE PARKING	14 STALLS
NOT INCLUDED WITHIN PARKING PROVIDED	
THD EQUIPMENT RENTAL	22 STALLS

TRC SITE PLAN

DATE:	7/23/2019
REVISION DATES:	1/28/2021
SITE PLANNER	LUIS REBELO
SITE DEV. COORDINATOR	SCOTT MOMMER
R. E. MARKET	
R. E. AGENDA NAME	
R. E. MANAGER	TREY CONWAY



**TX - MIDLAND
STORE #0561**

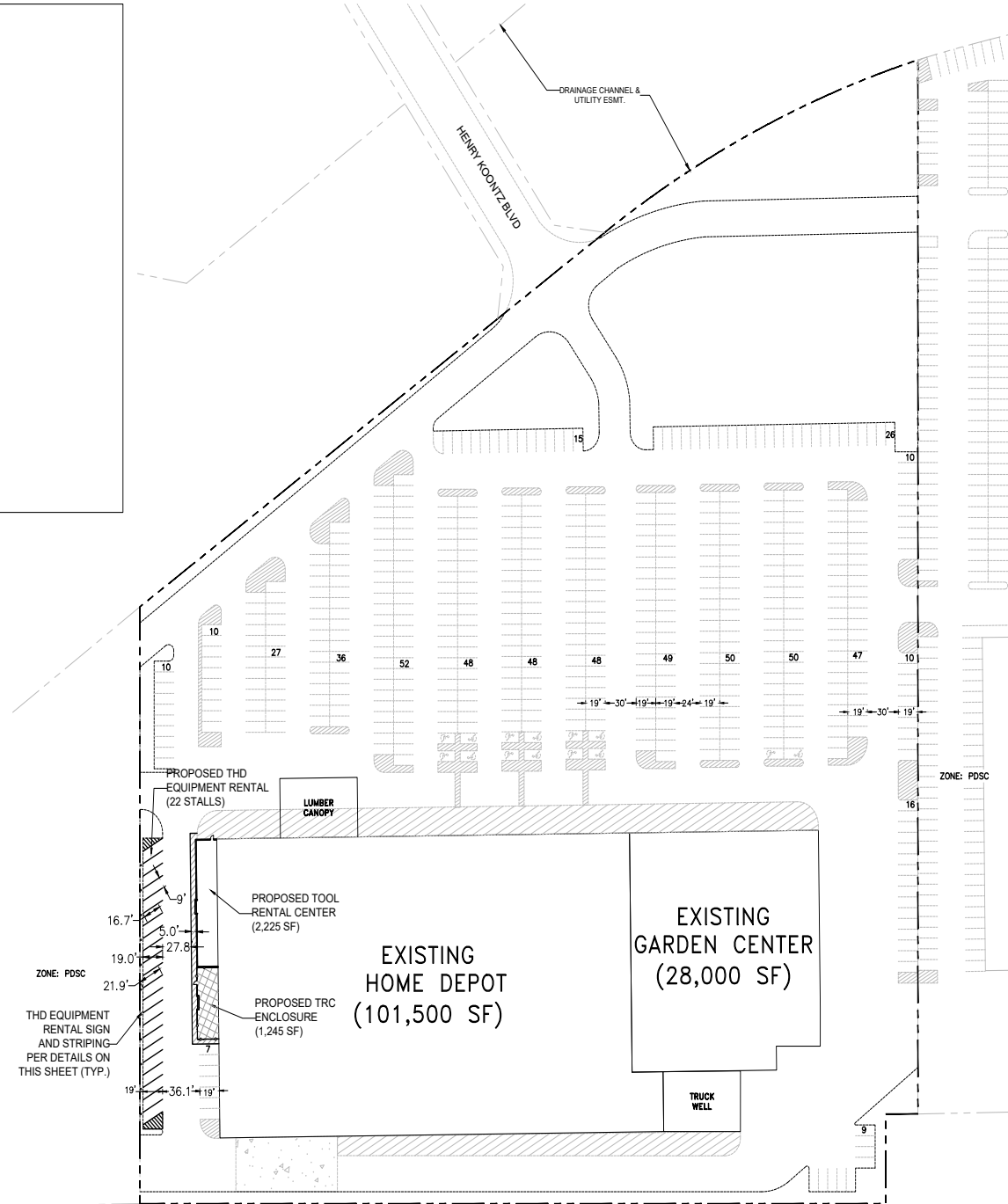
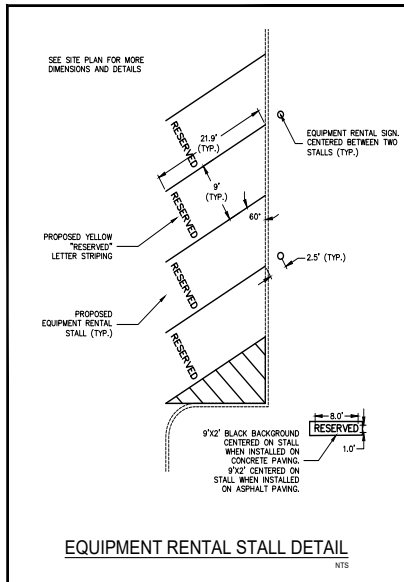
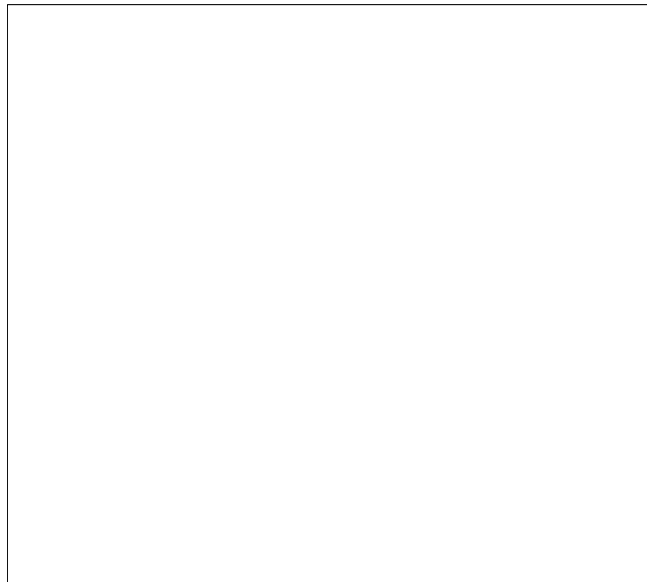
ADDRESS: 4009 N MIDLAND DR.
MIDLAND, TX 79707

LA PROJECT NUMBER 19000.00



SCALE 1"=50'

SITE PLAN
SHEET 1 OF 1



PACKET

20.8

ZONE: 1F1

February 23, 2021



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-21-0209
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Lars Andersen & Associates, Inc. - Janay Mommer

Phone () 559-978-7643

Email
jmommer@larsandersen.com

Address
4694 W. Jacquelyn Avenue

City
Fresno

State
CA

Zip
93722

Property Owner

Printed Name: Home Depot U.S.A., Inc.

Phone () 770-384-2406

Email
suzanne_russo@homedepot.com

Address
2455 Paces Ferry Road

City
Atlanta

State
GA

Zip
30339

Representative (if different from Applicant or Property Owner)

Firm: Same as Applicant

Printed Name: _____

Phone () _____

Email _____

Address _____

City _____

State _____

Zip _____

Street Address: 4009 N. Midland, Midland, TX 79707

Legal Description

Lot: 6 Block: 45 Subdivision: Fairmont Park

Current Zoning:

PDSC

Proposed Zone: PDSC (No Change)

(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Amending Site Plan to re-stripe the Equipment Rental stalls to angled parking and add an additional 12 Equipment Rental Stalls, for a total of 22 Equipment Rental Stalls

Present Use of Property: Existing Home Improvement Store

Proposed Use of Property: No change, amending Site Plan to re-stripe and add an additional 12 Equipment Rental stalls.

How would this zone change affect the public health, safety and welfare? _____

The proposed Plan will not affect the public health, safety, and welfare and there is no change to the existing Use or operation.

Describe how conditions affecting the property have changed since present zoning

designation: The re-striping of the Equipment Rental stalls to angled parking will provide easy access to customers to tow away and park the Equipment. The additional Equipment Rental units added will benefit the community by meeting customer needs.

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)

PACKET

20.10

February 23, 2021

Signature (by property owner only – authorized agent must sign affidavit below)Applicant (signature): Janay Mommer

Date: 01/05/2021

Applicant (printed): Janay Mommer

Property Owner (signature): Suzanne Russo

Date: 01/05/2021

Property Owner (printed): Suzanne Russo

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 Suzanne Russo who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Home Depot U.S.A., Inc., 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.

Suzanne Russo
Authorized Agent (signature)

Subscribed and sworn to before me, this 5th day of January, 2021, to certify which witness my hand and seal of office.



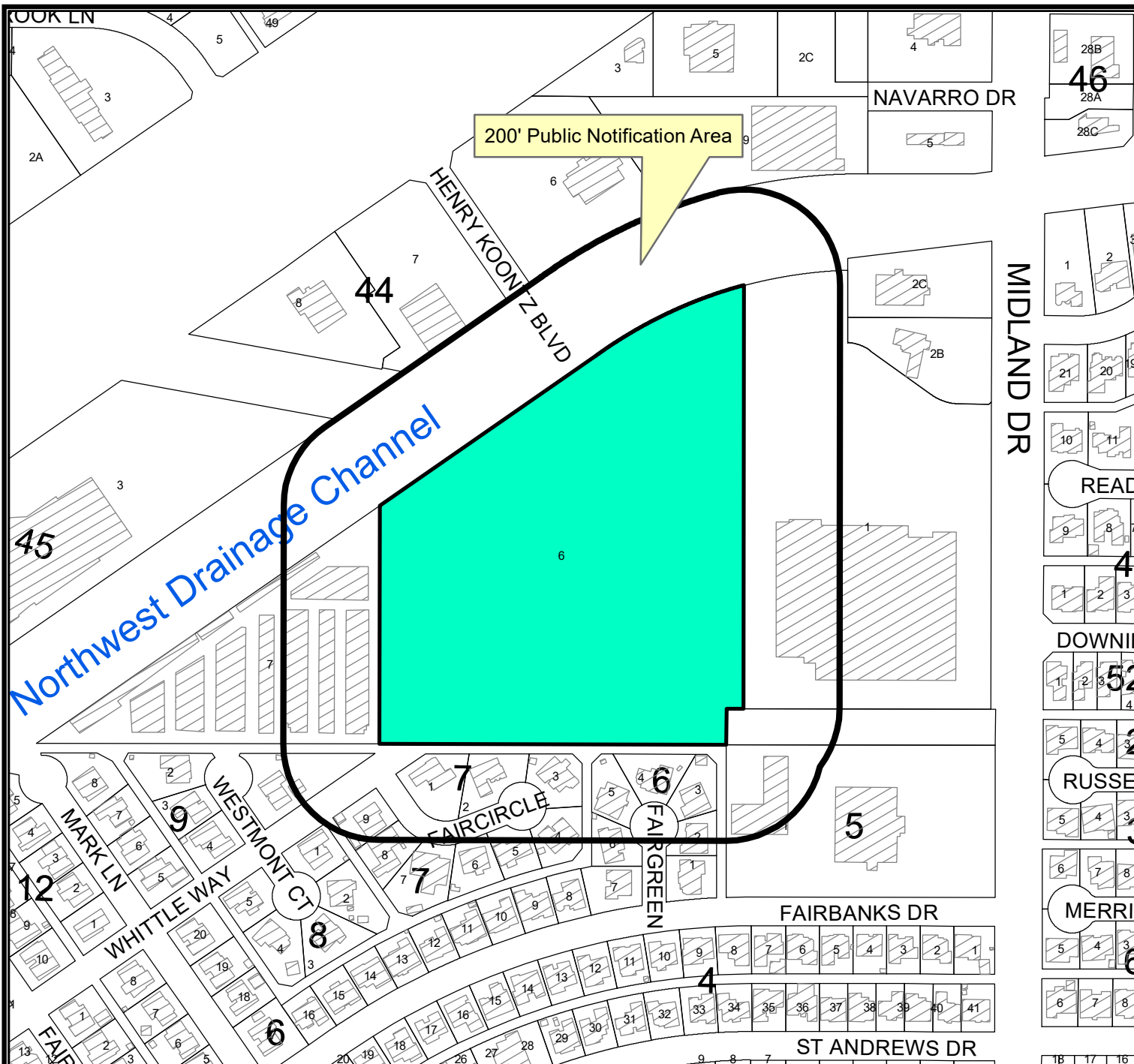
[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☐ Property Owner Authorization☐ Dimensioned Site Plan☐ Application Fee☐ Plans in Digital Format (PDF/JPEG)

Check # _____

Received By: _____

Date: _____



LOCATION MAP

Z-21-0209

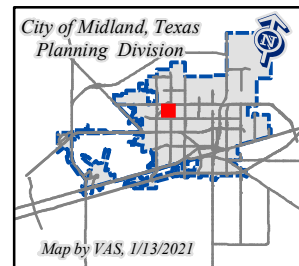
Scale: 1" = 300'

Consider a request by Home Depot U.S.A., Inc. for a zone change from PD, Planned District for a Shopping Center to Amended PD, Planned Development District for a Shopping Center on Lot 6, Block 45, Fairmont Park, Section 15, City and County of Midland, Texas.

Generally located on the south side of Henry Koontz Boulevard, approximately 535 feet west of N. Midland Drive. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING. 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.

February 23, 2021

PACKET

20.12

ORDINANCE NO. 10008

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED APPROXIMATELY 809 FEET SOUTH OF WEST LOOP 250 NORTH AND APPROXIMATELY 643 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 6, Block 45, Fairmont Park, Section 15, City and County of Midland, Texas (the “Property”) to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit “A” and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

That the Property shall significantly conform to the site plan and elevations plan, which are attached hereto as Exhibits “A” and “B” and incorporated herein for all purposes.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the 22nd day of October, A.D., 2019; and passed to second reading on motion of Council member Robnett, seconded by Council member Trost, by the following vote:

Council members voting "AYE": Trost, Hotchkiss, Love, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Lacy, seconded by Council member Love, on the 5th day of November, A.D., 2019, at a regular meeting of the City Council:

Council members voting "AYE": Trost, Hotchkiss, Love, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 5th day of November, A.D., 2019.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

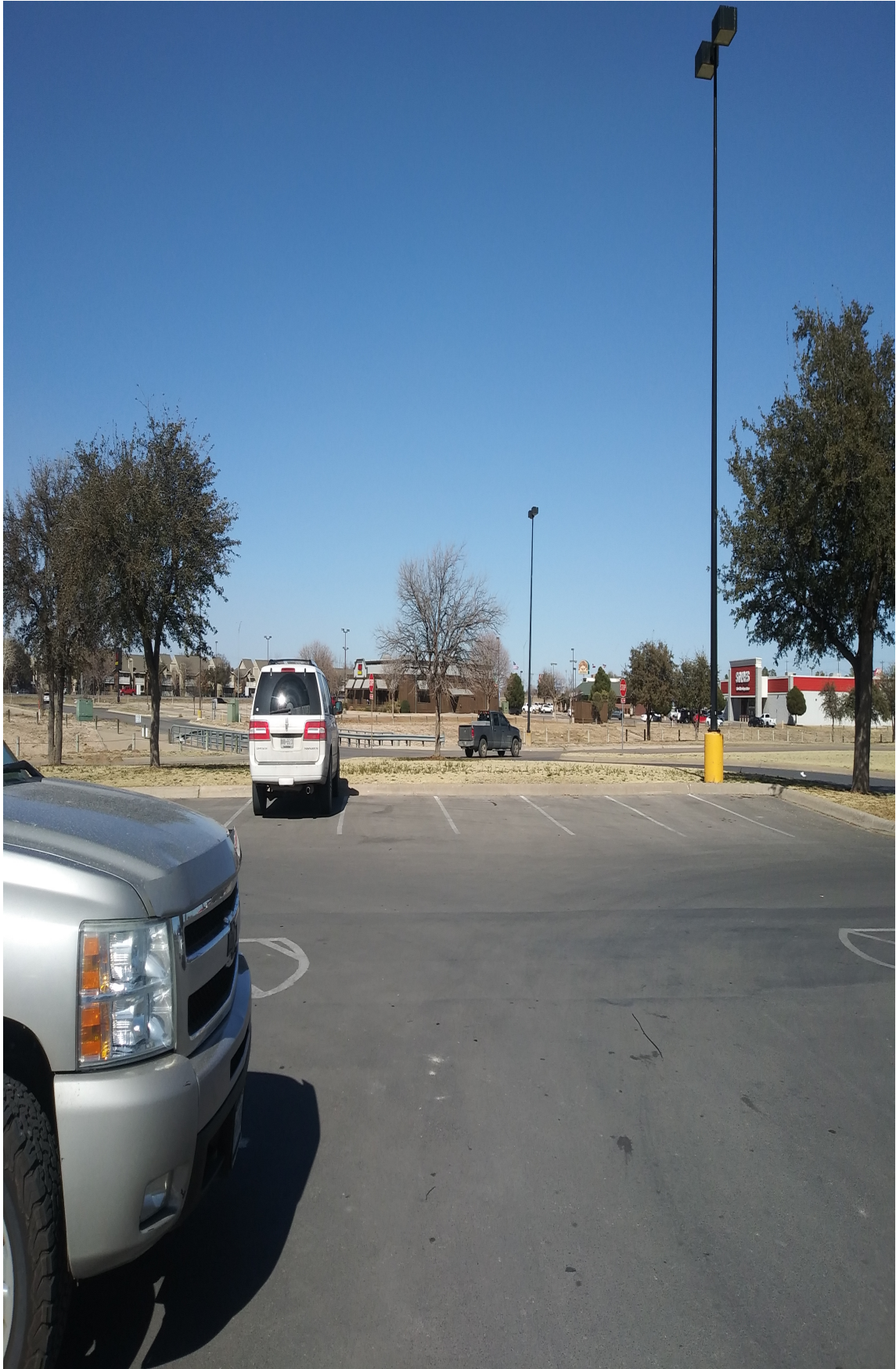
APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney











City Council Meeting

Item Number: 21
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Joseph Marynak, Planner
Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR RETAIL SALES ON LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WEST WADLEY AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DEVELOPMENT SERVICES)

Purpose:

Consider a resolution on a request by Lowe's Home Centers for approval of a Temporary Land Use Permit for Seasonal Outdoor Sales.

Recommended City Council Action:

Deny

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Lowe's Home Centers is requesting a Temporary Land Use Permit for their Seasonal Outdoor Sales on their property located at 3315 N Loop 250 West, as shown on the site plan (Exhibit A). The proposed dates and times of the event are Monday, March 1, 2021, through Thursday, July 15, 2021, during their standard operating hours.

This event will consist of the unfenced display and sale of lawn and garden materials, such as seed and soil to accommodate for the increased demand during the spring and summer seasons. The sales and display will be conducted in the Lowe's Home Center parking lot as depicted on the site plan (Exhibit A)

This request has been circulated to all pertinent City departments for review. Below are the departments's comments:

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objection.

Fire: (Awaiting Comments)

Building Code: (Approved)

No objections.

Code Compliance:

No oil and Gas issues.

Planning:

Although this Temporary Land Use Permit for seasonal outdoor sales will allow Lowe's Home Center to accommodate the increased demand for lawn and garden supplies during peak planting seasons, staff recommends denial of this request as code complaints were received last year when Lowe's used this parking area for overflow storage. Additionally, staff has recommended to Lowe's that they amend their planned development district to extend their outdoor garden area to increase their capacity for their supplies.

If approved, staff recommends that this temporary land use permit shall be subject to conditions A through G.

Conditions:

- A. That the operation of the Seasonal Outdoor Sales shall conform to the attached Site Plan (Exhibit A).**
- B. That the day and hours of the Seasonal Outdoor Sales shall be limited to Monday, March 1, 2021, through Thursday, July 15, 2021, during Lowe's Home Center's normal operating hours**

- C. That the event shall comply with all requirements of the Fire Code; the applicant shall call for an inspection by the Fire Marshal prior to commencing the event.
- D. That the twenty-six (26) foot wide fire lane adjacent to the garden center as indicated on the site plan shall remain unobstructed and shall not be used for the seasonal outdoor sales.
- E. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the event.
- F. That, Travis Spicer, a representative of Lowe's Home Centers, shall be responsible for ensuring that the conditions of this permit are observed.
- G. That the event shall be subject to future evaluation in regards to COVID-19 restrictions.

Letters of Objection:

As of February 17, 2021, Staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR OUTDOOR RETAIL SALES ON LOT 2,
BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION
1, CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED AT THE NORTHWEST
CORNER OF THE INTERSECTION OF NORTH LOOP
250 WEST AND WEST WADLEY AVENUE) SUBJECT
TO CERTAIN SPECIAL CONDITIONS AND
RESTRICTIONS**

WHEREAS, pursuant to Section 11-1-4.05 of the City Code of Midland, Texas, Lowe's Home Centers, LLC (the "Applicant") has applied for authorization to temporarily use Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas (the "Property") for outdoor retail sales (the "Event"); and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That the Applicant is hereby authorized by the City Council to temporarily use the Property for the Event subject to the following conditions and restrictions:

- A. That the days and hours of the Event shall be limited to Monday, March 1, 2021, through Thursday, July 15, 2021, during the Applicant's normal operating hours.
- B. That the operation of the Event shall conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein.
- C. That the Applicant shall operate the Event in compliance with all requirements of the Fire Code. The Applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the Event.
- D. That the Applicant shall not operate the Event on the 26-foot-wide fire lane adjacent to the garden center, as shown on the site plan. The Applicant shall ensure that said fire lane remains unobstructed.
- E. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding operation of the Event.
- F. That notwithstanding any provision herein, the Applicant shall ensure that the Event complies with all applicable laws, rules, regulations, proclamations and

orders related to the federal, state and local responses to the COVID-19 pandemic.

- G. That Travis Spicer, a representative of the Applicant, shall be responsible for ensuring that the conditions of this permit are observed and satisfied.

SECTION TWO. That the City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LOT 1
19.51 Ac.

BLOCK 1
LOT 1
63.08 Ac.

HERITAGE BLVD

PROPOSED EAST WEST ROAD

130' TRUCK TURNAROUND

TRUCK MILL

QUARRY CENTER

OPEN AREA

EXPANDED GARDEN CENTER PER ON/ODD/OOD DRAWINGS

COVERED AREA

LOWE'S
"AA"
130,497 SF

CONTRACTOR SHALL REFER TO ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF VESTIBULE, SLOPED PAVING, EXIT PORCHES, RAMPS, TRUCK DOORS, PROPOSE BUILDING DIMENSIONS, AND EXACT BUILDING UTILITY ENTRANCE LOCATIONS.

SEASONAL USE
MARCH 1 - JULY 6
1/2000 SF EACH

EXISTING GARDEN CENTER FENCE

EXISTING FIRE LANE TO REMAIN

PAINTED STOP BAR AND STOP SIGN

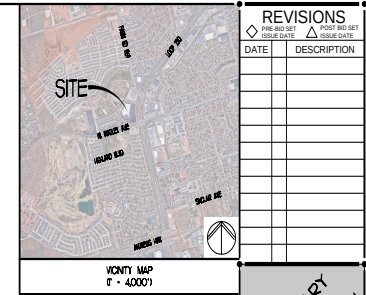
4' SIDEWALK PER CITY REQUIREMENTS (END @ PROPERTY LINE)

WADLEY AVENUE

LOOP 250 (Frontage Road)

PACKET

21.7



LOWE'S SITE - GENERAL NOTES:
SITE ADDRESS: 335 N LOOP 250 W MIDLAND, TX 79701
OWNER OF RECORD: COLE LO MIDLAND TX LP
SITE AREA: +18.52 ACRES
PIN: 46000020020
ZONING: PD
LOWE'S TOTAL FLOOR AREA: 130,497 SQ. FT.

CITY APPROVAL BLOCK

PRELIMINARY
NOT FOR
CONSTRUCTION

FREELAND and KAUFFMAN, INC.
Engineers • Landscape Architects
209 West Stone Avenue
Greenville, South Carolina 29609
(864) 233-5497

LOWE'S HOME CENTERS, LLC
1000 LOWES BOULEVARD
MOORESVILLE, NC 28117
704.758.1000 (V)



LOWES OF:
MIDLAND
MIDLAND, TEXAS

ORIGINAL	
ISSUE DATE:	02/09/2021
PERMIT SET	
ISSUE DATE:	
INSTRUCTION SET	
ISSUE DATE:	
DRAWING NUMBER:	



[illegible]

PRELIMINARY
NOT FOR
INSTRUCTION

FREELAND and KAUFFMAN, INC.
Engineers • Landscape Architects
209 West Stone Avenue
Greenville, South Carolina 29609
(864) 233-5497

LOWE'S HOME CENTERS, LL
1000 LOWES BOULEVARD
MOORESVILLE, NC 28117
704.758.1000 (V)

THIS DRAWING IS THE PROPERTY OF LOWE'S HOME CENTERS, LLC. ANY USE OR REPRODUCTION IN WHOLE OR PART IS PROHIBITED WITHOUT THE EXPRESSED WRITTEN CONSENT OF LOWE'S HOME CENTERS, INC.



OUTDOOR SALES /
DISPLAY PLAN
LOWES OF:
MIDLAND
MIDLAND, TEXAS

ORIGINAL	
ISSUE DATE:	02/09/20
PERMIT SET	
ISSUE DATE:	
CONSTRUCTION SET	
ISSUE DATE:	
DRAWING NUMBER:	

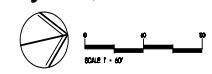
UNDERLYING DRAWING WAS TAKEN FROM A
DRAWING PREPARED BY ASG
INCORPORATED, REVISED 11/22/95, SIGNED BY
MARK A. BIALK AND CONSIDERS GARDEN
CENTER EXPANSION BY PAEP ARCHITECTURE
& ENGINEERING, INC. DATED 08/07/09

LOWE'S SITE - GENERAL NOTES:
SITE ADDRESS: 335 N LOOP 250 W MIDLAND, TX 79707
OWNER OF RECORD: COLE LO MIDLAND TX LP
SITE AREA: +1852 ACRES
PIN: 415000020020
ZONING: PD
LOWE'S TOTAL FLOOR AREA: 130,497 SQ. FT.

APPLICANT INFORMATION:
LOWE'S HOME CENTERS, LLC
1000 LOWES BLVD., MOORESVILLE, NC 28117
TRAVIS SPICER, DIRECTOR EEC

CITY APPROVAL BLOCK

February 23, 2021



PACKET

21.8

February 23, 2021



Temporary Land Use Application

Project Number: TLU-21-0078
Case Number: _____

Event Name: Seasonal Outdoor Sales - Lowe's Home Centers

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Lowes Home Centers, LLC

Phone ()

Email travis.j.spicer@lowes.com

Address 1000 Lowes Boulevard

City Mooresville

State NC

Zip 28117

Property Owner

Printed Name: Spirit LO Midland TX, LP

Phone (972) 476-1945

Email PRea@spiritrealty.com

Address 2727 N Harwood St. Ste 300

City Dallas

State TX

Zip 75201

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: Lowes Home Centers, LLC

Phone ()

Email

Address

City

State

Zip

Street Address: 3315 North Loop 250 West, Midland, TX 79707

Legal Description

Lot: 0020

Block: 002

Subdivision:

41500

Current Zoning: PD

Type of Temporary Use Requested: Seasonal Sales

Description of Event: Seasonal outdoor sales area to utilize existing impervious parking areas in order to provide product to serve the community during peak demand times.

Duration of Temporary Use: February 15 - July 15

If event lasts for more than (1) day and is located within any residential district or is located within 1,000 feet of any residential district, then a public hearing is required.

Proposed Days and Hours: During Lowe's store operating hours (7 days per week)

Will alcoholic beverages be sold? ☐ Yes ☒ No

If yes, you must comply with all Texas Alcoholic Beverage Commission (TABC) regulations for the event.

Are you requesting the temporary closure of any streets? ☐ Yes ☒ No

If yes, you must:

- Complete the "Special Event and Street Closure Application", available from the Planning Division (4th Floor, City Hall), as well as submit a "Traffic Control Plan" to the Transportation Division (5th Floor, City Hall).
- Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

Number of Peace Offices Provided: _____ <i>Contact the Midland Police Department to schedule off-duty police officers.</i>			
Type of Music (<i>carnival, live, etc.</i>): N/A			
Showmobile (<i>portable stage</i>) Requested: ☐ Yes ☒ No		Days & Hours: N/A	
Number of Restroom Fixtures Provided:	<i>Men</i>	Toilets/Urinals:	Bathroom Sinks:
	<i>Women</i>	Toilets:	Bathroom Sinks:
	<i>Unisex</i>	Toilets:	Bathroom Sinks:

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Damage Deposit
- Clean-Up Deposit
- 1 FOLDED Copy of Site Plan*
- Digital Copies of Site Plan (PDF/JPEG)

*Should show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.

Signatures

Applicant (signature): 	Date: 1.19.21
Applicant (printed): Travis Spicer	
Property Owner (signature): See Property Owner Signature Page attached	Date:
Property Owner (printed):	
Representative (signature):	Date:
Representative (printed): _____	

The Temporary Land Use Permit 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.

****Application will not be considered for scheduling until reviewed by a planner.****

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

☐ Liability Insurance (Street Closure)

☐ Dimensioned Site Plan

☐ Traffic Control Plan (Street Closure)

☒ Plans in Digital Format (PDF/JPEG)

☒ Clean-Up Deposit

☒ Application Fee

Check # waived

Check # Creditcard Form

☒ Damage Deposit

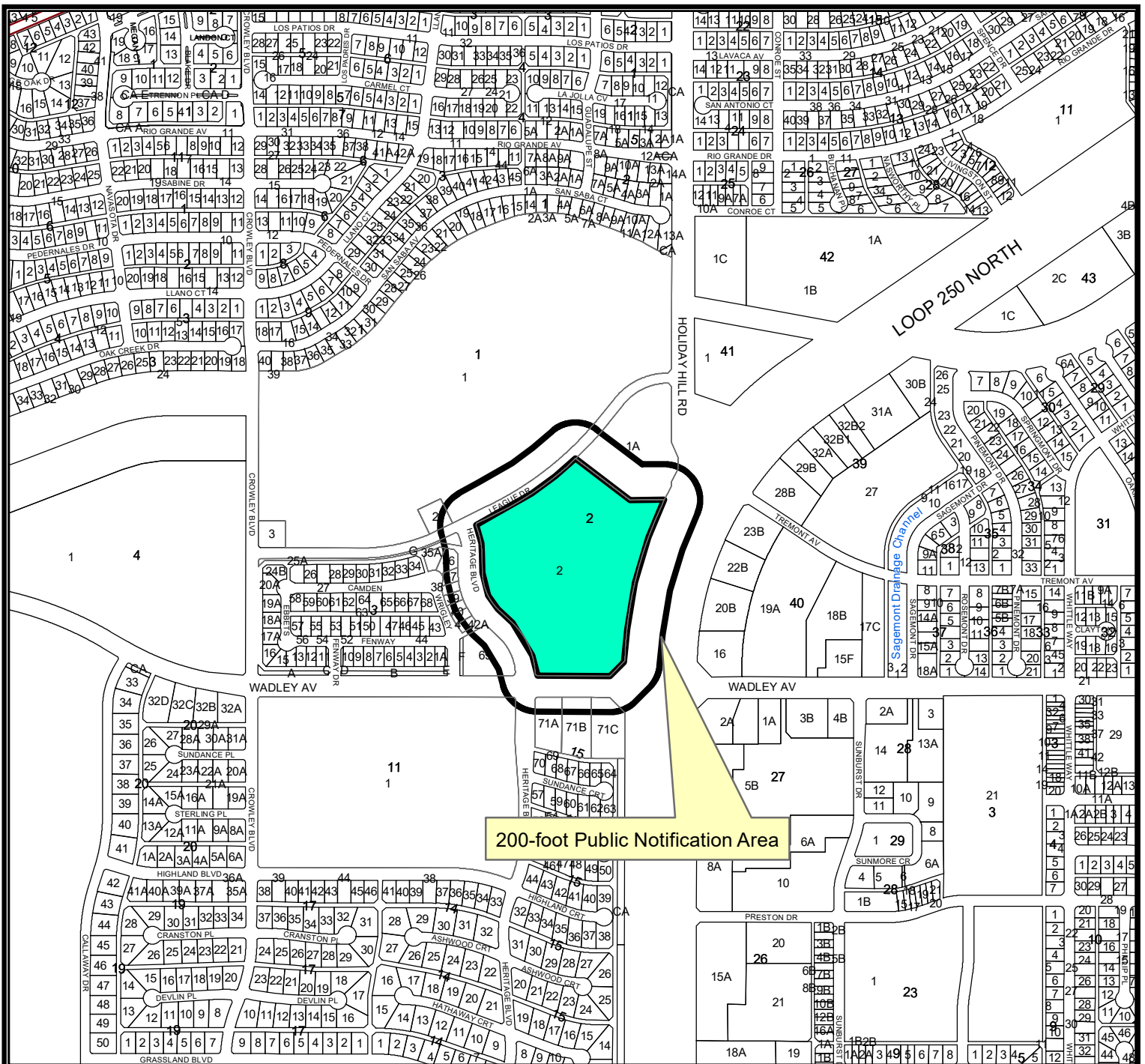
☐ Administrative Approval

Check # waived

Received By: Emailed

Date: 2-1-21

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

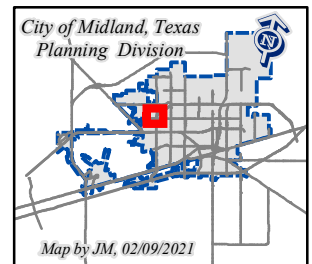
TLU-21-0078

Scale: 1" = 800'

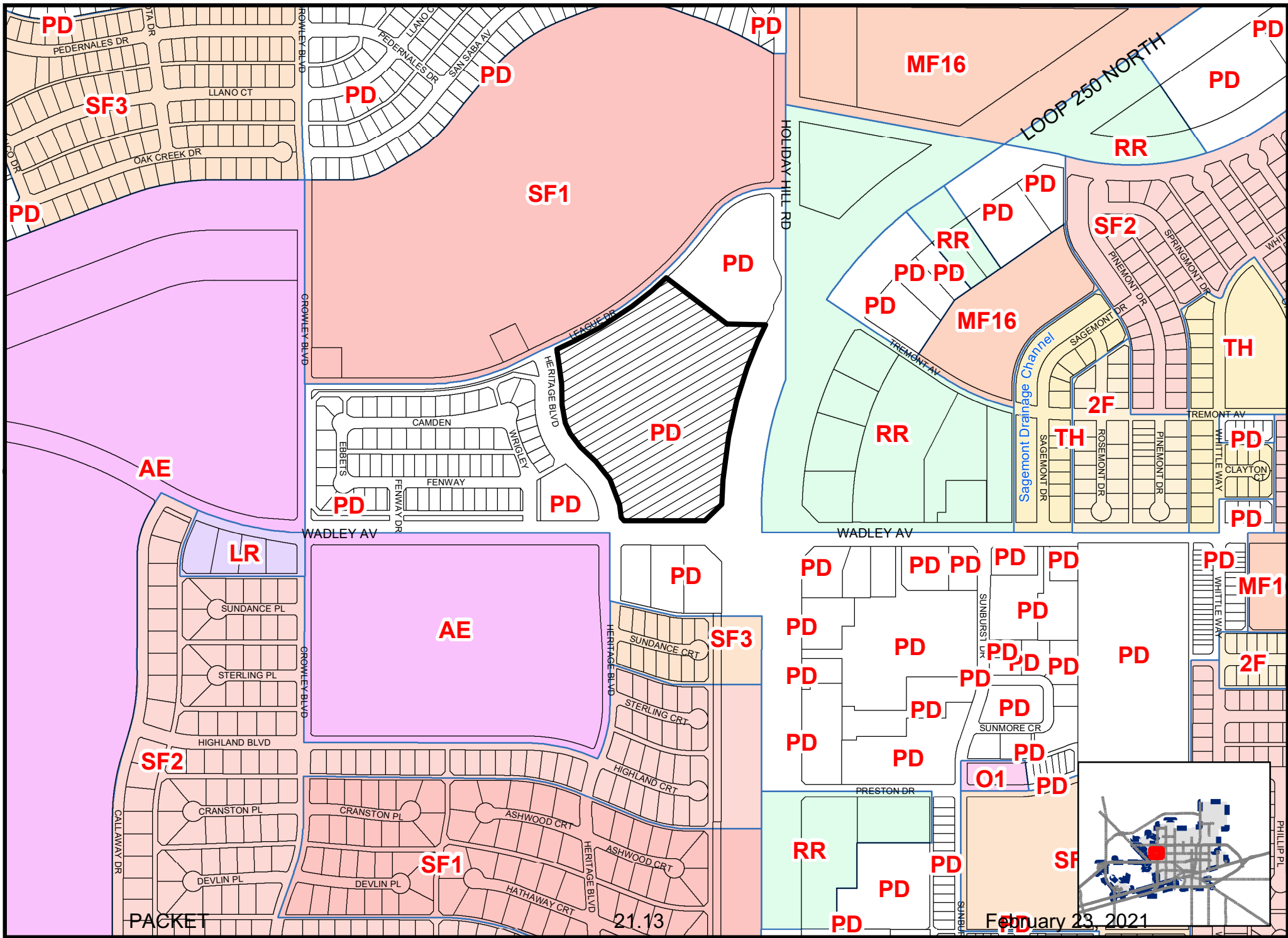
A resolution on a request by Lowe's Home Centers, LLC for approval of a Temporary Land Use Permit for Seasonal Outdoor Sales on the Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas. Generally located at the northwest corner of the intersection of North Loop 250 West and West Wadley Avenue. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 23, 2021













City Council Meeting

Item Number: 22
Meeting Date: February 23, 2021
To: City Council / City Manager
From: Michael Pacelli, City Traffic Engineer
Subject: MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE WITH MT223, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS AN APPROXIMATE 2,140-SQUARE FOOT PORTION OF SOUTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 65, AND CERTAIN OTHER NEARBY PORTIONS OF SOUTH COLORADO STREET, SOUTH LORAIN STREET, WEST WALL STREET, AND WEST MISSOURI AVENUE RIGHTS-OF-WAY, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (ENGINEERING SERVICES)

Purpose:

To consider a request for a right-of-way license with an initial term of one year to operate a private valet parking service utilizing four on-street public parking spaces on the east side of S. Colorado St., south of W. Wall St.

Recommended City Council Action:

Deny

Fiscal Impact:

The cost for changing the existing parking regulation signs is minimal. There is no other direct fiscal impact.

Discussion:

The owner of the building at 223 W Wall St. (MT223, LLC), has requested to utilize four on-street public parking spaces along the east side of Colorado St., just south of Wall St., to operate a private valet parking service. These are all of the on-street spaces on that side of Colorado St. between Wall St. and the first alley to the south, except for one handicap accessible space that is not included in this request and would remain available for public use.

The operation, called Midland Valet, proposes to operate 9 am to 10 pm, Monday through Saturday. Vehicle pick-up and drop-off would occur in the on-street spaces on Colorado St., which would be reserved by the City exclusively for valet parking use only. Vehicles would be transferred and stored in one of two privately-owned, off-street parking lots located on the east side of Big Spring St., south of Missouri Ave. Additional details provided by the Applicant are attached following this memo.

The Development Services Department recommends denial of this request as the applicant will profit from the use of public, on-street parking. Additionally, this request would remove the use of public, on-street parking in a high-demand area of downtown that has several retail and dining options.

Engineering Services also concurs with Development Services' recommendation and reasoning.

It should be noted that this is the first request that the City has received to reserve the use of public parking for private use on a long-term basis. Therefore, handling of this license request likely establishes a precedent for other such requests that may be received in the future.

Staff recommends denial.

City Manager's Office

MIDLAND VALET

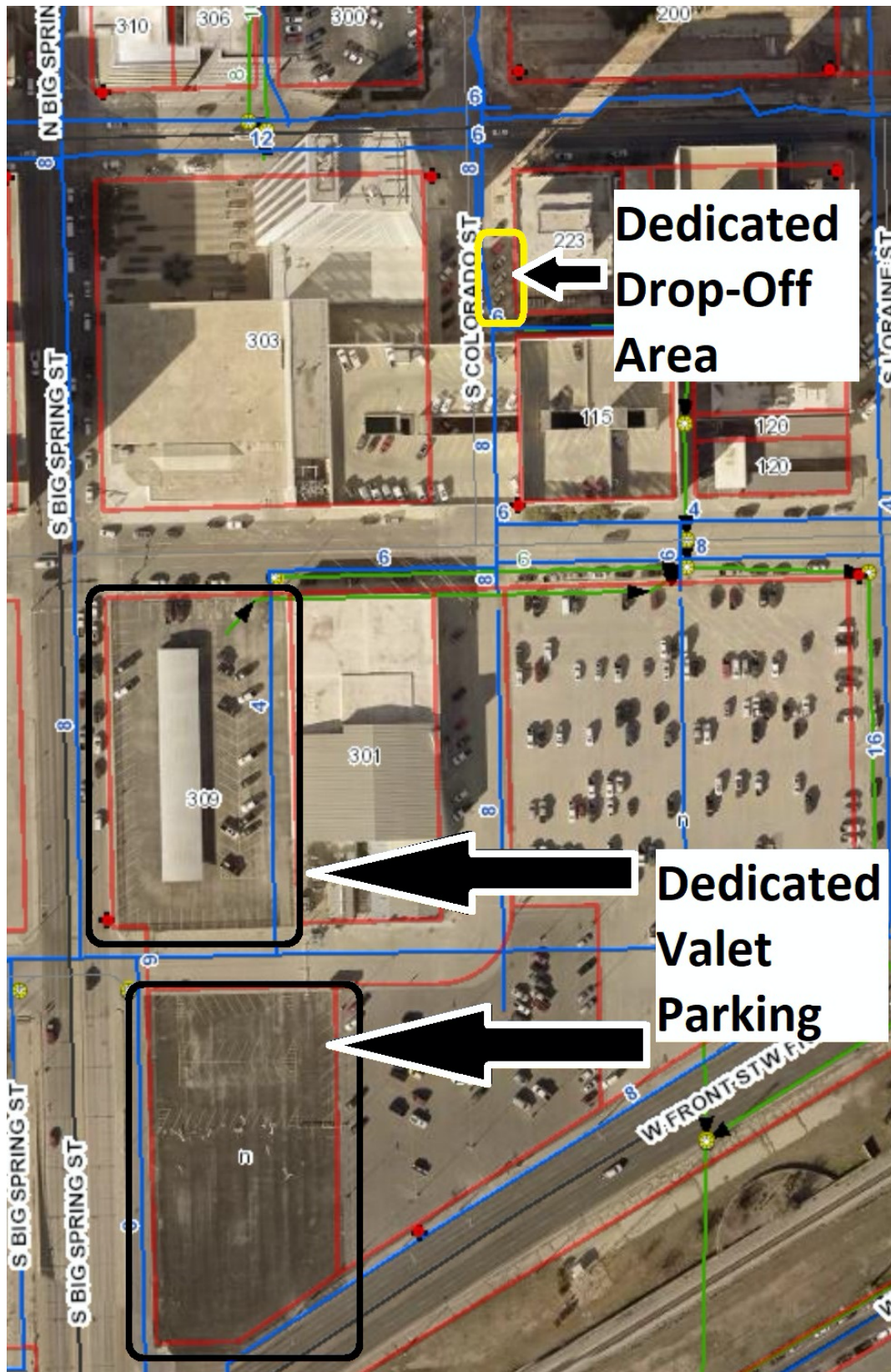
OVERVIEW AND OPERATION

The Midland Valet project is designed to improve vehicle and pedestrian circulation in downtown Midland through the implementation of efficient and secure valet parking.

Midland Valet aims for the highest degree of safety and security for customers and employees and will operate with the following considerations:

- a) The designated drop off areas and the storage valet lots will be managed and overseen by the valet company. Through state-of-the-art operational technology, guests will be able to retrieve their vehicles via their phones to reduce clutter and traffic in the designated pickup areas.
- b) The valet staff will provide pickup instructions to patrons using the valet service.
- c) Valet attendants will follow a strict code of conduct and transport in the operation and. Movement of vehicles including but not limited to:
 - a. Following a specific route to designated parking lot and back to the pickup area
 - b. A background check to ensure a flawless driving record prior to employment
 - c. A maximum moving speed of 25 miles an hour for the safety of the vehicle and parking attendant.
 - d. Training on the latest makes and models to ensure proper ability to safely operate any type of vehicle.
- d) The valet parking service will be available Monday-Saturday 9am-10pm and will consist of:
 - a. an operating manager trained in customer service and logistical operations.
 - b. Parking lot attendant to monitor the valet lot(s)
 - c. Two valets in non-peak times and a maximum of 8 valet attendants during peak times, weekends, and large events.
- e) Access to the specified valet lots will be limited to operators of the valet parking service exclusively. No unauthorized entrants or vehicle owners are allowed in the lot to ensure the safety of the vehicles.

VALET SITE OVERVIEW



RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: _____, 2021

Licensors: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Lensors's Representative: Robert Patrick, Interim City Manager

Lensors's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: MT223, LLC

Licensee's Representative: Wes Perry

Licensee's Mailing Address: 223 W. Wall Street, Suite 900
Midland, TX 79701

Property: The surface of an approximate 2,140-square foot portion of South Colorado Street right-of-way adjacent to Lot 12, Block 65, Original Town Addition, City and County of Midland, Texas, being more fully described as the "Dedicated Drop-Off Area" shown in **Exhibit A** attached hereto and incorporated herein for all purposes, and any streets shown in **Exhibit A** that must be used to travel between said "Dedicated Drop-Off Area" and the "Dedicated Valet Parking" area shown in **Exhibit A** (collectively, the "Property"). The "Dedicated Valet Parking" area shown in **Exhibit A** is not included in the Property that is covered by this License.

Licensee desires use of the Property that is owned by Lensors in Midland County, Texas, within the City of Midland, Texas, for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Lensors.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of one (1) year (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for two (2) additional terms of one (1) year upon the written request of Licensee received by Lensors on
PACKET 22.5 February 23, 2021

or before sixty (60) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of Licensor's representative.

C. Termination. Licensor may terminate this License at will for any or no reason upon giving at least ninety (90) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Licensee shall remove all equipment and facilities associated with the undertakings contemplated by this License within seven (7) days after termination of this license.

II. Financial Consideration

A. License Fee. Licensee shall pay to Licensor a license fee in the amount of One Thousand Dollars (\$1,000.00) (the "License Fee") for each term of this License. The initial term's License Fee shall be due and payable on or prior to the Commencement Date. The License Fee for each renewal term shall be due and payable on the first day of such renewal term. If Licensee fails to pay the entire License Fee within thirty (30) days after the License Fee is due, Licensee shall pay Licensor a late charge of five percent (5%) of the entire License Fee.

B. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of the Licensor's Representative, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of any nature.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property of Licensor for the purpose of operating valet parking as described in **Exhibit B** attached hereto and incorporated herein for all purposes.

B. Prohibited Use. Licensee covenants and agrees that it will not construct any structures on the Property or unreasonably interfere with others' uses of the Property, including those who are entitled to use the Property by easement, franchise, or express authorization. Licensee covenants and agrees that it will not damage the Property, including roads, sidewalks, water lines, sewer lines, service lines and water meters owned by Licensor. Licensee further covenants that it will not obstruct any pedestrian or vehicular traffic and will not violate any applicable traffic laws.

C. Property Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair any of Licensor's Property that is damaged by Licensee, its employees, its agents or assigns. In the event that roads or sidewalks are damaged by Licensee, its employees, its agents or assigns, Licensee shall repair such roads or sidewalks so that such roads and sidewalks comply with Licensor's Standard Specifications. In the event that water lines, sewer lines, service lines or water meters are damaged by Licensee, its employees, its agents or assigns, Licensee shall repair such water lines, sewer lines, service lines or water meters so that such

water lines, sewer lines, service lines or water meters comply with the requirements of the Licensor's Standard Specifications.

D. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor's Representative.

E. Reservation of Rights. Licensor expressly reserves the right to close, install, repair, or reconstruct streets or roads and all ancillary public facilities usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any of the Property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's operations, facilities or property, **NOR SHALL LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO LICENSEE'S PROPERTY ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of the closing of a street or sidewalk or changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than seven (7) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

F. Non-exclusive. Licensor expressly reserves the full right to grant other easements on the Property used by Licensee.

G. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of six (6) consecutive months, or longer, and upon giving Licensee thirty (30) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

H. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said Property used by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt,

conform or relocate any operations, facilities or property of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within seven (7) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit--
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$2,000,000.00 per accident or occurrence

The Commercial General Liability shall be on a per location aggregate and shall be on an occurrence basis. This insurance shall name Licensor as an additional insured, and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against the Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any non-owned auto for bodily injury and property damage, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. Licensee expressly represents that only non-owned autos shall be used to execute the work that is the subject of this License. This insurance shall name Licensor as an additional insured, and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than

thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

Licensor's City Manager is hereby authorized to modify the foregoing insurance requirements.

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

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, FURNISHERS OF GOODS, AND FURNISHERS OF SERVICES RELATED TO THE SUBJECT MATTER OF THIS LICENSE.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE

CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SUBJECT MATTER OF THIS LICENSE. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE LAWS.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of the governing body of Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY

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

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

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License the Licensor is not waiving its right of governmental immunity. The Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent

allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property for the purpose of operating valet parking as described in **Exhibit B**, but it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of Property to a specific purpose but does not require the use of Property for a specific purpose. This License does not require Licensee to use the Property for the purpose of operating valet parking as described in **Exhibit B**. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property, not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive the Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Robert Patrick, Interim City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Charles Harrington, Development Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
MT223, LLC

By: _____

Printed Name: _____

Title: _____

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared _____, an officer of **MT223, LLC**, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

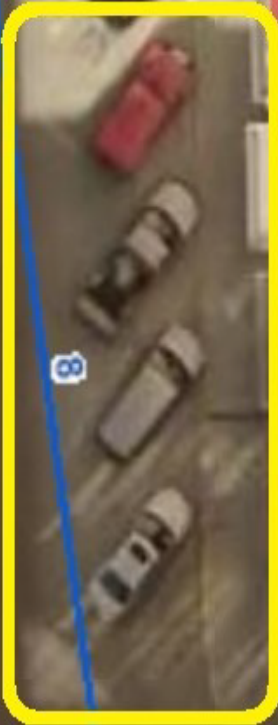
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

Notary Public, State of _____

Exhibit A

W WALL ST

Dedicated Drop-Off Area
(Accessible Parking Space Not Included)



S COLORADO ST

223

211

6

6

4

PACKET

22.15

February 23, 2021

Exhibit A cont.

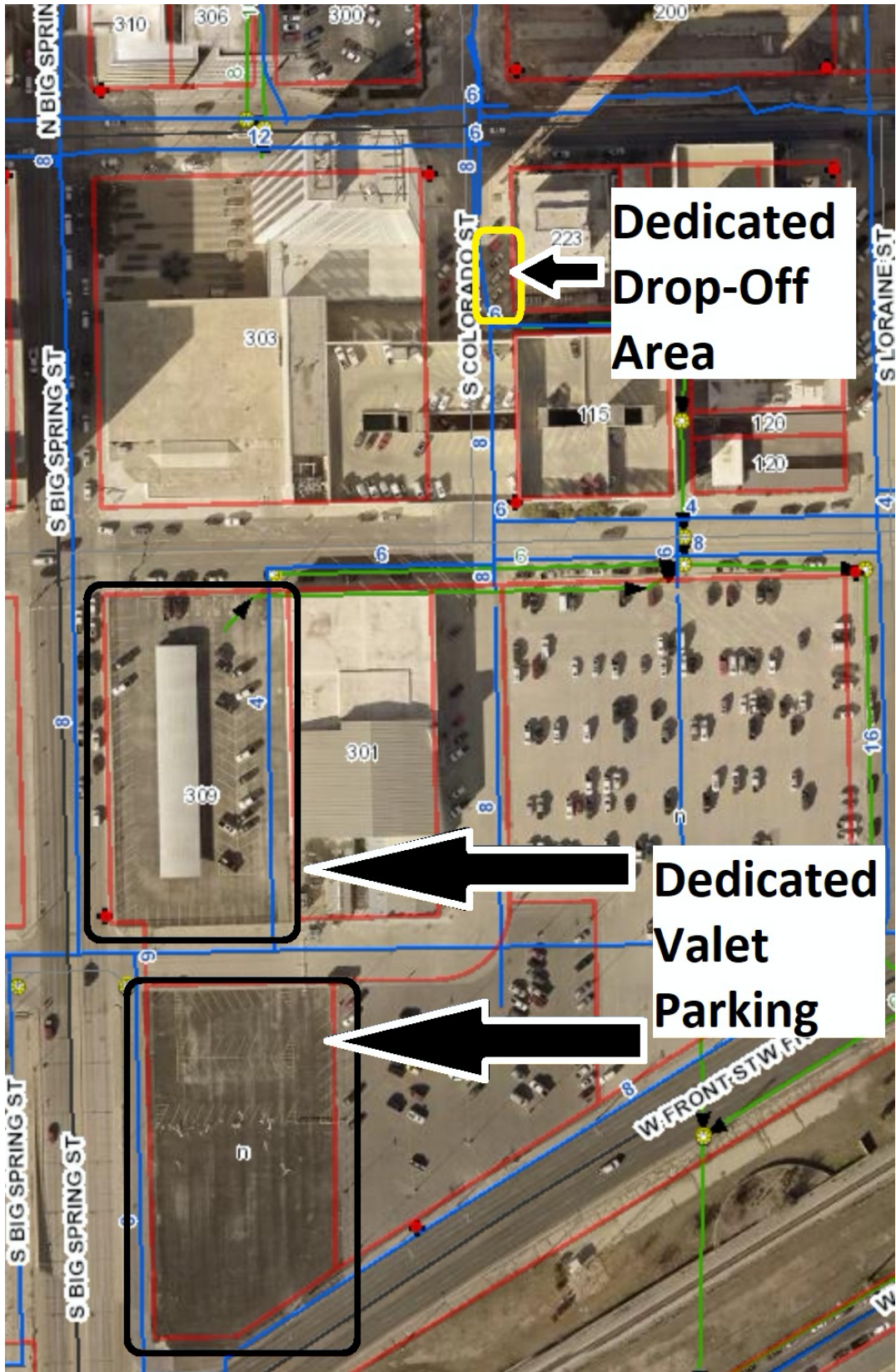


EXHIBIT B

MIDLAND VALET

OVERVIEW AND OPERATION

The Midland Valet project is designed to improve vehicle and pedestrian circulation in downtown Midland through the implementation of efficient and secure valet parking.

Midland Valet aims for the highest degree of safety and security for customers and employees and will operate with the following considerations:

- a) The designated drop off areas and the storage valet lots will be managed and overseen by the valet company. Through state-of-the-art operational technology, guests will be able to retrieve their vehicles via their phones to reduce clutter and traffic in the designated pickup areas.
- b) The valet staff will provide pickup instructions to patrons using the valet service.
- c) Valet attendants will follow a strict code of conduct and transport in the operation and. Movement of vehicles including but not limited to:
 - a. Following a specific route to designated parking lot and back to the pickup area
 - b. A background check to ensure a flawless driving record prior to employment
 - c. A maximum moving speed of 25 miles an hour for the safety of the vehicle and parking attendant.
 - d. Training on the latest makes and models to ensure proper ability to safely operate any type of vehicle.
- d) The valet parking service will be available 24 hours a day, 7 days a week and will consist of:
 - a. an operating manager trained in customer service and logistical operations.
 - b. Parking lot attendant to monitor the valet lot(s)
 - c. Two valets in non-peak times and a maximum of 8 valet attendants during peak times, weekends, and large events.
- e) Access to the specified valet lots will be limited to operators of the valet parking service exclusively. No unauthorized entrants or vehicle owners are allowed in the lot to ensure the safety of the vehicles.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/12/2021

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

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

PRODUCER Marsh & McLennan Agency LLC 15 Smith Road Suite 6000 Midland TX 79705		CONTACT NAME: Lesa Sanchez PHONE (A/C, No, Ext): 432-618-4570 E-MAIL ADDRESS: Lesa.sanchez@marshmma.com FAX (A/C, No):	
INSURED MT223, LLC PO Box 52154 Midland TX 79710		INSURER(S) AFFORDING COVERAGE INSURER A: Allied Property & Casualty Insurance Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 42579	

COVERAGES

CERTIFICATE NUMBER: 1798200453

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			ACP3028222024	6/1/2020	6/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			ACP3028222024	6/1/2020	6/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			ACP3028222024	6/1/2020	6/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Additional Insured form #CG7470 edition 12/16 applies to the General Liability policy
 Waiver of Subrogation form #CG7470 edition 12/16 applies to the General Liability policy

Additional Insured form #CG7470 edition 12/16 applies to the Hired Non-Owned Auto policy
 Waiver of Subrogation form #CG7470 edition 12/16 applies to the Hired Non-Owned Auto policy

The General Liability and Hired Non-Owned Auto policy includes an additional insured and Waiver of Subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.
 See Attached...

CERTIFICATE HOLDER

CANCELLATION

City of Midland 300 N. Loraine Midland TX 79701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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PACKET

22-18

February 23, 2021

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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Marsh & McLennan Agency LLC		NAMED INSURED MT223, LLC PO Box 52154 Midland TX 79710
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The City of Midland is included as an Additional Insured, on a claims occurred basis, on all policies. The Contractor and Insurer hereby Waive all Rights of Subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance.



City Council Meeting

Item Number: 23
Meeting Date: February 23, 2020
To: City Council / City Manager
From: Mark Mason, Director
Subject: Discussion and consideration of all matters incident and related to the issuance and sale of "City of Midland, Texas General Obligation Refunding Bonds, Series 2021," including the adoption of an ordinance authorizing the issuance of such bonds, establishing parameters for the sale and issuance of such bonds and delegating certain matters to an authorized official of the City. (FINANCE)

Purpose:

Adoption of an ordinance to issue the City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2021.

Recommended City Council Action:

Approve

Fiscal Impact:

Total issuance size for the City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2020 is a not-to-exceed \$19.25 million. Proposed savings are estimated at \$250,000 per year or \$2.8 million over the remaining term of the bonds. Fees incidental to the sale of the bonds will be paid from bond proceeds.

Discussion:

This bond issuance will refund, on a current basis, the Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012. This ordinance provides for the Delegation of Authority to the Pricing Officer, the City Manager or the Finance Director, allowing for the City to take the most advantageous pricing to fulfill the obligations of the ordinance. The term of the ordinance is six months to issue the bonds.

City staff estimates the net present value savings of the bond to be 13.51% or \$2.6 million with the delegation of pricing allowing for the issuance of the bonds at a minimum net present value savings of 10% or \$1,917,008.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE authorizing the issuance of "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized City official.

WHEREAS, the City of Midland, Texas (the "City") currently has outstanding obligations of the City of the following issue or series, to wit: City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012, dated January 15, 2012 (hereinafter called the "Refunded Obligations");

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the City Council of the City (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the City shall by this Ordinance, in accordance with the provisions of Texas Government Code, Section 1207.007, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the City to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the City (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1207. The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8

hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, the City Manager or Director of Finance of the City (either, the "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities or series, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which of the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which of the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the price and terms upon and at which of the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of a paying agent/registrar, the designation of an escrow agent, if applicable, satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Bonds shall not exceed \$19,250,000;
- (ii) the refunding must produce a net present value debt service savings of at least 10%, net of any City contribution;
- (iii) the maximum true interest cost for the Bonds shall not exceed 3.000%; and
- (iv) the maximum maturity date of the Bonds shall not exceed March 1, 2032.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of such series of the Bonds, to make the selection of the municipal bond

insurance company for such series of the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy or policies in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar (as defined below), and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the paying agent/registrar for the Bonds (the "Paying Agent/Registrar") shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices provided in the Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying

Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, new Bonds, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in the applicable sections hereof relating to the payment and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor or the Mayor Pro Tem under the City's seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date:
_____, 2021

Interest Rate:
_____%

Stated Maturity:
_____, 20__

CUSIP No.:

Registered Owner:

Principal Amount:

DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated [(or so much thereof as shall not have been paid upon prior redemption)], and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity [or prior redemption]. Principal of this Bond is payable at its Stated Maturity [or upon its prior redemption] to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in _____, _____, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond]. Interest is payable to the registered owner of this Bond (or Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on

which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

[The Bonds shall not be subject to redemption prior to maturity]

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

[The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained

in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.]

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity [or redemption], and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity[, or its redemption, in whole or in part], and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF MIDLAND, TEXAS

ATTEST:

[Mayor][Mayor Pro Tem]

City Secretary

(City Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER (REGISTER NO. _____
OF PUBLIC ACCOUNTS (_____
THE STATE OF TEXAS (_____

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in _____, is the Designated Payment/Transfer Office for this Bond.

as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____
attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face of
the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date: _____, 2021

Registered Owner:

Principal Amount: _____ DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political
subdivision in the Counties of Midland and Martin, State of Texas, for value received,
acknowledges itself indebted to and hereby promises to pay to the registered owner named
above, or the registered assigns thereof, the Principal Amount hereinabove stated on
_____ in the years and in principal amounts in accordance with the following
schedule:

STATED
MATURITY

PRINCIPAL
AMOUNT

INTEREST
RATE(S)

(Information to be inserted from Pricing Certificate)

[(without right of prior redemption)][(or so much principal thereof as shall not have been redeemed
prior to maturity)] and to pay interest on the unpaid principal installments hereof from the
_____ at the per annum rates of interest specified above computed on the basis of a 360-

day year of twelve 30-day months; such interest being payable on _____, 20____, and each _____ and _____ thereafter, until maturity [or prior redemption]. Principal installments of this Bond are payable in the year of maturity [or on a redemption date] to the registered owner hereof by _____ (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in _____, _____, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations by law prescribed, sufficient to pay such Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the City and shall be deposited in the "SPECIAL SERIES 2021 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the City and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no

deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise provided in the Pricing Certificate, the term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the respective Holders of each such series from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The City may, without the consent of or notice to any Holders,

from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount of any affected Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds within such series theretofore issued and delivered under this Ordinance, except:

(1) those Bonds within such series cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds within such series deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds within such series which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to

make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the amount that when added

to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, or Director of Finance of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the City reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are being issued to pay and discharge in full the Refunded Obligations and such payment of the Refunded Obligations will occur within ninety (90) days after the issuance of the Bonds.

(m) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the City to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City, as the act and deed of this Council, and to make a determination as to whether the terms are in the City's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the City's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the City under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the City;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and City Secretary of the City are further authorized and directed to deliver for and on behalf of the City copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An escrow agreement (the "Escrow Agreement") by and between the City and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the City and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed

approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agent's charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized City official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent from moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amounts set forth in the Pricing Certificate, are called for redemption on the first date(s) such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the respective redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption date shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the City shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrars for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrars for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the City or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any City contribution to the refunding from moneys on deposit in the interest and sinking fund(s) maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City

may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The City Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within 270 days after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) within twelve months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, if not provided as part of such financial information and operating data, audited financial statements of the City. If audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time, and audited financial statements when and if such audited statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City and (b) the City intends the words used in the immediately preceding items 15 and 16 in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally

recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[remainder of page intentionally left blank]

PASSED AND ADOPTED, this February 23, 2021.

CITY OF MIDLAND, TEXAS

Mayor

ATTEST:

City Secretary

(City Seal)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2021 (this "Agreement"), by and between _____, a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the City of Midland, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of Midland, Texas General Obligation Refunding Bonds, Series 2021" (the "Securities"), dated _____, 2021, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2021; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE

APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Financial Advisor” means Hilltop Securities Inc.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security,

and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or

registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of _____, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan or Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

_____ BANK

By: _____

Title: _____

Address: _____

CITY OF MIDLAND, TEXAS

By: _____
_____ and Pricing Officer

Address: 300 N. Loraine
Midland, Texas 79701

ORDINANCE NO. _____

AN ORDINANCE authorizing the issuance of "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized City official.

WHEREAS, the City of Midland, Texas (the "City") currently has outstanding obligations of the City of the following issue or series, to wit: City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012, dated January 15, 2012 (hereinafter called the "Refunded Obligations");

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the City Council of the City (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the City shall by this Ordinance, in accordance with the provisions of Texas Government Code, Section 1207.007, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the City to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the City (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1207. The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8

hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, the City Manager or Director of Finance of the City (either, the "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities or series, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which of the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which of the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the price and terms upon and at which of the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of a paying agent/registrar, the designation of an escrow agent, if applicable, satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Bonds shall not exceed \$19,250,000;
- (ii) the refunding must produce a net present value debt service savings of at least 10%, net of any City contribution;
- (iii) the maximum true interest cost for the Bonds shall not exceed 3.000%; and
- (iv) the maximum maturity date of the Bonds shall not exceed March 1, 2032.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of such series of the Bonds, to make the selection of the municipal bond

insurance company for such series of the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy or policies in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar (as defined below), and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the paying agent/registrar for the Bonds (the "Paying Agent/Registrar") shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices provided in the Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying

Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, new Bonds, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in the applicable sections hereof relating to the payment and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor or the Mayor Pro Tem under the City's seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date:
_____, 2021

Interest Rate:
_____%

Stated Maturity:
_____, 20__

CUSIP No.:

Registered Owner:

Principal Amount:

DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated [(or so much thereof as shall not have been paid upon prior redemption)], and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity [or prior redemption]. Principal of this Bond is payable at its Stated Maturity [or upon its prior redemption] to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in _____, _____, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond]. Interest is payable to the registered owner of this Bond (or Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on

which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

[The Bonds shall not be subject to redemption prior to maturity]

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

Term Bonds due _____, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	
_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

[The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained

in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.]

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity [or redemption], and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity[, or its redemption, in whole or in part], and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF MIDLAND, TEXAS

ATTEST:

[Mayor][Mayor Pro Tem]

City Secretary

(City Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER (REGISTER NO. _____
OF PUBLIC ACCOUNTS (_____
THE STATE OF TEXAS (_____

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in _____, is the Designated Payment/Transfer Office for this Bond.

as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____
attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face of
the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this
Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2021

Bond Date: _____, 2021

Registered Owner:

Principal Amount: _____ DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political
subdivision in the Counties of Midland and Martin, State of Texas, for value received,
acknowledges itself indebted to and hereby promises to pay to the registered owner named
above, or the registered assigns thereof, the Principal Amount hereinabove stated on
_____ in the years and in principal amounts in accordance with the following
schedule:

STATED
MATURITY

PRINCIPAL
AMOUNT

INTEREST
RATE(S)

(Information to be inserted from Pricing Certificate)

[(without right of prior redemption)][(or so much principal thereof as shall not have been redeemed
prior to maturity)] and to pay interest on the unpaid principal installments hereof from the
_____ at the per annum rates of interest specified above computed on the basis of a 360-

day year of twelve 30-day months; such interest being payable on _____, 20____, and each _____ and _____ thereafter, until maturity [or prior redemption]. Principal installments of this Bond are payable in the year of maturity [or on a redemption date] to the registered owner hereof by _____ (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in _____, _____, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations by law prescribed, sufficient to pay such Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the City and shall be deposited in the "SPECIAL SERIES 2021 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the City and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no

deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise provided in the Pricing Certificate, the term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the respective Holders of each such series from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The City may, without the consent of or notice to any Holders,

from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount of any affected Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds within such series theretofore issued and delivered under this Ordinance, except:

(1) those Bonds within such series cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds within such series deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds within such series which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to

make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the amount that when added

to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, or Director of Finance of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Bonds Not Hedge Bonds. At the time the original obligations refunded by the Bonds were issued, the City reasonably expected to spend at least 85% of the spendable proceeds of such obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are being issued to pay and discharge in full the Refunded Obligations and such payment of the Refunded Obligations will occur within ninety (90) days after the issuance of the Bonds.

(m) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the City to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City, as the act and deed of this Council, and to make a determination as to whether the terms are in the City's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the City's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the City under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the City;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and City Secretary of the City are further authorized and directed to deliver for and on behalf of the City copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An escrow agreement (the "Escrow Agreement") by and between the City and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the City and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed

approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;
2. The creation and funding of the Escrow Fund or Funds; and
3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agent's charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized City official listed in Section 33 hereof, shall also cause to be deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent from moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amounts set forth in the Pricing Certificate, are called for redemption on the first date(s) such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the respective redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption date shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the City shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrars for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrars for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the City or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any City contribution to the refunding from moneys on deposit in the interest and sinking fund(s) maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City

may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The City Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within 270 days after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) within twelve months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, if not provided as part of such financial information and operating data, audited financial statements of the City. If audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time, and audited financial statements when and if such audited statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City and (b) the City intends the words used in the immediately preceding items 15 and 16 in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally

recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[remainder of page intentionally left blank]

PASSED AND ADOPTED, this February 23, 2021.

CITY OF MIDLAND, TEXAS

Mayor

ATTEST:

City Secretary

(City Seal)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

February 23, 2021

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Nick Hood	09/15	Sept 30 2021	Sept 30 2021
Armand "Chip" Smith	09/18	Sept 30 2021	Sept 30 2024
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
Joshua Lorenz	09/20	Sept 30 2023	Sept 30 2026

Justine Ruff (Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 7; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Leah Lewis	09/17	Sept 30 2021	Sept 30 2025
Robert "Robin" Donnelly	11/13	Sept 30 2021	Sept 30 2021
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)

**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

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
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

CAPITAL IMPROVEMENT ADVISORY COMMITTEE

(Advisory)

(Membership – 7)

A minimum of 40% must be representative of real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity.)

	<u>Appt Date</u>
Carl Craig	10/19
Walter Pate	06/18
Mark Payne	06/18
Courtney Black	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz	06/18

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

4 2020, 3 -2021

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ellen K. Ramsey	10/18	Sept 30 2021	Sept 30 2023
VACANT (Williamson)	10/18	Sept 30 2021	Sept 30 2023
David Blackketter	10/18	Sept 30 2021	Sept 30 2023
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

Lori Blong (Council Liaison)
PACKET

24.2

February 23, 2021

* Indicates appointment to an unexpired term.

Page 2 of 8

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Robert McNaughton	11/15	Dec 31 2021

MIDLAND DEVELOPMENT CORPORATION

(Membership - 7; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Chase Gardaphe	01/19	Jan 14 2022	Jan 14 2025
Wesley Bownds	07/15*	Jan 14 2022	Jan 14 2022
Barry Simpson	01/19	Jan 14 2022	Jan 14 2025
Stephen Lowery	01/17	Jan 14 2023	Jan 14 2023
P Lourcey Sams	04/20	Jan 14 2023	Jan 14 2026
Jill Pennington	04/20	Jan 14 2023	Jan 14 2026
VACANY (Bedell)	04/20	Jan 14 2023	Jan 14 2026

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

Sharla Hotchkiss (Liaison)

MIDLAND HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

Appointments Made by Mayor (LGC 392.031)

	<u>Appt Date</u>	<u>Term Expires</u>
Sylvester Cantu	09/18*	Oct 2021
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2021
Wes Gotcher	09/20	Oct 2022
Robert Lehrer	09/20	Oct 2022
Dennis Bade	09/12	Oct 2022

Isaac Garnett (Staff Liasion)

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	<u>Appt. Date</u>
Vacancy	
W. L. "Scooter" Brown	09/04
Vacancy	
Richard Hatchett	11/08
Vacancy	
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
VACANT (Westmoreland)	06/18*	Sept 30 2020	Sept 30 2022
E. J. Baldrige	10/18	Sept 30 2022	Sept 30 2022
Iris Foster	06/18*	Sept 30 2022	Sept 30 2022
Joseph Sanchez	12/19	Sept 30 2021	Sept 30 2023
Jack Ladd	07/20	Sept 30 2022	Sept 30 2024
John Norman	07/20	Sept 30 2022	Sept 30 2024

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Stephen Brumley (Petroleum Eng.)	11/15	Sept 30 2021	Sept 30 2021
Bill Lanier (Real Estate)	09/18	Sept 30 2021	Sept 30 2024
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

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Shirley Howard	02/16*	Sept 30 2021	Sept 30 2024
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

Tina Juaz (Liaison)

PACKET

24.5

February 23, 2021

* Indicates appointment to an unexpired term.

John Norman (Council Liaison)

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Larry Edgerton (City)	07/10*	June 2021
Ryan Peckham (City)	08/20	June 2022

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms. Mayor appoints.)

	<u>Appt. Date</u>
Scott Dufford	01/14
John B. Love III	01/14
Hugh A. "Andy" Shaffer	09/05

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)

(Membership - 7; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Reggie Lawrence	09/14*	Sept 30 2021	Sept 30 2021
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

ALTERNATES:

Emily Holeva	09/20	Sept 30 2023	Sept 30 2026
Adrian Carrasco	09/20	Sept 30 2323	Sept 30 2026

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Matthew Wallace	07/15*	Sept 30 2020	Sept 30 2020
Derek Whiting	01/18*	Sept 30 2021	Sept 30 2023
E.J. Baldrige	02/18	Sept 30 2021	Sept 30 2023
Reed Claybrook	03/19*	Sept 30 2022	Sept 30 2024
Robert Gray	01/21	Sept 30 2024	Sept 30 2026
<u>ALTERNATES:</u> (not applicable to Airport Zoning)			
James Robert Franklin		Sept 30 2021	
VACANCY		Sept 30 2020	
VACANCY		Sept 30 2020	
VACANCY		Sept 30 2020	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: James "Jim" Murphy

Address: 6300 Chickasaw

Midland TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 29 years.

Professional and/or Community Activities:

Servant leader at Stonegate Fellowship, Troop Dad for daughters Girl Scout Troop, and enjoy helping youth learn more about aviation

What is your personal vision for the City?

My vision for Midland is to help people feel at home in our town as opposed to just being here for work. Also to make our aviation and public transportation infrastructure convenient and safe for all that live in or pass through our city.

Please specify any time constraints you may have.

I am on call 24-7 so things do pop up that are out of my control. Most of the time I can make arrangements that allow me to attend scheduled 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:

Zoning Board of Adjustments & Airport Zoning Board of Adjustments

Please tell us why you are interested in serving on this board or commission.

I have always had an interest in the aviation community and I enjoy serving others. I believe that my experience as a pilot and knowledge of the industry would help our airports better serve the community.

Date: 10/14/2020

Phone: (432) 557-1833 (Home)

(432) 631-2745 (Business)

Email: Jimm.murf@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Assistant District Manager - GNL Crude Transportat

What contribution would you most like to make?

I would like to be a voice for the continued growth of our Air and Spaceport. I believe that we have many people in the community that can fill these roles in the future and help to deversify our economy.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Odessa Urban Transit District Board

What contribution would you most like to make?

I would like to help the public transportation system serve the people of Midland in the most effecient and safe manor possible.

Additional pertinent information or references:

I currently work in the transportation industry and have been to several MOTRAN meetings.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail 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:

Name: James Gerety

Address: 6404 Homestead Blvd

Midland CA 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²¹ years.

Professional and/or Community Activities:

Board Member Midland Community Theater 2007-2008

Board Member Breaking Bread Kitchen 2003-2009, 2018 to present Treasurer

Board Member Domino's Franchisee Association 2007- Present, Board Presidnet 2012-2019

What is your personal vision for the City?

To continue the growth of our city into a more diverse business community by attracting new businesses

and provide a business friendly environment.

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:

Zoning Board of Adjustment and Airport Zoning Board of Adjustment

Please tell us why you are interested in serving on this board or commission.

Would like to improve the attractiveness of businesses coming to the city/airport area for space and aeronautical related purposes

and distribution services

Date: 9/28/2020

Phone: 432-967-3030 (Home)

432-570-1990 (Business)

Email: james.gerety@att.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Domino's Pizza Franchisee

What contribution would you most like to make?

Provide viewpoints and feedback from a business perspective that can improve our community.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Asa Franchisee of Domino's Pizza I employ over 700 people from Abilene to Pecos. We are proud to own 6 stores in Midland employing over 150 people. I have a desire to serve and give back to the community that has provided our family an opportunity to serve them.

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

James Gerety

Digitally signed by James Gerety
Date: 2020.09.28 13:04:18 -05'00'

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:

Name: Khris O'Grady

Address: 6306 Homestead Blvd

Midland Tx 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 34 years.

Professional and/or Community Activities:

Employed @ Leslie Hendrix Wood Interiors, Member St Ann's Church (volunteer Faith Formation, Life Teen) Member & office Lee High Rebel Volleyball Booster Club 2012-2019), Member DAR (Colonel Thanneius Dei Chapter)

What is your personal vision for the City?

Thriving Economy, low taxes, good & safe roads, low crime, great schools

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:

Zoning Board of Adjustments & Airport Zoning Board of Adjustments

Please tell us why you are interested in serving on this board or commission.

There is an opening on this board and I want to get involved in city government and learn new things.

Date: 10-14-2020

Phone: 432-634-6352 (Home)

432-684-4465 (Business)

Email: Ogratont@suddenlink.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Office Manager, Blog Manager

What contribution would you most like to make?

Make the best decisions for the City of Midland
Become more involved in city

Additional pertinent information or references:

Texas A+M Graduate BBA in Marketing
Worked in Advertising & Marketing before having children.
Returned to work in 2018.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Khari O'Grady

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:

Name: Brennan Berry

Address: 1503 Harvard Ave.

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 5 years.

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 graduated 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

Date: 2/4/2021

Phone: (646) 460-4778 (Home)

(432) 242-8850 (Business)

Email: bberry@erpfunds.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Real Estate Investment

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.

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



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Brandi Alexander
Address: 403 Pinewood Ct
Midland TX 79705
(City) (State) (Zip)

Date: 02/04/2021
Phone: 432-528-8920 (Home)
432-617-9156 (Business)
Email: balexander@firstbanktexas.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁵ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

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:

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

Brandi Alexander

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:

Name: Clayton Black

Address: #9 Lafayette Place
Midland TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 30+ years.

(Midland
Martin Cos
combined)

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Self Employed (oil/gas)

Professional and/or Community Activities:

Gubernatorial Appointee: Currently serve on Tex. Appr. Lic. + Cert. Board, Graduate of Leadership Midland (2009), Have & still served on 7 committees at Midland C.C., Republican Co. Chairman (Martin Co.) Delegate to State Republican Convention, Served on City of Lubbock's structural standards commission * (Please see attached resume for full list)

What is your personal vision for the City?

To see Midland, TX continue to grow and develop both on an economic & state level through increased oil & gas exploration & to try and diversify in to other areas.

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:

Airport Planning & Development Board

Please tell us why you are interested in serving on this board or commission.

I consider this board to be a very key/instrumental entity for Midland & I believe that I am qualified to serve in this capacity. I also own a Cessna Citation that are housed at MAF and consider myself an aircraft enthusiast, & I understand how important our airports are to our city & would like to serve.

PACKET

24.18

February 23, 2021

What contribution would you most like to make?

Once again, I would like to see Midland grow & develop in as many ways as possible and receive the recognition that we deserve and I believe that our airports are very important to our economic success. I would like to use my age, wisdom, education, & experience in any way possible to help contribute to this board.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Clayton Black

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

CLAYTON P. BLACK

9 Lafayette Place, Midland, TX. 79705

claytonpblack@hotmail.com

www.lazylevenranch.com

(432) 458-3291 - business; (432) 528-0461 - cell

OBJECTIVE:

I am an experienced and self-motivated professional with polished managerial, engineering, and sales skills seeking to advance my career and contribute to the community in which I live.

EMPLOYMENT:

Lazy Leven Ranch, LLC, Stanton, TX.

President/Owner. Responsible for operating all aspects of family owned business including buying/selling of cattle, oil/gas leases and contracts, pipeline easements/right of way agreements, water sales, wind turbine leases and contracts. Recently completed course at Texas Tech University on Wind Power Systems, Technology and Economics. 06/2006-present.

Anchor Retaining Wall Systems, Denver, CO.

Regional Engineer/Regional Account Manager. Responsible for **managing** and **consulting** with licensee's in 18 states across the U.S. Primary focus is on Engineered Segmental Retaining Walls and its continued growth within these markets. Act as a consultant to specifying engineers and help design using mechanically stabilized earth technologies via the use of Anchor Block and give presentations as needed. Work with the sales team regularly and meet with the General Manager of each location on a quarterly basis to discuss sales objectives and how these goals can be met. 03/2005-06/2006

Contech Construction Products, Denver, CO & Lubbock, TX

Sales Engineer. Responsible for **sales** and **promotion** of over 100 products including storm sewer systems, underground storage detention systems, erosion control products and bridge structures with emphasis on corrugated metal and pvc pipes. Maintain job-site service to civil engineering and construction sites in Colorado and Texas. Assist specifying engineers with product design. Initiate all contractual agreements. 11/1997-03/2005

Texas Tech University, Lubbock, TX.

Research Assistant, Plant and Soil Science. Research team headed by Dr. Richard Zartman. Studies include carbon-based polymers as soil anti-crusting agents for crop seedling emergence, and application of biosolids to a semi-arid region in Sierra Blanca, Texas, as an alternative to land filling. 05/1997-11/1997

Trace Analysis Environmental Lab, Lubbock, TX.

Chemist. Performed numerous jobs including prep & analysis of various samples primarily for trace metals. Experienced in metals, wet chemical, and T.P.H. environmental labs instruments. 08/1995-05/1997

Environmental Hazard Consultants Inc., Lubbock, TX.

General Supervisor of Field Scouts & Fertilizer Sales. Recommended application of fertilizer use on cotton plants to stimulate growth and produce higher yields. Conducted general entomology tasks. 04/1995-08/1995

Smith Barney Shearson, Midland, TX.

Financial Advisor. 1992-1994

Du Pont/Stanton Chemical Co., Stanton, TX.

Sales Representative. Recommended application of Du Pont chemicals to producers. 1990

Texas Pest Management Association, Stanton, TX.

Head Field Scout. Recorded and analyzed data for referral to chemical companies. 1987-1989 (summers)

EDUCATION:

Master of Science, Environmental Technology Management, Department of Civil Engineering.

Minors in Range and Wildlife Management and Geography.

Texas Tech University, Lubbock, TX. 1997 GPA: 3.4

Bachelor of Science, Management, Department of Human Sciences.

Texas Tech University, Lubbock, TX. 1992

Graduate Course Work

- **Thesis:** Research studies using cross-linked polymers for water retention in crop soil environments.
- Advanced Work in Specific Fields (Civil Engineering)
- Principles of Environmental Technology Management (Environmental Engineering)
- Environmental Impact Analysis (Civil Engineering)
- Economics of Manufacturing Systems (Industrial Engineering)
- Risk Management and Public Policy (Civil Engineering)
- Advanced Environmental Soil Science (Plant and Soil Science)
- Environmental Systems Models and Information Reporting (Environmental Engineering)
- Water and Wastewater Analysis (Civil Engineering)
- Organization and Management (Business Administration)

ORGANIZATIONS/CIVIC WORK:

Appointed by Gov. Rick Perry to serve on Texas State Board: Texas Appraiser Licensing & Certification Board. 2013-present.
Re-Appointed by Governor Abbott in 2017 for another term

Midland Country Club: Golf Committee, Water Committee, Membership Committee, Finance Committee, Long Range Planning Committee, Board nominating/Search Committee, House Committee

NRA, Amer. Angus Assoc, Texas & Southwestern Cattle Raisers Assoc, Ducks Unlimited (lifetime sponsor). 2009-present

Leadership Midland 2008-2009

National Concrete & Masonry Association (NCMA) Certified Instructor. 2005

American Society of Civil Engineers, Denver, CO. & Lubbock, TX. 1998-present.

Texas Society of Professional Engineers, Lubbock, TX. 1998-2001

Republican Party of Texas:

Republican County Chairman, Martin Co. 2017-present; Republican Precinct Chairman for #62 in Lubbock, TX.; Lubbock County Republican Party Officer Exploratory Committee 2000; Officer (Sergeant at Arms) - Lubbock County Republican Convention 2000; Delegate – Texas State Republican Convention 2000

City of Lubbock – Structural Standards Commission 2000-2001

Lubbock Chamber of Commerce:

Legislative Committee & Transportation Committee 1999-2001; Leadership Lubbock 1999-2000

Broadway Festivals, Lubbock, TX. 4th on Broadway Logistics Chairman 1999

First United Methodist Church, Lubbock, TX.

FUMC Leadership Class; Lay Ministry. 1998-2001

Lubbock Lions Club, Lubbock, TX. 1998-2001.

Chamber of Commerce, Midland, TX. 1993

Midland, TX Jaycees:

Labor Day Rest Stop Chairman 1993; Mardi Gras Cook Off Chairman 1994.

Junior Achievement, Midland, TX. 1993-1994

Texas Tech University Student Senator: 1995-1996

Vice-Chairman of Student Services Committee; Student Service Fee Advisory Board

Phi Gamma Delta (Fiji) 1988-present:

Alumni Board of Chapter Advisors, Graduate Relations Chairman 1994, Inter Fraternity Council Representative 1991, Social Chairman and Rush Chairman 1990, Snowy White Owl Award 1990-1992, and 1994-1995, Awards Cup Chairman 1989, Intramural Football and Softball 1988-1992.





Black Ventures, LLC

#9 Lafayette Place

Midland, TX 79705

432.528.0461

claytonblack@hotmail.com



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Brad Bullock
Address: 7212 ecr 114
Midland TX 79706
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ¹⁵ years.

Professional and/or Community Activities:

Past: MOSC Boardmember, Treasurer, President; BasinPBS Boardmember, Vice President; COM Planning and Zoning

Commissioner, Graduate of Leadership Midland

Current: MCDC Boardmember, President, Chairman of Hillcrest Village Project; MCT Boardmember

What is your personal vision for the City?

To create collaborative efforts within the city among the private sector and the public sector to enhance the quality of life for all citizens. To foster efforts to make Midland a destination to live, not just because there is a job opportunity, but because Midland is where you want to be.

Please specify any time constraints you may have.

MCDC Board meetings third Thursday of the month 1200-130pm; Community National Bank Board meetings third Wednesday of every month all day; MCT Board meetings every other month on the third Thursday from 500-630pm

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 a lifetime banker, finding opportunities to assist businesses that already call Midland home as well as attracting businesses from outside is near and dear to my heart. As COO of Community National Bank, strengthening the workforce of Midland is also

Date: 1/28/2021

Phone: 432.559.3761 (Home)
432.262.1627 (Business)

Email: bbullock@cnbt.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Banker

something of keen interest.

What contribution would you most like to make?

Not being a native Midlander, I bring a unique perspective of what attracted me to come to Midland and what keeps me here. As a father of four, I want my children all to grow up in a community that they are proud to call home and that when they grow up will consider keeping their roots planted here.

Additional pertinent information or references:

MCDC's Hillcrest Village project is no longer a project that will be seeking support from MDC and has been re-imagined as a SFR development similar to other MCDC projects in the past. If MCDC was to be seeking funding from MDC, there would be a conflict of interest. However, none now exists.

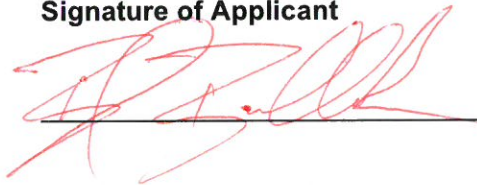
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Zachary Deck

Address: 1607 W Tennessee Ave

Midland TX 79701
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 15 years.

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

Date: 2/11/2021

Phone: 703-659-5911 (Home)

(Business)

Email: zachary.e.deck@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Senior Production Engineer at Diamondback Energy

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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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Garner Gonzales

Address: PO Box 125

Midland Texas 79702

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 25 years.

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 exponentially 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.

Date: 2/18/2021

Phone: 432-967-0699 (Home)

432-684-6410 (Business)

Email: garner@gonzalescontractors.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Owner/General Contractor

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

Anna Engel

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PLEASE TYPE OR PRINT CLEARLY:

Name: Elizabeth Rader Haigler

Address: 1409 Pine Ave W

Midland TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Professional and/or Community Activities:

Oil and Gas Industry Professionals, Chi Omega Women's Fraternity- Midland Alum Chapter President

Young Professionals in Energy- Midland Chapter, Schnauzer Rescue of Houston- foster parent

Make a Wish- volunteer, Junior Achievement of Houston

What is your personal vision for the City?

Midland reminds me of my hometown and it is a place that I want to live in, thrive in, and show others how fantastic of a gem it is.

I see the need to help support all aspects of the area, not just for it's economic gains. I see Midland as a fast growing, business

oriented place that can be a hub for young professionals, business entrepreneurs, but also a place for families and community to grow

Please specify any time constraints you may have.

I will be able to make time needed for this opportunity.

Date: 1/14/2021

Phone: 307-631-8537 (Home)

(Business)

Email: ezrader@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: HR Professional

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:

I am willing to serve on any board that has need- my professional roles have included the areas of Strategic Planning,

Higher Education, Non-Profit Organizations, Women's Leadership Boards, and Human Resources.

Boards that I might fit best include: City Development Advisory Committee, Personnel Board of Appeals, Midland Higher Education F;

Please tell us why you are interested in serving on this board or commission.

I have a passion for civic engagement and helping shape the strategy and innovations where ever I am. I have lived in Dallas and

Houston but I am from a town very similar to Midland. I believe that I can help mold and support Midland as a place

for businesses, young professionals, families, and exciting new business endeavors while partnering with oil/gas businesses.

What contribution would you most like to make?

I have experience on working with teams, setting goals, and outlining ways to make improvements that reduce waste and approach problems in new ways. I would like to spend my time with others brainstorming and coming up with ways to support Midland and everything this city has to offer.

Additional pertinent information or references:

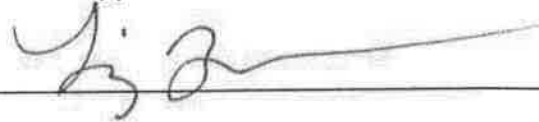
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Vicky Hailey

Address: P.O. Box 50008

Midland TX 79710

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 67 years.

Professional and/or Community Activities:

Served on the City Council for three consecutive terms (2003-2013)

Date: 1/19/2021

Phone: 432-235-2044 (Home)

432-688-4315 (Business)

Email: vickyhailey@att.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Administrative Assistant

What is your personal vision for the City?

My vision for Midland is to grow and change with the times and be inclusive for the entire 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:

Citizens Development and Hotel/Motel Advisory Board

Please tell us why you are interested in serving on this board or commission.

I served on this board while on City Council.

What contribution would you most like to make?

I will work for a shared vision for all of Midland. I am a good team player.

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: James "Jim" Murphy

Address: 6300 Chickasaw

Midland TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³⁰ years.

Professional and/or Community Activities:

Servant leader at Stonegate Fellowship

Date: 1/31/2021

Phone: 432-557-1833 (Home)

432-631-2745 (Business)

Email: jimm.murf@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Assistant District Manager

What is your personal vision for the City?

My vision for the city of Midland is for it to be a place that is known not only for the work we do in the Basin, but to be a place for those workers to bring their families willingly to grow our community.

Please specify any time constraints you may have.

I am able to adjust my schedule with advance notice.

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:

Zoning Board of Adjustment and Airport Zoning Board of Adjustment

Please tell us why you are interested in serving on this board or commission.

I believe that city codes are designed to address the most common issues that may arise. Sometimes there are special considerations that may need to be addressed. I believe that I can be a fair participant in the appeal process.

What contribution would you most like to make?

I would like to offer my experience in working with contractors to complete projects while representing the citizens of Midland.

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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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: DANIEL NORWOOD
Address: 1705 MABERRY
MIDLAND, TX 79705
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 62 years.

Professional and/or Community Activities:

Past BOARD MEMBER OF AM. CANCER SOCIETY, Big Brother Big Sisters, MARCH OF DIMS, & High Sky Children

Date: 1-27-2021

Phone: 432-682-5544 (Home)

432-413-2764 (Business)

Email: danny@dannynorwood.com

→ I started it in fall of 2019 but it ended early bc of COVID.

Are you a graduate of Midland 101? ☐ yes ☐ no

Occupation: REALTOR - LEGACY REAL ESTATE
FOR 29 YEARS.

What is your personal vision for the City?

TO SEE IT CONTINUE TO GROW IN A CONTROLLED WAY, IF POSSIBLE - IE - HAVE ENOUGH AFFORDABLE HOUSING AVAILABLE.

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:

I'M NOT REALLY PICKY BUT IN ORDER IT WOULD BE:
① CITIZENS DEVELOPMENT BOARD OF ADJUSTMENT, ② URBAN TRANSIT, ③ ZONING

Please tell us why you are interested in serving on this board or commission.

AGAIN, I'M NOT PICKY, JUST WANT TO GET INVOLVED ON BOARD AFFAIRS.

What contribution would you most like to make?

I WAS VERY INVOLVED ON BOARDS YEARS AGO & QUIT WHEN MY GIRLS WERE BORN. THEY ARE BOTH GROWN & GONE & I WOULD LIKE TO GET INVOLVED AGAIN.

Additional pertinent information or references:

NATIVE MIDLAND, GRADUATE OF MHS, GRADUATE OF UT-AUSTIN WITH A FINANCE DEGREE, RETURNED TO MIDLAND WAS IN BANKING FOR SEVERAL YEARS BEFORE GETTING INTO REAL ESTATE.

(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

James Norman

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Clint Williamson

Address: 1410 Country Club Drive

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 8+ years.

Professional and/or Community Activities:

MARC -Board Member (Secretary); Senior Life - Resource Committee Member; Midland Education Foundation -- Board Member;

High Sky Children's Ranch (Board Member)

Date: 1/28/2021

Phone: 432-217-2542 (Home)

432-247-6220 (Business)

Email: clintwilliamson@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Corporate Affairs Lead

What is your personal vision for the City?

Midland has changed substantially in the last ten years. The city has emerged as the leading city in the Permian Basin. Our leadership and community stakeholders must accept this mantle of responsibility and lead the region in an effort to ensure our voices are heard around the state, in Austin and beyond.

Please specify any time constraints you may have.

I have flexibility in my 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:

Citizens Development and Hotel/Motel Advisory Board

Please tell us why you are interested in serving on this board or commission.

The mission of this board is critical in making determinations to fund venues and organizations that bring visitors (revenue) to Midland.

During these depressed commodity price times, the board must make strategic choices in where to invest limited resources. The

board needs to make choices that make a dollar stretch further.

What contribution would you most like to make?

I have a history of service to education organizations in Midland, I would like to bring the perspective of a education advocate and public school parent to the board. What can this board due (during its decision making) to promote education forums in Midland?

Midland should be the meeting hub for the various ISDs around the basin to come togetehr and discuss best practices.

Additional pertinent information or references:

Happy to supply references upon request.

(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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CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory; Membership - 7: Terms - 2 Years Staggered)

4-2020, 3-2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Joey Hopkins	Sept 30 2022	100%	3	3	Yes	
Brandon Ofield	Sept 30 2022	0%	0	3	Yes	Appt. 9/2020
Alex Singh	Sept 30 2020	100%	3	3	Yes	
Becky Wisdom	Sept 30 2020	100%	3	3	Yes	
Ellen K. Rasmsey	Sept 30 2021	100%	3	3	Yes	
VACANT (Williamson)	Sept 30 2021	0%	0	3	Yes	
David Blackketter	Sept 30 2021	100%	3	3	Yes	
APPLICANTS NAME	Additional Boards Applying to	NOTES				
Elizabeth Haigler						
Vicky Hailey						
Daniel Norwood						
Clint Williamson						
Brennan Berry	MDC					

MIDLAND DEVELOPMENT CORPORATION
(Membership - 7: Terms - 3 Years - Staggered)

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Chase Gardaphe	Jan 14 2022	70%	7	10	Yes	
Wesley Bownds	Jan 14 2022	100%	10	10	Yes	
Barry Simpson	Jan 14 2022	90%	9	10	Yes	
Stephen Lowery	Jan 14 2023	100%	10	10	Yes	
P Lourcey Sams	Jan 14 2023	40%	4	10	Yes	Appointed April 2020
Jill Pennington	Jan 14 2023	40%	4	10	Yes	Appointed April 2020
VACANT (Bedell)	Jan 14 2023	40%	4	10	Yes	
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
Brad Bullock						
Brennan Berry	CDHMAB					
Brandi Alexander						
Garner Gonzales						
Zachary Deck						

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Advisory; Membership - 6: Terms - 2 Years Staggered)

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
VACANT (Westmoreland)	Sept 30 2019	0%		10	Yes	
E.J. Baldrige	Sept 30 2019	90%	9	10	Yes	Still Intrested in Serving
Iris Foster	Sept 30 2019	90%	9	10	Yes	Still Intrested in Serving
Joseph Sanchez	Sept 30 2020	70%	7	10	Yes	Appointed Dec 2019
Jack Ladd	Sept 30 2020	10%	1	10	Yes	Appointed July 2020
John Norman	Sept 30 2021	0%	0	10	Yes	Appointed July 2020
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
James "Jim" Murphy						
Daniel Norwood						

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT
(Advisory; Membership - 5: Terms - 2 Years Expiring 3 Odd & 2 Even)

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Matthew Wallace	Sept 30 2020	75%	3	4	No	
Derek Whiting	Sept 30 2021	100%	4	4	Yes	
E.J. Baldrige	Sept 30 2021	100%	4	4	Yes	
Reed Claybrook	Sept 30 2022	50%	2	4	Yes	
Robert Gray	Sept 30 2024	0%	0	4	Yes	Appointed January 2021
ALTERNATES: (not applicable to Airport Zoning)						
James Robert Franklin	Sept 30 2021					
VACANCY	Sept 30 2019					
VACANCY	Sept 30 2020					
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
James Gerety						
James "Jim" Murphy						
Khris O'Grady						