

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 25, 2025 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall



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

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

OPENING ITEMS

1. Invocation – Pastor Sheldon Riley, Elevate Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, periods of time, or reports, including, but not limited to:
 - 3a. Presentation of Proclamation for “Youth in Leadership Day”.
 - 3b. Presentation by Chief of Staff Taylor Novak regarding Midland’s Merry Lights Recap, Future Programming, and needs.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR SESSION OF FEBRUARY 11, 2025
 - 4b. SPECIAL SESSION OF FEBRUARY 11, 2025
 - 4c. SPECIAL SESSION OF FEBRUARY 12, 2025
 - 4d. SPECIAL SESSION OF FEBRUARY 13, 2025
5. 2025-027 – RESOLUTION AWARDING THREE CONTRACTS FOR ON-CALL MOWING AND NUISANCE ABATEMENT SERVICES FOR THE DEVELOPMENT SERVICES DEPARTMENT TO ISMAEL S. GONZALEZ DOING BUSINESS AS F281 BRUSH HOG SERVICE, ISFRAIN MORIN JR. DOING BUSINESS AS M3 LANDSCAPE
PACKET

MAINTENANCE & IRRIGATION, LLC, AND DEBORAH ADELOYE DOING BUSINESS AS IVY GAZE, LLC; EACH CONTRACT BEING FOR A ONE-YEAR TERM, WITH AN OPTION FOR THE CITY TO RENEW THE CONTRACT FOR AN ADDITIONAL ONE-YEAR TERM; THE TOTAL COST OF EACH CONTRACT NOT TO EXCEED \$30,000.00 PER TERM; AND AUTHORIZING PAYMENT **(DISTRICT: ALL) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)**

6. 2025-028 – RESOLUTION APPROVING THE PURCHASE OF ONE HERBICIDE TRUCK FOR THE TRANSPORTATION DIVISION FROM CHEMICAL CONTAINERS, INC. FOR A TOTAL COST OF \$121,840.50 **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
7. 2025-029 – RESOLUTION AWARDED A CONTRACT IN THE AMOUNT OF \$2,710,000.00 FOR THE OPERATION AND MAINTENANCE OF THE WATER PRODUCTION AND TRANSMISSION FACILITIES AT THE T-BAR WELL FIELD AND THE CLEARWATER WELL FIELD TO PARKHILL, SMITH & COOPER OPERATIONS, LLC D/B/A PSC WATER OPERATING COMPANY **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
8. 024-2025 – MOTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER 1 WITH VERIZON WIRELESS TELECOM INC. REGARDING CELLULAR COMMUNICATION SERVICES; SAID CHANGE ORDER TO BE IN THE AMOUNT OF \$197,089.14 FOR THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
9. 2025-030 – RESOLUTION AUTHORIZING THE PURCHASE OF AMMUNITION OF ASSORTED TYPES AND IN ASSORTED QUANTITIES FOR THE MIDLAND POLICE DEPARTMENT FROM THE RESPECTIVE LOW BIDDERS, KIESLER POLICE SUPPLY, INC., AND SSD INTERNATIONAL, INC., FOR A TOTAL COST OF \$201,928.00 **(DISTRICT: NONE) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
10. 2025-031 – RESOLUTION AUTHORIZING THE EXECUTION OF THE NINTH AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT ADJUSTING THE ANNUAL FEE TO \$762,930.96, AND PROVIDING FOR PRE-EMPLOYMENT SCREENING AND/OR POST-ACCIDENT TESTING SERVICES; AND AUTHORIZING PAYMENT **(DISTRICT: NONE) (ADMINISTRATIVE SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
11. 2025-032 – RESOLUTION AMENDING THE CITY OF MIDLAND PERSONNEL POLICIES SO AS TO ELIMINATE THE REQUIREMENT THAT DEPARTMENT MANAGERS ENTER INTO EMPLOYMENT AGREEMENTS APPROVED BY THE CITY MANAGER **(DISTRICT:**

NONE) (ADMINISTRATIVE SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

12. 2025-033 – RESOLUTION AUTHORIZING AN ADOPTION PARTNER AGREEMENT WITH PETSMART CHARITIES, INC., TO PARTICIPATE IN THE PETSMART CHARITIES ADOPTION PROGRAM **(DISTRICT: ALL) (ANIMAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
13. 025-2025 – MOTION AUTHORIZING THE EXECUTION OF A CONSULTANT SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND INTERFLIGHT GLOBAL CORPORATION IN AN AMOUNT NOT TO EXCEED \$192,500.00 FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT **(DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**
14. 2025-034 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,797 FEET AND 1,837 FEET EAST OF NORTH A STREET, AND 1,827 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT **(DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
15. 2025-035 – RESOLUTION GRANTING VARIANCES FOR THREE OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 878 FEET AND 913 FEET EAST OF NORTH A STREET, AND BETWEEN 1,885 AND 1,921 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT **(DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
16. 2025-036 – RESOLUTION CONSENTING TO THE CREATION OF A DISTRICT TO BE KNOWN AS THE PRESERVE MUNICIPAL MANAGEMENT DISTRICT **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
17. 2025-037 – RESOLUTION OF THE CITY OF MIDLAND, TEXAS FINDING THAT THE STATEMENT OF INTENT FILED BY ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE “COMPANY”) TO CHANGE RATES WITHIN THE CITY SHOULD BE DENIED; FINDING THAT THE CITY’S REASONABLE RATE CASE EXPENSES SHALL BE

REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL **(DISTRICT: ALL) (ENGINEERING SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

18. 2025-038 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MIDLAND COUNTY, TEXAS, ALLOWING FOR CITY UTILIZATION OF OFFICE AND OPERATIONAL SPACE IN THE EMERGENCY MANAGEMENT WING OF THE MIDLAND COUNTY SHERIFF’S OFFICE FACILITY **(DISTRICT: ALL) (FIRE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
19. 026-2025 – MOTION AUTHORIZING THE EXECUTION OF SPORTS AGREEMENTS WITH THE FOLLOWING ORGANIZATIONS: BOYS AND GIRLS CLUB OF THE PERMIAN BASIN; GREATER MIDLAND FOOTBALL LEAGUE; POW5R SPORTS LEAGUE; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED ACTIVITIES THROUGH THE USE OF CERTAIN CITY-OWNED PROPERTY AND FACILITIES **(DISTRICT: ALL) (PARKS AND RECREATION) (QUALITY OF LIFE AND PLACE)**
20. 2025-039 – RESOLUTION REAPPOINTING SHARLA HOTCHKISS TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY **(DISTRICT 2) (PARKS AND RECREATION) (QUALITY OF LIFE AND PLACE)**

SECOND READINGS

21. 10596 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 1, “BUILDING CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED BUILDING CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S BUILDING CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES USED AS TOOL AND STORAGE SHEDS, PLAYHOUSES AND SIMILAR USES, PROVIDED THAT THE FLOOR AREA IS NOT GREATER THAN 120 SQUARE FEET, AND (2) SIDEWALKS AND DRIVEWAYS NOT MORE THAN 30 INCHES ABOVE ADJACENT GRADE, AND NOT OVER ANY BASEMENT OR STORY BELOW AND ARE NOT PART OF AN ACCESSIBLE ROUTE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN
PACKET

EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (FIRST READING HELD ON FEBRUARY 11, 2025) **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

22. 10597 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 11, “RESIDENTIAL CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED RESIDENTIAL CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S RESIDENTIAL CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES, PROVIDED THAT THE FLOOR AREA DOES NOT EXCEED 200 SQUARE FEET, (2) WATER TANKS SUPPORTED DIRECTLY UPON GRADE IF THE CAPACITY DOES NOT EXCEED 5,000 GALLONS AND THE RATIO OF HEIGHT TO DIAMETER OR WIDTH DOES NOT EXCEED 2 TO 1, AND (3) DECKS NOT EXCEEDING 200 SQUARE FEET IN AREA, THAT ARE NOT MORE THAN 30 INCHES ABOVE GRADE AT ANY POINT, ARE NOT ATTACHED TO A DWELLING AND DO NOT SERVE THE REQUIRED EXIT DOOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
23. 10598 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS” OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, “CONSTRUCTION WORK HOURS”, SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
24. 10599 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 1, 349 RETAIL ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUSINESS STATE HIGHWAY 349-C (NORTH BIG SPRING STREET), APPROXIMATELY 390 FEET NORTH OF TEJAS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT 1) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

25. 10600 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 11, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST WASHINGTON AVENUE AND SOUTH WEBSTER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT 2) (DEVELOPMENT SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
26. 10601 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 6 AND 7, BLOCK 1, SNIVELY RESUBDIVISION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-1 SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND CLARK STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
27. 10602 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 172, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH DALLAS STREET, APPROXIMATELY 125 FEET NORTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 11, 2025) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

PUBLIC HEARINGS

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

28. 10603 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 15.44-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 220 FEET WEST OF HOLDRIDGE ROAD.); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE &**

PLACE)

29. 10604 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, AND THE NORTH 39.7 FEET OF LOT 9, BLOCK 2, HUNTINGTON PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF MABERRY STREET AND SINCLAIR AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE NORTH SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
30. 10605 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,523-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK, 2ND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD APPROXIMATELY 120 FEET SOUTH OF MAXWELL 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 **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE & PLACE)**

PUBLIC COMMENT

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

EXECUTIVE SESSION

32. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:
 - a. Section 551.087, Deliberate Economic Development Negotiations
 - a.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.
 - b. Section 551.074, Personnel Matters

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

Respectfully Submitted,

Tommy Gonzalez
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
February 11, 2025**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., February 11, 2025.

Council Members present: John Burkholder, Amy Stretcher Burkes, Robin Poole, Lori Blong, Brian Stubbs, John Norman

Council Members absent: Jack Ladd

Staff members present: City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Jose Ortiz, City Governance Officer/City Secretary Marcia Bentley-German

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

OPENING ITEMS

1. Invocation – Dr. Darin Wood, First Baptist Church of Midland

Dr. Darin Wood was unable to attend today's meeting. Mayor Blong provided the invocation.

2. Pledge of Allegiance

PRESENTATIONS

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

3a. Presentation of Proclamation for “Project Blueprint Day”.

3b. Presentation of “Transportation Landscape in Midland”.

Intergovernmental Relations Officer Lindsey Adams provided an extensive presentation on the “Transportation Landscape in Midland”. Ms. Adams reviewed transportation planning to include the key players and advocates in Midland such as the Texas Department of Transportation Odessa District (TXDOT), Permian Basin Metropolitan Planning Organization (PBMPO), City of Midland, Midland County, the Midland Development Corporation (MDC), Midland Odessa Transportation Alliance

(MOTRAN), Permian Strategic Partnership (PSP) and Ports to Plains Alliance. Ms. Adams also reported on the responsibilities of each of these organizations and gave an update on the I-27 and I-14 corridors.

To view this presentation in it's entirety, please visit the city's web page at <https://www.midlandtexas.gov/1231/Council-Meetings>.

- 3c. Presentation by Financial Reporting Manager Jamie Barton regarding Investing in Basic Services: Infrastructure and Public Safety.

Finance Director Christy Weakland introduced Financial Reporting Manager Jamie Barton who provided a brief overview of the strategic plan funding, strengthening and sustaining infrastructure, the roads project for growth, water projects, sanitation projects, Airport needs, the Hogan Golf Course, park improvements and the Fire Pension Retirement Fund.

City Manager Tommy Gonzalez reported 60 million dollars will be saved on interest since solving the issue with the Firefighter fund.

Council Member Norman spoke about revisiting Hogan Park, especially with regard to tournaments in Midland.

Council Member Stubbs spoke about how the City of Midland is staying focused while growing.

Council Member Burkholder spoke about unlocking tax dollars to use for projects that will enhance the City of Midland and help tax payers.

To view this presentation in it's entirety, please visit the city's web page at <https://www.midlandtexas.gov/1231/Council-Meetings>.

- 3d. Presentation by Justin Graham, Chairman of the Midland Firemen's Retirement & Relief Fund regarding Fire Retirement Fund Update.

Chairman of the Midland Firemen's Retirement and Relief Fund, Justin Graham, provided an update of the Fire Retirement Fund reporting that the Firefighters have taken the necessary steps to honor the mutual resolutions the Pension Board and the City Council have made. On Sunday, February 6, 2025, the preliminary election results by the firefighters, to reduce the liability by five percent of pay received, was overwhelmingly supported to fix the pension issue.

Mr. Graham thanked the Mayor, City Council, City Manager Tommy Gonzalez and Deputy City Manager Morris Williams Jr. for their help in finding a resolution to the problem. Mr. Graham also reported that because of the board's quick action after receiving the forensic and governance audit and making the investment changes needed, it has placed the pension fund at around a 12 percent return for 2024. This is well above the seven percent expected, ranking as 37 among 405 pension fund plans compared, moving Midland into the top 10 percent.

Mayor Blong thanked the Firefighters on behalf of the City Council and reported the plan is to move forward quickly with funding once it's ratified.

Council Member Burkholder also thanked the Firefighters.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. SPECIAL SESSION OF JANUARY 22, 2025
 - 4b. SPECIAL SESSION OF JANUARY 23, 2025
 - 4c. REGULAR SESSION OF JANUARY 28, 2025
 - 4d. SPECIAL SESSION OF JANUARY 28, 2025
5. 017-2025 – MOTION ACCEPTING A DONATION IN THE AMOUNT OF \$30,000 FROM CHEVRON; SAID FUNDS TO BE USED FOR THE PURCHASE OF SCBA TESTING EQUIPMENT TO ENSURE THE FUNCTIONALITY OF RESPIRATOR MASKS FOR THE MIDLAND FIRE DEPARTMENT **(DISTRICT: NONE) (FINANCE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
6. 2025-018 – RESOLUTION AUTHORIZING THE PURCHASE OF VARIOUS VEHICLES FOR THE GENERAL SERVICES DEPARTMENT FOR A TOTAL COST OF \$802,323.40 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
10. 2025-021 – RESOLUTION AUTHORIZING THE SUBMISSION OF APPLICATION NO. 5362201 TO THE OFFICE OF THE GOVERNOR FOR THE FISCAL YEAR 2026 STATE AND LOCAL CYBERSECURITY GRANT PROGRAM (OBJECTIVE 4 – WORKFORCE DEVELOPMENT) FOR GRANT FUNDS TOTALING \$16,000.00; SAID GRANT FUNDS, IF AWARDED, SHALL BE USED TO UNDERTAKE THE IMPLEMENTING COURSERA PROJECT THAT CONSISTS OF A TRAINING PROGRAM FOR THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT COVERING COURSES AND CERTIFICATIONS IN CYBERSECURITY, CLOUD COMPUTING, ARTIFICIAL INTELLIGENCE, AND OTHER CRITICAL INFORMATION TECHNOLOGY DISCIPLINES; APPROVING AND APPROPRIATING \$3,200.00 IN LOCAL MATCHING FUNDS; AND AUTHORIZING THE CITY MANAGER, THE FINANCE DIRECTOR, THE CHIEF INFORMATION OFFICER, AND THE GRANT WRITER TO EXECUTE ALL NECESSARY DOCUMENTS TO ACCEPT, DENY, OR MODIFY ALL ASPECTS OF THE GRANT **(DISTRICT: ALL) (COMMUNICATION & INFORMATION SYSTEMS) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
11. 2025-022 – RESOLUTION AUTHORIZING THE SUBMISSION OF APPLICATION NO. 5362101 TO THE OFFICE OF THE GOVERNOR FOR THE FISCAL YEAR 2026 STATE PACKET

AND LOCAL CYBERSECURITY GRANT PROGRAM (OBJECTIVE 3 – MITIGATION) FOR GRANT FUNDS TOTALING \$277,000.00; SAID GRANT FUNDS, IF AWARDED, SHALL BE USED TO UNDERTAKE THE IMPLEMENTING XSIAM FROM PALO ALTO NETWORKS PROJECT, WHICH PROVIDES THE CAPABILITY TO AUTOMATICALLY DETECT AND REMEDIATE INCIDENTS BY LEVERAGING ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING; APPROVING AND APPROPRIATING \$55,400.00 IN LOCAL MATCHING FUNDS; AND AUTHORIZING THE CITY MANAGER, THE FINANCE DIRECTOR, THE CHIEF INFORMATION OFFICER, AND THE GRANT WRITER TO EXECUTE ALL NECESSARY DOCUMENTS TO ACCEPT, DENY, OR MODIFY ALL ASPECTS OF THE GRANT **(DISTRICT: ALL) (COMMUNICATION & INFORMATION SYSTEMS) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

12. 2025-023 – RESOLUTION AUTHORIZING THE SUBMISSION OF APPLICATION NO. 5329201 TO THE OFFICE OF THE GOVERNOR FOR THE FISCAL YEAR 2026 STATE AND LOCAL CYBERSECURITY GRANT PROGRAM (OBJECTIVE 2 – ASSESSMENT AND EVALUATION) FOR GRANT FUNDS TOTALING \$40,000.00; SAID GRANT FUNDS, IF AWARDED, SHALL BE USED TO UNDERTAKE THE CYBERSECURITY PENETRATION TEST PROJECT THAT WILL SIMULATE REAL-WORLD CYBERATTACKS AGAINST THE CITY OF MIDLAND'S SYSTEMS, NETWORKS, AND APPLICATIONS; APPROVING AND APPROPRIATING \$8,000.00 IN LOCAL MATCHING FUNDS; AND AUTHORIZING THE CITY MANAGER, THE FINANCE DIRECTOR, THE CHIEF INFORMATION OFFICER, AND THE GRANT WRITER TO EXECUTE ALL NECESSARY DOCUMENTS TO ACCEPT, DENY, OR MODIFY ALL ASPECTS OF THE GRANT **(DISTRICT: ALL) (COMMUNICATION & INFORMATION SYSTEMS) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
15. 019-2025 – MOTION APPROVING MIDLAND COUNTY'S APPOINTMENTS OF COUNTY COMMISSIONER DIANNE ANDERSON AND COUNTY COMMISSIONER JEFF SOMERS TO THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER TWO **(DISTRICT 2 & 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
16. 020-2025 – MOTION APPOINTING THE CURRENT MAYOR AND CITY COUNCIL MEMBERS AND THEIR SUCCESSORS TO THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER TWO **(DISTRICT 2 & 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
17. 021-2025 – MOTION AUTHORIZING THE EXECUTION OF A GRANT AGREEMENT WITH THE SCHARBAUER FOUNDATION, INC.; SAID AGREEMENT PROVIDING FOR \$5,000,000 IN GRANT FUNDS TO BE USED FOR THE UPGRADE TO THE SPLASH PAD FEATURE PLANNED AT BEAL PARK AS PART OF THE BEAL PARK RENOVATION PROJECT **(DISTRICT 4) (PARKS AND RECREATION) (QUALITY OF LIFE AND PLACE)**
19. 023-2025 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-A-WAY LICENSE (25-329-005) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX L.L.C.; REGARDING CITY-OWNED PROPERTY DESCRIBED AS PACKET

SECTIONS 5, 8, AND 9, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Brian Stubbs moved to approve consent agenda items 4 – 19, excluding items 7, 8, 9, 13, 14 & 18; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Burkholder, Stretcher Burkes, Poole, Blong, Stubbs, Norman

NAY: None

ABSTAIN: None

ABSENT: Ladd

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

7. 2025-019 – RESOLUTION AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR THE ASSISTANT CITY MANAGER (COLLECTIVELY, THE “CITY MANAGER’S OFFICE”) TO ACQUIRE, ON BEHALF OF THE CITY OF MIDLAND, IN FEE SIMPLE CERTAIN REAL PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 38, ORIGINAL TOWN ADDITION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAVE AND EXCEPT: (1) A 31.6-FOOT BY 21.2-FOOT TRACT OUT OF THE NORTHEAST CORNER OF SAID REAL PROPERTY THAT IS THE LOCATION OF A SATELLITE DISH SURROUNDED BY A WROUGHT IRON FENCE; AND (2) A 29.4-FOOT BY 37-FOOT TRACT LOCATED ON THE WEST SIDE OF SAID REAL PROPERTY AND SITUATED APPROXIMATELY 64 FEET NORTH OF THE SOUTHWEST CORNER OF SAID PROPERTY THAT IS IMPROVED WITH A CONDENSING UNIT AND HVAC EQUIPMENT SURROUNDED BY A CHAIN LINK FENCE; AUTHORIZING THE CITY MANAGER’S OFFICE TO NEGOTIATE, EXECUTE, AND FILE ALL DOCUMENTS NECESSARY TO ACQUIRE SAID REAL PROPERTY, PURCHASE A TITLE INSURANCE POLICY, AND HOLD THE CLOSING FOR SAID ACQUISITION; AUTHORIZING PAYMENT FOR THE PURCHASE OF SAID REAL PROPERTY, TITLE INSURANCE POLICY, AND CLOSING COSTS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENTS OF CONVEYANCE

Assistant City Manager Jose Ortiz gave a brief update about adding more spaces for parking downtown.

City Manager Tommy Gonzalez thanked the Midland County Judge and Commissioners for keeping the rates low to pre-Covid dollars.

John Burkholder moved to approve Resolution No. 2025-019; seconded by John Norman.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

8. 018-2025 – MOTION APPROVING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND FLOUR CHILD BAKED GOODS, LLC

Council Member Poole reported she would like an update on small business development that the late Council Member Dan Corrales began work on and would prefer to see items like this go through the Midland Entrepreneurial Challenge to assist even more businesses.

City Manager Tommy Gonzalez provided an update on the work being done with small businesses within the city.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting one of the challenges small businesses face is the access to capital, noting the most successful programs are the ones that help with access to capital in the form of grants. Mrs. Triggs reported the city is already looking into the process.

Council Member Burkholder reported he is for small businesses but that he also wants to see economic benefits for the city.

Midland Development Corporation Director Sara Harris reported Midland Development Corporation does have substantial commitments; however, they are offset by monthly revenues that are received through the Comptroller for sales tax. The commitments are over a very long period of time, such as around seven years. The total amount available over that period of time is more than the commitments that have been made.

Mayor Blong clarified the City is not operating at a deficit into the future because we have future revenues that will cover things that come up.

Council Member Norman agrees the city needs to be investing in our communities.

Mrs. Harris provided information on Flour Child Baked Goods LLC and the positive impact of an agreement with the organization. Mrs. Harris also reviewed the return on investment with this deal and how it came about.

Council Member Stubbs and Council Member Norman spoke on their support of small businesses within Midland.

Robin Poole moved to approve Motion No. 018-2025; seconded by John Norman.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Blong, Norman

NAY: Poole, Burkholder

ABSTAIN: None

ABSENT: Ladd

9. 2025-020 – RESOLUTION AUTHORIZING THE SUBMISSION OF APPLICATION NO. 5362301 TO THE OFFICE OF THE GOVERNOR FOR THE FISCAL YEAR 2026 STATE AND LOCAL CYBERSECURITY GRANT PROGRAM (OBJECTIVE 1 – GOVERNANCE PACKET

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AND PLANNING) FOR GRANT FUNDS TOTALING \$100,000.00; SAID GRANT FUNDS, IF AWARDED, SHALL BE USED TO UNDERTAKE THE CYBERSECURITY POLICY GAP ANALYSIS PROJECT TO DEVELOP AND ESTABLISH APPROPRIATE GOVERNANCE STRUCTURES IN ALIGNMENT WITH THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S CYBERSECURITY FRAMEWORK, INCLUDING DEVELOPING, IMPLEMENTING, AND REVISING CYBERSECURITY PLANS; APPROVING AND APPROPRIATING \$20,000.00 IN LOCAL MATCHING FUNDS; AND AUTHORIZING THE CITY MANAGER, THE FINANCE DIRECTOR, THE CHIEF INFORMATION OFFICER, AND THE GRANT WRITER TO EXECUTE ALL NECESSARY DOCUMENTS TO ACCEPT, DENY, OR MODIFY ALL ASPECTS OF THE GRANT

Council Member Stubbs thanked staff for working on getting these grant funds.

Chief Information Officer Gorgees Eskander gave a brief overview of the grant.

Brian Stubbs moved to approve Resolution No. 2025-020; seconded by John Burkholder.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

13. 2025-024 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MIDLAND COUNTY FOR SAID COUNTY TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER THREE

Planning & Development Officer Elizabeth Triggs gave a brief overview of Tax Increment Reinvestment Zone (TIRZ) number three with which Midland County has agreed to participate. TIRZ number three runs along the 191 corridor and is intended to assist with a plan to fund infrastructure and growth.

John Burkholder moved to approve Resolution No. 2025-024; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

14. 2025-025 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MIDLAND COUNTY FOR SAID COUNTY TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR

This item was discussed along with item number 13.

John Burkholder moved to approve Resolution No. 2025-025; seconded by Brian Stubbs.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

18. 022-2025 – MOTION AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR THE ASSISTANT CITY MANAGER (COLLECTIVELY, THE “CITY MANAGER’S OFFICE”) TO ACCEPT, ON BEHALF OF THE CITY OF MIDLAND, A GIFT DEED FROM OCCIDENTAL PERMIAN, LTD. CONVEYING UNTO THE CITY A 4.44-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID TRACT TO BE USED FOR THE DEVELOPMENT AND OPERATION OF A FIRE STATION; AND AUTHORIZING THE CITY MANAGER’S OFFICE TO EXECUTE ALL DOCUMENTS NECESSARY FOR SUCH ACCEPTANCE

Managing Director of Public Safety Chuck Blumenauer gave a brief overview of the item with regard to how this station will help with the growth of Midland.

Brian Stubbs moved to approve Motion No. 022-2025; seconded by John Burkholder.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

SECOND READINGS

20. 10594 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12, BLOCK 1, CRESCENT PLACE, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF CRESCENT PLACE, APPROXIMATELY 800 FEET WEST OF SOUTH FOUNDATION BOULEVARD), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK FOR A VEHICLE ENTRANCE TO A GARAGE THAT FACES THE REAR ALLEY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (FIRST READING HELD ON JANUARY 28, 2025) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10594.

Amy Stretcher Burkes moved to approve the second and final reading of Ordinance No. 10594; seconded by John Burkholder.

The motion passed by the following vote:

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AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder
NAY: None
ABSTAIN: None
ABSENT: Ladd

21. 10595 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12A, BLOCK 3, AVALON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WINFIELD ROAD, APPROXIMATELY 160 FEET EAST OF NORTH L STREET), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE WEST SIDE OF THE LOT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (FIRST READING HELD ON JANUARY 28, 2025) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10595.

Amy Stretcher Burkes moved to approve the second and final reading of Ordinance No. 10595; seconded by John Norman.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder
NAY: None
ABSTAIN: None
ABSENT: Ladd

PUBLIC HEARINGS

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

22. 10596 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 1, “BUILDING CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED BUILDING CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S BUILDING CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES USED AS TOOL AND STORAGE SHEDS, PLAYHOUSES AND SIMILAR USES, PROVIDED THAT THE FLOOR AREA IS NOT GREATER THAN 120 SQUARE FEET, AND (2) SIDEWALKS AND DRIVEWAYS NOT MORE THAN 30 INCHES ABOVE ADJACENT GRADE, AND NOT OVER ANY BASEMENT OR STORY BELOW AND ARE NOT PART OF AN ACCESSIBLE ROUTE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

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

10596.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is the first of three code amendments regarding the the city's building code. These changes will encourage better permitting processes for customers. Mrs. Triggs provided a history noting that using the international codes are best practices.

Mayor Blong opened the public hearing at 11:38 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Burkholder moved to approve the first of two readings of Ordinance No. 10596; seconded by Brian Stubbs.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

23. 10597 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 11, “RESIDENTIAL CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED RESIDENTIAL CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S RESIDENTIAL CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES, PROVIDED THAT THE FLOOR AREA DOES NOT EXCEED 200 SQUARE FEET, (2) WATER TANKS SUPPORTED DIRECTLY UPON GRADE IF THE CAPACITY DOES NOT EXCEED 5,000 GALLONS AND THE RATIO OF HEIGHT TO DIAMETER OR WIDTH DOES NOT EXCEED 2 TO 1, AND (3) DECKS NOT EXCEEDING 200 SQUARE FEET IN AREA, THAT ARE NOT MORE THAN 30 INCHES ABOVE GRADE AT ANY POINT, ARE NOT ATTACHED TO A DWELLING AND DO NOT SERVE THE REQUIRED EXIT DOOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10597.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this item is similar to the previous item (number 22). It's about removing the amendment which will no longer require certain permits if approved. This will improve customer service for homeowners, tenants and frees up staff to work on more critical tasks.

Mayor Blong opened the public hearing at 11:40 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10597; seconded by John Burkholder.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

24. 10598 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS” OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, “CONSTRUCTION WORK HOURS”, SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10598.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is the third and final amendment of the building code. Its to implement effective code enforcement strategies and create an attractive and inclusive living environment. The proposed ordinance would establish construction work hours within Midland city limits from 7:00 a.m. to 7:00 p.m. Monday through Sunday. However, this only pertains to construction work taking place within 600 feet of occupied residences and hospitals. There is a provision in the ordinance that allows a contractor to obtain an after hours work permit. Best practices have been reviewed in other Texas cities.

Council Member Poole inquired if 600 feet is enough. Mrs. Triggs reported that looking at best practices, 600 feet was around the average. Assistant City Manager Jose Ortiz provided an example of how far 600 feet is.

Discussion ensued regarding how the construction workers would be notified and enforcement of this ordinance.

City Manager Tommy Gonzalez reported his staff will work on having a process in place.

Mayor Blong opened the public hearing at 11:53 a.m.

Jody McGee, 6700 Big Bend Country, former President of the Builders Association and the current Chair of the Political Action Committee spoke on decreasing the amount from 600 feet to 300 feet. Mr. McGee spoke with many builders and they like the idea but would like to propose a slight change. It would be extremely helpful to be able to pour concrete during

the summer in early mornings or late nights. What may happen is many builders will have to come apply for special permits which would create more work for staff and an extra layer for the contractor.

Mayor Blong reported the Council does not wish to create more work or hardship. Discussion ensued about making possible provisions in the code.

There being no one else wishing to speak, the public hearing was closed at 11:57 a.m.

Amy Stretcher Burkes moved to approve the first of two readings of Ordinance No. 10598; seconded by John Norman.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

25. 10599 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 1, 349 RETAIL ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUSINESS STATE HIGHWAY 349-C (NORTH BIG SPRING STREET), APPROXIMATELY 390 FEET NORTH OF TEJAS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 1) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10599.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a rezone request to allow for the development of mini storage units on the property.

Mayor Blong opened the public hearing at 12:00 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10599; seconded by Brian Stubbs.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

26. 10600 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 11, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, PACKET 4a.12 February 25, 2025

MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST WASHINGTON AVENUE AND SOUTH WEBSTER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10600.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a rezoning request.

Mayor Blong opened the public hearing at 12:02 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No.10600; seconded by Brian Stubbs.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

27. 10601 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 6 AND 7, BLOCK 1, SNIVELY RESUBDIVISION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-1 SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND CLARK STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10601.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a rezoning request for two properties.

Mayor Blong opened the public hearing at 12:05 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10601; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

28. 10602 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 172, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH DALLAS STREET, APPROXIMATELY 125 FEET NORTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10602.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is for a zone change request.

Mayor Blong opened the public hearing at 12:07 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Burkholder moved to approve the first of two readings of Ordinance No. 10602; seconded by Brian Stubbs.

The motion passed by the following vote:

AYE: Stubbs, Stretcher Burkes, Poole, Blong, Norman, Burkholder

NAY: None

ABSTAIN: None

ABSENT: Ladd

PUBLIC COMMENT

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

Eliel Rosa, 3603 Humble Avenue, would like an update on a question he asked at the last Council meeting about changing the time of City Council meetings to the evening instead of during the day.

EXECUTIVE SESSION

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

Mayor Blong recessed the City Council Meeting to go into Executive Session at 12:10 p.m.

Mayor Blong recessed Executive Session at 12:55 p.m. to go to the Fire Pension Special Meeting.

a. Section 551.087, Deliberate Economic Development Negotiations

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

b. Section 551.072, Deliberation Regarding Real Property

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

c. Section 551.074, Personnel Matters

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

All the business at hand having been completed, the meeting adjourned at 3:07 p.m.

PASSED AND APPROVED February 25, 2025.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary



The City Council convened in **Special** Session in the First Methodist Church Parking Lot, Midland, Texas, at 1:00 PM, Tuesday, February 11, 2025.

Council Members present: John Burkholder, Amy Stretcher Burkes, Robin Poole, Lori Blong, Brian Stubbs, John Norman

Council Members absent: Jack Ladd

Staff members present: City Manager Tommy Gonzalez, Assistant City Manager Jose Ortiz, City Governance Officer/City Secretary Marcia Bentley-German, Managing Director of Public Safety Charles Blumenauer, General Services Director Regina Stephenson, Administrative Services Director Mark Widmann, Chief of Staff Taylor Novak, Interim Fire Chief Michael Tully, Strategic Communications Officer Stewart Doreen, Purchasing Manager Erika Munoz

The meeting was called to order at 1:00 p.m.

SPECIAL SESSION

1. Attend a special recognition of Occidental Petroleum for its donation of land to the City of Midland, which shall be designated for the future development of a fire station to enhance public safety and emergency response services.

Members of the Midland City Council, Midland Fire Department and City staff gathered today for a special recognition of Occidental Petroleum for its donation of land to the City of Midland for the future development of a fire station.

All the business at hand having been completed, the meeting adjourned at 1:05 p.m.

PASSED AND APPROVED February 25, 2025.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary
PACKET

4b.1

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The City Council convened in **Special** Session at Beal Park, Midland, Texas, at 2:00 PM, Wednesday, February 12, 2025.

Council Members present: John Burkholder, Amy Stretcher Burkes, Robin Poole, Lori Blong, Brian Stubbs, Jack Ladd, John Norman

Council Members absent: None

Staff members present: City Manager Tommy Gonzalez, City Attorney John Ohnemiller, City Governance Officer/City Secretary Marcia Bentley-German, Managing Director of Public Safety Charles Blumenauer, General Services Director Regina Stephenson, Director of Parks & Recreation Director Laurie Williams, Planning & Development Officer Elizabeth Triggs, Interim Fire Chief Michael Tully, Chief of Staff Taylor Novak, Intergovernmental Relations Officer Lindsey Adams, Strategic Communications Officer Stewart Doreen, Purchasing Manager Erika Munoz, Grant Writer Michele Hagemann, Parks and Recreation Manager Joey Jolly

The meeting was called to order at 2:04 p.m.

SPECIAL SESSION

1. Hold a groundbreaking ceremony for the Beal Park improvements project.

Members of the Midland City Council, Midland Development Corporation (MDC), MDC Board, Parks Conservancy, City of Midland staff and the Media attended the Beal Park Master Plan Groundbreaking Ceremony.

Tatum Hubbard, Chief of Staff and Executive Director of Communications & Marketing at The University of Texas Permian Basin welcomed guest.

Mayor Blong made remarks and recognized the generosity of the Beal Foundation, Scharbauer Foundation and ExxonMobil.

Council Member Amy Stretcher Burkes spoke on the importance of this project for the Citizens of Midland and District 4. Council Member Amy Stretcher Burkes also thanked donors and partners for their commitment to this project.

PROPOSED Council Member Scott Dufford provided remarks on the transformation of this project over the years.

The following provided remarks for the event: Matthew Voss, President, Midland Soccer Association, Matt Mathis, ExxonMobil and Barry (BJ) Beal Jr., Beal Foundation.

All the business at hand having been completed, the meeting adjourned at 2:27 p.m.

PASSED AND APPROVED February 25, 2025.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary



The City Council convened in **Special** Session in the City Hall Council Chamber, Midland, Texas, at 4:15 PM, Thursday, February 13, 2025.

Council Members present: John Burkholder, Amy Stretcher Burkes, Robin Poole, Lori Blong, Brian Stubbs, Jack Ladd, John Norman

Council Members absent: None

Staff members present: City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Jose Ortiz, City Governance Officer/City Secretary Marcia Bentley-German, Managing Director of Public Safety Charles Blumenauer, Director of Finance Christy Weakland, Chief of Staff Taylor Novak, Interim Fire Chief Michael Tully, Strategic Communications Officer Stewart Doreen, Chief Information Officer Gorgees Eskander

The meeting was called to order at 4:16 p.m.

SPECIAL SESSION

1. Consider and take action on a resolution authorizing the execution of an administration and funding agreement with the Midland Firemen's Relief and Retirement Fund; and authorizing payment for said agreement.

City Manager Tommy Gonzalez provided an update regarding the Midland Firemen's Retirement and Relief Fund (MFRRF) issue and results. Mr. Gonzalez reported that if the City had waited until February 25th, 2025, the City would not have saved \$111,000. He also thanked Deputy City Manager Morris Williams Jr. and the team for their help getting this done.

Mayor Blong reported that the Actuarially Determined Contribution Rate (ADC) prevents this issue from ever happening again.

City Manager Tommy Gonzalez reported that through sound governance, reports will be provided to Council regularly.

Council Member Amy Stretcher Burkes provided remarks and offered thanks to everyone involved with this process.

Council Member Burkholder provided remarks and thanks.

City Manager Tommy Gonzalez praised Finance Director Christy Weakland and thanked Chief of Staff Taylor Novak and Strategic Communications Officer Stewart Doreen for their assistance.

City Attorney John Ohnemiller thanked SR Assistant City Attorney Nicholas Toulet-Crump for all his help.

Council Member Ladd thanked MFRRF Board Chairman Justin Graham for his hard work on this project.

Mayor Blong reported that thanks to the Firefighters, we are celebrating something they gave up and that they should be acknowledged for this.

Robin Poole moved to approve; seconded by John Burkholder.

The motion passed by the following vote:

AYE: Burkholder, Stretcher Burkes, Poole, Blong, Stubbs, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

All the business at hand having been completed, the meeting adjourned at 4:26 p.m.

PASSED AND APPROVED February 25, 2025.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary



City Council Meeting

Item Number: 5
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AWARDING THREE CONTRACTS FOR ON-CALL MOWING AND NUISANCE ABATEMENT SERVICES FOR THE DEVELOPMENT SERVICES DEPARTMENT TO ISMAEL S. GONZALEZ DOING BUSINESS AS F281 BRUSH HOG SERVICE, ISFRAIN MORIN JR. DOING BUSINESS AS M3 LANDSCAPE MAINTENANCE & IRRIGATION, LLC, AND DEBORAH ADELOYE DOING BUSINESS AS IVY GAZE, LLC; EACH CONTRACT BEING FOR A ONE-YEAR TERM, WITH AN OPTION FOR THE CITY TO RENEW THE CONTRACT FOR AN ADDITIONAL ONE-YEAR TERM; THE TOTAL COST OF EACH CONTRACT NOT TO EXCEED \$30,000.00 PER TERM; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Resolution awarding the execution of a contract for the On-call Mowing and Nuisance Abatement Services to F281 Brush Hog Service, Ivy Gaze, LLC, and Isfrain Morin Jr. dba M3 Landscape Maintenance & Irrigation, LLC, for the Development Services Department, each agreement shall not exceed \$30,000.00 per agreement per year; and authorizing payment.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the General Fund operating budget.

Strategic Priority:

(Quality of Life and Place)

Discussion:

City Manager's office authorized staff to advertise a request for proposals for services for three (3) contractors to assist the Development Services Department by providing Mowing and Nuisance Abatement services on an as-needed basis for up to two (2) years. Fifty-eight (58) request for qualifications were issued. We received three (3) statements of proposals. Staff recommends selecting F281 Brush Hog Service, Ivy Gaze, LLC, and Isfrain Morin Jr. dba M3 Landscape Maintenance & Irrigation, LLC and entering into an agreement with each contractor to provide these services. Please see the attached memo, from Elizabeth Triggs, Chief Planning and Development Officer, for additional information.



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Jose Ortiz, Assistant City Manager
FROM: Elizabeth Triggs, Planning and Development Officer
SUBJECT: 25000011 On Call Mowing and Nuisance Abatement
DATE: February 25, 2025

To improve efficiency and ensure timely mowing and debris abatement for non-compliant properties, Development Services recommends awarding an on-call contract to multiple third-party contractors. Outsourcing routine mowing will allow staff to focus on more complex code enforcement efforts, including vacant and substandard structures and property maintenance along the city's twelve most traveled corridors.

A Request for Proposals (RFP) was issued on February 5, 2025, seeking three (3) qualified vendors to provide on-call mowing and debris removal services. The goal was to increase responsiveness, reduce turnaround times, and enhance service delivery.

Three (3) bids were received, with a total contract amount not to exceed \$90,000, distributed equally at a maximum of \$30,000 per contractor over an initial twelve (12)-month period. The evaluation team determined that all bidders met the necessary qualifications.

Staff recommends awarding on-call contracts to F281 Brush Hog Services, Ivy Gaze, and M3 Landscape Maintenance & Irrigation, LLC for a twelve (12)-month term, with a one-year renewal option, at a total cost not to exceed \$90,000.

Council Action Requested: Please consider adopting a resolution approving these on-call contracts to improve service efficiency, maintain compliance, and allow staff to focus on higher-priority enforcement efforts.

RESOLUTION NO. _____

RESOLUTION AWARDING THREE CONTRACTS FOR ON-CALL MOWING AND NUISANCE ABATEMENT SERVICES FOR THE DEVELOPMENT SERVICES DEPARTMENT TO ISMAEL S. GONZALEZ DOING BUSINESS AS F281 BRUSH HOG SERVICE, ISFRAIN MORIN JR. DOING BUSINESS AS M3 LANDSCAPE MAINTENANCE & IRRIGATION, LLC, AND DEBORAH ADELOYE DOING BUSINESS AS IVY GAZE, LLC; EACH CONTRACT BEING FOR A ONE-YEAR TERM, WITH AN OPTION FOR THE CITY TO RENEW THE CONTRACT FOR AN ADDITIONAL ONE-YEAR TERM; THE TOTAL COST OF EACH CONTRACT NOT TO EXCEED \$30,000.00 PER TERM; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager advertised for competitive proposals for on-call mowing and nuisance abatement services (the “Services”); and

WHEREAS, Proposal No. 25000011 was opened on February 5, 2025, with the only three proposals that the City received having been submitted by Ismael S. Gonzalez doing business as F281 Brush Hog Service, Isfrain Morin Jr. doing business as M3 Landscape Maintenance & Irrigation, LLC, and Deborah Adeloye doing business as Ivy Gaze, LLC (each being a “Contractor”); and

WHEREAS, each Contractor’s best and final offer to provide the Services is reflected in the tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds that the Contractors will provide the Services at the best value for the City; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with each Contractor for the Services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with each Contractor for the Services, each said contract being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That each contract described in Section One hereof shall be for a term of one year, with an option for the City to renew the contract for an additional one-year-term, and the total cost to the City for each contract shall not exceed \$30,000.00 per term.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay each Contractor pursuant to the terms of the applicable contract in an amount not to exceed \$30,000.00 per term from funds available in the General Fund operating budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT A

BAFO 25000011 On-Call Mowing and Nuisance Abatement Bid Opening: February 5, 2025								
			F281 Brush hog and Tractor service		Ivy Gaze LLC		M3 Landscape Maintenance & Irrigation, LLC	
#	Items	Quantity Required	Unit	Unit Price	Total Cost	Unit Price	Total Cost	Total Cost
Cutting and Mowing Weeds, Tall Grass and Brush								
#1-1	Mowing Services for properties less than 12,000 square feet.	1	Property	\$150.00	\$150.00	\$100.00	\$100.00	\$400.00
#1-2	Mowing Services for properties of 12,000 square feet and to less than 1 acre.	1	Property	\$200.00	\$200.00	\$200.00	\$200.00	\$800.00
#1-3	Mowing services for properties of 1 acre or greater.	1	Property	\$275.00	\$275.00	\$400.00	\$400.00	\$1,600.00
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal								
#2-1	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris	3	Cubic Yards	\$225.00	\$225.00	\$200.00	\$200.00	\$600.00
#2-2	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	1	Unit	\$0.00	\$0.00	\$100.00	\$100.00	\$150.00
#2-3	Removal with lawful disposal of automobile or pickup tires.	1	Tire	\$0.00	\$0.00	\$30.00	\$30.00	\$15.00
#2-4	Removal with lawful disposal of semi-truck or similar large tires.	1	Tire	\$0.00	\$0.00	\$45.00	\$45.00	\$45.00
Tree Trimming and Dead Tree Removal with lawful disposal								
#3-1	Tree Trimming and Dead Tree Removal with lawful disposal.	1	Hour	\$140.00	\$140.00	\$150.00	\$150.00	\$175.00

Bid Summary

58 Bid Requests were issued
3 Bids are listed above
0 NO BIDS were received
55 Bidders did not respond

25000011 On-Call Mowing and Nuisance Abatement Bid Opening: February 5, 2025									
				F281 Brush hog and Tractor service		Ivy Gaze LLC		M3 Landscape Maintenance & Irrigation, LLC	
#	Items	Quantity Required	Unit	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
Cutting and Mowing Weeds, Tall Grass and Brush									
#1-1	Mowing Services for properties less than 12,000 square feet.	1	Property	\$175.00	\$175.00	\$1,000.00	\$1,000.00	\$50.00/HR	\$50.00/HR
#1-2	Mowing Services for properties of 12,000 square feet and to less than 1 acre.	1	Property	\$225.00	\$225.00	\$3,000.00	\$3,000.00	\$50.00/HR	\$50.00/HR
#1-3	Mowing services for properties of 1 acre or greater.	1	Property	\$300.00	\$300.00	\$5,500.00	\$5,500.00	\$50.00/HR	\$50.00/HR
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal									
#2-1	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris	3	Cubic Yards	\$225.00	\$225.00	\$1,500.00	\$1,500.00	\$50.00/HR	\$50.00/HR
#2-2	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	1	Unit	\$0.00	\$0.00	\$2,000.00	\$2,000.00	\$50.00	\$50.00
#2-3	Removal with lawful disposal of automobile or pickup tires.	1	Tire	\$0.00	\$0.00	\$2,000.00	\$2,000.00	\$15.00	\$15.00
#2-4	Removal with lawful disposal of semi-truck or similar large tires.	1	Tire	\$0.00	\$0.00	\$2,000.00	\$2,000.00	\$45.00	\$45.00
Tree Trimming and Dead Tree Removal with lawful disposal									
#3-1	Tree Trimming and Dead Tree Removal with lawful disposal.	1	Hour	\$150.00	\$150.00	\$500.00	\$500.00	\$50.00/HR or \$75.00/HR with Tree Truck	\$50.00/HR or \$75.00/HR with Tree Truck

Bid Summary

58 Bid Requests were issued

3 Bids are listed above

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55 Bidders did not respond

BAFO 25000011 On-Call Mowing and Nuisance Abatement Bid Opening: February 5, 2025									
				F281 Brush hog and Tractor service		Ivy Gaze LLC		M3 Landscape Maintenance & Irrigation, LLC	
#	Items	Quantity Required	Unit	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
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#1-1	Mowing Services for properties less than 12,000 square feet.	1	Property	\$150.00	\$150.00	\$100.00	\$100.00	\$400.00	\$400.00
#1-2	Mowing Services for properties of 12,000 square feet and to less than 1 acre.	1	Property	\$200.00	\$200.00	\$200.00	\$200.00	\$800.00	\$800.00
#1-3	Mowing services for properties of 1 acre or greater.	1	Property	\$275.00	\$275.00	\$400.00	\$400.00	\$1,600.00	\$1,600.00
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal									
#2-1	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris	3	Cubic Yards	\$225.00	\$225.00	\$200.00	\$200.00	\$600.00	\$600.00
#2-2	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	1	Unit	\$0.00	\$0.00	\$100.00	\$100.00	\$150.00	\$150.00
#2-3	Removal with lawful disposal of automobile or pickup tires.	1	Tire	\$0.00	\$0.00	\$30.00	\$30.00	\$15.00	\$15.00
#2-4	Removal with lawful disposal of semi-truck or similar large tires.	1	Tire	\$0.00	\$0.00	\$45.00	\$45.00	\$45.00	\$45.00
Tree Trimming and Dead Tree Removal with lawful disposal									
#3-1	Tree Trimming and Dead Tree Removal with lawful disposal.	1	Hour	\$140.00	\$140.00	\$145.00	\$500.00	\$175.00	\$175.00

Bid Summary

58 Bid Requests were issued

3 Bids are listed above

0 NO BIDS were received

55 Bidders did not respond

**CITY OF MIDLAND
SERVICE CONTRACT
On-Call Mowing and Nuisance Abatement
25000011-1**

THIS CONTRACT, effective this 26th day of February 2025, by and between the City of Midland, hereinafter referred to as the "CITY" and Ismael S Gonzalez dba F281 Brush Hog Service, hereinafter referred to as the "COMPANY".

Projected Annual Cost Not to Exceed: \$30,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.
2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.
3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.
4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.
5. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES,**

PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF

THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

- a. defective work not corrected;
- b. completed service report not submitted;
- c. failure of COMPANY to pay subcontractors or suppliers;
- d. damage to other work or CITY's property or equipment; or
- e. default of COMPANY in performance of this Contract.

The term of this agreement shall be for a period of one (1) year commencing on February 26, 2025, and terminating on February 25, 2026 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one (1) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

- a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

- b. have a designated supervisor on the job site at all times work is in progress;
- c. make no changes in the scheduled work without written authorization from CITY;
- e. permit and facilitate inspection of the work in progress by CITY;
- f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;
- g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;
- h. remedy all defects in workmanship which develop within a period of one (1) year from the date of service report acceptance by CITY; and
- i. not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:	City of Midland, Texas
(If mailed)	P. O. Box 1152
	Midland, Texas 79702
(If hand delivered)	300 North Loraine
	Suite 220
	Midland, Texas 79701

To COMPANY. Ismael S Gonzalez dba F281 Brush Hog Service
4001 Dyer Circle
Midland, TX 79707

The above addresses may be changed at any time by providing written notice to the other party.

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

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the “Prompt Pay Act”) does not waive governmental immunity.

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

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

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The

notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

23. **THIRD-PARTY BENEFICIARY:** CITY's approval of this Contract does not create a third-party beneficiary. There is no third-party beneficiary to this Contract. No person or entity who is not a party to this Contract shall have any third-party beneficiary or other rights hereunder.

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

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

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

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

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

on a claims occurred basis (except workers compensation).

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

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

30. **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.

31. To the extent that Sections 2271.002, 2274.002 and 2276.002 of the Texas Government Code (collectively, the “Anti-Boycott Statutes”) apply to this Contract, Company hereby verifies:

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

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

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

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

this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.
THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2025 personally appeared, _____, an officer of Ismael S Gonzalez dba F281 Brush Hog Service, 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 _____, 2025.

Notary Public, State of _____



300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BID NO: 25000011

CLOSING DATE:

February 5, 2025

CLOSING TIME:

2:00 PM

BIDS WILL BE RECEIVED UNTIL 2:00 PM on 2/5/2025 THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: Various properties within the city limits

DESCRIPTION
Obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits.
*Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way.
NOTICE TO BIDDERS: 1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM. 2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER. 3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK. 4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA. 5. PUBLIC INFORMATION: To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter
FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV
NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID. THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.
COMPANY NAME: <u>F281 Brush hog Services</u> ADDRESS: <u>4001 Dyer circle</u> CITY: <u>Midland TX 79707</u> PHONE NO: <u>432-425-3856</u> STATE: <u>TX</u> ZIP: <u>79707</u> EMAIL: <u>ishgonzalez2123@gmail.com</u> DELIVERY CAN BE MADE: AUTHORIZED SIGNATURE: <u>[Signature]</u>

Request for Proposals

RFP 25000011

for
On-Call Mowing & Nuisance Abatement

Proposals for this requirement will be accepted until 2:00 P.M. on February 5, 2025

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

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

SCHEDULE OF EVENTS

RFP 25000011

For

On- Call Mowing & Nuisance Abatement

Event	Date*
RFP Released.....	January 18, 2025
Preproposal Meeting Date.....	January 23, 2025
Cutoff Date for inquiries and clarification.....	January 31, 2025
Proposal Due Date	February 5, 2025
Intended Date for Contract Award.....	February 25, 2025

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as the “the City”) is pleased to invite you to submit a proposal for On-Call Mowing and Nuisance Abatement as specified herein. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

1.6.1. **All information received in response to this RFP will be available to the public except for:**

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. matters involving individual safety as determined by the department.

1.6.2. **In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.**

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

- 1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.
- 1.6.3. **Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.**

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PREPROPOSAL MEETING

A PREPROPOSAL MEETING WILL BE CONDUCTED AT CITY HALL, 300 N LORAIN, MIDLAND, TEXAS IN THE BASEMENT CONFERENCE ROOM ON JANUARY 23, 2025, AT 2:00 PM LOCAL TIME.

1.10. CLARIFICATION/ INTERPRETATION

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

The City of Midland Office of the
Purchasing Agent
PO BOX 1152
Midland, TX 79702

FAX: (432) 685-0523

OR

Email: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Bid Table and Detail Sheet. The Bid Table and Detail Sheet will be used as the primary representation of each offeror's cost and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

- 1.15.1.1. Offerors must submit proposal via Bonfire or one (1) original, hard copy to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.
- 1.15.2. **Each Offeror who submits a proposal represents that:**
 - 1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.
 - 1.15.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.
 - 1.15.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.
- 1.15.3. **The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.**
- 1.15.4. **A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission,** or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.16. RIGHTS RESERVED

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

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

1.17. BONDING REQUIREMENTS

Intentionally Omitted

1.18. OFFEROR INTERVIEW

- 1.18.1. After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation in Midland, Texas to clarify their response or to further define their offer. Oral presentations, if requested, shall be at the offeror's expense.

1.19. SUBCONTRACTING

- 1.19.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.
- 1.19.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document, or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.20. INSURANCE REQUIREMENTS

See Contract or Agreement

1.21. CONTRACTOR'S RESPONSIBILITIES

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

1.22. OFFEROR COMPETITION

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

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

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

- 1.23.1.1. The City will execute a contract with three (3) successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.23.2. Terms and Conditions

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

1.23.3. Exceptions to Contract Terms & Conditions

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

- 1.23.4. **The initial contract(s) term shall be for one (1) year. CITY shall have the right to extend the term of the agreement for one (1) additional one (1) year periods.**

- 1.23.5. **Contract Extension** The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.23.6. Escalation

- 1.23.6.1. Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

- 2.1. **WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS PROPOSAL, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS PROPOSAL. OFFEROR SPECIFICALLY AGREES THAT IF OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS PROPOSAL, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.**
- 2.2. **OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 2.3. **OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.**
- 2.4. **WAIVER:**
- 2.5. **BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**
- 2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- 2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

2.6. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSAL DOCUMENTS AND CONSENTS TO THE PROPOSAL PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS. THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE PROPOSAL AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland desires to obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. The City of Midland offers no guarantee of the extent of abatements during the contract term. The City reserves the right to contract with one or more parties to perform identical services as deemed appropriate. Bidders are not required to provide all services to be contracted by the City.

3.1. SERVICES TO BE FURNISHED

The City will meet with the Contractor prior to the abatement work to determine the scope of the work. The Contractor shall not charge for meeting with City staff. Invoices for any completed work shall include the abated property location, the date work was performed, and the cost for work. Invoices will be turned into the City of Midland Code Enforcement Office within seven business days after completion of work. Required photos, where indicated herein, shall accompany the invoices and failure to submit the proper photos will result in non-payment of the invoice. Payment will be made periodically on approved claims approximately every two weeks. The unit rate agreed upon in the contract constitutes full payment to the Contractor.

3.1.1 CUTTING AND MOWING WEEDS, TALL GRASS, AND BRUSH

3.1.1.1. Description of Services required. The Contractor shall provide necessary cutting and mowing of weeds, tall grass, and/or brush on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community due to weeds, tall grass, or brush. Such work may include, but not be limited to tractor and brush-hog, standard mower, riding mower, or similar work to reduce the weed, tall grass, or brush height; and when necessary, remove up to one cubic yard of debris and/or trash prior to the mowing of the lots. The Contractor shall clean all clippings caused by mowing from the street, curb, and sidewalks. In no event shall the Contractor blow grass clippings into the street or drainage ways. Mowing must be completed within seven business

days from the date of the “Notice to Proceed” is provided to the Contractor designating the specific properties to be mowed, unless a different performance period is mutually agreed to between the Contractor and the City.

- 3.1.1.2. **Classification of Work.** The City has established the following types of properties for these services as set forth below:
- 3.1.1.3. **Mowing services for properties less than 12,000 square feet.** Smaller properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.4. **Mowing services for properties 12,000 square feet and to less than 1 acre.** Properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Larger properties may accommodate or require larger commercial-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.5. **Mowing services for properties of 1 acre or greater.** Properties must be mowed to a height between 2-inches and 6-inches, and may require the usage of tractors, brush hogs, or larger commercial or agricultural-sized mowers for larger properties. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown from streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.

3.2. TRASH, JUNK, REFUSE, AND/ OR DEBRIS REMOVAL

- 3.2.1. **Description of Services Required.** The Contractor shall provide necessary trash, refuse, and/or debris abatement services on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community. Such services shall be inclusive of, but not limited to, generalized clean up through pick-up of trash, litter, cans, bottles, and other garbage, as well as the removal and legal disposal of such items. Further, such work may include removal of old junk items, as designated by the City, including lumber, wood, wire, parts, tires, household debris, etc. and will be specified by the City to the Contractor. All projects shall have “before” and “after” photos. Clean up must be completed within seven days from the date the “Notice to Proceed” is provided to the Contractor designating specific properties to be cleaned up, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.2.2. **Classification of Work.** All equipment used for trash, refuse, and/or debris removal is to be provided by the Contractor, to include but not limit to trucks, loaders, chain saws, etc.
 - 3.2.2.1. **Removal of up to 3 cubic yards of trash, refuse, and/or debris.** Remove and lawfully dispose of up to 3 cubic yards of trash, refuse, and/or debris, excluding tires, refrigerators, or air conditioners (with Freon).
 - 3.2.2.2. **Removal of refrigerators or air conditioner units (with Freon).** Remove and lawfully dispose of refrigerators or air conditioners (with Freon).
 - 3.2.2.3. **Removal of automobile or pick-up truck tires.** Remove and lawfully dispose of automobile or pick-up truck tires.
 - 3.2.2.4. **Removal of semi-truck or similar large tires.** Remove and lawfully dispose of semi-truck or similar large tires.

3.3. TREE TRIMMING AND DEAD TREE REMOVAL

- 3.3.1. **Description of Services Required.** The Contractor shall provide services that include, but not be specifically limited to, trimming the underbrush or limbs of trees and/or shrubs as specified by the City to the Contractor. The Contractor shall clean and remove all cuttings and trimmings caused by the work. All projects shall have “before” and “after” photos. Work must be completed within seven business days from the date the “Notice to Proceed” is provided to the Contractor, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.3.2. **Classification of Work.** All equipment used for tree trimming and dead tree removal is to be provided by the Contractor, to include but not limit to chain saws, ladders, trucks, loaders, etc.
- 3.3.2.1. **Tree trimming and dead tree removal.** Trim trees and/or remove dead trees with lawful disposal.

3.4. PHOTOGRAPHS

- 3.4.1. **Description.** Where the Contractor shall be required to take multiple digital photographs of each work area before and after the work is performed, the photos shall be submitted with each invoice for completed work. Photo submittals may be provided through e-mail or other digital methods. Camera and related costs are the responsibility of the Contractor and should be included in the unit price. No fee shall be paid to the Contractor for the required photos.
- 3.4.2. **Minimum standards**
- 3.4.2.1. All photos shall have the date of abatement clearly indicated by date and time stamp within the photo.
- 3.4.2.2. All photos shall indicate the job address in the saved file name.
- 3.4.2.3. For trash removal jobs, the before photos shall clearly show each area of trash, refuse, and/or debris to be removed in their original location. The after photo shall be taken of the same areas as taken in the before photos. Additionally, photos shall be taken of each load of trash hauled away, along with the number of the load within the photo.
- 3.4.2.4. For all other jobs, the before photos shall clearly show the original condition of the areas to be abated. The after photos shall be taken in the same areas as the before photos

4. SUPPLEMENTAL REQUIREMENTS PLACE UPON CONTRACTOR

The Contractor agrees to abide by the specified supplemental requirements outlined herein as part of any contract (award) extended subsequent to this bid.

4.1. WORKMANSHIP

- 4.1.1. The City will perform inspections during the abatement processes. The work is to conform to those inspection instructions. The Contractor agrees to complete said work in a timely manner.

4.2. LEGAL COMPLIANCE

- 4.2.1. The Contractor shall comply with all federal, state, county and City of Midland ordinances, statutes, rules and regulations governing all aspects of the work.

5. VENDOR QUALIFICATIONS

5.1 INFORMATION VERIFICATION

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

5.2 RIGHT TO REJECT

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

5.3 VENDOR CAPABILITIES

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

5.3.1 References

5.3.1.1 Offeror shall provide a minimum of three (3) references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to fulfil the conditions of the contract. Negative references may be grounds for proposal disqualification.

5.4.1 Vendor Stability

- 5.4.1.1 Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.4.1.2 Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.
- 5.4.1.3 Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.4.1.4 Offerors shall specify how long the company submitting the proposal has been in business doing mowing and nuisance abatement.

6. EVALUATION PROCESS

6.1 EVALUATION PROCEDURE

6.1.1 Committee Actions

6.1.2 The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.

6.1.3 The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek the best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP.

6.1.4 Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any award.

7.1 EVALUATION CRITERIA

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

- 7.1.1 This Contract will be awarded to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland will consider the following criteria:
- 7.1.2 **Manpower/ Staffing Process-** Vendor must provide a detailed response to staffing and personnel that will be providing services. This includes providing information for staff that are qualified to fulfill and abide by specifications and who have shown experience in mowing and nuisance abatement **(25%)**
- 7.1.3 **Price-** Price will be evaluated for fairness and reasonable costs **(35%)**
- 7.1.4 **References-** Vendors shall submit (3) business references, preferably from current customers **(20%)**.
- 7.1.5 **Quality and Program Management Plan-** Vendor must provide approach to performance and quality assurance of services **(20%)**

8. PROPOSAL CONTENTS

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

8.2 THE RFP RESPONSE

8.3 THE BID TABLE

8.4 DETAIL SHEET

8.5 REQUESTED ATTACHMENTS

8.5.1 References

8.5.2 Resumes

8.5.3 Financial Information

8.5.4 Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

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



THE CITY OF MIDLAND

BAFO
DETAIL SHEET
25000011
FOR

On-Call Mowing and Nuisance Abatement

Item	Description	Unit	Flat Fee Unit Cost
Cutting and Mowing Weeds, Tall Grass and Brush. All equipment used for mowing is inclusive, to include but not limit to mowers, brush hog, weed eaters, saw blades, chain saws, loaders, etc.			
1	Mowing services for properties less than 12,000 square feet. Includes up to 1 cubic yard of debris removal.	Property	\$ 150 ⁰⁰
2	Mowing services for properties of 12,000 square feet and to less than 1 acre. Includes up to 1 cubic yard of debris removal.	Property	\$ 200 ⁰⁰
3	Mowing services for properties of 1 acre or greater. Includes up to 1 cubic yard of debris removal.	Property	\$ 275 ⁰⁰
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal. All equipment used for trash/debris removal is inclusive, to include but not limit to trucks, loaders, chainsaws, etc.			
4	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris – excluding tires, refrigerators or air conditioners (with Freon).	3 cubic yards	\$ 225 ⁰⁰
5	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	Unit	\$ No Bid
6	Removal with lawful disposal of automobile or pick-up tires	Tire	\$ No Bid
7	Removal with lawful disposal of semi-truck or similar large tires	Tire	\$ No Bid
Tree Trimming & Dead Tree Removal with lawful disposal. All equipment for tree trimming and dead tree removal is inclusive, to include but not limit to chainsaws, ladders, trucks, loaders, etc.			
8	Tree Trimming and Dead Tree Removal with lawful disposal	Hour	\$ 140 ⁰⁰
9	Cost not to exceed per contract term.		\$30,000.00

VENDOR CONTACT:

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

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

OR FAX: (432) 685-0523
E-mail: purchasing@midlandtexas.gov

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

Award:

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

BID WAIVERS:

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

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST

THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;
2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS;
3. ACCEPTANCE OR REJECTION OF ANY BIDS; OR
4. AWARD OF THE CONTRACT.

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS. THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

F281 Brush Hog Services

Company Name

Authorized Signature
Ismael Gonzalez

Print Above Name

02-06-2025

Date
432-425-3856

Phone

Fax

CITY OF MIDLAND

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

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: F281 Brush hog Services

Local Address (must be within the City limits): 4601 Dyer Circle Midland, TX 79707

1. Is the above address the principal place of business for the business named above? ☒ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? 0
3. Year your business was established in the City of Midland: 2022
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

Reseller Permit Number: _____

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

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

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

☐ Yes ☒ No

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

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

Authorized Signature: [Signature] Date: 02-03-2025

Printed Name and Title: Ismael Gonzalez (owner)

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

F281 Brush hog Service's

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

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

Name of Officer

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

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

☐ Yes

☒ No

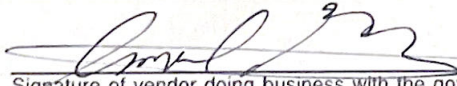
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☒ No

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

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

7 
Signature of vendor doing business with the governmental entity

01-05-2025
Date

References

Barry Williamson
(512) 663-4435

Renee Garcia
(432) 352-3191

Tony Agilar
(432) 813-4097

Ismael Gonzalez

432-425-3856

Midland Tx, 79707 432-425-3856

ishgonzalez123@gmail.com

EXPERIENCE

F281 Brush Hog services, 4001 Dyer cir Midland Tx, 79707- Owner / Operator

March 2022- current

Midland Fire Department, 1500 W. Wall st, Midland Tx, 79701— Firefighter/ Paramedic/ Engineer

Oct 1999 – May 2022 Retired

Permian Cardiology, 400 Rosalind Redfern Grover Parkway Craddick Medical Building, 240 Midland Tx, 79701 — Lab Technician

2006 - 2008

Midland Memorial Hospital, Midland Memorial Hospital, Midland Tx, 79701 — Paramedic Tech

1997 - 2007

Midland College, 3600 N. Garfield st, Midland Tx, 79705 — Paramedics Instructor

1997 - 2005

EDUCATION

Midland College, 3600 N. Garfield st, Midland Tx, 79705 — Paramedic License

Graduated May 1996

Midland College, 3600 N. Garfield st, Midland Tx, 79705 — Texas Firefighters Master's Certificate

Graduated May 1999

SKILLS

- 3 years of operating Tractor, Brush hog, Excavator, and earth moving equipment
- Haz-mat Technician Certificate
- Able to maintain and check firefighting equipment for day to day use
- CPR and ACLS trained

LANGUAGES

- English
- Spanish



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 1

The following is provided as a matter of clarification for all bidders:

The non-mandatory pre-bid meeting has been rescheduled to Wednesday, January 29, 2025, at 10:00 AM in the City Hall Council Chambers 300 N Loraine Midland, Texas 79701.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

Bidder Authorized Signature

02-03-2025

Date



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 2

The following is provided as a matter of clarification for all bidders:

- ❖ The On-Call Mowing service will be provided for properties within the City of Midland, specifically targeting areas such as front yards, side yards, and alleyways. This service is provided for properties that do not meet the city's compliance standards and have received an official notice regarding the violation.
- ❖ Financial statements are intentionally omitted.
- ❖ Prior to the on-call service being provided, Midland Police Department will be notified and aware of the services being provided to ensure proper coordination and communication.
- ❖ If vendor becomes aware of hazardous surroundings such as asbestos, please contact the City of Midland Code Administrator immediately.
- ❖ Please see attached Pre-Bid Sign In Sheet.

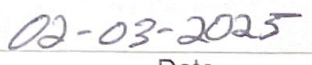
Q1: Would the City of Midland be willing to extend the deadline?

A1: The City of Midland will not be extending the deadline.

Q2: How does the awarded bidder need to invoice?

A2: Invoicing must be itemized by each service provided, including before and after photos, at the time of service.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

	
Bidder Authorized Signature	Date

Generated on Feb 12, 2024 1:22 PM CST - Carolina Jones

**CITY OF MIDLAND
SERVICE CONTRACT
On-Call Mowing and Nuisance Abatement
25000011-2**

THIS CONTRACT, effective this 26th day of February 2025, by and between the City of Midland, hereinafter referred to as the "CITY" and Isfrain Morin Jr. dba M3 Landscape Maintenance & Irrigation, LLC, hereinafter referred to as the "COMPANY".

Projected Annual Cost Not to Exceed: \$30,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.
2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.
3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.
4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.
5. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES,**

PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF

THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

- a. defective work not corrected;
- b. completed service report not submitted;
- c. failure of COMPANY to pay subcontractors or suppliers;
- d. damage to other work or CITY's property or equipment; or
- e. default of COMPANY in performance of this Contract.

The term of this agreement shall be for a period of one (1) year commencing on February 26, 2025, and terminating on February 25, 2026 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one (1) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

- a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

- b. have a designated supervisor on the job site at all times work is in progress;
- c. make no changes in the scheduled work without written authorization from CITY;
- e. permit and facilitate inspection of the work in progress by CITY;
- f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;
- g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;
- h. remedy all defects in workmanship which develop within a period of one (1) year from the date of service report acceptance by CITY; and
- i. not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:	City of Midland, Texas
(If mailed)	P. O. Box 1152
	Midland, Texas 79702
(If hand delivered)	300 North Loraine
	Suite 220
	Midland, Texas 79701

To COMPANY. Isfrain Morin Jr. dba M3 Landscape Maintenance & Irrigation, LLC
PO BOX 80298
Midland, TX 79708

The above addresses may be changed at any time by providing written notice to the other party.

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

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the “Prompt Pay Act”) does not waive governmental immunity.

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

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

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The

notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

23. **THIRD-PARTY BENEFICIARY:** CITY's approval of this Contract does not create a third-party beneficiary. There is no third-party beneficiary to this Contract. No person or entity who is not a party to this Contract shall have any third-party beneficiary or other rights hereunder.

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

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

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

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

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

on a claims occurred basis (except workers compensation).

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

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

30. **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.

31. To the extent that Sections 2271.002, 2274.002 and 2276.002 of the Texas Government Code (collectively, the “Anti-Boycott Statutes”) apply to this Contract, Company hereby verifies:

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

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

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

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

this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.
THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2025 personally appeared, _____, an officer of Isfrain Morin Jr. dba M3 Landscape Maintenance & Irrigation, LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2025.

Notary Public, State of _____



300 NORTH LORRAINE
P. O. BOX 1152
MIDLAND, TX 79702

BID NO: 25000011

CLOSING DATE:

February 5, 2025

CLOSING TIME:

2:00 PM

BIDS WILL BE RECEIVED UNTIL **2:00 PM** on **2/5/2025** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: **Various properties within the city limits**

DESCRIPTION	
Obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits.	
*Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way.	
NOTICE TO BIDDERS: 1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM. 2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER. 3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK. 4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA. 5. PUBLIC INFORMATION: To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter	
FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV	
NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID. THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.	
COMPANY NAME: M3 Landscape Maintenance & Irrigation, LLC ADDRESS: 1511 W Montgomery Ave CITY: Midland STATE: TX ZIP: 79701 PHONE NO: 432-218-6652 _dar@m3landscapes.com DELIVERY CAN BE MADE: AUTHORIZED SIGNATURE:	

Request for Proposals

RFP 25000011

for
On-Call Mowing & Nuisance Abatement

Proposals for this requirement will be accepted until 2:00 P.M. on February 5, 2025

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

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

SCHEDULE OF EVENTS

RFP 25000011

For

On- Call Mowing & Nuisance Abatement

Event	Date*
RFP Released.....	January 18, 2025
Preproposal Meeting Date.....	January 23, 2025
Cutoff Date for inquiries and clarification.....	January 31, 2025
Proposal Due Date	February 5, 2025
Intended Date for Contract Award.....	February 25, 2025

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as the “the City”) is pleased to invite you to submit a proposal for On-Call Mowing and Nuisance Abatement as specified herein. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

1.6.1. **All information received in response to this RFP will be available to the public except for:**

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. matters involving individual safety as determined by the department.

1.6.2. **In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.**

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

- 1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.
- 1.6.3. **Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.**

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PREPROPOSAL MEETING

A PREPROPOSAL MEETING WILL BE CONDUCTED AT CITY HALL, 300 N LORAIN, MIDLAND, TEXAS IN THE BASEMENT CONFERENCE ROOM ON JANUARY 23, 2025, AT 2:00 PM LOCAL TIME.

1.10. CLARIFICATION/ INTERPRETATION

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

The City of Midland Office of the
Purchasing Agent
PO BOX 1152
Midland, TX 79702

OR

FAX: (432) 685-0523

Email: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Bid Table and Detail Sheet. The Bid Table and Detail Sheet will be used as the primary representation of each offeror's cost and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

- 1.15.1.1. Offerors must submit proposal via Bonfire or one (1) original, hard copy to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.
- 1.15.2. **Each Offeror who submits a proposal represents that:**
 - 1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.
 - 1.15.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.
 - 1.15.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.
- 1.15.3. **The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.**
- 1.15.4. **A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission,** or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.16. RIGHTS RESERVED

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

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

1.17. BONDING REQUIREMENTS

Intentionally Omitted

1.18. OFFEROR INTERVIEW

- 1.18.1. After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation in Midland, Texas to clarify their response or to further define their offer. Oral presentations, if requested, shall be at the offeror's expense.

1.19. SUBCONTRACTING

- 1.19.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.
- 1.19.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document, or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.20. INSURANCE REQUIREMENTS

See Contract or Agreement

1.21. CONTRACTOR'S RESPONSIBILITIES

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

1.22. OFFEROR COMPETITION

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

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

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

- 1.23.1.1. The City will execute a contract with three (3) successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.23.2. Terms and Conditions

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

1.23.3. Exceptions to Contract Terms & Conditions

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

- 1.23.4. **The initial contract(s) term shall be for one (1) year. CITY shall have the right to extend the term of the agreement for one (1) additional one (1) year periods.**

- 1.23.5. **Contract Extension** The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.23.6. Escalation

- 1.23.6.1. Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

- 2.1. **WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS PROPOSAL, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS PROPOSAL. OFFEROR SPECIFICALLY AGREES THAT IF OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS PROPOSAL, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.**
- 2.2. **OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 2.3. **OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.**
- 2.4. **WAIVER:**
- 2.5. **BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**
- 2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- 2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

2.6. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSAL DOCUMENTS AND CONSENTS TO THE PROPOSAL PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS. THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE PROPOSAL AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland desires to obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. The City of Midland offers no guarantee of the extent of abatements during the contract term. The City reserves the right to contract with one or more parties to perform identical services as deemed appropriate. Bidders are not required to provide all services to be contracted by the City.

3.1. SERVICES TO BE FURNISHED

The City will meet with the Contractor prior to the abatement work to determine the scope of the work. The Contractor shall not charge for meeting with City staff. Invoices for any completed work shall include the abated property location, the date work was performed, and the cost for work. Invoices will be turned into the City of Midland Code Enforcement Office within seven business days after completion of work. Required photos, where indicated herein, shall accompany the invoices and failure to submit the proper photos will result in non-payment of the invoice. Payment will be made periodically on approved claims approximately every two weeks. The unit rate agreed upon in the contract constitutes full payment to the Contractor.

3.1.1 CUTTING AND MOWING WEEDS, TALL GRASS, AND BRUSH

3.1.1.1. Description of Services required. The Contractor shall provide necessary cutting and mowing of weeds, tall grass, and/or brush on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community due to weeds, tall grass, or brush. Such work may include, but not be limited to tractor and brush-hog, standard mower, riding mower, or similar work to reduce the weed, tall grass, or brush height; and when necessary, remove up to one cubic yard of debris and/or trash prior to the mowing of the lots. The Contractor shall clean all clippings caused by mowing from the street, curb, and sidewalks. In no event shall the Contractor blow grass clippings into the street or drainage ways. Mowing must be completed within seven business

days from the date of the “Notice to Proceed” is provided to the Contractor designating the specific properties to be mowed, unless a different performance period is mutually agreed to between the Contractor and the City.

- 3.1.1.2. **Classification of Work.** The City has established the following types of properties for these services as set forth below:
- 3.1.1.3. **Mowing services for properties less than 12,000 square feet.** Smaller properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.4. **Mowing services for properties 12,000 square feet and to less than 1 acre.** Properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Larger properties may accommodate or require larger commercial-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.5. **Mowing services for properties of 1 acre or greater.** Properties must be mowed to a height between 2-inches and 6-inches, and may require the usage of tractors, brush hogs, or larger commercial or agricultural-sized mowers for larger properties. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown from streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.

3.2. TRASH, JUNK, REFUSE, AND/ OR DEBRIS REMOVAL

- 3.2.1. **Description of Services Required.** The Contractor shall provide necessary trash, refuse, and/or debris abatement services on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community. Such services shall be inclusive of, but not limited to, generalized clean up through pick-up of trash, litter, cans, bottles, and other garbage, as well as the removal and legal disposal of such items. Further, such work may include removal of old junk items, as designated by the City, including lumber, wood, wire, parts, tires, household debris, etc. and will be specified by the City to the Contractor. All projects shall have “before” and “after” photos. Clean up must be completed within seven days from the date the “Notice to Proceed” is provided to the Contractor designating specific properties to be cleaned up, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.2.2. **Classification of Work.** All equipment used for trash, refuse, and/or debris removal is to be provided by the Contractor, to include but not limit to trucks, loaders, chain saws, etc.
 - 3.2.2.1. **Removal of up to 3 cubic yards of trash, refuse, and/or debris.** Remove and lawfully dispose of up to 3 cubic yards of trash, refuse, and/or debris, excluding tires, refrigerators, or air conditioners (with Freon).
 - 3.2.2.2. **Removal of refrigerators or air conditioner units (with Freon).** Remove and lawfully dispose of refrigerators or air conditioners (with Freon).
 - 3.2.2.3. **Removal of automobile or pick-up truck tires.** Remove and lawfully dispose of automobile or pick-up truck tires.
 - 3.2.2.4. **Removal of semi-truck or similar large tires.** Remove and lawfully dispose of semi-truck or similar large tires.

3.3. TREE TRIMMING AND DEAD TREE REMOVAL

- 3.3.1. **Description of Services Required.** The Contractor shall provide services that include, but not be specifically limited to, trimming the underbrush or limbs of trees and/or shrubs as specified by the City to the Contractor. The Contractor shall clean and remove all cuttings and trimmings caused by the work. All projects shall have “before” and “after” photos. Work must be completed within seven business days from the date the “Notice to Proceed” is provided to the Contractor, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.3.2. **Classification of Work.** All equipment used for tree trimming and dead tree removal is to be provided by the Contractor, to include but not limit to chain saws, ladders, trucks, loaders, etc.
- 3.3.2.1. **Tree trimming and dead tree removal.** Trim trees and/or remove dead trees with lawful disposal.

3.4. PHOTOGRAPHS

- 3.4.1. **Description.** Where the Contractor shall be required to take multiple digital photographs of each work area before and after the work is performed, the photos shall be submitted with each invoice for completed work. Photo submittals may be provided through e-mail or other digital methods. Camera and related costs are the responsibility of the Contractor and should be included in the unit price. No fee shall be paid to the Contractor for the required photos.
- 3.4.2. **Minimum standards**
- 3.4.2.1. All photos shall have the date of abatement clearly indicated by date and time stamp within the photo.
- 3.4.2.2. All photos shall indicate the job address in the saved file name.
- 3.4.2.3. For trash removal jobs, the before photos shall clearly show each area of trash, refuse, and/or debris to be removed in their original location. The after photo shall be taken of the same areas as taken in the before photos. Additionally, photos shall be taken of each load of trash hauled away, along with the number of the load within the photo.
- 3.4.2.4. For all other jobs, the before photos shall clearly show the original condition of the areas to be abated. The after photos shall be taken in the same areas as the before photos

4. SUPPLEMENTAL REQUIREMENTS PLACE UPON CONTRACTOR

The Contractor agrees to abide by the specified supplemental requirements outlined herein as part of any contract (award) extended subsequent to this bid.

4.1. WORKMANSHIP

- 4.1.1. The City will perform inspections during the abatement processes. The work is to conform to those inspection instructions. The Contractor agrees to complete said work in a timely manner.

4.2. LEGAL COMPLIANCE

- 4.2.1. The Contractor shall comply with all federal, state, county and City of Midland ordinances, statutes, rules and regulations governing all aspects of the work.

5. VENDOR QUALIFICATIONS

5.1 INFORMATION VERIFICATION

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

5.2 RIGHT TO REJECT

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

5.3 VENDOR CAPABILITIES

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

5.3.1 References

5.3.1.1 Offeror shall provide a minimum of three (3) references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to fulfil the conditions of the contract. Negative references may be grounds for proposal disqualification.

5.4.1 Vendor Stability

- 5.4.1.1 Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.4.1.2 Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.
- 5.4.1.3 Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.4.1.4 Offerors shall specify how long the company submitting the proposal has been in business doing mowing and nuisance abatement.

6. EVALUATION PROCESS

6.1 EVALUATION PROCEDURE

6.1.1 Committee Actions

6.1.2 The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.

6.1.3 The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek the best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP.

6.1.4 Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any award.

7.1 EVALUATION CRITERIA

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

- 7.1.1 This Contract will be awarded to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland will consider the following criteria:
- 7.1.2 **Manpower/ Staffing Process-** Vendor must provide a detailed response to staffing and personnel that will be providing services. This includes providing information for staff that are qualified to fulfill and abide by specifications and who have shown experience in mowing and nuisance abatement **(25%)**
- 7.1.3 **Price-** Price will be evaluated for fairness and reasonable costs **(35%)**
- 7.1.4 **References-** Vendors shall submit (3) business references, preferably from current customers **(20%)**.
- 7.1.5 **Quality and Program Management Plan-** Vendor must provide approach to performance and quality assurance of services **(20%)**

8. PROPOSAL CONTENTS

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

8.2 THE RFP RESPONSE

8.3 THE BID TABLE

8.4 DETAIL SHEET

8.5 REQUESTED ATTACHMENTS

8.5.1 References

8.5.2 Resumes

8.5.3 Financial Information

8.5.4 Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

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



THE CITY OF MIDLAND

BAFO
DETAIL SHEET
25000011
FOR

On-Call Mowing and Nuisance Abatement

Item	Description	Unit	Flat Fee Unit Cost
Cutting and Mowing Weeds, Tall Grass and Brush. All equipment used for mowing is inclusive, to include but not limit to mowers, brush hog, weed eaters, saw blades, chain saws, loaders, etc.			
1	Mowing services for properties less than 12,000 square feet. Includes up to 1 cubic yard of debris removal.	Property	\$ 400.00
2	Mowing services for properties of 12,000 square feet and to less than 1 acre. Includes up to 1 cubic yard of debris removal.	Property	\$ \$800.00
3	Mowing services for properties of 1 acre or greater. Includes up to 1 cubic yard of debris removal.	Property	\$ 1,600.00
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal. All equipment used for trash/debris removal is inclusive, to include but not limit to trucks, loaders, chainsaws, etc.			
4	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris – excluding tires, refrigerators or air conditioners (with Freon).	3 cubic yards	\$ 600.00
5	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	Unit	\$ 150.00
6	Removal with lawful disposal of automobile or pick-up tires	Tire	\$ 15.00
7	Removal with lawful disposal of semi-truck or similar large tires	Tire	\$ 45.00
Tree Trimming & Dead Tree Removal with lawful disposal. All equipment for tree trimming and dead tree removal is inclusive, to include but not limit to chainsaws, ladders, trucks, loaders, etc.			
8	Tree Trimming and Dead Tree Removal with lawful disposal	Hour	\$ 175.00
9	Cost not to exceed per contract term.		\$30,000.00

VENDOR CONTACT:

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

The City Of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152 E-mail: purchasing@midlandtexas.gov
Midland, TX 79702

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

Award:

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

BID WAIVERS:

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

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST

THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;
2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS;
3. ACCEPTANCE OR REJECTION OF ANY BIDS; OR
4. AWARD OF THE CONTRACT.

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS. THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

M3 Landscaping & Maintenance & Irrigation, LLC

2/6/2025

Company Name

David Ramirez

Authorized Signature

David Ramirez

Print Above Name

Date

432-218-6652

Phone

N/A

Fax

CITY OF MIDLAND

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

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: M3 Landscape Maintenance & Irrigation, LLC

Local Address (must be within the City limits): 1511 W Montgomery Ave, Midland, TX 79707 (PO Box 80298)

1. Is the above address the principal place of business for the business named above? ☒ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? 26
3. Year your business was established in the City of Midland: 2005
4. If you collect sales tax for ANY class of customer, provide the following Reseller information: Reseller Permit

Number: N/A

Company Name and Address (as it appears on permit): M3 Landscape Maintenance & Irrigation, LLC
PO Box 80298, Midland, TX 79708

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

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

☒ Yes

☐ No

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

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

Authorized Signature: David Ramirez Date: 1/30/2025

Printed Name and Title: David Ramirez, CEO

Texas sales permit: 3-20595-9489-8

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

M3 Landscape Maintenance & Irrigation, LLC

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

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

None

Name of Officer

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

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

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

7 David Ramirez
Signature of vendor doing business with the governmental entity

1/30/2025
Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

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

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

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

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

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

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

M3 Landscape and Irrigation, LLC

References:

Eddie Melendez
Director of Facilities/Operations
Midland County
Phone: [432-257-5027](tel:432-257-5027)
Email: emelendez@mccounty.com

Kristy Engeldahl
Purchasing Agent
Midland County
Phone: 432-688-4870
Fax: 432-688-4914
Email: PUR103@co.midland.tx.us

James Eaden
MISD Grounds Foreman
Midland Independent School District/ School Plant Services
432-240-1600
Email: james.eaden@midlandisd.net

Liza Granado
Contract Manager
City of Midland, Parks & Recreation
432-685-7356
Email: lgranado@midlandtexas.gov

Kristen Henley
ReNew Apartment Office Manager/Realtor
Sagewood Condominiums
432-689-7770 Ext 104
Email: kristin@davisandcotx.com

Bill Vallie
Sunset Memorial Gardens & Funeral Home
Odessa, TX 79762
432-362-2331
Email: vallie@sunsetodessa.com

M3 Landscape Maintenance & Irrigation, LLC will provide more upon request.

M3 Landscape Maintenance & Irrigation, LLC

Organization / Staffing

February 2025

ADMINISTRATIVE STAFF

NAME	TITLE
Frank Morin	Owner
Ashley B. Morin	Owner
David A. Ramirez	CEO
Juan Vasquez	General Manager
Lee Spacek	Mechanic
Tristan Esposito	Account Manager
Pablo Diaz	I.T.
Codey J. Ray	Mechanic
Mike Ramirez	Account Manager

AXILLARY STAFF:

NAME	POSITION
Yoan P. Avila	Crew Leader
Lauro G. Brito	Crew Leader
Ruben Diaz	Crew Leader
Miguel Angel Paez Avila	Crew
Adolfo Regalado	Crew
Cesar Ruiz	Crew
Luis F. Saavedra Vega	Crew
Jostin U. Sanchez	Crew Leader
Regino Tamayo Escolona	Crew Leader
Travis Lamont Ross	Crew
Mario A. Zamudio	Crew Leader
Luis Zamudio	Crew Leader
Yasel Perez Acanda	Crew
Johnny Gatlin	Crew Leader
Diomar Milian Suarez	Crew
Salvador Pozo Ojeda	Crew
Julio Alberto Crespo Oliva	Crew
Ibrain Fernandez Verdecia	Crew
Yadrian Zomora Lapinet	Crew
Yunior Mojena Mojena	Crew
Luis Ceballos	Crew
Ayden Mallow	Crew
Jesus Capote	Crew
Aledis Fabre Romero	Crew
Regis Escalona Tamayo	Crew
Alberto Paez	Crew

Adrian Batista Calzadilla	Crew
Erlis Sosa Romero	Crew
Walter Quindo	Crew
Bryan Kelly Perley	Crew
Alejandro Hernandez	Crew



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 1

The following is provided as a matter of clarification for all bidders:

The non-mandatory pre-bid meeting has been rescheduled to Wednesday, January 29, 2025, at 10:00 AM in the City Hall Council Chambers 300 N Loraine Midland, Texas 79701.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

David Ramirez

Bidder Authorized Signature

1/4/2025

Date



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 2

The following is provided as a matter of clarification for all bidders:

- ❖ **The On-Call Mowing service will be provided for properties within the City of Midland, specifically targeting areas such as front yards, side yards, and alleyways. This service is provided for properties that do not meet the city's compliance standards and have received an official notice regarding the violation.**
- ❖ **Financial statements are intentionally omitted.**
- ❖ **Prior to the on-call service being provided, Midland Police Department will be notified and aware of the services being provided to ensure proper coordination and communication.**
- ❖ **If vendor becomes aware of hazardous surroundings such as asbestos, please contact the City of Midland Code Administrator immediately.**
- ❖ **Please see attached Pre-Bid Sign In Sheet.**

Q1: Would the City of Midland be willing to extend the deadline?

A1: The City of Midland will not be extending the deadline.

Q2: How does the awarded bidder need to invoice?

A2: Invoicing must be itemized by each service provided, including before and after photos, at the time of service.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

David Ramirez

Bidder Authorized Signature

2/4/2025

Date

**CITY OF MIDLAND
SERVICE CONTRACT
On-Call Mowing and Nuisance Abatement
25000011-3**

THIS CONTRACT, effective this 26th day of February 2025, by and between the City of Midland, hereinafter referred to as the "CITY" and Deborah Adeloye dba Ivy Gaze LLC, hereinafter referred to as the "COMPANY".

Projected Annual Cost Not to Exceed: \$30,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.
2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.
3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.
4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.
5. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES,**

PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF

THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

- a. defective work not corrected;
- b. completed service report not submitted;
- c. failure of COMPANY to pay subcontractors or suppliers;
- d. damage to other work or CITY's property or equipment; or
- e. default of COMPANY in performance of this Contract.

The term of this agreement shall be for a period of one (1) year commencing on February 26, 2025, and terminating on February 25, 2026 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one (1) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

- a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

- b. have a designated supervisor on the job site at all times work is in progress;
- c. make no changes in the scheduled work without written authorization from CITY;
- e. permit and facilitate inspection of the work in progress by CITY;
- f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;
- g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;
- h. remedy all defects in workmanship which develop within a period of one (1) year from the date of service report acceptance by CITY; and
- i. not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:	City of Midland, Texas
(If mailed)	P. O. Box 1152
	Midland, Texas 79702
(If hand delivered)	300 North Loraine
	Suite 220
	Midland, Texas 79701

To COMPANY. Deborah Adeloye dba Ivy Gaze LLC
110 W Randoll Rd
Arlington, Texas 76011

The above addresses may be changed at any time by providing written notice to the other party.

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

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the “Prompt Pay Act”) does not waive governmental immunity.

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

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

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

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

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The

notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

23. **THIRD-PARTY BENEFICIARY:** CITY's approval of this Contract does not create a third-party beneficiary. There is no third-party beneficiary to this Contract. No person or entity who is not a party to this Contract shall have any third-party beneficiary or other rights hereunder.

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

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

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

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

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

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

29. **INSURANCE**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

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

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

on a claims occurred basis (except workers compensation).

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

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

30. **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.

31. To the extent that Sections 2271.002, 2274.002 and 2276.002 of the Texas Government Code (collectively, the “Anti-Boycott Statutes”) apply to this Contract, Company hereby verifies:

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

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

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

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

this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.
THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2025 personally appeared, _____, an officer of Deborah Adeloye dba Ivy Gaze LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2025.

Notary Public, State of _____



300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BID NO: 25000011

CLOSING DATE:

February 5, 2025

CLOSING TIME:

2:00 PM

BIDS WILL BE RECEIVED UNTIL **2:00 PM** on **2/5/2025** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: **Various properties within the city limits**

DESCRIPTION	
Obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits. *Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way.	
NOTICE TO BIDDERS: 1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM. 2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER. 3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK. 4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA. 5. PUBLIC INFORMATION: To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter	
FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV	
NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID. THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.	
Ivy Gaze LLC COMPANY NAME: _____ ADDRESS: _____ 110 W.RANDOL MILL RD, ARLINGTON, TEXAS CITY: _____ ARLINGTON _____ TEXAS _____ 76011 STATE: _____ ZIP _____ PHONE NO: _____ 6822500650 _____ EMAIL: _____ dadeloye@ivygaze.com	

3-5 DAYS

DELIVERY CAN BE MADE: _____

PACKET
AUTHORIZED SIGNATURE: _____

5.95

February 25, 2025

Request for Proposals

RFP 25000011

for
On-Call Mowing & Nuisance Abatement

Proposals for this requirement will be accepted until 2:00 P.M. on February 5, 2025

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

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

SCHEDULE OF EVENTS

RFP 25000011

For

On- Call Mowing & Nuisance Abatement

Event	Date*
RFP Released.....	January 18, 2025
Preproposal Meeting Date.....	January 23, 2025
Cutoff Date for inquiries and clarification.....	January 31, 2025
Proposal Due Date	February 5, 2025
Intended Date for Contract Award.....	February 25, 2025

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as the “the City”) is pleased to invite you to submit a proposal for On-Call Mowing and Nuisance Abatement as specified herein. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

1.6.1. **All information received in response to this RFP will be available to the public except for:**

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. matters involving individual safety as determined by the department.

1.6.2. **In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.**

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PREPROPOSAL MEETING

A PREPROPOSAL MEETING WILL BE CONDUCTED AT CITY HALL, 300 N LORAIN, MIDLAND, TEXAS IN THE BASEMENT CONFERENCE ROOM ON JANUARY 23, 2025, AT 2:00 PM LOCAL TIME.

1.10. CLARIFICATION/ INTERPRETATION

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

The City of Midland Office of the
Purchasing Agent
PO BOX 1152
Midland, TX 79702

FAX: (432) 685-0523

OR

Email: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Bid Table and Detail Sheet. The Bid Table and Detail Sheet will be used as the primary representation of each offeror's cost and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

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

1.15.2. Each Offeror who submits a proposal represents that:

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

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

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

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

1.15.4. **A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission,** or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.16. RIGHTS RESERVED

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

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

1.17. BONDING REQUIREMENTS

Intentionally Omitted

1.18. OFFEROR INTERVIEW

- 1.18.1. After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation in Midland, Texas to clarify their response or to further define their offer. Oral presentations, if requested, shall be at the offeror's expense.

1.19. SUBCONTRACTING

- 1.19.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.
- 1.19.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document, or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.20. INSURANCE REQUIREMENTS

See Contract or Agreement

1.21. CONTRACTOR'S RESPONSIBILITIES

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

1.22. OFFEROR COMPETITION

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

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

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

- 1.23.1.1. The City will execute a contract with three (3) successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.23.2. Terms and Conditions

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

1.23.3. Exceptions to Contract Terms & Conditions

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

- 1.23.4. **The initial contract(s) term shall be for one (1) year. CITY shall have the right to extend the term of the agreement for one (1) additional one (1) year periods.**

- 1.23.5. **Contract Extension** The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.23.6. Escalation

- 1.23.6.1. Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

- 2.1. **WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS PROPOSAL, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS PROPOSAL. OFFEROR SPECIFICALLY AGREES THAT IF OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS PROPOSAL, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.**
- 2.2. **OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 2.3. **OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.**
- 2.4. **WAIVER:**
- 2.5. **BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**
- 2.5.1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- 2.5.2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE**

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

2.6. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSAL DOCUMENTS AND CONSENTS TO THE PROPOSAL PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS. THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE PROPOSAL AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland desires to obtain qualified contractors interested in providing mowing and other clean-up services related to nuisance abatement on properties located within the city limits. Properties to be mowed will not include properties owned by the City of Midland, Union Pacific, or any rights-of-way. The City of Midland offers no guarantee of the extent of abatements during the contract term. The City reserves the right to contract with one or more parties to perform identical services as deemed appropriate. Bidders are not required to provide all services to be contracted by the City.

3.1. SERVICES TO BE FURNISHED

The City will meet with the Contractor prior to the abatement work to determine the scope of the work. The Contractor shall not charge for meeting with City staff. Invoices for any completed work shall include the abated property location, the date work was performed, and the cost for work. Invoices will be turned into the City of Midland Code Enforcement Office within seven business days after completion of work. Required photos, where indicated herein, shall accompany the invoices and failure to submit the proper photos will result in non-payment of the invoice. Payment will be made periodically on approved claims approximately every two weeks. The unit rate agreed upon in the contract constitutes full payment to the Contractor.

3.1.1 CUTTING AND MOWING WEEDS, TALL GRASS, AND BRUSH

3.1.1.1. Description of Services required. The Contractor shall provide necessary cutting and mowing of weeds, tall grass, and/or brush on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community due to weeds, tall grass, or brush. Such work may include, but not be limited to tractor and brush-hog, standard mower, riding mower, or similar work to reduce the weed, tall grass, or brush height; and when necessary, remove up to one cubic yard of debris and/or trash prior to the mowing of the lots. The Contractor shall clean all clippings caused by mowing from the street, curb, and sidewalks. In no event shall the Contractor blow grass clippings into the street or drainage ways. Mowing must be completed within seven business

days from the date of the “Notice to Proceed” is provided to the Contractor designating the specific properties to be mowed, unless a different performance period is mutually agreed to between the Contractor and the City.

- 3.1.1.2. **Classification of Work.** The City has established the following types of properties for these services as set forth below:
- 3.1.1.3. **Mowing services for properties less than 12,000 square feet.** Smaller properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.4. **Mowing services for properties 12,000 square feet and to less than 1 acre.** Properties may include fenced yards and/or small yards requiring the usage of residential-sized lawn mowers. Larger properties may accommodate or require larger commercial-sized lawn mowers. Yards must be mowed to a height between 2 inches and 4 inches and weed eat around buildings and fences. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown off of streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.
- 3.1.1.5. **Mowing services for properties of 1 acre or greater.** Properties must be mowed to a height between 2-inches and 6-inches, and may require the usage of tractors, brush hogs, or larger commercial or agricultural-sized mowers for larger properties. All grass clippings are to be spread evenly over the lot or removed from lot if excessive. Grass clippings must be blown from streets, sidewalks, driveways, or other paved surfaces. Mowing and cutting services will include up to 1 cubic yard of debris removal.

3.2. TRASH, JUNK, REFUSE, AND/ OR DEBRIS REMOVAL

- 3.2.1. **Description of Services Required.** The Contractor shall provide necessary trash, refuse, and/or debris abatement services on properties designated by the City which have been determined to be nuisance properties in need of abatement as a result of the health hazards posed to the community. Such services shall be inclusive of, but not limited to, generalized clean up through pick-up of trash, litter, cans, bottles, and other garbage, as well as the removal and legal disposal of such items. Further, such work may include removal of old junk items, as designated by the City, including lumber, wood, wire, parts, tires, household debris, etc. and will be specified by the City to the Contractor. All projects shall have “before” and “after” photos. Clean up must be completed within seven days from the date the “Notice to Proceed” is provided to the Contractor designating specific properties to be cleaned up, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.2.2. **Classification of Work.** All equipment used for trash, refuse, and/or debris removal is to be provided by the Contractor, to include but not limit to trucks, loaders, chain saws, etc.
 - 3.2.2.1. **Removal of up to 3 cubic yards of trash, refuse, and/or debris.** Remove and lawfully dispose of up to 3 cubic yards of trash, refuse, and/or debris, excluding tires, refrigerators, or air conditioners (with Freon).
 - 3.2.2.2. **Removal of refrigerators or air conditioner units (with Freon).** Remove and lawfully dispose of refrigerators or air conditioners (with Freon).
 - 3.2.2.3. **Removal of automobile or pick-up truck tires.** Remove and lawfully dispose of automobile or pick-up truck tires.
 - 3.2.2.4. **Removal of semi-truck or similar large tires.** Remove and lawfully dispose of semi-truck or similar large tires.

3.3. TREE TRIMMING AND DEAD TREE REMOVAL

- 3.3.1. **Description of Services Required.** The Contractor shall provide services that include, but not be specifically limited to, trimming the underbrush or limbs of trees and/or shrubs as specified by the City to the Contractor. The Contractor shall clean and remove all cuttings and trimmings caused by the work. All projects shall have “before” and “after” photos. Work must be completed within seven business days from the date the “Notice to Proceed” is provided to the Contractor, unless a different performance period is mutually agreed to between the Contractor and the City.
- 3.3.2. **Classification of Work.** All equipment used for tree trimming and dead tree removal is to be provided by the Contractor, to include but not limit to chain saws, ladders, trucks, loaders, etc.
- 3.3.2.1. **Tree trimming and dead tree removal.** Trim trees and/or remove dead trees with lawful disposal.

3.4. PHOTOGRAPHS

- 3.4.1. **Description.** Where the Contractor shall be required to take multiple digital photographs of each work area before and after the work is performed, the photos shall be submitted with each invoice for completed work. Photo submittals may be provided through e-mail or other digital methods. Camera and related costs are the responsibility of the Contractor and should be included in the unit price. No fee shall be paid to the Contractor for the required photos.
- 3.4.2. **Minimum standards**
- 3.4.2.1. All photos shall have the date of abatement clearly indicated by date and time stamp within the photo.
- 3.4.2.2. All photos shall indicate the job address in the saved file name.
- 3.4.2.3. For trash removal jobs, the before photos shall clearly show each area of trash, refuse, and/or debris to be removed in their original location. The after photo shall be taken of the same areas as taken in the before photos. Additionally, photos shall be taken of each load of trash hauled away, along with the number of the load within the photo.
- 3.4.2.4. For all other jobs, the before photos shall clearly show the original condition of the areas to be abated. The after photos shall be taken in the same areas as the before photos

4. SUPPLEMENTAL REQUIREMENTS PLACE UPON CONTRACTOR

The Contractor agrees to abide by the specified supplemental requirements outlined herein as part of any contract (award) extended subsequent to this bid.

4.1. WORKMANSHIP

- 4.1.1. The City will perform inspections during the abatement processes. The work is to conform to those inspection instructions. The Contractor agrees to complete said work in a timely manner.

4.2. LEGAL COMPLIANCE

- 4.2.1. The Contractor shall comply with all federal, state, county and City of Midland ordinances, statutes, rules and regulations governing all aspects of the work.

5. VENDOR QUALIFICATIONS

5.1 INFORMATION VERIFICATION

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

5.2 RIGHT TO REJECT

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

5.3 VENDOR CAPABILITIES

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

5.3.1 References

5.3.1.1 Offeror shall provide a minimum of three (3) references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to fulfil the conditions of the contract. Negative references may be grounds for proposal disqualification.

5.4.1 Vendor Stability

- 5.4.1.1 Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.4.1.2 Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.
- 5.4.1.3 Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.4.1.4 Offerors shall specify how long the company submitting the proposal has been in business doing mowing and nuisance abatement.

6. EVALUATION PROCESS

6.1 EVALUATION PROCEDURE

6.1.1 Committee Actions

6.1.2 The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.

6.1.3 The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek the best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP.

6.1.4 Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any award.

7.1 EVALUATION CRITERIA

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

- 7.1.1 This Contract will be awarded to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland will consider the following criteria:
- 7.1.2 **Manpower/ Staffing Process-** Vendor must provide a detailed response to staffing and personnel that will be providing services. This includes providing information for staff that are qualified to fulfill and abide by specifications and who have shown experience in mowing and nuisance abatement **(25%)**
- 7.1.3 **Price-** Price will be evaluated for fairness and reasonable costs **(35%)**
- 7.1.4 **References-** Vendors shall submit (3) business references, preferably from current customers **(20%)**.
- 7.1.5 **Quality and Program Management Plan-** Vendor must provide approach to performance and quality assurance of services **(20%)**

8. PROPOSAL CONTENTS

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

8.2 THE RFP RESPONSE

8.3 THE BID TABLE

8.4 DETAIL SHEET

8.5 REQUESTED ATTACHMENTS

8.5.1 References

8.5.2 Resumes

8.5.3 Financial Information

8.5.4 Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

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



THE CITY OF MIDLAND

BAFO
DETAIL SHEET
25000011
FOR

On-Call Mowing and Nuisance Abatement

Item	Description	Unit	Flat Fee Unit Cost
Cutting and Mowing Weeds, Tall Grass and Brush. All equipment used for mowing is inclusive, to include but not limit to mowers, brush hog, weed eaters, saw blades, chain saws, loaders, etc.			
1	Mowing services for properties less than 12,000 square feet. Includes up to 1 cubic yard of debris removal.	Property	\$ 100
2	Mowing services for properties of 12,000 square feet and to less than 1 acre. Includes up to 1 cubic yard of debris removal.	Property	\$200
3	Mowing services for properties of 1 acre or greater. Includes up to 1 cubic yard of debris removal.	Property	\$400
Trash, Junk, Refuse, and/or Debris Removal with lawful disposal. All equipment used for trash/debris removal is inclusive, to include but not limit to trucks, loaders, chainsaws, etc.			
4	Removal with lawful disposal of 3 cubic yards of Trash, Junk, Refuse, and/or Debris – excluding tires, refrigerators or air conditioners (with Freon).	3 cubic yards	\$200
5	Removal with lawful disposal of refrigerators or air conditioner units (with Freon)	Unit	\$100
6	Removal with lawful disposal of automobile or pick-up tires	Tire	\$30
7	Removal with lawful disposal of semi-truck or similar large tires	Tire	\$45
Tree Trimming & Dead Tree Removal with lawful disposal. All equipment for tree trimming and dead tree removal is inclusive, to include but not limit to chainsaws, ladders, trucks, loaders, etc.			
8	Tree Trimming and Dead Tree Removal with lawful disposal	Hour	\$150
9	Cost not to exceed per contract term.		\$30,000.00

VENDOR CONTACT:

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

The City Of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152 E-mail: purchasing@midlandtexas.gov
Midland, TX 79702

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

Award:

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

BID WAIVERS:

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

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST

THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

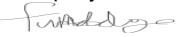
- 1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;**
- 2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS;**
- 3. ACCEPTANCE OR REJECTION OF ANY BIDS; OR**
- 4. AWARD OF THE CONTRACT.**

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS. THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

Ivy Gaze LLC

Company Name



Authorized Signature
Deborah Adeleye

Print Above Name

02/06/2025

Date

6822500650

Phone

Fax

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: Ivy Gaze LLC
Local Address (must be within the City limits): 110 W.Randol Mill RD, Arlington, Texas

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

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

N/A

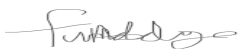
5. Does your business have more than one office in the State of Texas? ☐ Yes ☒ No
If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

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

☐ Yes ☒ No

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

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

Authorized Signature:  Date: 02/05/2025

Printed Name and Title: Deborah Adeleye Managing Director

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

~~PACKET~~ ~~5-1-13~~ ~~Signature of vendor doing business with the governmental entity~~

~~February 25, 2025~~

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

References

1. **Olariche Construction Services**

Address: 495 Bufflehead Ct, Sunnyvale, Texas 75182

Contact: 914-255-2654

Contact Name: Chiazio Akarichi (Project Manager)

2. **Imperial Comfort Suites**

Address: 110 W Randol Mill Rd, Ste 240, Arlington, TX 76011

Contact Name: Patrick Obi (Project Manager)

Service: Airbnb

3. **Xpathedge**

Address: 110 W Randol Mill Rd, Ste 240, Arlington, TX 76011

Contact: info@xpathedge.com

Resume: Ivy Gaze, LLC

Company Information

Company Name: Ivy Gaze, LLC

Location: 110 W Randol Mill Rd, Suite 240, Arlington, TX 76011

Phone: (682) 250-0650

Email: info@ivygaze.com

Website: <https://www.ivygaze.com>

Mission

To make the earth a cleaner and healthier place through sustainable cleaning services and the use of eco-friendly products, impacting one home or business at a time.

Vision

- Promote safe and healthy home and business environments through sustainable cleaning services.
- Provide clients and employees with the best possible service and care.
- Protect the health and safety of the environment and the earth.

Services Offered

1. Home Cleaning Services

- Kitchen, bedroom, and living area cleaning
- Cleaning and sanitizing restrooms
- Sweeping, mopping, and vacuuming floors
- Recycling
- Trash removal

2. Landscape Maintenance Services

- Lawn care and aeration
- Soil amendment services
- Tree and shrub services
- Mosquito, tick, flea, and grub control

- Tree trimming and dead tree removal
- Mowing

3. Daytime & Nightly Janitorial Services

- Breakroom and kitchen cleaning
- Cleaning and sanitizing restrooms
- Sweeping, mopping, and vacuuming floors
- Recycling
- Trash removal

4. Floor Stripping, Waxing, and Buffing

- Maintenance to keep commercial floors clean, safe, and visually appealing

5. Carpet Cleaning

- Hot water extraction ('steam cleaning') to remove dirt, spots, and odors without leaving residue

6. Latrine Services

- Provision of bathrooms, lavatories, and field toilets for both government and non-government institutions, including transportation, setup, servicing, and hand hygiene options

Key Principal

Deborah Adeloye



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 1

The following is provided as a matter of clarification for all bidders:

The non-mandatory pre-bid meeting has been rescheduled to Wednesday, January 29, 2025, at 10:00 AM in the City Hall Council Chambers 300 N Loraine Midland, Texas 79701.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

--

Bidder Authorized Signature

Date



25000011

On-Call Mowing & Nuisance Abatement Services

Addendum # 2

The following is provided as a matter of clarification for all bidders:

- ❖ **The On-Call Mowing service will be provided for properties within the City of Midland, specifically targeting areas such as front yards, side yards, and alleyways. This service is provided for properties that do not meet the city's compliance standards and have received an official notice regarding the violation.**
- ❖ **Financial statements are intentionally omitted.**
- ❖ **Prior to the on-call service being provided, Midland Police Department will be notified and aware of the services being provided to ensure proper coordination and communication.**
- ❖ **If vendor becomes aware of hazardous surroundings such as asbestos, please contact the City of Midland Code Administrator immediately.**
- ❖ **Please see attached Pre-Bid Sign In Sheet.**

Q1: Would the City of Midland be willing to extend the deadline?

A1: The City of Midland will not be extending the deadline.

Q2: How does the awarded bidder need to invoice?

A2: Invoicing must be itemized by each service provided, including before and after photos, at the time of service.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

--

Bidder Authorized Signature

Date



City Council Meeting

Item Number: 6
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING THE PURCHASE OF ONE HERBICIDE TRUCK FOR THE TRANSPORTATION DIVISION FROM CHEMICAL CONTAINERS, INC. FOR A TOTAL COST OF \$121,840.50 (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution approving the purchase of one (1) Herbicide Truck for the Transportation Division from Chemical Containers, Inc. for a total of \$121,840.50.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Garage Fund operating budget.

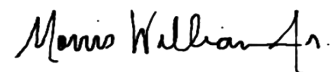
Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

The City Manager approved specifications and authorized advertisement for bids for one (1) Herbicide Truck for the Transportation Division. The bid request was sent to fifty-seven (57) companies, we received four (4) bids. Staff recommends purchasing the Herbicide truck from the apparent low bidder, Chemical Containers, Inc. Please see the attached memo from Manual Salinas, Garage Superintendent, for more information.

Therefore, please consider a resolution approving the purchase of one (1) Herbicide Truck for the Transportation Division from Chemical Containers, Inc. for a total of \$121,840.50.



City Manager's Office



Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: Bid 25002459 for a new Herbicide Truck

DATE: 02/10/2025

Fleet services is requesting the purchase of (1) one Herbicide Truck. This new unit will be a replacement for a 2005 unit that has gone beyond its serviceable life. Budgeted amount for FY 2025 is \$124,271 for (1) one Herbicide Truck. Chemical Containers, Inc has submitted a bid proposal in the amount of \$121,840.5 for the purchase of (1) one Herbicide Truck.

Fleet services accepts this bid proposal from Chemical Containers, Inc which meets all required specifications.

Sincerely,

Manuel Eloy Salinas

City of Midland Superintendent

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF ONE
HERBICIDE TRUCK FOR THE TRANSPORTATION
DIVISION FROM CHEMICAL CONTAINERS, INC.
FOR A TOTAL COST OF \$121,840.50**

WHEREAS, the City Manager approved the specifications and authorized advertisement for bids for one herbicide truck (the “Goods”) for the Transportation Division; and

WHEREAS, Bid No. 25002459 was opened on February 5, 2025, with the lowest responsible bidder being Chemical Containers, Inc. (“Seller”), having submitted a bid of \$121,840.50, as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds the price proposed by Seller for the purchase of the Goods to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase the Goods from Seller for a total cost of \$121,840.50;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the Goods from Seller for a total cost of \$121,840.50.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Seller for the Goods from funds available in the Garage Fund Operating budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

Gabe McClelland, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT A

25002459 Purchase of Herbicide Truck Bid Opening: February 5, 2025															
				Chemical Containers, Inc.			IVM Solutions LLC			Ivy Gaze LLC			Technology International, Inc.		
			Total Cost	\$ 121,840.5			\$ 141,527.23			\$ 170,790.15			\$ 135,140.0		
#	Items	Quantity Required	Delivery Time ARO	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost
#0-1	525 Gallon Roadside Sprayer	1		2025 Isuzu NPR-HD 14,500 GVW 109" Wheelbase	\$ 121,840.5	\$ 121,840.5	2025 Isuzu NPR Diesel	\$ 141,527.2	\$ 141,527.23	Isuzu NPR-HD 14 GVWR With 2025 Open Deck 1000 Series Spray Truck	\$ 170,790.15	\$ 170,790.15	One (1) 525 Gallon Roadside Sprayer with 2025 Isuzu NPR-HD	\$ 135,140.0	\$ 135,140.0

Bid Summary 57 Bid Request 4 Bids Listed Above 0 No Bids were received 53 Bidders did not respond
--

25002459 Purchase of Herbicide Truck Bid Opening: February 5, 2025															
				Chemical Containers, Inc.			IVM Solutions LLC			Ivy Gaze LLC			Technology International, Inc.		
			Total Cost	\$ 121,840.5			\$ 141,527.23			\$ 170,790.15			\$ 135,140.0		
#	Items	Quantity Required	Delivery Time ARO	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost	Brand and Model	Unit Price	Total Cost
#0-1	525 Gallon Roadside Sprayer	1		2025 Isuzu NPR-HD 14,500 GVW 109" Wheelbase	\$ 121,840.5	\$ 121,840.5	2025 Isuzu NPR Diesel	\$ 141,527.23	\$ 141,527.23	Isuzu NPR-HD 14 GVWR With 2025 Open Deck 1000 Series Spray Truck	\$ 170,790.15	\$ 170,790.15	One (1) 525 Gallon Roadside Sprayer with 2025 Isuzu NPR-HD	\$ 135,140.0	\$ 135,140.0

Bid Summary 57 Bid Request 4 Bids Listed Above 0 No Bids were received 53 Bidders did not respond
--







City Council Meeting

Item Number: 7
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AWARDDING A CONTRACT IN THE AMOUNT OF \$2,710,000.00 FOR THE OPERATION AND MAINTENANCE OF THE WATER PRODUCTION AND TRANSMISSION FACILITIES AT THE T-BAR WELL FIELD AND THE CLEARWATER WELL FIELD TO PARKHILL, SMITH & COOPER OPERATIONS, LLC D/B/A PSC WATER OPERATING COMPANY (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution authorizing the City Manager or his designee to negotiate and execute a contract with Parkhill, Smith & Cooper Operations, LLC dba PSC Water Operating Company, to provide engineering support and administrative services to the City of Midland – T-Bar Systems for a two (2) year term at a cost of \$2,710,000.00 with two (2) additional one-year extensions for a possible four (4) year cost of \$5,420,000.00; as directed by City Staff.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Utilities Fund operating budget.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

Staff recommends authorizing the City Manager or his designee to negotiate and execute a

contract with Parkhill, Smith & Cooper Operations, LLC dba PSC Water Operating Company for the Utilities Department. Parkhill will support and administer services to the City of Midland T-Bar Systems. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution authorizing the City Manager or his designee to negotiate and execute a contract with Parkhill, Smith & Cooper Operations, LLC dba PSC Water Operating Company, to provide engineering support and administrative services to the City of Midland – T-Bar Systems for a two (2) year term at a cost of \$2,710,000.00 with two (2) additional one-year extensions for a possible four (4) year cost of \$5,420,000.00; as directed by City Staff.



City Manager's Office



INTEROFFICE MEMORANDUM

To: Erika Martinez, Purchasing Manager

From: Carl Craig, PE

Date: 2/11/25

Subject: Approval of Proposal for Operations of Tbar and Clearwater groundwater source

Dear Erika,

I am writing to seek your approval on the proposal submitted PSC Water for the operations of the City of Midland's groundwater source.

Background:

The City of Midland issued an RFP for the operations of the Tbar/Clearwater groundwater source. PSC Water was the sole provider and the current contracted operations group at the groundwater source.

Parkhill has successfully operated the Tbar/Clearwater source for the past several years and with this proposal will operate for the next two (2) years with two (2) additional one-year extensions. This proposal supports Goal 6 in the City of Midland Strategic Plan.

Request for Approval:

Given the importance of this project, I kindly request your approval to proceed with the proposal from Parkhill Water. The funds are available in the Utilities Operations budget.

Thank you for considering this request.

I am available for any further discussion or clarification needed.

RESOLUTION NO. _____

**RESOLUTION AWARDDING A CONTRACT IN THE
AMOUNT OF \$2,710,000.00 FOR THE OPERATION AND
MAINTENANCE OF THE WATER PRODUCTION AND
TRANSMISSION FACILITIES AT THE T-BAR WELL
FIELD AND THE CLEARWATER WELL FIELD TO
PARKHILL, SMITH & COOPER OPERATIONS, LLC
D/B/A PSC WATER OPERATING COMPANY**

WHEREAS, the City Manager authorized the issuance of a request for proposals for the operation and maintenance of the water production and transmission facilities at the T-Bar Well Field and the Clearwater Well Field ; and

WHEREAS, the sole proposal was submitted by Parkhill, Smith & Cooper Operations, LLC, d/b/a PSC Water Operating Company (“PSC”) for a total cost of \$2,710,000.00; and

WHEREAS, the City Council finds the amount proposed by PSC for the operation and maintenance of the water production and transmission facilities at the T-Bar Well Field and the Clearwater Well Field to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to PSC for the operation and maintenance of the water production and transmission facilities at the T-Bar Well Field and the Clearwater Well Field;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract in the amount of \$2,710,000.00 with PSC for the operation and maintenance of the water production and transmission facilities at the T-Bar Well Field and the Clearwater Well Field. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That funding shall be available in the Utilities Fund operating budget.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



THE CITY OF MIDLAND CONTRACT

Contract No. 25003359

THIS CONTRACT, effective the 26th day of February 2025, by and between the City of Midland, hereinafter referred to as "CITY", and Parkhill, Smith & Cooper Operations, LLC dba PSC Water Operating Company, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 2,710,000.00 DOLLARS
1.1.**Term:** The term of this agreement shall be for a period of two (2) years commencing on February 26, 2025, and terminating on February 25, 2027 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of two (2) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.
2. **Scope of Work:** COMPANY shall perform all work described for the operations and maintenance at T-Bar Well and Clearwater Wellfield. Said work being more particularly described in the following documents, which are attached hereto and incorporated herein for all purposes.
EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Intentionally Omitted
EXHIBIT D..... Wage Scale
3. **City:** The words "CITY's Representative" or "representative" shall mean Carl Craigo or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.
4. **City's Representative:** CITY's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. CITY's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative

be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. CITY's representative will not be responsible for COMPANY's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, COMPANY shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. COMPANY shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

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

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

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

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

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

8. **INDEMNITY:** COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND

DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND

ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

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

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

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

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of said contract are completed, and CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, CITY shall thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. CITY shall be the final judge of when the work is completed by COMPANY. CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to CITY's requirements. CITY may make periodic payments to COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by COMPANY and approved by CITY. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment.

17. **No Third-Party Beneficiary:** CITY's approval of this contract does not create a third-party beneficiary.
PACKET 7.11 February 25, 2025

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

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

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

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. Insurance:

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's February 25, 2025 with the

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

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

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

28. **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.

29. To the extent that Sections 2271.002, 2274.002, and 2276.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

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

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

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2025 personally appeared, _____, an officer of Parkhill, Smith & Cooper Operations, LLC dba PSC Water Operating Company, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2025.



February 18, 2025

Jose Ortiz
 Assistant City Manager
 City of Midland
 3000 North Lorraine
 Midland, Texas 79701

Re: Proposal for Professional Operational Services
 T-Bar and ClearWater Well Fields Water Production and Transmission Facilities O&M
 Midland, Texas

Dear Mr. Ortiz:

PSC Water is pleased to have the opportunity to provide this revised proposal to the City of Midland for the referenced Project. The deliverables below are in alignment with the original technical submission delivered on December 15, 2023, and include personnel consistent with the level of expertise currently being provided.

SCOPE OF SERVICES

- Five full-time licensed operators to provide 24-hour per day, 365 days per year operations of the T-Bar and ClearWater Fields and associated facilities

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

- Right-of-Way (ROW) manager
- Administrative Support Personnel
- Engineering Services

SCHEDULE

The anticipated agreement will be based upon an annual term consistent with the format proposed below.

COMPENSATION

Our fee for the Scope of Services described below will be based on a lump sum amount and will be billed monthly on a percentage complete method. Invoices shall be submitted in a format acceptable to the City of Midland and will not exceed the stated fee without prior written consent.

Cost summary of Proposed Services:

Flat Annual Combined Rate:

2-Year Term	February 26, 2025 – February 25, 2027	Lump Sum	\$2,710,000
1 st Additional Year	February 26, 2027 – February 25, 2028	Lump Sum	\$1,355,000
2 nd Additional Year	February 26, 2028 – February 25, 2029	Lump Sum	\$1,355,000
TOTAL FEE		Lump Sum	\$5,420,000

We truly appreciate the opportunity to provide these critical services to you and look forward to continuing our partnership with the City of Midland. If you have any questions, or additional clarification is required, please do not hesitate to contact me at 432.681.6149 or by email at jedwards@parkhill.com.

Sincerely,

PARKHILL

By 
Jay M. Edwards, PE
Managing Director

RK/jw
Enclosures



City of Midland

T-BAR WELL AND CLEARWATER WELL FIELD

REQUEST FOR PROPOSAL

Operation and Maintenance of the Water Production and Transmission Facilities

PACKET

December 15, 2023 | Original | Technical Proposal

7.21

February 25, 2025



01 COVER LETTER

December 15, 2023

City of Midland
Purchasing Department
300 N. Loraine, Suite 330
Midland, Texas 79701

Re: **City of Midland, Texas | T-Bar Well and Clearwater Well Field Operation and Maintenance of the Water Production and Transmission Facilities**

City of Midland:

PSC Water Operating Company (PSC Water) is pleased to offer our continued services to the City of Midland. PSC Water takes great pride in our ongoing partnership with the City of Midland to consistently deliver reliable, safe drinking water to the residents of Midland. When it comes to making sure your citizens have water to drink, **we understand completely that failure is not an option.** We have formed and developed our entire water operating company with the City of Midland's needs as our paramount mission. We measure success of our company's mission by our ongoing ability to deliver uninterrupted service to your utility system.

Delivering safe drinking water consistently is not always an easy task. Many obstacles can arise that make this mission difficult to accomplish. Over the years we have experienced unusual and unprecedented challenges as your water delivery partner. Each time challenges over the past decade have arisen, the City of Midland and PSC Water have been able to overcome the circumstances together through communication, determination and a combined dedication to the citizens of our community. Examples of when extraordinary effort was required to prevent disruption in water service was during the epic Winter Storm Yuri and after a developer's construction crew damaged the main T-Bar transmission line just outside the city.

In 2021, Texas experienced an unprecedented winter storm. Prolonged freezing temperatures caused many utility systems to fail across the Permian Basin, West Texas, and the entire state. Not only were the harsh temperatures hard on pipes, pumps and water delivery systems, but the storm caused prolonged power outages as well. Fortunately, PSC Water was able to respond to the harsh conditions of the storm for two reasons. The first was through foresight and preparation. The second was through tireless efforts of dedicated field personnel that believe in the mission of providing water to our community's families.

Prior to the storm, PSC Water had recommended and ultimately implemented a backup power generation system at the T-Bar and Clearwater Well Fields, and at the T-Bar Intermediate Site. When Uri took the power down for the better part of a week, this generator system was able to keep the wells, the pumps, and the chlorination system running. But having power was not enough to prevent disruption during this storm. It also required dedicated PSC Water personnel manually operating the well field and intermediate sites throughout the week that the systems automatic controls were not functioning. Manual operations included climbing 40-feet up to the top of a ground storage tank to manually disinfect the raw water stored in the tank with chlorine. Operators did this multiple times each day for nearly a week in freezing temperatures, **keeping Midland as the only major city in West Texas to not experience interruptions during this 'storm of the century.'**

Our team demonstrated incredible resolve and determination to deliver water during extreme conditions because we care. This type of commitment comes with having local operators who care deeply about their jobs and the community. We live in Midland and the Permian Basin so we are available for emergencies, and we care about our communities. That was again demonstrated when the 42-inch main transmission line was damaged by an unauthorized construction crew. Our operators, along with Parkhill's engineers, worked with the City staff to develop an emergency repair plan. PSC Water operators were on-site continuously during the repair of the damaged line, ensuring it was expedited and correct.

As evidenced by these two specific events and a track record of continuous service for a decade, PSC Water possesses the intimate knowledge, depth of experience, and understanding of what it takes to operate your water system on a daily basis.

PACKET

7.23 1700 Wall Street, Suite 100 | Midland, Texas 79701 | 252.697.1447
February 25, 2025

Our team is the most qualified in providing these services because of our commitment, our knowledge of your system, our local operators, and our ability to communicate with City of Midland staff.

Thank you for allowing us to be a part of such meaningful work this past decade. It is my sincerest desire and hope that PSC Water and the City of Midland can continue to partner together to overcome every new challenge to provide the residents of this great community uninterrupted, safe drinking water.

We appreciate your consideration of PSC Water for these operations services. I am pleased to provide the following proposal for your consideration and look forward to answering any of your questions.

Sincerely,

A handwritten signature in blue ink that reads "Jay M. Edwards". The signature is fluid and cursive, with the first name "Jay" and last name "Edwards" clearly legible.

Jay M. Edwards, PE
Managing Director
PSC Water Operating Company





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Required Standards

02



PSC WATER

PSC Water Operating Company (PSC Water) is a comprehensive water and wastewater operations firm conducting business in Texas, New Mexico, and Oklahoma. Our Texas license numbers with TCEQ to provide water and wastewater treatment are: #WC0000241 / #OC0000234. Our operations staff is committed to meeting the needs of our customers and their citizens by providing operations services on a daily basis with availability 24 hours a day and

365 days a year. PSC Water is a wholly owned subsidiary of Parkhill, Smith and Cooper, Inc. Parkhill is an engineering and architectural design firm who has been in continuous professional practice since 1945. PSC Water was formed in 2018 and has focused their efforts to provide exceptional service to the communities and citizens of West Texas.

Our philosophy at PSC Water is to partner our experienced water and wastewater operations staff with our clients to help solve their daily operations needs to provide clean water and treated wastewater to customers and the environment. At PSC Water we emphasize the development of long-term relationships with the clients we serve. We believe that thoughtful and regular communication with our clients is key to a good working relationship. **Our Staff understands the importance of providing efficient and effective solutions to our client's water operations issues.**

Services include but are not limited to the following:

- | Prepare Monthly Operating Report (MOR) | (DMR), Prepare Consumer Confidence Report
- | Update Backflow Preventions | Cross Connection
- | Update Drought Contingency Plan and Prepare Yearly Consumption Report
- | Tier II Report
- | Update Risk Management Plans
- | Update Emergency Action Plans
- | Site Operating Plans for Operations Activities
- | Implementation of a Computerized Maintenance Management System (CMMS)
- | Emergency Response Plans
- | TCEQ Inspection
- | TCEQ Compliance
 - DLQOR (Quarterly Chlorine Residual Testing)
 - Testing (Total Coliform Rule Revision 2015-2016 TCEQ)
 - Lead and Copper Testing
 - Disinfection Biproducts Testing
 - Water Quality Parameter Testing
 - Nitrite Testing
 - Any additional required testing for State and Federal compliance.

EXPERIENCE SERVICING EXISTING PUBLIC-PRIVATE CONTRACTS

We offer experienced chief operators, lead operators, operators-in-training, skilled technical staff, project support, and operation compliance specialists. Our team of licensed and qualified staff will use their skills and knowledge to improve processes and accountability. Our platform for transparency and accountability in reporting has been at the success of our current client's compliance records and data access. The PSC Water team has worked in Texas, Oklahoma, Alabama, Georgia, Florida, New Mexico, and Oregon. Our licensed staff of Water Operators and Wastewater Operators have worked with numerous techniques and treatment applications from flows of 40,000 gallons a day to 112,000,000 gallon a day facilities. PSC Water currently ensures the safe drinking water to over 200,000 citizens each and every day 24 hours per day, seven days per week, three hundred and sixty-five days a year.



Our staff has experience in the operation of many facilities rated at 10 million gallons per day (MGD) or more. Please find the following facilities our staff has operated:

- | | |
|---|---|
| Ronler Acers Water Project, Hillsboro, Oregon
 10 MGD treatment | NEWPP Phase 2, Houston, Texas
 112 MGD surface water treatment facility |
| T-Bar Systems, Midland, Texas
 10 MGD, water supply and delivery system | Shelby County Water Treatment Facility, Calera, Alabama
 8-16 MGD, water treatment plant and delivery system |
| San Jacinto River Authority, Conroe, Texas
 13-26 MGD, 2nd largest reverse osmosis facility in the United States | Big Spring Water Treatment Facility, Big Spring, Texas
 7 - 14 MGD |

PUBLIC WATER SUPPLY SYSTEM/TREATMENT FACILITIES OPERATIONS EXPERIENCE

PSC Water has nine licensed operators and one operator-in-training in the West Texas area. All of them have worked on the T-Bar Systems project and are intimate with its workings, maintenance requirements, blending programs, and regulatory compliance. Please review employee license numbers and qualifications in the technical approach section of this proposal. Our parent company, Parkhill, has worked with TCEQ and their staff for decades and are an invaluable resource that provides guidance and operational understanding to ensure rules and regulations are followed and adhered to by the strictest measure.

FAMILIARITY WITH MICROWAVE COMMUNCIATONS SYSTEMS

Dave Clausen is Aviat Communication Systems Certified and was on the commissioning team for the microwave system that is utilized for T-Bar Systems. Josh Wingard works closely with Parkhill and SCADA professional Dean Lackey to ensure that this system remains operable. PSC Water ensures that as updates and replacements are needed, they are done so in a timely and efficient manner. System failures do happen, and the system is over ten years old. Dean Lackey with Parkhill has been providing programming solutions to the T-Bar Systems for over eight years and currently works very closely with Dave and Josh to ensure automation and remote access are operating and running as effectively and efficiently as possible. The experience of these individuals is invaluable because they have firsthand knowledge of how these systems work, how to correct failures, and how to ensure a constant communication link so that systems remain operable.

STAFF WHO OPERATED FACILITIES COMPARABLE IN SIZE

Dave Clausen operated this system from its inception in March 2013 to July 2016 and from 2018 to present. Dave understands the depth and complexity of the system and has worked through the many challenges of bringing the system online at the start of its service to its current application. The current PSC Water staff has been operating the system since 2018 and has met everyday challenges and system challenges to ensure the system has remained in service through many adversities.

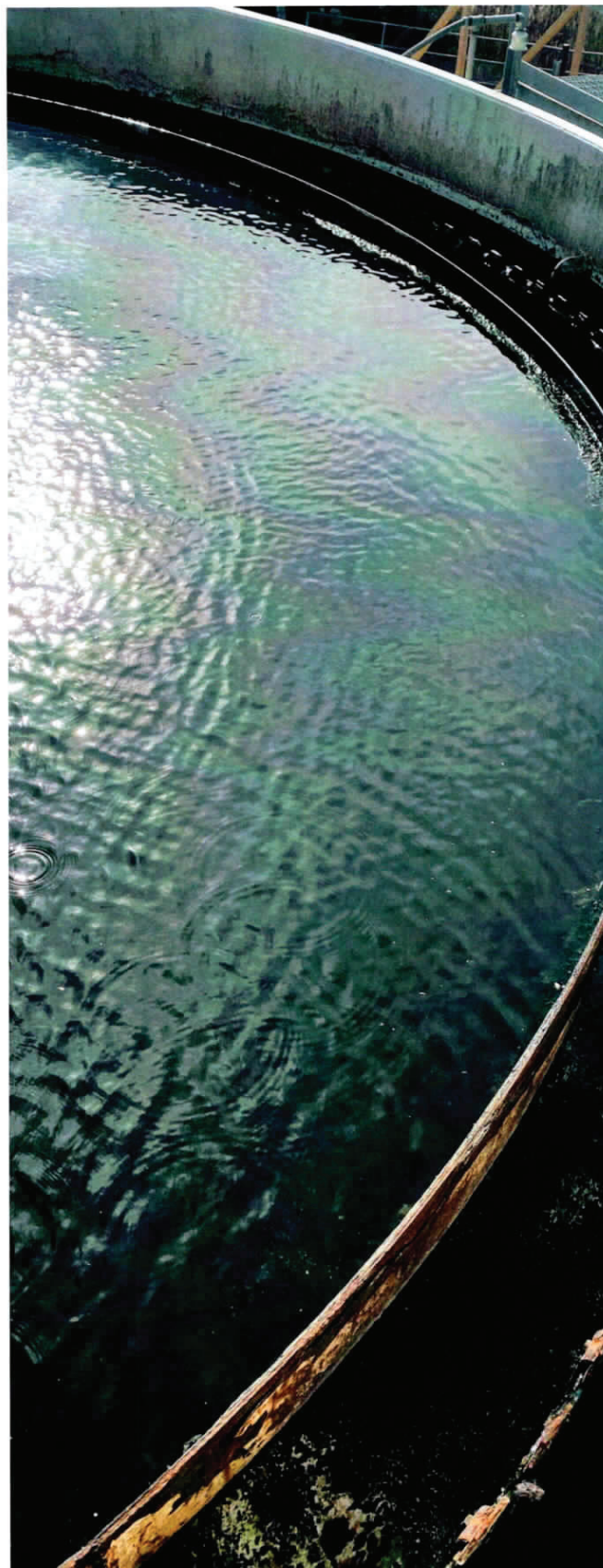
This in-depth knowledge of the T-Bar Systems will be very helpful in successfully identifying and addressing operational issues as they arise in future years. Josh Wingard has provided exceptional input and guidance over the past three years regarding mechanical operations as well as addressed and implemented solutions to water quality issues that have arisen.

Dave Clausen and Johnny Fisher have also operated the Big Spring Water Treatment Facility in Big Spring, Texas which is similar to the complexity of Midland's facility and receives its source water from some of the same entities. The treatment of surface water and its complexities require extensive treatment knowledge and the ability to make adjustments to ensure water quality at a moment's notice. Both Dave and Johnny have the necessary and applicable knowledge.

STAFF WHO HAVE EXPERIENCE WITH ENGINEERS

Our operators have had extensive experience in working with engineers to help improve the water systems of our clients. As mentioned previously, PSC Water is a wholly-owned subsidiary of Parkhill. Parkhill has provided engineering services to clients in the Permian Basin area for over 75 years. This type of experience is extremely valuable to our clients and operations staff as both companies can work with our clients to provide solutions to their needs.

Our staff has also worked with engineering staff from many firms and understand the role of reporting and operation of existing facilities. At PSC Water we provide operations services and work closely with experienced engineers who design the facilities that we operate. Our goal is to operate these facilities to the best of our abilities, and to maximize their effectiveness in providing clean and reliable drinking water to the clients we serve.



EXPERIENCE IN SUCCESSFULLY IMPLEMENTING RISK MANAGEMENT PLANS

Risk Management Plans are required by the Environmental Protection Agency (EPA) to determine the risk to the general public should any type of chemical used for the treatment of water be spilled as a liquid or released as a gas into the atmosphere. T-Bar Systems utilized one ton chlorine gas cylinders to chlorinate the city's water supply, which is typical of many water systems in Texas, and in the United States. Since chlorine is most efficiently injected into water as a gas, the real risk to the public would be if a cylinder developed a leak, and systematically leaked chlorine gas into the atmosphere until found by operations staff and fixed properly. T-Bar Systems utilized chlorine gas at the intermediate site. This site is in a very remote location, and a release would most likely not affect anyone in the immediate area should a leak occur. Our staff at PSC Water has experience with these plans as required by the EPA and the periodic renewal of these plans to meet state and federal requirements. PSC Water updated these procedures in 2018 and updates the plan and requirements every July. PSC Water also conducts a yearly mock release in July to ensure all personnel are trained in what to do in case of a leak or chlorine feed issue at the intermediate location.

EXPERIENCE IMPLEMENTING EMERGENCY RESPONSE PLANS

PSC Water staff has experience in preparing for, and responding to, all types of emergency situations. We will have a minimum of six employees available to respond to any emergency situation impacting T-Bar Systems. Our training and experience helps to ensure our preparedness should an emergency situation arise. Our ability to respond during severe weather and our constant communication with the City of Midland on these issues is unmatched in the industry. We have a proven track record such as responding to power outages and the ability to keep the City of Midland in water during Winter Storm Yuri. PSC Water takes pride in our ability to push through adversity to ensure the City of Midland has a reliable source of water under our watch. Parkhill will also provide support to our staff. With over 200 employees in the Permian Basin and West Texas area, we can respond quickly to any situation as needed.

PROJECT SPOTLIGHT: WINTER STORM YURI

PSC Water began preparing for winter operations starting in September to stay ahead of the freezing weather, and to ensure all equipment was given the attention it required to ensure its protection and operability in possible freezing conditions. With severe weather predicted to start on February 13, 2021, PSC Water project teams began going through checklists and completing necessary preparations for the upcoming conditions.

The T-Bar Systems team scheduled additional fuel deliveries for generators on February 11, 2021. The team faced a delivery issue but managed to find a truck for Friday with the help of their contacts. Despite the snowfall, the delivery was successfully made. The weekend was bitter cold and conditions began to continually get worse. Over the weekend, the team ensured Midland had water and prepared for power failures. When the power did falter, the crew was ready and worked around the clock to maintain the system. By Wednesday morning, everything was running smoothly when the City of Midland urgently requested more water. The team knew it was all hands-on deck and that they were going to get the City of Midland every drop they needed to

keep them from having to issue a Boil Water Notice. Armed with heat trace, a jet heater, pipe wrenches, and pick axes, the team went into action trying to thaw out seven wells that were frozen solid. By noon, the flow was up to 11 MGD, and by 2:30 p.m. it had increased to 14 MGD. As night fell, preparations were made to ensure Midland would receive 18+ MGD the following morning. The team worked around the clock for the next several days ensuring the City of Midland had water and could repair their leaks to regain system integrity.

The PSC Water team was formed to provide Parkhill's clients with a standard of operational services they have come to expect and appreciate from Parkhill. The PSC Water team takes pride in their work and strives to be the best stewards of our most precious resource, water. Despite the challenges, the PSC Water team worked around the clock to ensure the City of Midland could provide their citizens with access to one of our most precious resources - water.

EXPERIENCE PREPARING FOR OR RESPONDING TO EMERGENCY SITUATIONS

The current T-Bar Systems staff provided by PSC Water consists of five licensed operators and one operator in training. PSC Water also has three additional licensed operators in the area who have intimate knowledge of the system and can be called upon in any emergency situation to assist with whatever response is required to mitigate any emergency situation that may arise.

INSURANCE REQUIREMENTS

PSC Water will provide the insurance policies as set forth in this RFP upon award. We will also provide the required Performance Bond in the amount of the annual operating fee.

CONTRACTOR'S CAPABILITIES TO PROVIDE STAFF

Our Staff is currently operating your facility and will continue to work diligently to coordinate all operations. We will continue to make staff available to meet the needs of the City.

RISK MANAGEMENT PLAN

PSC Water will provide a draft Risk Management Plan to T-Bar Systems staff at the effective start date of our operations contract should we be chosen to provide the City with our operations services.





Qualifications

03

CORPORATE PROFILE

LEGAL NAME OF FIRM

PSC Water Operating Company

DATE OF FIRM FORMATION

2018

PRIMARY CONTACT

CHIEF OPERATOR



Dave Clausen

E | DClausen@PSCOperations.com

O | 806.473.3700

LEAD OPERATOR



Josh Wingard

E | JWingard@PSCOperations.com

O | 806.473.3700

TAX IDENTIFICATION NUMBER

82-3382318

FIRM ORGANIZATION

PSC Water is a Limited Liability Company wholly-owned as a subsidiary of Parkhill, Smith & Cooper, Inc.

MAIN OFFICE ADDRESS

1700 W. Wall Street, Suite 100
Midland, Texas 79707

WHO WE ARE

PSC Water is a comprehensive water and wastewater operations company formed in 2017. The company was formed in response to the specific need for reliable, local operations of the City's T-Bar and Clearwater Well Field Systems. Previous operating companies had been unsuccessful in effectively operating the system because of their inability to maintain a full crew of operators and staff on the project. Large national operating companies brought operators in from outside of the Permian Basin and typically those operators would not stay for long in the Midland area as water operators. Because of this unstable staffing, previous operating companies struggled to keep up with the daily operations and ongoing maintenance needs of the system.

Additionally, the large operating companies attempting to serve Midland were acquired by larger national firms, causing more transition of staff and service. Finally, the City of Midland's partnering agency, the Midland County Fresh Water Supply District, asked Parkhill if they could operate the well field. As a direct response to this request, Parkhill formed PSC Water with the mission of creating a local team of operating experts dedicated to the consistent delivery of safe drinking water to their hometown of Midland.

PSC Water is organized as a wholly owned subsidiary of Parkhill. Jay Edwards serves as the Managing Director of PSC Water and has full authority to direct the operations of the company. Jay has a five-member Board of Advisors that assists in the overall management of the enterprise. Dave Clausen serves as the Chief Operator of PSC Water and manages the day to day activities of the organization and staff. Dave has extensive knowledge and experience in water operations and has served in an operational role at T-Bar since the inception of the company. Josh Wingard is the Lead Operator for the T-Bar System and is responsible for field operations and maintenance.

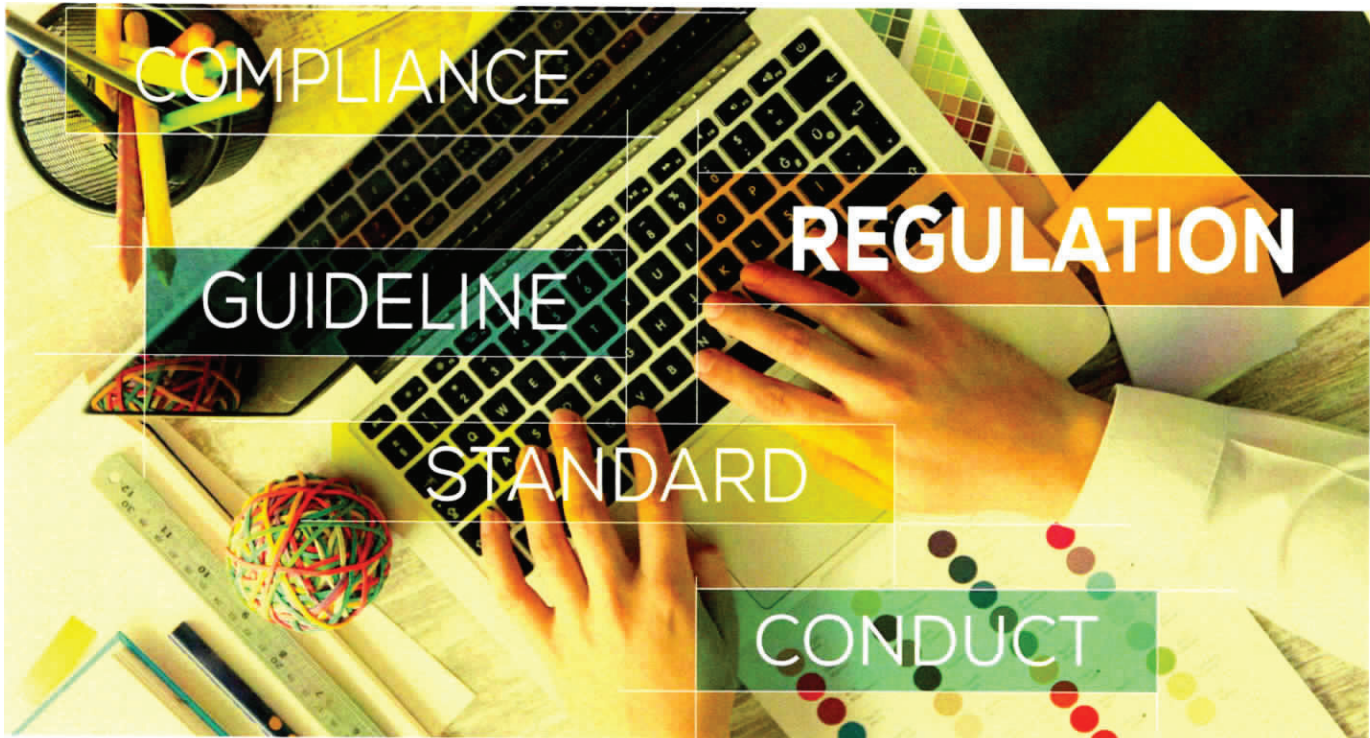


JAY EDWARDS, PE
Managing Partner

PSC WATER
BOARD OF ADVISORS

DAVE CLAUSEN
Chief Operator

JOSH WINGARD
Lead Operator



We offer experienced chief operators, lead operators, operators in training, skilled technical staff, project support, and operation compliance specialists. Our team of licensed and qualified staff will use their skills and knowledge to improve processes and accountability. Our Platform for transparency and accountability in reporting has been at the success of our current client's compliance records and data access. The PSC Water team has worked in Texas, Oklahoma, Alabama, Georgia, Florida, New Mexico, and Oregon. Our Licensed staff of Water Operators and Wastewater Operators have worked with numerous techniques and treatment applications from flows of 40,000 gallon a day to 112,000,000 gallon a day facilities. PSC Water currently ensures the safe drinking water to over 300,000 citizens each and every day 24 hours per day, seven days per week, 365 days a year. The graphic below is a summary of our operating staff's experience.

Please find a summary of our operating staff's experience as follows:

- | Operation of over 10 Water Treatment Facilities
- | Operation of over 45 Wastewater Treatment Plants
- | Operation of three Water Treatment Reverse Osmosis Facilities
- | Operation of 69 Production Wells, in four Well Systems
- | 100 Miles of Distribution and Collection Lines
- | 95 Miles of Transmission lines



PSC Water encourages our employees to believe there is no limit to our team; we make our job better each day.



WATER

Full-Service Water System Operations

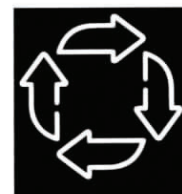
- Water Treatment
- Water Distribution
- Water Supply (Groundwater and Surface Water Systems)
- Regulatory Compliance Monitoring/Testing Services



WASTEWATER

Full-Service Wastewater System Operations

- Wastewater Collection
- Wastewater Treatment
- Regulatory Compliance Monitoring/Testing Services



PROJECT MANAGEMENT

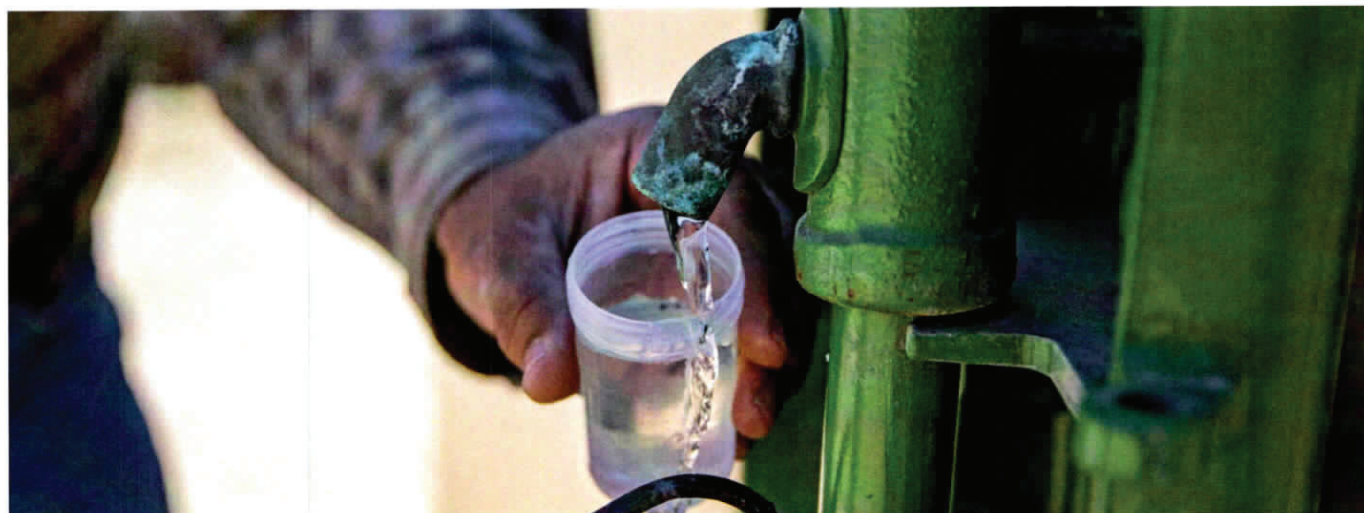
Other Services

- Operator of Record Services
- Infrastructure Commissioning and Start up Services
- Industrial Standards and Procedures
- Construction Management

RELEVANT EXPERIENCE AND REFERENCES

PSC Water has over 196 months of consecutive operations experience, including 72 months of operating experience at your facilities. The table below gives an overview of our experience.

Project	Location	Operation Duration	Size	Process
T-Bar Systems City of Midland T-Bar Well Field	Kermit, Texas	65 mo.	Up to 20 MGD	Ground water withdrawal with chlorination and well blending
T-Bar Systems City of Midland Clearwater Well Field	Kermit, Texas	65 mo.	4 MGD (max)	Ground water withdrawal with chlorination and well blending
City of Pell City	Pell City, Alabama	24 mo.	1.6 MGD 5,000+ connections	Ground water withdrawal with chlorination and fluoridation
City of Seminole RO System	Seminole, Texas	53 mo.	1.5 MGD	Operation of the reverse osmosis system





T-Bar Systems and Clearwater Ranch Well fields

Kermit, Texas

The T-Bar Systems currently serves potable water to approximately 140,000 residents in the City of Midland, Texas. The well field consists of 69 Public Water Supply Wells, 50 miles of well collection piping and over 70 miles of 48-inch transmission pipeline. PSC Water operates this 20 MGD system on a daily basis.



Northeast Water Purification Plant Expansion

Houston, Texas

The major component of this expansion is a new treatment facility constructed on land owned by the City of Houston next to the current plant. This facility will supply 320 MGD per day in addition to the current 80 MGD.

The 400 million gallons per day plant will occupy approximately 150 acres of the city's 252-acre site. Several buildings will be constructed on the site, including the administration/maintenance building, ground storage tanks, pump stations, and the water education center. Above is an aerial view of the actual plant site under construction.

The expansion will include conventional treatment processes like the existing plant that helps coagulate, settle, filter, and then disinfect the water to a quality that exceeds requirements set forth by the Texas Commission on Environmental Quality. In addition, an advanced oxidation process called ozonation will be implemented. Ozonation is a very powerful process for disinfecting water to help eliminate harmful organisms such as Giardia and Cryptosporidium. Ozonation also helps eliminate taste and odor-causing compounds, which improves the aesthetic quality of the water supplied by the plant.

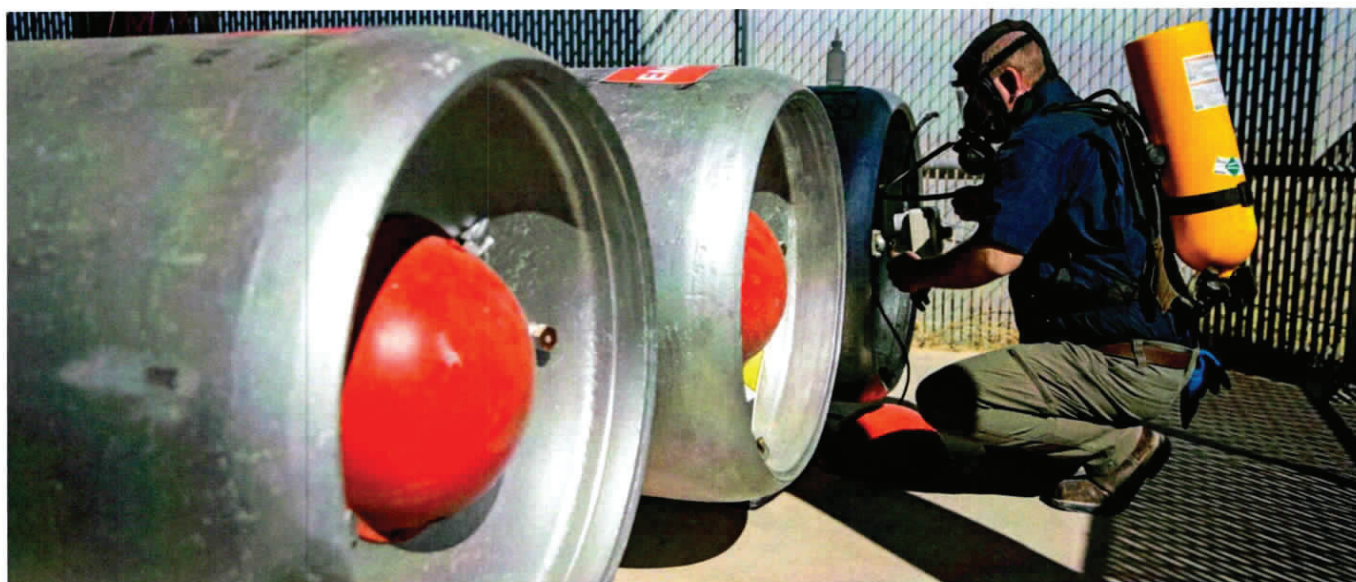
Dave was provided the opportunity to join the start-up and commission team at the NEWPP for acceptance testing and turnover to the City of Houston for Phase 2 of the 400 MGD new plant build-out. Dave worked with Jacobs Engineering and CDM Smith Constructors to bring the 112 MGD facility online and place it into continuous operations for the City of Houston over six weeks.



San Jacinto River Authority (SJRA)

Conroe, Texas

The San Jacinto River Authority (SJRA) Lake Conroe Division's primary function is the operations and maintenance of the dam, spillway structure, and service outlet at Lake Conroe, including capturing and passing storm events through the reservoir. SJRA is responsible for providing municipal and industrial raw water supply, maintaining all equipment associated with the dam, and conducting emergency operations to protect all facilities. **During the commissioning of this facility, Dave assisted his company's technical team with bringing the reverse osmosis system online.** The SJRA membrane treatment system is the second largest in North America. Dave and his team were tasked with the start-up of these membranes as well as the issues associated with treating surface water. The system was brought online on schedule and is one of the largest water producers for its region.



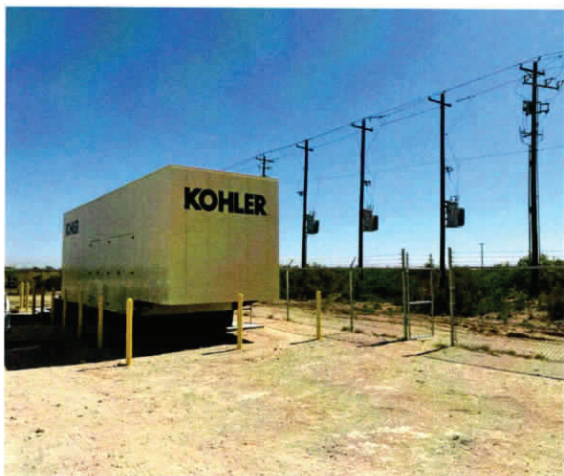
Seminole Reverse Osmosis Facility Rebuild and Membrane Replacement

Seminole, Texas

Josh Wingard oversaw the replacement of schedule 40 PVC to all schedule 80 PVC to meet application specifications. LMI pumps were replaced with peristaltic pumps for Polymer injection. All filtration media in the 12 MM vessels over 3 RO plants was removed and replaced with filter sand and anthracite by Josh and his team. Pressure relief valves and air release valves were also added to each MM vessel. A post flush with RO water was added to the system to remove concentrated ions from the RO membranes to prevent fouling. A prefilter and heater were added to the CIP system. Josh modified the piping at all three RO system sites to allow automatic post flush and fill with the flush tank. Flush system controls were then integrated into the RO systems controls to enable automatic start and stop. Josh checked all system instruments and replaced all non-operational tools. Then, he had all instruments calibrated to ensure proper system operation. Josh led his team to replace 180 membranes across three RO plants.

PROJECT SPOTLIGHT

Midland T-Bar Backup Generator



In 2018, planning began to create a project to add a backup power source to the T-Bar Well Field and Transmission System. The PSC Water team, engineers, district management, and the City planned this improvement based on the isolation of the T-Bar System and its intended use as an emergency backup and peaking source that requires operations at all times of the year. The system was designed around running one pump at the transmission pump station, or roughly seven million gallons, with a 1,500 KW generator on a high-service pump station foundation. The project also included six portable generators rated at 150 KW, improvements to 10 well sites to allow the portable generators to connect to the existing wells, and a 70-foot by 50-foot building to store the portable generators. The PSC Water staff worked with the team to determine the wells that would be the best candidates for portable generators based on historical operations, water quality, and long-term maintenance planning. With the corrosion issues experienced in the well field, it was found that installing the boreline as column pipe with soft starts on the wells was the best course of action for long-term well performance. Adding the soft starts to the wells allowed the project to decrease the size of the portable generators required, allowing for cost savings from the original plan while coordinating needed improvements to the original infrastructure.



The project was originally planned around the known issue of unreliable power infrastructure in the area. Still, it was always known that the T-Bar source must always be ready to run, as is the mission of PSC Water. Winter Storm Uri impacted the majority of Texas in February of 2021. Over 1,800 public water systems in 199 Texas counties and approximately 14.9 million Texans were under boil water notice due to the storm. With the strategic planning and recognition of a potential impact before the issue, the generators played a crucial role in keeping the City of Midland as one of the few public water systems not having to issue a boil water notice due to the storm. After Winter Storm Uri, the State required all public water systems to be backed up like the T-Bar system before the storm. This level of planning and foresight saved hundreds of thousands of dollars. Before the storm, the operations staff came to District management and requested a complete system run test. While the generator had been installed, tested, and proved out, it hadn't been run for 24 hours. The operations staff performed this test and continued to deliver water to the City of Midland without interruption. This allowed any issue to be worked out before the system's actual requirement. This proved invaluable. The operations team implemented a concept into reality while maintaining long-term maintenance goals, which made this project the success that it truly is.



“I had the opportunity to see this project from the engineer, owner, manager, and operations staff’s points of view. I was involved with the original concept, ironing out the design details based on input from the PSC Water team, and then seeing the project provide lasting benefit. That was a challenging time, but our unofficial mission was to deliver water to the City of Midland without any excuses, and it didn’t matter who we were working for. We pushed the engineer to ensure the project was designed specifically for the issues they were facing in the field, and I still believe it is one of the best-engineered projects Parkhill has had the opportunity to work on. The project won’t win any awards; it’s not a big, pretty project that few have yet to do, but it was precisely what was needed to serve the client and, ultimately, the citizens of Midland. That credit is due to the level of effort and ownership the PSC Water team put into the planning, design, construction, testing, and maintenance. I saw how much it would mean to a community during Winter Storm Uri. I saw the operations staff take an idea of what something could do and make it fit an unprecedented event that many operators couldn’t overcome. I saw personal ownership in delivering a product that is rarely seen. I saw the PSC Water team take a weather event that most wrote off as “typical northern” seriously. They were not surprised, they were not reacting, they were ready. They prepared for the worst by preparing equipment before the storm, even outside the generator project. That level of ownership is rare in the industry, but not in this team. Working with them and hearing the stories from the field was humbling. The result would not have been the same with another operator on the project. It’s not just another job for this team; delivering water to the City of Midland is the most critical job. It’s where they want their families to live. It’s where they want to live. I know it’s personal with this team. Dave and Josh keep that culture. They only hire people who fit it, and they work hard to grow and maintain it in everybody. I am proud to have worked with them.”

Kyle Krueger, PE

General Manager, Midland County Freshwater Supply District No. 1



PROJECTS

PSC Water has no current contracts. Our staff has worked on the following projects with previous employers.

Project	Location	Operation Duration	Size	Process
City of Midland T-Bar Systems Well Field	Kermit, Texas	84 mo.	Up to 20 MGD	Ground water withdrawal with chlorination and well blending
City of Midland T-Bar Systems Clearwater Well Field	Kermit, Texas	72 mo.	4 MGD (max)	Ground water withdrawal with chlorination and well blending
Ipsco Steel	Axis, Alabama	18 mo.	Up to 1,500 GPM	Turbidity monitoring and process water supply from surface water source
City of Plains	Plains, Georgia	24 mo.	800 connections	Ground water withdrawal with chlorination and fluoridation
Shelby County Water Treatment Facility	Calera, Alabama	48 mo.	8 MGD - 16 MGD Population: 60,000	Surface water withdrawal with filtration and chlorination
City of Pell City	Pell City, Alabama	24 mo.	1.6 MGD 5,000+ connections	Ground water withdrawal with chlorination and fluoridation
San Jacinto River Authority	Conroe, Texas	2 mo.	13 - 26 MGD	Surface water withdrawal with micro filtration and chemical treatment
Metro Water LLC/ co Southwest Water, Inc.	Seminole, Texas	56 mo.	Population: 8,000	Ground water withdrawal with micro filtration and chemical treatment
Ector County Utility District (ECUD)	West Odessa, Texas	29 mo.	Population: 28,000 5,000+ connections	Operation of Distribution System
City of Big Spring	Big Spring, Texas	36 mo.	Population: 26,144 5,000+ connections	Surface Water Treatment Plant Operations Oversight
Ron Acers Water Treatment Facility (Intel)	Portland, Oregon	24 mo.	10 MGD	Commissioning, Acceptance Testing and Plant Operations
Northeast Water Purification Plant Expansion	Houston, Texas	6 wks.	122 MGD	Commissioning and start-up phase 2
Paul Davis Well Field	Midland, Texas	42 mo.	3 MGD	Well field maintenance and rehabilitation project

ADDITIONAL RESOURCES

With a water system of the size and complexity that T-Bar Systems possesses, PSC Water understands that proper field maintenance is key to maintaining the system to keep it running efficiently. Due to this large task, PSC Water has a history with several companies and vendors in the West Texas area to aid in regularly scheduled maintenance as well as emergency maintenance and repairs. These relationships have aided in the success of rapid responses and onsite repairs in a timely manner. Most of these vendors are now on the City of Midland's approved vendor list and others are also on Buy Board which expedites the process of ensuring work is completed promptly.

OTHER CAPABILITIES

We feel that PSC Water provides three distinct advantages in providing operations services to the district as follows:

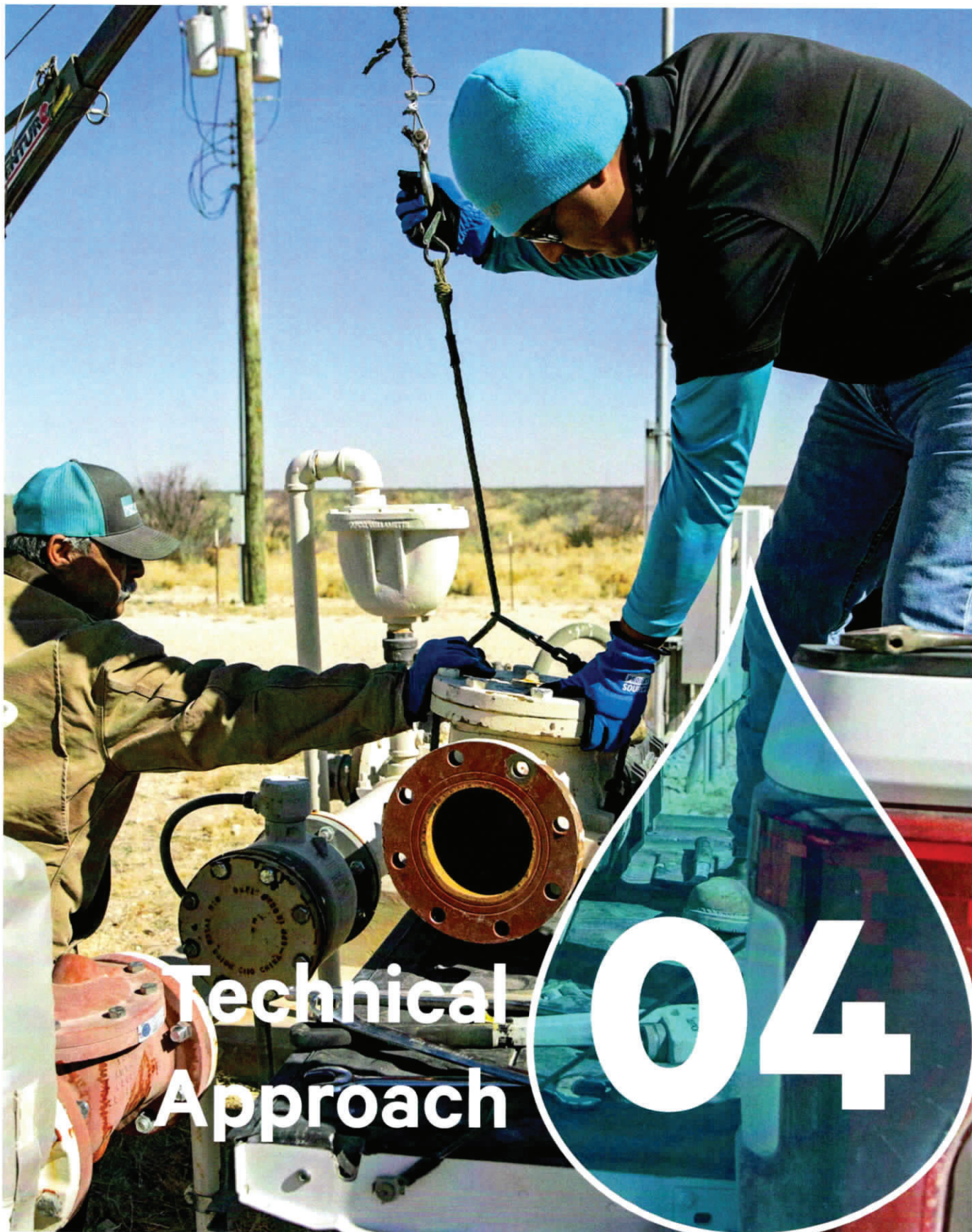
Unique Advantages

1 Our Chief Operator—Dave Clausen was the first operator for the T-Bar Systems (previously the MCFWSD No. 1) and operated the system for over eight years very successfully, and therefore has unmatched firsthand knowledge and experience with your water system. The current West Texas staff of PSC Water have all worked on the T-Bar System project over the past five years and are committed to the success of this water system and providing safe drinking water to the City of Midland.

PSC Water is a subsidiary of Parkhill, **2** and therefore our operators have experience in working with local engineers that have knowledge of your water system.

We are a local Texas company that provides services to the Permian Basin and West Texas areas. We want to make **3** sure that operations of your facilities are a success because we live and work here!





Technical Approach

04

MANAGEMENT TEAM



JAY EDWARDS, PE
Managing Partner

LEADERSHIP



DAVE CLAUSEN
Chief Licensed Water Operator



JOSH WINGARD
Lead Operator



JOHN FISHER
Assistant Manager

SUPPORT STAFF



JOVANNY GARCIA
Plant Systems Operator



ARMANDO ARMENDARIZ
Plant Systems Operator



JESSICA RICHEY
Project Compliance Specialist



JESSE HERNANDEZ
Plant Systems Operator



ISAIHA SAENZ
Plant Systems Operator



CORINA GARCIA
Plant Systems Operator



GILBERT MARTINEZ
Plant Systems Operator



ELOISA GALVAN
Project Support

STAFFING PLAN

We propose to provide the following staff to serve the district as follows:

- | | |
|----------------|----------------------------------|
| Chief Operator | Operator C |
| Operator A | Field Maintenance Sub Consultant |
| Operator B | On Call Operations Staff (2) |

The included staffing plan presented in our proposal shows how our staff will service the district for 12-hour days from Monday through Friday and for 10-hour days on Saturday and Sunday. At PSC Water, our work-life balance is important, and therefore our staff is limited to an overtime limit of 10%. Our overtime hours are calculated and identified in our cost proposal. As is always the case, additional overtime caused by an unforeseen event as caused by Acts of God or due to events that are out of control of PSC Water would require additional overtime.

RESUMES

Jay Edwards

Managing Partner

Jay Edwards serves on our executive leadership team and is the managing partner for PSC Water. Jay grew up on the unpaved streets of O'Donnell, Texas as a child but soon went on to lead some of the largest and most successful engineering projects in West Texas. Jay consistently strives to deliver high-quality service to T-Bar Systems, and he believes that through PSC Water exceeding expectations they will continue to build trust and satisfaction with T-Bar.

NOTABLE PROJECTS

- | MCFWSD No. 1 T-Bar Design and Construction | Principal-in-Charge
- | MCFWSD No. 1 Clearwater Ranch | Principal-in-Charge
- | MCFWSD No. 1 11788 12-inch Waterline Extension Loop | Principal-in-Charge
- | MCFWSD No. 1 Water Planning Study | Principal-in-Charge



YEARS WITH
PSC WATER

06

YEARS IN
INDUSTRY

33

EDUCATION

Texas Tech University

Bachelor of Science, Civil Engineering

REGISTRATION

Licensed Professional Engineer

State of Texas No. 80587



Dave Clausen

Chief Licensed Water Operator

Dave Clausen serves on our executive leadership team and manages the field operations for PSC Water. As a licensed water and wastewater operator in Texas, Oklahoma, Alabama, and Georgia with more than 17 years of experience in the operations field, Dave has operated 10 water treatment facilities, over 45 wastewater treatment facilities, and 5 advanced treatment water facilities. He has also operated over 75 public water supply wells, multiple booster pump stations, and over 200 miles of well field collection and transmission pipelines. With more than 20 years of construction and facility start-up experience, Dave has been a part of or assisted in the operational design of many intriguing projects, including Intel corporation's most advanced water treatment facility in Hillsboro, Oregon, in 2016-2017.

NOTABLE PROJECTS

- | C12 Intermediate Well Rehab | Lead Operations Manager
- | MCFWSD No. 1 T-Bar System | Lead Operations Manager
- | MCFWSD No. 1 Clearwater System | Lead Operations Manager
- | Plains Ground Water Withdrawl | Lead Operations Manager
- | San Jacinto River Authority | Lead Operations Manager
- | Seminole Ground Water Withdrawl | Lead Operations Manager
- | Shelby County Water Treatment Facility | Lead Operations Manager



YEARS WITH
PSC WATER

06

YEARS IN
INDUSTRY

17

EDUCATION

Auburn
University at Montgomery
Bachelor of Science

Troy University
Master of Public Administration

REGISTRATION

Class A Water Operator
WO033135

Class A Wastewater Operator
WW0049858



SAN JACINTO RIVER AUTHORITY



SHELBY COUNTY WATER TREATMENT FACILITY

Josh Wingard

Water Operator | Project Manager

Josh Wingard is a Plant/System Operator for PSC Water. Josh brings a passion and dedication to his professional life through his never-ending quest to protect citizens' quality of life by working to provide a safe and reliable supply of drinking water. Josh and his colleagues at PSC Water strive daily to protect their community's quality of life.

NOTABLE PROJECTS

- | MCFWSD No. 1 T-Bar Well Field Rehabilitation | Lead Water Treatment Plant Manager
- | MCFWSD Generator Project T-Bar High Service Pump Station | Lead Water Treatment Plant Manager
- | Seminole RO Facility Rebuild and Membrane Replacement | Lead Water Treatment Plant Manager

REGISTRATION

Class B Groundwater

WG0020278



YEARS WITH
PSC WATER

04

YEARS IN
INDUSTRY

11

EDUCATION

Auburn University

Bachelor of Science, Accounting

Master of Business Administration



John Fisher

Plant Systems Operator

John Fisher is a Plant Systems Operator for PSC Water. In his capacity as a Plant Systems Operator, John has implemented procedures and technologies, enhancing operational efficiency. John leads teams to proficiently operate a water treatment plant, reducing turnover. John also helped successfully recover treatment systems post Winter Storm Uri, minimizing downtime.

NOTABLE PROJECTS

- | City of Big Spring Water Treatment Plant | Superintendent
- | City of Big Spring Water Treatment Plant | Maintenance Operator
- | City of Big Spring Water Treatment Plant | Operator

REGISTRATION

Class B Surface Water
WS0015366



YEARS WITH
PSC WATER

01

YEARS IN
INDUSTRY

08



CITY OF BIG SPRING WATER TREATMENT PLANT

Jovanny Garcia

Plant Systems Operator

Jovanny Garcia is a Plant Systems Operator for PSC Water. Jovanny uses over six years of experience in Water and Wastewater Management to find the right solutions for complex problems in the field. He has experience in operations management, customer service, and equipment maintenance. Jovanny's diverse background allows him to apply experience in a variety of areas to find solutions and improve existing processes and overall water quality.

NOTABLE PROJECTS

- | T-Bar Systems
- | Paul Davis Well Field

REGISTRATION

Class C Groundwater

WG0020145



Armando Armendariz

Plant Systems Operator

Armando has been in the water treatment field since 2015. Armando started his career by working on the T-Bar well field project in Kermit, Texas, and assisted in the operation and maintenance of 69 water wells, 3 storage facilities, 2 chlorination stations, and over 80 miles of transmission line. Armando also worked in the industrial sector working on gas pipelines and was lead plant operator for the Covid Sand plants in Kermit, Texas. Armando received his Reverse Osmosis certification in 2019 and has been operating the City of Seminole, Texas 3 RO facilities. Armando is currently completing his requirements to become a level 3 RO technician and operator.

NOTABLE PROJECTS

- | City of Seminole, Texas

REGISTRATION

Class C Groundwater

WG0019651

RO Technician One



Jessica Richey

Project Compliance Specialist

Jessica, with 14 years of experience in project controls and engineering support, brings valuable insights into day-to-day operations, financial support, documentation compliance, lab results, and fleet maintenance. She has implemented a centralized document management system, enhancing accessibility for team members. Additionally, Jessica manages HIPPO, a work order system facilitating documentation and maintenance coordination. Serving as a liaison between clients and PSC Water, she contributes to the mission of ensuring communities have access to safe drinking water.

NOTABLE PROJECTS

- | MCFWSD No. 1 Operations | Project Support and Compliance Specialist
- | Metro Water, LLC. | Project Support and Compliance Specialist
- | Ector County Utilities District | Project Support and Compliance Specialist

REGISTRATION

Class C Groundwater

WG0020235

RO Technician One



Isaiah Saenz

Plant Systems Operator

Isaiah Saenz is a Plant Systems Operator for PSC Water. In his capacity as a Plant Systems Operator, Isaiah shoulders significant responsibilities crucial to the smooth functioning of PSC Water's operations. A primary facet of his role involves diligently checking the residual readings of chlorine, ensuring that they consistently align with the required standard levels. This meticulous oversight is integral to maintaining water quality and adhering to regulatory guidelines, reflecting his dedication to upholding the highest standards in water treatment.

NOTABLE PROJECTS

- | T-Bar Systems
- | Paul Davis Well Field

REGISTRATION

Operator-in-Training



Corina Garcia

Plant Systems Operator

Corina Garcia is a Class D Water Operator engaged in water management, ensuring the quality and efficiency of water treatment processes. Corina's responsibilities include conducting systematic collections of water samples for regular residual level testing. She also helps ensure the facility's compliance with industry standards through vigilant oversight. Through a combination of hands-on maintenance, regulatory compliance, and technological utilization, Corina is dedicated to ensuring the sustainable and efficient treatment of this precious resource.

NOTABLE PROJECTS

| T-Bar Systems | Well Field Manager

REGISTRATION

Class D Water

WO0051413



Jesse Hernandez

Plant Systems Operator

With an impressive background spanning seven years in the field, Jesse is a highly motivated and detail-oriented Plant Systems Operator committed to ensuring the seamless and efficient operation of water treatment facilities. His extensive experience has guided him in his proficiency in conducting comprehensive water quality analyses, allowing him to implement proactive measures to uphold and exceed stringent regulatory standards. Adept at monitoring and fine-tuning equipment performance, Jesse brings a keen eye for detail to the operational processes, ensuring optimal functionality and reliability.

NOTABLE PROJECTS

| Ector County Utility District

REGISTRATION

Class B Wastewater

WW0040329

Class C Surface Water

WS0009465



Gilbert Martinez

Plant Systems Operator

Gilbert has been with PSC Water since 2018. Gilbert assists in managing the T-Bar well field and is the Land and Lease supervisor for all T-Bar systems right of ways and property. Gilbert is a certified line locator and is present at all pipeline crossings. Gilbert documents new infrastructure that comes in contact with the T-Bar systems infrastructure in both well fields and all transmission lines. Gilbert coordinates activities with lease holders and contractors so that the T-Bar water transmission system stays protected and remains under a watchful eye for the City of Midland. Gilbert's past experience with water treatment and compressor maintenance has provided a wealth of experience to pull from in order to make him successful in his position. His dedication to the T-Bar system and his maintenance experience is one of our greatest assets in the field. Gilbert's knowledge of the system and pipeline right of ways ensures the integrity of the T-Bar system and its ability to safely and effectively deliver water to the City of Midland.



Eloisa Galvan

Project Support

As project support, Eloisa brings insight into day-to-day operations and document compliance. Additionally, Eloisa assists Jessica with managing HIPPO, a work order system facilitating documentation and maintenance coordination. Serving as a liaison between clients and PSC Water Operators, she contributes to the mission of ensuring communities have access to safe drinking water.

NOTABLE PROJECTS

| T-Bar Systems | Project Support



TRANSITION APPROACH

PSC Water is currently operating T-Bar Systems for the City of Midland. PSC Water has proven lines of communication and operates T-Bar Systems under the direction of Raymond Saddler. PSC Water has daily, weekly, monthly, and annual reports transmitted to the City of Midland for review and input to ensure effective and efficient operations of T-Bar Systems. We at PSC Water strive to keep open lines of communication and transparency in our communication and reporting. PSC Water has worked with city staff for the past five years and have established contacts and means of communication that are utilized on a daily basis. These communication chains ensure that someone from PSC Water is always available 24-7 / 365 should anyone from the city need to contact us regarding operations, emergency situations, or information requests. We also provide access to all of our information through shared drives to make sure that documentation is always available no matter where someone is located as long as Internet access is available.

OPERATING PLAN

T-Bar Systems possess an extremely large footprint and an equally large amount of mechanical equipment necessary to maintain the delivery of safe drinking water to the City of Midland. Manpower, maintenance activities and compliance knowledge are essential for system production capabilities and system reliability. Our computerized maintenance management program, HIPPO, provides us with the platform and reporting capabilities essential to operating a system the size and complexity of T-Bar Systems. Proper documentation and record keeping is also not only a requirement from TCEQ but essential in maintaining a water production facility as large and complex as T-Bar Systems. PSC Water currently provides all documentation in accepted formatting as well as direct access to all records through our shared One Drive which can be accessed from any computer. An outline of the facilities and activities associated with operations is provided in the following pages of this proposal provided by Josh Wingard, the current project manager.

PSC Water uses a CMS software called HIPPO for maintenance management and sample requirements. This software is integral to developing and tracking our large quantity of work orders, preventive maintenance, sample tracking and inventory (if necessary). Work Order Management gives our team instant access to everything and provides the operator all tools necessary to complete their work order tasks effectively and efficiently. HIPPO gives PSC Water the ability to ensure the maintenance needed to keep all facilities operational and safe is addressed and documented. Our software allows PSC Water to have a complete asset data with maintenance and repair history for our facilities. It allows us the ability to associate maintenance at a facility level, building/room level, all the way down to a specific piece of equipment/machinery level. This helps to better assess or determine when equipment failure or issue may arise and correct them before they happen (preventative maintenance schedules). HIPPO also can store digital images, schematics and O&M manuals from vendors and/or attach them to associated work orders. Preventive maintenance within our software gives us the ability to have a history from our facilities through the work order management, therefore our teams can formulate and prepare our preventive maintenance schedules to try and minimize failures or issues that can be assessed before they happen. The preventive maintenance tool allows PSC Water to get out from under reactive, on-demand maintenance to moving ahead of the curve. We can schedule and track maintenance inspections and tasks to find minor issues before they grow into costly problems. It allows us to line up resources, parts and materials ahead of time to minimize down time for repairs, if at all. PSC Water has taken the work order management and the preventive maintenance and combined them and implemented as a tool to schedule, log, and track sample schedules. This has been an essential tool for our operators and has allowed PSC Water to go without missing a sample since its implementation. With the ability to attach and house documents we can attach the chains of custody from collected samples to the sample work orders once the operators have taken them to approved labs. Our software also could inventory supplies and/or parts for all facilities and has the capabilities to give a warning to reorder once it becomes below the required quantity.

PSC Water knows and understand the importance of compliance. We take extra care and go the extra mile to stay compliant to the best of our ability without cutting corners, and we make sure all reporting and documentation meets guidelines and due dates. Our management/compliance team stays up to date with the changes and new requirements issued by its appropriate state's guidelines. We then use a combination of HIPPO, compliance calendars, and project data sheets to meet deadlines and documentation as required by the state and/or client. Together as a team the project manager, project lead, and project support meets monthly to discuss and address all compliance issues, needs, changes or schedules and then collectively as a group help our operators and/or each other to meet them. Every project has an operational real time data sheet that is tailored specifically for that project's needs and requirements that is housed in our secured project drive along with all the projects documentation and compliance documents and is accessible to 24 hours a day, seven days a week.

Each of our employees will be thoroughly trained and will have their own computer with this software loaded to complete their daily tasks.

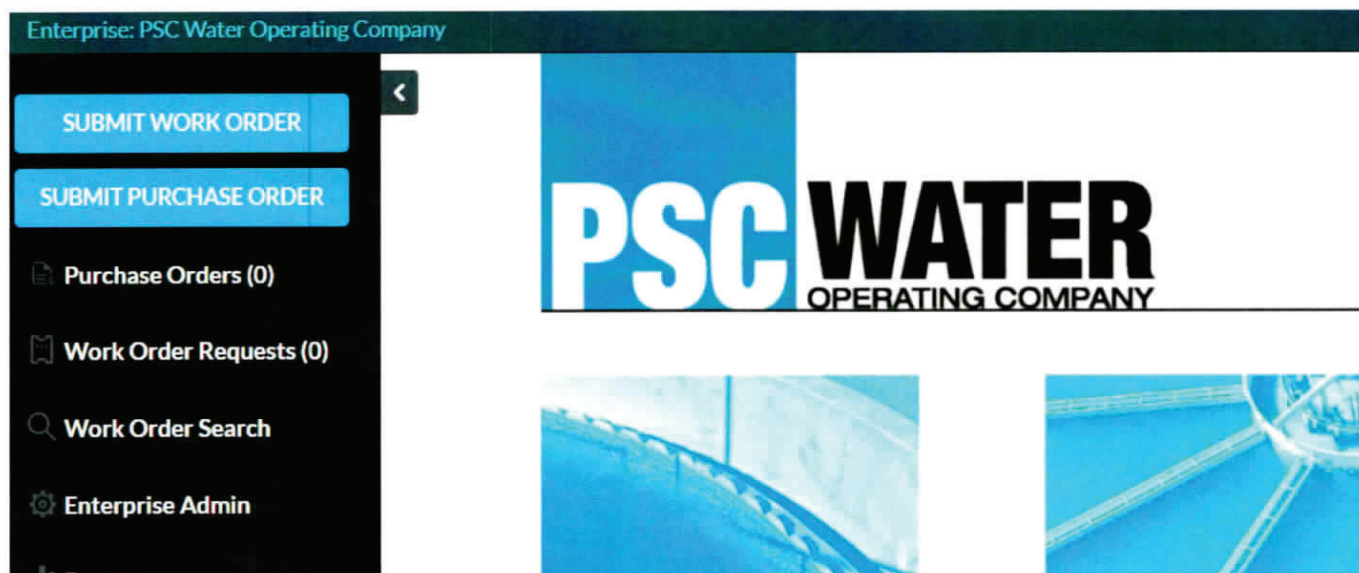
We will have a project support / compliance position dedicated for this project to make sure that we can adequately manage the volume of daily work orders and compliance tasks required for this project.

PSC Water staff will communicate daily with City utility staff, as well as be present at regularly scheduled meetings to answer questions and to give reports on operations.

One of the key aspects of these reports is to update progress on expenditures of the yearly operations budget, which will include energy, chemicals, materials, etc. as described in this Request for Proposal. As a part of our service to the City of Midland — PSC Water staff will assist the city in creating an annual budget, much like the example shown to the right.

"City of Midland" Daily Water Production Report

Date	Raw Water (gals)	Bypass (gals)	Backwash (gals)	Treated (gals)
February-21				
2/1/2021	792,215	-	-	792,215
2/2/2021	420,659	-	-	420,659
2/3/2021	444,481	-	-	444,481
2/4/2021	473,941	-	-	473,941
2/5/2021	437,294	-	-	437,294
2/6/2021	511,746	-	-	511,746
2/7/2021	502,257	-	-	502,257
2/8/2021	562,657	-	-	562,657
2/9/2021	372,517	-	-	372,517
2/10/2021	465,317	-	-	465,317
2/11/2021	46,280	-	-	46,280
2/12/2021	443,571	-	47,188	396,383
2/13/2021	83,564	-	3,341	80,223
2/14/2021	424,392	-	443	423,949
2/15/2021	506,255	-	1,389	504,866
2/16/2021	947,735	-	447	947,288
2/17/2021	1,193,257	-	-	1,193,257
2/18/2021	1,148,722	-	5,777	1,142,945
2/19/2021	461,790	-	3,325	458,465
2/20/2021	1,196,638	-	2,756	1,193,882
2/21/2021	702,252	-	2,547	699,705
2/22/2021	567,790	-	3,005	564,785
2/23/2021	180,167	-	2,786	177,381
2/24/2021	92,696	-	3,781	88,915
2/25/2021	180,162	-	3,186	176,976
2/26/2021	372,495	-	3,372	369,123
2/27/2021	354,996	-	3,078	351,918
2/28/2021	1,227,805	-	2,745	1,225,060
Daily Minimum	46,280	-	-	-
Daily Maximum	1,227,805	-	47,188	1,225,060
Daily Average	539,773	-	3,185	484,661
Total Gallons	15,113,651	-	89,166	15,024,561



ROUTINE DAILY AND MONTHLY OPERATIONS

Terminus Site (1788)

- | Daily residual measurements are taken using a HACH DR900 at the sample point and at the CL17 located in the sleeve valve vault.
- | Facilities are cleaned and maintained, as well as weed control maintenance when necessary.
- | All mechanical parts with fittings are greased monthly.

Intermediate Facility

- | Daily residual measurements are taken using a HACH DR900 at the GST sample point and at the CL17 located in the chlorine booster pump room.
- | Outside CL2 containers are checked for leaks and tubing wear.
- | Facilities are cleaned and maintained, as well as weed control maintenance when necessary.

Clearwater Well Field and Facility

- | Daily flows, pressures and well data is recorded and analyzed.
- | All mechanical fittings are greased monthly.
- | Running well data is recorded daily from SCADA and is field verified.
- | Running wells are field checked daily for leaks and that all components are operating correctly.
- | Wells that are temporarily out of service are fully checked at least once a month until repairs have been made and normal operations continue.
- | Facilities and well pads are cleaned and maintained, as well as weed control maintenance when necessary.
- | The well field overhead lines are visually inspected for any issues. Most routine issues include blown fuses or blown arresters.

T-Bar Well Field and Facilities

- | Daily flows, pressures and well data is recorded and analyzed.
- | All mechanical fittings are greased monthly.
- | Running well data is recorded daily from SCADA and is field verified.

- | Running wells are field checked daily for leaks and that all components are operating correctly.
- | Wells that are temporarily out of service are fully checked at least once a month until repairs have been made and normal operations continued.
- | Facilities and well pads are cleaned and maintained, as well as weed control maintenance when necessary.
- | The well field overhead lines are visually inspected for any issues.
- | Most routine issues include blown fuses or blown arresters
- | Portable generators are connected to battery chargers and are started weekly.
- | Once a month the generators are load tested by pulling the generators to one of the ten wells that are equipped to run from temporary power for two hours.

811 and Land Management

- | PSC Water handles all 811 call requests for T-Bar Systems. The pipeline is monitored for surface leaks while handling 811 requests periodically throughout the year.
- | All City of Midland T-Bar Systems property is monitored for activity from Kermit to Midland.

Repairs and Maintenance

- | Jovanny Garcia is the maintenance manager, PSC Water handles routine electrical issues including: replacing fuses, transmitters, GFCI's and diagnosing electrical component problems.
- | PSC Water has two trucks with bed mounted cranes to assist with valve replacement on wells.
- | Overhead power, new electrical wiring, large valve replacement, heating and cooling, SCADA and radio communication, and chlorine component repairs are handled utilizing outside contractors.

Contractors

- | Please see a list of contracted maintenance companies that assist with routine daily and monthly operations included under our maintenance plan on page 38.

MAINTENANCE PLAN

This maintenance outline is designed to ensure the efficient and reliable operation of T-Bar Systems by PSC Water. Proper maintenance is critical to ensure the availability of clean and safe drinking water to the citizens of the City of Midland.

The primary objectives of this maintenance plan are:

- | To maximize the uptime and reliability of the water distribution system.
- | To extend the lifespan of equipment and infrastructure by utilizing the CMMS programs and work order system.
- | To ensure compliance with all safety and regulatory standards outlined by the EPA and TCEQ.
- | To optimize operational efficiency and reduce operational costs.
- | To respond promptly to equipment failures or issues.
- | To maintain accurate records of maintenance activities.

MAINTENANCE SCHEDULE



Routine Maintenance: PSC Water will conduct routine inspections and preventive maintenance activities on a monthly basis.

- | Inspect all wells, pumps, and motor assemblies and associated equipment and components.
- | Lubricate moving parts as scheduled by the manufacturer's recommendations and operations.
- | Check and calibrate instrumentation and control devices.
- | Inspect and test safety systems.
- | Conduct minor repairs and replacements as required.

Quarterly Maintenance:

- | Perform comprehensive system-wide inspections every quarter.
- | Inspect and maintain chlorination equipment.
- | Conduct flow rate and pressure tests.
- | Verify automation system functionality.
- | Replace worn-out parts and gaskets.
- | Check electrical systems for loose connections or signs of wear.

Annual Maintenance:

- | Annually inspect and maintain the high-service pump stations.
- | Clean and inspect all valves and check for leaks.
- | Inspect backup power systems and generators.
- | Conduct a comprehensive automation system review and update software/firmware if necessary.

Emergency Maintenance: PSC Water currently has a 24/7 on-call response team to address any unexpected system failures or emergencies set up with the City of Midland staff. Our team maintains a readily available inventory of critical spare parts and equipment.

PERSONNEL AND TRAINING

PSC Water will ensure that all maintenance personnel receive adequate training and certification to perform their duties safely and effectively. This includes training on the operation of the automation system and emergency response procedures of T-Bar Systems.

DOCUMENTATION AND RECORDS

PSC Water currently maintains detailed records of all maintenance activities, including dates, tasks performed, parts replaced, and any anomalies discovered. Utilizing HIPPO, the computerized maintenance management system (CMMS), PSC Water tracks and manages maintenance records for T-Bar Systems.

BUDGET AND RESOURCES

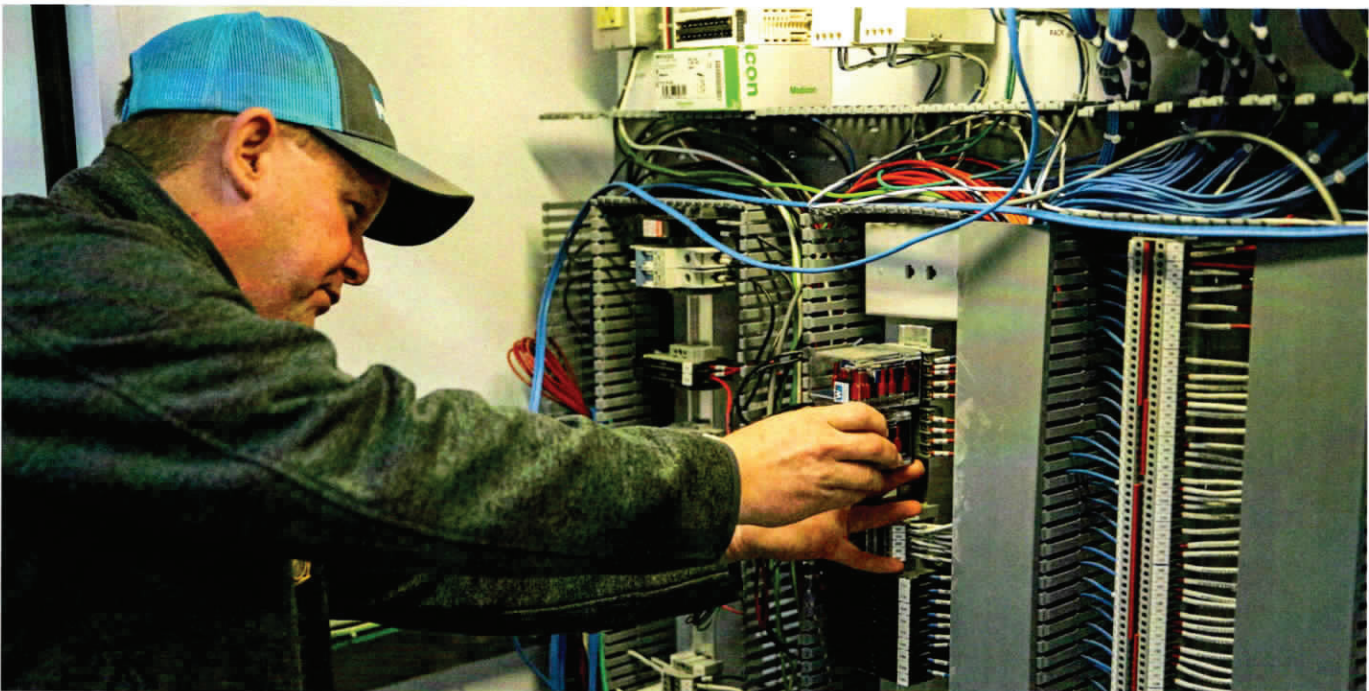
PSC Water makes suggestions and reviews budgetary resources for maintenance activities, including personnel, equipment, spare parts, and software updates. Josh Wingard and Dave Clausen with the assistance of Eloisa Galvan regularly review the budget to ensure it meets the system's needs with the guidance of City of Midland staff.

COMPLIANCE AND REPORTING

We will ensure that the water transfer system complies with all relevant safety and regulatory standard and report any non-compliance issues to the appropriate regulatory authorities as required.

PSC WATER FOCUSES ON CONTINUOUS IMPROVEMENT FOR T-BAR SYSTEM OPERATION EFFICIENCIES

PSC Water regularly reviews the maintenance plan and procedures to identify areas for improvement. PSC Water always solicits feedback from city staff, vendors, maintenance personnel and operators to enhance the efficiency and effectiveness of the T-Bar Systems maintenance program. By following the established T-Bar Systems maintenance plan diligently, PSC Water can ensure the long-term reliability and performance of T-Bar Systems facilities and infrastructure. These maintenance activities and proactive measures will help avoid costly downtime and ensure the continued delivery of safe and clean water to the City of Midland.



CONTRACTED MAINTENANCE

Service	Company/Firm	Maintenance
Well Services	Marks Water Well Services Advanced Water Well Technologies	Pulling and installing pumps, column pipe, boreline hose and all down hole fittings
Well Services	WellTech	Jetting well screens
Electrical Services	Cascade Process Controls, Inc. Ratliff Electric Company	All poles, transformers, connectors and over cable work
Electrical Services	Cascade Process Controls, Inc. ACME Electric Company	All soft starts, well panels, new instrumentation wiring and major electrical issues
SCADA Programming	Parkhill	Radio communication issues involving the 24 Aviat Radio system and towers, and all irregular well site communications issues.
Chlorine System	E12	Repairing regulators, re-piping feed system and vacuum system repairs
Chlorine System	CraneTech	Overhead crane system inspection and repairs
Compressors	Allbright & Associates	Annual inspection and repair services
Pump and Motor Repair	Marks Water Well Services Advanced Water Well Technologies DXP Enterprises	Repairs and services for the 900hp pumps at T-Bar, the 100hp pumps at Clearwater and the chlorine booster pumps at Intermediate
HVAC System	Huskey Mechanical	All repairs and service to the heating and cooling systems at facilities and offices
Collection and Transmission Lines	Garney Construction Edgardo Madrid and Associates Red Deer Construction LLC Advanced Water Well Technologies Marks Water Well Services	All repairs and replacement for lines, ARVs, valves, surge suppressing tanks and equipment, and other construction related issues
Generators	City of Midland	All repairs and service including annual maintenance of the six portable generators at T-Bar, the main facility generator at T-Bar and the facility generator at Intermediate
Electrical Transfer Switches	Cascade Process Controls	Electrical issues involving the transfer switches for the generators at T-Bar and Intermediate

EMERGENCY OPERATIONS AND RESPONSE PLAN

Our staff has experience in preparing for and responding to all types of emergency situations that have impacted T-Bar Systems. The purpose of this Emergency Operations Response Plan outline is to ensure the continuous and reliable operation of T-Bar Systems in the event of an emergency or power outage. This plan outlines the procedures and responsibilities for managing emergency situations and utilizing backup generators to maintain water supply services.

EMERGENCY CONTACTS

Emergency contacts are listed at each facility along with necessary facility identification numbers so that vendors and suppliers are informed and know exactly where an issue exists. This information is maintained by Josh Wingard an up-to-date information is transmitted to staff on a monthly basis.

Contact	Email	Phone Number	Role
Jay Edwards	jedwards@parkhill.com	N/A	Managing Partner
Dave Clausen	dclausen@pscoperations.com	478.232.6835	Compliance and System Manager T-Bar Systems
Josh Wingard	jwingard@pscoperations.com	334.531.0233	Lead Operator T-Bar Systems
John Fisher	jfisher@pscoperations.com	432.901.5272	Assistant Manager support on all projects
Jovanny Garcia	jogarcia@pscoperations.com	432.940.4083	Operator Maintenance Lead / Electrical T-Bar Systems / PD
Armando Armendariz	aarmendariz@pscoperations.com	432.258.9627	Lead Operator Seminole
Jessica Richey	jrichey@pscoperations.com	806.241.7591	Compliance and Work Order Specialist
Isaiah Saenz	isaenz@pscoperations.com	432.640.9594	Operator in Training T-Bar Systems / PD
Corina Garcia	cgarcia@pscoperations.com	432.202.6381	Operator T-Bar Systems CWR
Jesse Hernandez	jhernandez@pscoperations.com	806.474.8407	Lead Operator ECUD
Gilbert Martinez	gmartinez@pscoperations.com	432.248.7102	Surface Lease Coordinator
Eloisa Galvan	egalvan@pscoperations.com	432.813.1069	Project Support on all current proejects

TRAINING AND AWARENESS

PSC Water ensures that all personnel are trained in emergency response procedures and are aware of their roles during emergencies. We have four facility training sessions a year in regard to chlorine, acclimate weather, accident awareness and response to an injury and infrastructure failure of the system and proper response to these situations.

EQUIPMENT AND SUPPLIES

PSC Water maintains essential emergency supplies, such as first aid kits, flashlights, batteries, and communication devices, in accessible locations at each facility and in all field offices.

BACKUP GENERATORS

PSC Water regularly inspects, tests, and maintains backup generators and portable generators to ensure their reliability during emergencies.

EMERGENCY RESPONSE PROCEDURES

POWER OUTAGE

When a power outage occurs, PSC Water immediately activates the backup generators to provide electricity to critical components of the water supply system. If portable generators are required, there is a staffing plan on responsibilities and where each assigned generator is to be taken to and hooked up for service. Josh Wingard and Corina Garcia are the team leads in these efforts with electrical hook up support by Jovanny Garcia and Isaiah Saenz.

PSC Water promptly notifies the utility company of the power outage to get an expected duration of down time and then immediately passes this information to City of Midland staff so availability of water supply can be determined and managed.

SYSTEM MONITORING

PSC Water continuously monitors the status of backup generators, wells, pumps, and facilities during an emergency. If the automation system is down, staff remains at assigned facilities and operates the system manually.

COMMUNICATION

An established communication system and response protocol is essential to provide updates on the situation in order to make informed decisions on how to respond to ever changing emergencies and situations. PSC Water has a proven track record of responding to and addressing emergency situations for T-Bar Systems and will continue with these proven protocols to ensure information flows accurately and quickly.

WATER QUALITY MONITORING

PSC Water will continue to monitor water quality during emergencies and ensure that the water treatment processes are maintained to meet the regulatory standards established by TCEQ by all means necessary.

RECOVERY AND RESTORATION

Once the emergency has been resolved, PSC Water has the experience and knowledge to ensure a successful restart of the system or systems to maintain water quality and equipment efficiencies by restoring T-Bar Systems to normal operations.

REVIEW AND UPDATE

PSC Water, under the guidance of Josh Wingard and Dave Clausen, regularly reviews and updates T-Bar Systems Emergency Operations Response Plan to reflect changes impacting the water supply system, regulations, and lessons learned from past emergencies.

REGULATORY COMPLIANCE

PSC Water makes sure that all emergency response procedures adhere to relevant local, state, and federal regulations governing water supply systems and emergency management. TCEQ regulations as well as OSHA standards are documented accordingly, no matter the situation.

DOCUMENTATION

PSC Water maintains comprehensive records of all emergency response activities, including incident reports, equipment maintenance logs, and communication records. This is kept under the watchful eye of Jesscia Richey who codes and files all this documentation in digital format for transparency and ease of access.

By maintaining the Emergency Operations Response Plan for T-Bar Systems, PSC Water can effectively respond to emergencies, safeguard public health, and ensure the continuity of essential water services to the City of Midland.



STAFFING PLAN

Admin Staff Member	License Type	Role
1) Dave Clausen	AA	Project Start-up Manager / Resume attached
2) Jessica Richey	C and RO Technician One	Start-up Records and Compliance / Resume Attached
3) Eloisa Galvan	N/A	Project Support

WTP Staff Member	License Type	Role
4) Josh Wingard	B	Lead Ops Under Dave
5) John Fisher	B	Assistant Manager support on all projects
6) Jovanny Garcia	C	Operator Maintenance Lead / Electrical T-Bar Systems / PD
7) Armando Armendariz	C and RO Technician One	Lead Operator Seminole
8) Isaiah Saenz	Operator-in-Training	Operator in Training T-Bar Systems
9) Corina Garcia	D	Operator T-Bar Systems CWR
10) Jesse Hernandez	B and C	Lead Operator ECUD
11) Gilbert Martinez	D	Surface Lease Coordinator T-Bar Systems

Project Support / Compliance Specialist

- | Knowledge of industry policies and procedures of organization.
- | Principles of business letter writing and basic report preparation.
- | Principles and procedures of record keeping.
- | Principles and practices of customer service.
- | English usage, spelling, grammar, and punctuation.
- | Office procedures, methods, and equipment including computers and applicable software applications such as word processing, spreadsheets, and databases.
- | Principles of supervision, training, and performance evaluation.

Lab Tech

- | Understand advanced principles, practices, and techniques of organic and inorganic chemistry, microbiology, laboratory equipment, and laboratory protocols and safety.
- | Experience performing routine laboratory tests in a chemical, bacteriological or public health laboratory.

Well Field and Distribution

- | Performing routine laboratory test.
- | Applying advanced protocols and laboratory safety techniques.



- | Communicating clearly and concisely verbally and in writing. The ability to: Perform routine physical, chemical, and bacteriological tests.
- | The ability to audit lab processes. Use and calibration of laboratory equipment. Follow as well as provide oral and written instructions. Prepare reports and may perform other assigned duties.

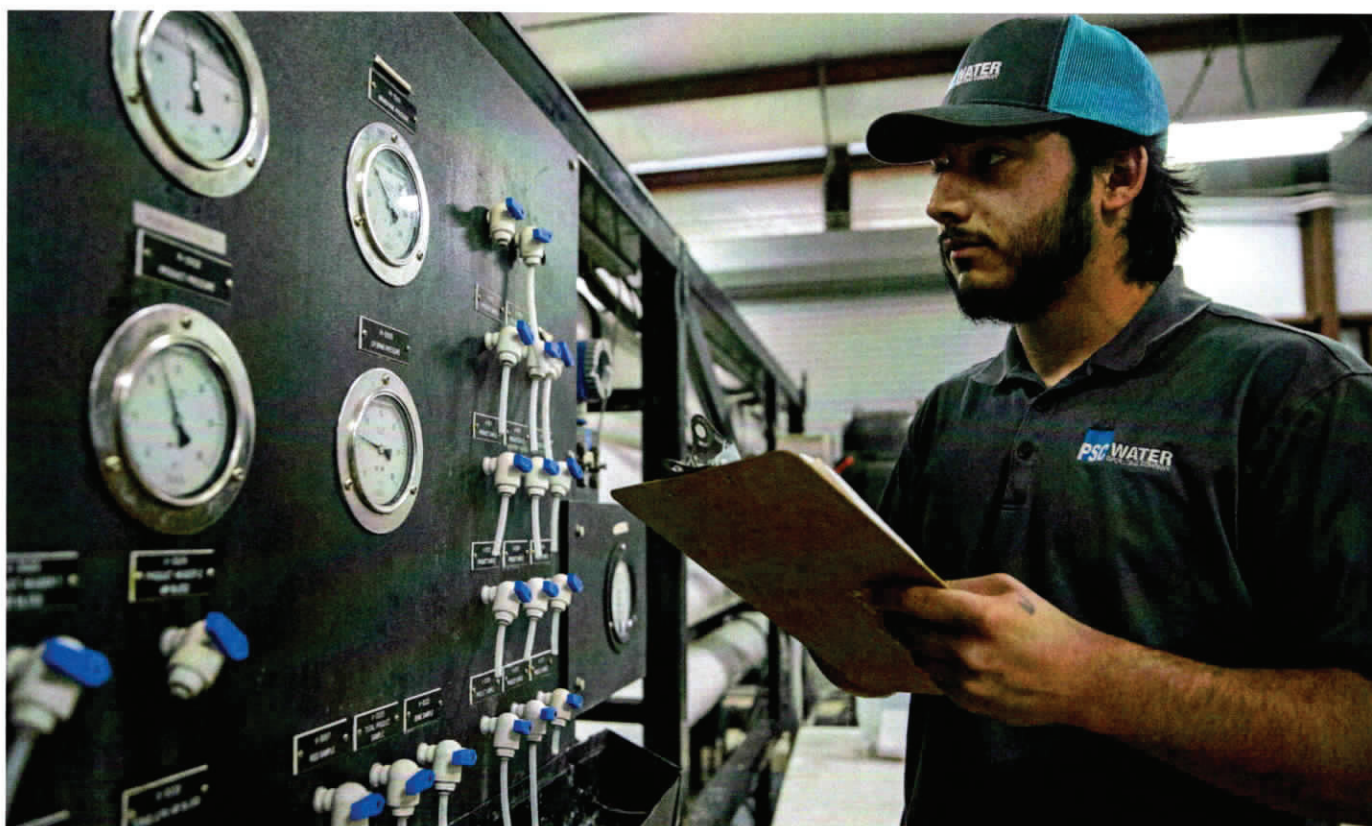
Operator #3 and #4

- | Operator knows methods and techniques of maintaining and repairing water and wastewater plant equipment, machinery, and related facilities.
- | Lubricants used in plant equipment.
- | Electrical codes.
- | Fundamentals of pipefitting and fabrication.
- | Programmable logic controls, telemetry units and fiber optics. Operational characteristics of maintenance equipment and tools.
- | Metering and measuring devices related to water and wastewater.
- | Basic mathematics.

- | Office procedures, methods, and equipment including computers and applicable software applications.
- | Plant shipping and receiving procedures.
- | Occupational hazards and standard safety practices.

Lead and Operator #2

- | Operate and monitor water or wastewater treatment plant equipment.
- | Read, interpret, and calibrate gauges and other recording devices related to water or wastewater treatment plant operations.
- | Take liquid and solid samples and perform routine laboratory tests.
- | Diagnose operating problems and take effective courses of action.
- | Make independent technical decisions to maintain proper treatment process.
- | Maintain pertinent records and compile data into written reports.
- | Perform routine to difficult maintenance, repairs, and installations to plant equipment such as pumps, valves, and electronic monitoring devices.



- | Read, interpret, and understand technical manuals, drawings, blueprints, schematics, and diagrams.
- | Perform heavy manual labor.
- | Schedule maintenance and repair of water or wastewater treatment plants.
- | Logically solve problems.
- | Operate office equipment including computers and supporting software applications.
- | Adapt to changing technologies and learn functionality of new equipment and systems.
- | Communicate clearly and concisely, both orally and in writing.
- | Establish and maintain effective working relationships with those contacted in the course of work.

Project Manager

- | Ability to operate required equipment processes used in water and wastewater treatment plant operations.
- | Maintain operational compliance with applicable water quality control and environmental regulations.
- | Supervise, direct, and coordinate the work of lower-level staff. Select, supervise, train, and evaluate staff.
- | Interpret and explain water and wastewater treatment plant policies and procedures.
- | Prepare clear and concise reports.
- | Operate office equipment including computers and supporting software applications.
- | Communicate clearly and concisely, both orally and in writing.
- | Establish and maintain effective working relationships with those contacted in the course of work.

Monthly Staffing Plan for T-Bar Systems Operations

	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday/PD	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Total
Ops 1 E	off	off	10	10	10	10	off	off	off	10	10	10	10	off	80
Ops 2 E	off	off	8	8	8	8	8	10	10	8	8	8	off	off	84
Ops 1 W	10	10	8	8	8	off	off	off	off	8	8	8	8	8	84
Land Man	off	off	8	8	8	8	8	off	off	8	8	8	8	8	80
Compliance	off	off	10	10	10	10	10	off	off	12	12	12	12	12	110
Manager	off	off	12	12	12	12	12	off	off	10	10	10	10	10	110

	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday/PD	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Total
Ops 1 E	off	off	10	10	10	10	off	off	off	10	10	10	10	off	80
Ops 2 E	off	off	8	8	8	8	8	10	10	8	8	8	off	off	84
Ops 1 W	10	10	8	8	8	off	off	off	off	8	8	8	8	8	84
Land Man	off	off	8	8	8	8	8	off	off	8	8	8	8	8	80
Compliance	off	off	10	10	10	10	10	off	off	12	12	12	12	12	110
Manager	off	off	12	12	12	12	12	off	off	10	10	10	10	10	110



Price Proposal

05

PRICE PROPOSAL

PSC Water is pleased to present the following price proposal inclusive of all items represented in the associated RFP section 'Overview of Services'. The annual pricing adjustments are solely reflective of the anticipated inflation and cost-of-living adjustments required to maintain a strong work force in a such a competitive labor market. Future price adjustments for additional improvements will be negotiated upon addition of upgrades.

*Existing operational services, inclusive of right-of-way management and oversight, were excluded from the RFP and thus not accounted for in the proposed pricing. PSC Water would appreciate the opportunity to review the complete list of services required and any relative pricing adjustments prior to contract execution.

Period			
Year One	February 1, 2024 - January 31, 2025	Lump Sum	\$1,228,500.00
Year Two	February 1, 2025 - January 31, 2026	Lump Sum	\$1,290,000.00
Year Three	February 1, 2026 - January 31, 2027	Lump Sum	\$1,355,000.00
Year Four	February 1, 2027 - January 31, 2028	Lump Sum	\$1,423,000.00
Year Five	February 1, 2028 - January 31,2029	Lump Sum	\$1,495,000.00

PRICE PROPOSAL

Please see separately sealed price proposal provided for the City's review.



Appendix

06

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY 	
1 Name of vendor who has a business relationship with local governmental entity. There is no known conflict of interest between PSC Water Operating Company and Midland		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. N/A Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7  Signature of vendor doing business with the governmental entity December 12, 2023 Date		

CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: PSC Water Operations Company

Local Address (must be within the City limits): 1700 W Wall Street, Suite 100, Midland, Texas 79701

1. Is the above address the principal place of business for the business named above? ☐ Yes ☒ No

2. How many residents of the City of Midland are employed at the above business location? 11

3. Year your business was established in the City of Midland: 2018

4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

Reseller Permit Number: _____

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

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

4222 85th Street, Lubbock, Texas 79423

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

☒ Yes ☐ No

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

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

Authorized Signature: Jay M Edwards Date: December 12, 2023

Printed Name and Title: Jay Edwards, PE | Managing Partner

"General Decision Number: TX20220002 02/25/2022

Superseded General Decision Number: TX20210002

State: Texas

Construction Types: Heavy and Highway

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

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number
PACKET
 0

Publication Date
 01/07/2022

7.70

February 25, 2025

1

02/25/2022

* SUTX2011-002 08/02/2011

Rates Fringes

CEMENT MASON/CONCRETE

FINISHER (Paving & Structures)...\$ 13.55 **

ELECTRICIAN.....\$ 20.96

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.36 **

Structures.....\$ 13.52 **

LABORER

Asphalt Raker.....\$ 12.28 **

Flagger.....\$ 9.30 **

Laborer, Common.....\$ 10.30 **

Laborer, Utility.....\$ 11.80 **

Work Zone Barricade

Servicer.....\$ 10.30 **

POWER EQUIPMENT OPERATOR:

Asphalt Distributer.....\$ 14.87 **

Asphalt Paving Machine.....\$ 13.40 **

Broom and Sweeper.....\$ 11.21 **

Crane, Lattice Boom 80

Tons or Less.....\$ 16.82

Crawler Tractor Operator....\$ 13.96 **

Excavator, 50,000 lbs or

less.....\$ 13.46 **

Front End Loader Operator,

Over 3 CY.....\$ 12.77 **

Front End Loader, 3CY or

less.....\$ 12.28 **

Loader/Backhoe.....\$ 14.18 **

Mechanic.....\$ 20.14

Milling Machine.....\$ 15.54

Motor Grader, Rough.....\$ 16.15

Motor Grader, Fine.....\$ 17.49

Pavement Marking Machine...\$ 16.42

Reclaimer/Pulverizer.....\$ 12.85 **

Roller, Asphalt.....\$ 10.95 **

Roller, Other.....\$ 10.36 **

Scraper.....\$ 10.61 **

Spreader Box.....\$ 12.60 **

Servicer.....\$ 13.98 **

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

TRUCK DRIVER

Lowboy-Float.....\$ 14.46 **

Single Axle.....\$ 12.74 **

Single or Tandem Axle Dump..\$ 11.33 **

Tandem Axle Tractor with

Semi.....\$ 12.49 **

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

=====PACKET=====

7-71

February 25, 2025

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

PACKET

7.72

February 25, 2025

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
1400 Constitution Avenue, N.W.
Washington, DC 20210

7.73

February 25, 2025

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

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

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

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

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

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

=====

END OF GENERAL DECISIO"



City Council Meeting

Item Number: 8
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER 1 WITH VERIZON WIRELESS TELECOM INC. REGARDING CELLULAR COMMUNICATION SERVICES; SAID CHANGE ORDER TO BE IN THE AMOUNT OF \$197,089.14 FOR THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT. (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Motion authorizing the execution of Change Order Number 1 with Verizon Wireless Telecom Inc. regarding Cellular communication services; said change order to be in the amount of \$197,089.14 for the Information Technology Services Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Technology Fund operating budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Resolution 2023-076 authorized the purchase of cellular communication services for a term of two (2) years through the Texas Department of Information Resources from Verizon Wireless Telecom Inc. at a total cost of \$788,356.56. Staff is requesting approval of a motion authorizing

the execution of Change Order #1 with Verizon Wireless Telecom Inc., regarding cellular communication services. In the past 18 months, the City of Midland's staffing growth has increased demand for mobile services, causing Verizon invoices to exceed projections and therefore require additional funding through June 2025. Please see the attached memo from Gorgees Eskander, Chief Information Officer, for additional information.

Therefore, please consider a motion authorizing the execution of Change Order Number 1 with Verizon Wireless Telecom Inc. regarding Cellular communication services; said change order to be in the amount of \$197,089.14 for the Information Technology Services Department.



City Manager's Office



Council Agenda Item

DATE: February 12, 2025

TO: Erika Martinez, Assistant General Services Director

FROM: Gorgees Eskander, Chief Information Officer

SUBJECT: Consider a motion authorizing the execution of Change Order No. 1 with Verizon Wireless regarding cellular communication services, adjusting the contract amount by \$197,089.14.

Purpose:

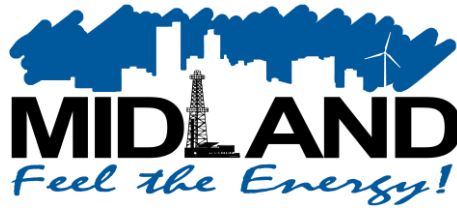
Consider a motion authorizing the execution of Change Order No. 1 with Verizon Wireless, increasing the contract amount by \$197,089.14, for a revised total of \$985,445.70 via DIR-TELE-CTSA-003. This adjustment is necessary to cover increased costs associated with the city's staffing growth and expanded mobile communication needs.

Discussion:

Over the last 18 months, the City of Midland has experienced significant staffing growth, leading to an increased demand for mobile communication services. As a result, monthly Verizon invoices have exceeded initial cost projections, requiring additional funding to sustain operations through the current contract term, ending in June 2025.

Financial Impact:

This change order will result in an increase of \$197,089.14 to the contract with Verizon Wireless, bringing the total contract amount to \$985,445.70. The increase will be covered through the ITSD Tech Fund.



CHANGE ORDER

Order No. 1
Date: February 26, 2025
Contract Date: May 30, 2023

SERVICE: CELLUAR SERVICES

CUSTOMER: CITY OF MIDLAND, TEXAS

VENDOR: VERIZON WIRELESS TELECOM, INC.

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

This adjustment is necessary to cover increased costs associated with staffing growth and expanded mobile communication needs.

Change to CONTRACT PRICE:

Original UNIT PRICE CONTRACT: \$788,356.56

Current UNIT PRICE CONTRACT adjusted by previous CHANGE ORDER: \$0.00

The UNIT PRICE CONTRACT due to this CHANGE ORDER will be:

☒ (increased) ☐ (decreased) by: \$197,089.14

The new UNIT PRICE CONTRACT including this CHANGE ORDER will be: \$985,445.70

Change to CONTRACT TIME:

The CONTRACT TIME will be: ☐ (increased) ☐ (decreased) by: 0 calendar days.

Approvals Required:

To be effective this Order must be approved by the Midland City Council if it changes the scope or objective of the PROJECT, or asmay otherwise be required by the GENERAL PROVISIONS AND SUPPLEMENTAL CONDITIONS.

Requested by: _____

Approved by: _____

Accepted by: _____

www.MidlandTexas.gov



City Council Meeting

Item Number: 9
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE PURCHASE OF AMMUNITION OF ASSORTED TYPES AND IN ASSORTED QUANTITIES FOR THE MIDLAND POLICE DEPARTMENT FROM THE RESPECTIVE LOW BIDDERS, KIESLER POLICE SUPPLY, INC., AND SSD INTERNATIONAL, INC., FOR A TOTAL COST OF \$201,928.00 (DISTRICT: NONE) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Resolution approving the purchase of ammunition for a total cost of \$201,928.00 for the Police Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the General Fund operating budget.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The City Manager approved specifications and authorized advertisement for bids for ammunition. Bid requests were sent to fifty-three (53) vendors. We received bids from seven (7) companies. Staff recommends awarding items 1, 2, and 4 to Kiesler Police Supply and item 3 to BSSD International Inc. Please see the attached memo from Joseph Beltran, Midland

Police Department Sergeant, for additional information. Therefore, please consider approval of a resolution awarding the purchase of ammunition for the Police Department as follows:

Items	Vendor	Total Cost
1, 2, & 4	Kiesler Police Supply Inc. of Jeffersonville, IN	\$86,928.00
3	SSD International Inc. of Apopka, Florida	\$115,000.00
	Total Cost for all Ammunition	\$201,928.00



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
AMMUNITION OF ASSORTED TYPES AND IN
ASSORTED QUANTITIES FOR THE MIDLAND
POLICE DEPARTMENT FROM THE RESPECTIVE
LOW BIDDERS, KIESLER POLICE SUPPLY, INC.,
AND SSD INTERNATIONAL, INC., FOR A TOTAL
COST OF \$ 201,928.00**

WHEREAS, the City Manager approved specifications and authorized advertisement for bids for ammunition of assorted types and in assorted quantities for the Midland Police Department; and

WHEREAS, Bid No. 25003220 was opened on February 12, 2025, with the lowest and most advantageous bids being submitted by Kiesler Police Supply, Inc., and SSD International, Inc., as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds it to be in the public interest to purchase the above-referenced ammunition from Kiesler Police Supply, Inc., and SSD International, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above-referenced ammunition from the respective low bidders, Kiesler Police Supply, Inc., and SSD International, Inc., for a total cost of \$ 201,928.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Kiesler Police Supply, Inc., and SSD International, Inc., for the above-referenced ammunition from funds available in the General Fund operating budget upon receipt of proper invoices or statements approved by the City Manager or his designee.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

25003220 FY 2025 Ammunition for MPD Bid Opening: February 12, 2025																
Total Cost				CTC Gunworks \$57,163,904.00				G T Distributors, Inc. \$84,408.64				Kiesler Police Supply \$86,928.00				
#	Items	Quantity/ Rounds	Part Number	Brand Name	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost
#0-1	9mm 147 grain TMJ training ammo (Equivalent Products will ONLY be accepted for Line Item # 1)	300,000	53826	CCI/ Speer	\$15.81	20	801906402	\$4,743,000.00	\$0.24	20	53826	\$72,504.00	\$0.25	20	SPEER 53826	\$74,400.00
#0-2	9mm 147 grain Gold Dot G2 JHP duty ammo	20,000	54226	Speer	\$668.00	20	54226	\$13,360,000.00	\$0.45	20	54226	\$8,956.80	\$0.47	20	SPEER 54226	\$9,360.00
#0-3	.223 Remington 53 grain TAP Patrol	100,000	80295	Hornady	\$382.89	10	FEDELE223T1CS	\$38,289,000.00	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#0-4	.308 Win Tactical Bonded tip 168 grain	1,600	FC-308LETT2	Federal	\$482.44	10	FC-308LETT2	\$771,904.00	\$1.84	10	LE308TT2	\$2,947.84	\$1.98	10	FEDE LE308TT2	\$3,168.00

Bid Summary	
53	Bid Requests were issued
7	Bids are listed above
0	NO BIDS were received
46	Bidders did not respond

25003220 FY 2025 Ammunition for MPD																				
Bid Opening: February 12, 2025																				
				Precision Delta Corporation				RTP ARMOR, LLC				SSD International Inc.				TXAT LLC				
Total Cost				\$90,000.00				\$130,800				\$205,000.00				\$75,000.00				
#	Items	Quantity/ Rounds	Part Number	Brand Name	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	TotalCost
#0-1	9mm 147 grain TMJ training ammo (Equivalent Products will ONLY be accepted for Line Item # 1)	300,000	53826	CCI/ Speer	\$0.30	10	USA9MM1	\$90,000.00	\$0.37	1,000 (20 boxes of 50)	53620	\$111,000.00	\$0.30	20	Magtech 9G	\$90,000.00	\$0.25	20	Aguila 1E097719	\$75,000.00
#0-2	9mm 147 grain Gold Dot G2 JHP duty ammo	20,000	54226	Speer	No Bid	No Bid	No Bid	No Bid	\$0.99	1,000 (20 boxes of 50)	54226	\$19,800.00	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#0-3	.223 Remington 53 grain TAP Patrol	100,000	80295	Hornady	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$1.15	200	80295	\$115,000.00	No Bid	No Bid	No Bid	No Bid
#0-4	.308 Win Tactical Bonded tip 168 grain	1,600	FC-308LETT2	Federal	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid

Bid Summary

53 Bid Requests were issued

7 Bids are listed above

0 NO BIDS were received

46 Bidders did not respond

City of Midland
Police Department

Interoffice Memorandum

DATE: February 13, 2025

TO: Deputy Chief Chatwell

FROM: Sergeant Joseph Beltran

SUBJECT: FY2025 Ammunition Bid

I have reviewed the Bid Tabulation for FY2025 Ammunition order and listed the selected vendors below.

Line Items 1, 2, and 4 all go to **Kiesler Police Supply**. They are the low bidder who meets product and delivery specifications.

Line Item 3 goes to **SSD International Inc.** They are the only bidder who meets product and delivery specifications.

Total cost of \$201,928.00.

No substitutions will be accepted.

25003220 FY 2025 Ammunition for MPD Bid Opening: February 12, 2025																
Total Cost				CTC Gunworks				G T Distributors, Inc.				Kiesler Police Supply				
				\$57,163,904.00				\$84,408.64				\$86,928.00				
#	Items	Quantity/ Rounds	Part Number	Brand Name	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost	Unit Price	Boxes per Case	MFG Number	Total Cost
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#0-4	.308 Win Tactical Bonded tip 168 grain	1,600	FC-308LETT2	Federal	\$482.44	10	FC-308LETT2	\$771,904.00	\$1.84	10	LE308TT2	\$2,947.84	\$1.98	10	FEDE LE308TT2	\$3,168.00

Bid Summary	
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25003220 FY 2025 Ammunition for MPD																				
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#0-2	9mm 147 grain Gold Dot G2 JHP duty ammo	20,000	54226	Speer	No Bid	No Bid	No Bid	No Bid	\$0.99	1,000 (20 boxes of 50)	54226	\$19,800.00	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#0-3	.223 Remington 53 grain TAP Patrol	100,000	80295	Hornady	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$1.15	200	80295	\$115,000.00	No Bid	No Bid	No Bid	No Bid
#0-4	.308 Win Tactical Bonded tip 168 grain	1,600	FC-308LETT2	Federal	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid

Bid Summary

53 Bid Requests were issued

7 Bids are listed above

0 NO BIDS were received

46 Bidders did not respond



City Council Meeting

Item Number: 10
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Mark Widmann, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF THE NINTH AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT ADJUSTING THE ANNUAL FEE TO \$762,930.96, AND PROVIDING FOR PRE-EMPLOYMENT SCREENING AND/OR POST-ACCIDENT TESTING SERVICES; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (ADMINISTRATIVE SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

To extend the current interlocal Management Services Agreement between the City of Midland and Midland Memorial Hospital with a three-percent (3%) fee increase.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Employee Benefits operating budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

This amendment will provide continued quality healthcare at the Health & Wellness Center

located at 709 W Louisiana Avenue to our plan members and applicants for City employment. The services provided include:

- Walk-in services or Appointment basis.
- Episodic Care: Assessment and treatment of medical conditions that are episodic in nature and short duration.
- Management of chronic conditions.
- Routine annual exams and screenings.
- Lab Draws.
- Biometric screenings.
- Influenza (Flu shot) clinics
- COVID Testing
- Health Maintenance and Disease Prevention Chronic Condition Coaching
- Pre-employment screening and/or post-accident testing

The amendment also projects an estimated savings of \$45,000 for the City by including pre-employment screening and post-accident testing, as many physical costs are already included in the agreement. It's a comprehensive approach that aims to maintain high-quality healthcare while managing costs efficiently.

The amendment also increases the number of annual encounters from 3,320 to 3,600 encounters. In the event that the Hospital sees less than 3,600 encounters, the Hospital agrees to reimburse the City Ten Dollars (\$10) per encounter below 3,600. In the event the number of monthly encounters exceeds three hundred (300) for three months, the Hospital will request reimbursement for Excess Capacity.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF THE NINTH AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT ADJUSTING THE ANNUAL FEE TO \$762,930.96 AND PROVIDING FOR PRE-EMPLOYMENT SCREENING AND POST-ACCIDENT TESTING SERVICES; AND AUTHORIZING PAYMENT

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

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

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

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

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

WHEREAS, the City Council, by Resolution No. 2021-023, authorized the execution of the fifth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2022-020, authorized the execution of the sixth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2023-016, authorized the execution of the seventh amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2024-044, authorized the execution of the eighth amendment to the Agreement; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a ninth amendment (the “Amendment”) to the Agreement to adjust the annual fee to \$762,930.96 and to provide for pre-employment screening and post-accident testing services;

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

SECTION ONE. That the City Manager or the City Manager’s designee is hereby authorized and directed to execute, on behalf of the City of Midland, the Amendment to the Agreement with Midland County Hospital District, doing business as Midland Memorial Hospital. Said Amendment shall be in a form substantially similar to that attached hereto and incorporated herein as Exhibit “A”.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

PACKET

10.4
2

February 25, 2025

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Mark Widmann, Administrative Services
Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

NINTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS NINTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT (the “Ninth Amendment”) is made and entered into as of March 1, 2025, 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 d/b/a 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 (the “Agreement”) wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City’s qualified health plan;

WHEREAS, the City and Hospital have amended the Agreement: 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; the Fourth Amendment with an Effective Date of April 1, 2020; the Fifth Amendment with an Effective Date of April 1, 2021; the Sixth Amendment with an Effective Date of April 1, 2022; the Seventh Amendment with an Effective Date of April 1, 2023; and the Eighth Amendment with an Effective Date of April 1, 2024.

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 Recitals. Section B. of the Recitals is amended to read as follows (additions **bolded** for reference):

“The City desires to contract with Hospital and Hospital desires to contract with the City, for Hospital to furnish physician(s), **Advanced Practice Provider(s) to include Physician Assistant(s) and Nurse Practitioner(s)**, and medical personnel to provide certain Medical and Well Being Services (as defined herein) to **applicants for City employment and** the eligible employees of the City and/or their eligible dependents participating in a City qualified health plan, on the terms and subjected to the conditions contained herein. Hospital will ensure that the medical personnel providing such services are not employees of the City.”

2. **Amendment to Section 1.01.** The first sentence of Section 1.01 “Provision of Physician” of the Agreement is deleted and shall be replaced with the following:

“Hospital shall furnish at least one physician (“Physician”) or Advanced Practice Provider to provide the Medical & Well-Being Services to the eligible employees/retirees, eligible spouses, and eligible dependents of the City’s Health Plan and to provide pre-employment screening services to applicants for City employment.”

3. **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 \$762,930.96 will be billed in twelve (12) equal monthly installments of \$63,577.58. 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 Medical & Well-Being Services access commencing sixty (60) days after the nonpayment from the date of the outstanding invoice. Hospital shall deduct \$2,415.17 per month from March 1, 2025 to February 28, 2026 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.”

4. **Amendment to Exhibit A – “Scope of Services”.** Exhibit A “Scope of Services” of the Agreement is deleted and replaced in its entirety with the Exhibit A attached to this Ninth Amendment.

5. **Amendment to Exhibit B – “Employer Locations, Schedules, and Rates”.** The Excess Capacity section of Exhibit B is deleted and replaced in its entirety with the following:

“Hospital has a base rate of \$762,930.96 per year on 3,600 encounters (300 per month). Should the number of encounters exceed 300 per month on a trend of three (3) months, Hospital will request reimbursement for Excess Capacity that will include the cost of supplies, equipment, and staff needed to cover such Excess Capacity. Hospital will work with the City to mutually agree upon what the reimbursement of Excess Capacity will include. At the end of a 12 month cycle, should Hospital see less than 3,600 encounters, Hospital has agreed to reimburse the City Ten Dollars and 00/100 (\$10.00) per encounter below 3,600.”

6. **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.

7. **Headings.** The headings contained in this NINTH 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.

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

9. **Entire Agreement.** This NINTH Amendment together with the Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, and this NINTH Amendment constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

[Signature page follows]

SIGNATURE PAGE OF

NINTH 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

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

By: _____
Name: _____
Title: _____

By: _____
Name: Stephen Bowerman
Title: President & CEO

EXHIBIT A

“SCOPE OF SERVICES”

ONGOING SERVICES INCLUDED IN ANNUAL FEE

Labor costs, medical and office supplies, medical liability insurance, worker’s compensation insurance, general liability insurance and all other insurance policies.

Primary Care:

- Episodic Care
 - Assessment and treatment of medical conditions that are episodic in nature and short in duration. Examples include, but are not limited to, upper respiratory infections, rashes, urinary tract infections, and first treatment of minor injuries.
- Management of Chronic Conditions
 - For those individuals with an existing primary care provider and/or specialist, and in particular for those individuals who have multiple complicated medical conditions requiring specialty care and/or significant oversight, the Midland Health clinician will work in collaboration with said provider to provide adjunct care and education to the patient.
 - For those individuals who do not have a primary care provider, Midland Health shall function as the medical home and provide full primary care, including the management of multiple chronic conditions requiring significant oversight. After hours coverage and in-hospital care not included. The physician will work in collaboration with specialty care providers if specialty referral is indicated.
- Routine annual exams and screenings and additional charges
 - Annual Physicals: Includes a physical exam and all external lab processing and that is not included on the Exception List.
 - Annual women’s health exams to include pelvic exam and pap smear. Pap smear requiring external lab processing is not included in the annual fees.
 - School Physicals: Limited to routine physicals for students (high school and below) who are dependents of employees of the City; physicals will be provided during summer months in conjunction with Midland Independent School District’s athletic physicals.
 -

CODE	TYPE	NAME OF TEST	CHARGE
85027	CBC	COMPLETE CBC	\$8.81
80053	CMP	COMPLETE METABOLIC PANEL	\$14.39
81000	UA	URINALYSIS	\$4.32
84443	TSH	THYROID STIMULATING HORMONE	\$22.89
84479	T4	ASSAY OF THYROID (T3 or T4)	\$8.81
80061	LIPIDS	LIPID PANEL	\$18.24
86036	HA1C	GLYCOSYLATED HEMOGLOBIN	\$13.22
80076	HEP PANEL	HEPATITIS PANEL	\$11.13

83015	HEAVY METALS	HEAVY METAL	\$25.65
83690	LIPASE	ASSAY OF LIPASE	\$9.38
G0103	PSA	PROSTATE SPEC. ANTI. TEST	\$25.06
82270	FOB	FECAL OCCULT BLOOD	\$4.43
71020	CXR	CHEST XTRAY 2V	\$60.80
94010	SPIROMETRY	SPIROMETRY	\$37.17

- Travel Medicine
 - Consultation with clinician to receive guidance on recommended immunizations, medications, and travel precautions. Vaccines can be administered in-house for most required immunizations, but are purchased in advance per the agreement with Client, and the cost of vaccines is not included in the annual fees.
- Influenza Clinics for COM employees and dependents
 - Hospital will conduct two influenza clinics in locations as directed by the City of Midland. The cost of the influenza injections and accompanying costs of conducting clinics are included in the Monthly Fee shown in Section 2.01.
- Employee COVID Tests

Supplemental Primary Care Services:

- Lab Draws
 - Labs may be drawn for diagnostic and monitoring purposes at the recommendation of the onsite clinician. The cost of external lab processing for tests included on the Exception List is a third party charge and shall be billed to the City of Midland's Health Plan by the third party and is not included in the annual fee with the exception of labs drawn for hormone levels for patients with pellets inserted at the clinic which are not billed to the patient or the insurance.
- CLIA-waived Labs
 - Processed in-house during the provision of care, as needed. The following tests are included in the annual fee: A1C Hemoglobin, Fecal Occult, Blood Test, Glucose, HCG Pregnancy, Influenza A and B, Lipid Profile, Mono, Strep A, H. Pylori, and Urinalysis.
- Mass Biometric Screenings and/or 100% general employee and eligible spouse population screening through health center.

Health Maintenance and Disease Prevention:

- Health Risk Assessment: an Annual Bio-Metric Screening will be provided to all employees to include a Lipid Panel, HA1C, Height, Weight, and Blood Pressure.
- Comprehensive Health Review: for high risk individuals and individuals with chronic disease, a 1:1 consultation with the onsite clinician to review assessment results, health history, and risk appraisal, set goals, and recommend strategies to achieve goals.
- Lifestyle Risk Reduction: for high risk individuals agreeing to follow-up with the Midland Health provider as their personal health coach:

- Work 1:1 with individuals to change behaviors putting them at risk for certain conditions, addressing lifestyle habits such as physical activity, smoking, diet, stress, weight control, cholesterol, and blood pressure.
- Individualized well-being improvement plans
- Proactive support with periodic outreach initiatives designed to identify individuals likely to have an episode of care.

Chronic Condition Coaching:

- For individuals with chronic diseases (Diabetes, COPD, asthma, CHF, CAD, HTN, depression, low back pain).
- Work 1:1 with individuals to empower and educate them to improve their health and quality of life through self-management practices and adherence to a treatment plan that aligns with national clinical guidelines for their disease.
- Coaching, symptom monitoring, and disease education.

Pre-employment Screening and/or Post Accident Testing: screening and testing for applicants for City employment and testing/assessment for Workers Compensation claims.

- Physicals: L2 Physical Form will be completed by the provider and sent to the City Human Resources representative once all required testing is completed and the applicant is cleared.
- Standardized Bloodwork: Hep B Surface Antigen, Hep B Antibody, Hep C Antibody, HIV, CMP, and any additional testing required if any test reflexes or returns a positive result. This includes bloodwork for pre-employment and Workers Compensation claims.
 - \$200.00 per person to be invoiced to the City for charges in addition to the Monthly Fees.
- Hepatitis B Injection: given as needed depending on lab work results.
- PPD/TB Skin Test: given at the time of visit, but must be on Mondays, Tuesdays, or Wednesdays since the results need to be read 48-72 hours after tested.
- Chest X-Ray: performed at Diagnostic Imaging Associates.
 - \$78.85 per image to be invoiced to the City for charges in addition to the Monthly Fees.
- Spirometry: performed for L2 physicals for the police academy.
- Audiogram: performed for L2 physicals for the police academy.

Exclusions to Contract

The following is a list of procedures and/or services excluded from the contract:

- Immunizations (childhood immunizations)
- Pneumococcal and Shingles Vaccines
- Allergy Injections
- Imaging (Radiology)
- Excisions/Biopsies
- Pathology
- Joint Injections
- DME, including boots, braces, and crutches



City Council Meeting

Item Number: 11
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Mark Widmann, Director
Subject: RESOLUTION AMENDING THE CITY OF MIDLAND PERSONNEL POLICIES SO AS TO ELIMINATE THE REQUIREMENT THAT DEPARTMENT MANAGERS ENTER INTO EMPLOYMENT AGREEMENTS APPROVED BY THE CITY MANAGER (DISTRICT: NONE) (ADMINISTRATIVE SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Recommended City Council Action:

Approve

Fiscal Impact:

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

A handwritten signature in black ink, appearing to read "Morris Wilkerson Jr.".

RESOLUTION NO. _____

**RESOLUTION AMENDING THE CITY OF MIDLAND
PERSONNEL POLICIES SO AS TO ELIMINATE THE
REQUIREMENT THAT DEPARTMENT MANAGERS
ENTER INTO EMPLOYMENT AGREEMENTS
APPROVED BY THE CITY MANAGER**

WHEREAS, the City Council finds it to be in the public interest to approve and adopt certain amendments to the City of Midland Personnel Policies;

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

SECTION ONE. That the City of Midland Personnel Policies are hereby amended to read in their entirety as shown in Exhibit “A”, which is attached hereto and incorporated herein (the “Amended Personnel Policies”).

SECTION TWO. That the Amended Personnel Policies shall become effective immediately upon adoption of this resolution.

SECTION THREE. That the Administrative Services Director is hereby authorized to make non-substantive ministerial revisions to the Amended Personnel Policies, such as correcting misspellings, grammatical errors, and cross-references and making formatting changes.

SECTION FOUR. That should any section, clause, or provision of this resolution or the Amended Personnel Policies be declared by a court of competent jurisdiction to be invalid, same shall not affect the validity of this resolution or any other resolution of the City as a whole, or any part thereof, or the Amended Personnel Policies other than the part so declared to be invalid.

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., 2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Mark Widmann, Administrative Services
Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT A



City of Midland, Texas Personnel Policies

Certificates

This certificate shall be placed at the beginning of the City's Personnel Policies. Resolution Number 2009-341, adopted by the Midland City Council on December 8, 2009, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution Number 2009-341 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151 to Section 271.160 of the Texas Local Government Code, as amended, and Resolution Number 2009-341.

W. Wesley Perry, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. Resolution No. 2011-067, adopted by the Midland City Council on April 12, 2011, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2011-067 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2011-067.

W. Wesley Perry, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2011-185, adopted by the Midland City Council on August 9, 2011, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2011-185 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2011-185.

W. Wesley Perry, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2018-225, adopted by the Midland City Council on June 27, 2018, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2018-225 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2018-225.

Jerry F. Morales, Mayor

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This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2021-065, adopted by the Midland City Council on May 25, 2021, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2021-065 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2021-065.

Patrick Payton, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2023-088, adopted by the Midland City Council on July 11, 2023, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2023-088 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2023-088.

Lori Blong, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2023-105, adopted by the Midland City Council on August 8, 2023, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2023-105 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2023-105.

Lori Blong, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2023-138, adopted by the Midland City Council on October 10, 2023, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2023-138 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2023-138.

Lori Blong, Mayor

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This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2023-185, adopted by the Midland City Council on December 12, 2023, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2023-185 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2023-185.

Lori Blong, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2024-009, adopted by the Midland City Council on January 9, 2024, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2024-009 was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2024-009.

Lori Blong, Mayor

This certificate shall be placed at the beginning of the City of Midland Personnel Policies. The City shall be bound by this execution and it is not necessary for the employee to execute any instrument to be bound. All employees accept these policies by actual performance.

Resolution No. 2025-XXX, adopted by the Midland City Council on February 25, 2025, amends the City of Midland Personnel Policies. The City of Midland Personnel Policies are amended as if Resolution No. 2025-XXX was entirely incorporated and written verbatim into the City of Midland Personnel Policies. I am authorized to execute this certification on behalf of the City of Midland, Texas, by the City Charter, Ordinances of the City of Midland, Sections 271.151-.160 of the Texas Local Government Code, as amended, and Resolution No. 2025-XXX.

Lori Blong, Mayor

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Personnel Policies With Explanations

Foreword

The intent of this document is to provide helpful personnel information to every employee of the City of Midland. It is compiled after much consideration by many members of the City staff. It is designed as a device for better understanding and communication among the employees.

This manual is to be used as a reference, and knowledge of its contents is essential.

Policy changes may occur often, and the information in this handbook will change. As an employee, your input is important and appreciated.

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City of Midland Personnel Policies

Chapter I

Purpose

Section 1 Objectives

The objectives of these rules are to facilitate efficient and economical services to the public and to provide for a fair and equitable system of personnel management for the City. While these rules constitute a precise statement of policies and procedures, they are not intended to cover every conceivable personnel situation that may arise. As with any ordinance or regulation, these rules must be supplemented with administrative regulations in addition to the principles and policies set forth. For this reason, considerable latitude shall be given to the City Manager and the Administrative Services Director for administration of these policies within the framework set forth in these rules. It is expected that amendments and revisions affecting personnel policies will be made from time to time when they are necessary to meet changing conditions.

Section 2 Applicability

These rules, policies and procedures shall apply to and govern all employees of the City of Midland, except when these rules are inconsistent with State legislation. Words used in the singular shall be construed to read in the plural and words used in the masculine gender shall be construed to read in the feminine. Failure to comply with these policies may result in disciplinary action being taken against an employee. Nothing in these rules, policies and procedures, except [Chapter XII](#), shall be considered or construed to establish an employment agreement or contractor right of employment with the City of Midland. Nothing in these policies, rules and procedures, except [Chapter XII](#), should be construed as an employment agreement, guarantee of or contract for continued benefits from or employment by the City of Midland. Severance as defined in these rules and policies shall mean salary and all other compensation. Severance is to be paid in a lump sum upon involuntary separation. The Mayor shall have the authority to execute and approve amendments and modifications to employment agreements entered into under Chapter XII. The standard for compliance by the City with these personnel policies, rules or procedures shall be substantial compliance. A violation of or failure to follow any rule or procedure shall not form a basis for any civil or criminal action against the City or any employee or official of the City who is acting on behalf of the City except as authorized by Sections 271.151 through 271.160 of the Texas Local Government Code, as amended. The administrative remedy set out in these rules and procedures is the exclusive remedy. There shall be no appeal to or action in any court except on constitutional or statutory grounds. These personnel rules, policies and procedures shall be implemented, administered and construed to comply with applicable local, state and federal laws. That the term Other Employees as used in these policies shall only mean the Deputy City Manager, Assistant City Manager, First Assistant City Attorney, and Senior Assistant City Attorney. That Chapter XII and its related definitions are a contract for providing services as authorized by Sections 271.151 through 271.160 of the Texas Local Government Code, as amended. The testing of employees conducted in conjunction with the administration and enforcement of the City's drug and alcohol testing policy shall be conducted in accordance with the United States Constitution, the Texas Constitution, federal and state laws, and regulations and judicial precedent. Except as outlined in Chapter XII, an employee's at-will employment status is not modified by these policies and the Midland City Council reserves the right to amend these personnel policies in accordance with applicable statutes. As used in these rules and policies, council appointees shall mean the City Manager, City Attorney, City Secretary, the Presiding Municipal Court Judge and the Associate Municipal Court Judge.

Section 3 Nondiscrimination

Equal employment opportunities shall be afforded to all qualified persons seeking employment with the City of Midland, Texas, and no person shall be refused employment because of race, age, color, creed, sex, national origin, disability, or genetic information, nor shall any person be promoted, demoted, transferred or discharged for reasons other than merit. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, compensation or any other aspect of

personnel administration because of race, age, color, creed, sex, national origin, disability, or genetic information is prohibited.

Section 4 Mission

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Section 5 Vision

City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Section 6 Guiding Principles

I-Force

Integrity

Financial Stewardship

Outstanding Service

Respect

Collaboration

Excellence

Chapter II

General Provisions

Section 1 Political Activity

While in uniform or on active duty, an employee of the City of Midland may not engage in a political activity relating to a campaign for an elective office.

For the purposes of this section, a person engages in a political activity if the person:

- a. Makes a public political speech supporting or opposing a candidate;
- b. Distributes a card or other political literature relating to the campaign of a candidate;
- c. Wears a campaign button;
- d. Circulates or signs a petition for a candidate;
- e. Solicits votes for a candidate;
- f. Solicits campaign contributions for a candidate.

While out of uniform and not on active duty, an employee of the City of Midland may engage in a political activity relating to a campaign for an elective office, including each activity listed, except that the person may not solicit campaign contributions for a candidate other than from members of an employee organization to which that person belongs. See Texas Local Government Code 150.002.

Section 2 Disclosure of Religious Affiliations

No question in any text, in any application form or in any personnel proceeding, or of any appointing authority, shall be so framed as to attempt to elicit information concerning religious opinions or affiliations of any applicant or employee. No appointment to, or removal from, a position with the City of Midland shall be affected or influenced in any manner by any religious opinion or affiliation.

Section 3 Nepotism

a. No person related, within the second degree of affinity (marriage) or within the third degree of consanguinity (blood), to the Mayor, member of the City Council, or the City Manager shall be appointed to any office, position or clerkship or other service to the City.

b. In addition to the above stipulation, it is hereby provided that relatives or family members related within the second degree of affinity or the second degree of consanguinity (as defined in section "d" of this regulation) shall not be appointed to serve in positions in the same division (except for Police and Fire Departments, where the term "on the same shift assignment" shall be substituted for the term "in the same division") or in a position where one relative is to supervise or have influence over the other's employment. Any Department Manager who feels that such appointments are justified and necessary must present to the Administrative Services Director the reason and needs which are the basis for requesting the appointment. The City Manager's approval will be needed to make the appointment official.

c. In the event of reorganization, promotion, or marriage between two City employees, the following shall apply:

- 1) If the affected employees are employed in different departments or different divisions of a department and neither is in a position to supervise or have influence over the other's employment, no change in employment status will be required,

- 2) If the affected employees are employed in the same division of a department (or one is in a position to supervise or have influence over the other's employment), one of them must seek a transfer to another division of that department or to another department. Said employee may apply for any position for which they meet the minimum qualifications, but cannot remain in the same division for more than 90 days. At the end of the 90-day period one of the two must either terminate employment or accept reassignment to a position selected by the City Manager. Such reassignment shall be at the City Manager's sole discretion with due regard for the individual's skills and qualifications and the organization's needs. The City Manager may extend the 90 day limit an additional 90 days if the City Manager finds an extension to be in the best interest of the City of Midland.

d. For the purpose of this policy, the following shall constitute familial relationships:

- 1) Consanguinity (Blood): 1st degree includes Mother, Father, Son and Daughter; 2nd degree includes Brother, Sister, Grandfather, Grandmother, Grandson, Granddaughter; 3rd degree includes Uncle, Aunt, Nephew, Niece, Great Grandson, Great Granddaughter, Great Grandfather, Great Grandmother.
- 2) Affinity (Marriage): 1st degree includes Spouse, Mother-in-law, Father-in-law, Son-in-law, and Daughter-in-law (for the purposes of this policy 1st degree relationship will also apply to Stepmother, Stepfather, Stepson, and Stepdaughter); 2nd degree includes Brother-in-law, Sister-in-law (for the purpose of this policy 2nd degree relationship will also apply to Stepbrother and Stepsister), Grandfather-in-law, Grandmother-in-law, Grandson-in-law, Granddaughter-in-law.

Relatives who are currently employed in situations that would be a violation of this policy on the date it becomes effective shall not have their current employment status affected.

Section 4 Oath of Office

"All officers of the City, whether elective or appointive, shall qualify by taking the oath prescribed by the constitution of this state and by executing such bond as may be required under the provisions of this Charter and the ordinances and resolutions of the City". (Charter of the City of Midland, Article IV, Section 8)

Section 5 Solicitations

No solicitation of funds of any character or for any purpose whatsoever shall be permitted among city employees on the job without the express approval of the City Manager.

Section 6 Financial Responsibility of Employees

Employees of the City of Midland are expected to maintain a good credit standing in the community and to pay their obligations promptly. The City shall in no way serve as a collecting agency or arbitrator. Failure of an employee to pay or make reasonable provisions for future payment of his debts to such an extent that such failure shall be detrimental to the City services may be just cause for dismissal.

Section 7 Outside Employment

Full-time City employees are not encouraged to accept additional employment from another source. However, in certain situations, occasional and part-time work will be allowed if approved by the Department Manager and the City Manager and if the work does not constitute a conflict of interest, does not interfere with the employee efficiently carrying out his normal duties with the City, and does not involve the use of City time or City equipment. If an employee shall become unable to perform the duties of his City job because of any injury or other incapacitating cause while in the employment of an employer other than the City, the City may, at its sole option, reduce the benefits otherwise granted by these policies to whatever amount or degree the City deems to be justified.

Section 8 City-Owned Vehicles

All employees who drive City-owned vehicles in the performance of their duties are responsible for their proper operation. No City vehicle or piece of equipment used in normal operation or an emergency vehicle housed at an employee's home is to be used for personal business, except police. No City employee may drive a City vehicle if he does not have a valid driver's license.

Section 9 Employment Conditions

These rules shall become a part of the employment conditions of each employee and employment or continued employment with the City shall be contingent upon the employee's compliance with the provisions of these rules. Within ninety (90) days after the adoption of these rules and at the time of employment of each new employee, a copy of these rules in handbook form incorporating pertinent phrases of these rules shall be furnished to each employee.

Section 10 Amendment and Revision of Rules

The Director of Administrative Services may make recommendations for amendment and revision of these rules to the City Manager. If the City Manager shall approve such changes, he in turn shall submit them to the City Council for their approval. All rules and amendments thereto shall become effective upon the date of their approval by the City Council.

A copy of the Personnel Policies, Rules and Procedures, and all amendments or changes shall be filed in the office of the City Secretary and shall be available for inspection by all City employees and the public. Such filing shall constitute notice to all employees of the personnel policies, rules and procedures and of all amendments and changes. The Personnel Policies, Rules and Procedures manual, as amended or changed from time to time, shall supersede any conflicting provisions previously adopted. The rules, policies and procedures described herein may be amended, changed or terminated in whole or in part, at any time by the City of Midland. If an employee continues to work for the City of Midland for thirty (30) days after the effective date of any such amendment, change or termination, the employee will be deemed to have accepted such amendment, change or termination.

Section 11 Possession of Weapons

No employee, other than a peace officer, shall carry on or about his/her person, at a City work site, any instrument or weapon that is specifically designed, made, or adapted for the purpose of inflicting serious bodily injury or death, including, but not limited to, clubs, firearms, handguns, illegal knives, explosives, crossbows, bow and arrows, throwing stars and knuckles. No employee, other than a peace officer, shall carry a concealed weapon in any City building, regardless of whether or not the person is duly licensed by the State of Texas to carry a concealed handgun. No employee, other than a peace officer, may carry a weapon on or about his/her person at any time while conducting City business. The term "City work site" includes not only City buildings and property, but also other assigned work locations, City vehicles and City equipment. The term "City building" means any and all buildings or portions of buildings owned, leased, or otherwise controlled by the City of Midland.

Chapter III

Organization and Administration

Section 1 Organization of Personnel

a. The City Council. "The compensation of all appointive officers and employees shall be fixed by the City Council, who may increase or diminish compensation at will or abolish any appointive office entirely at any time." (Charter of the City of Midland, Article IV, Section 14c)

b. The City Manager. The City Manager will advise the City Council on personnel matters and recommend to them changes in personnel policies, changes in personnel rules and regulations, the compensation rates of appointive officers and other City employees, and any other changes that he may deem necessary or expedient. The City Manager is responsible for the administration of the personnel program of the City of Midland and to assist him in this function he may appoint a Director of Administrative Services.

c. Director of Administrative Services. The Director of Administrative Services and the Administrative Services Department, acting under his supervision, will represent the City Manager with regard to routine administration of all phases of these rules and policies.

d. Department Managers. Department managers are expected to effectively supervise their employees and to maintain proper working relationships. They may adopt and enforce departmental regulations not inconsistent with these rules and regulations. Department Managers will report on the efficiency of their subordinates and notify the Director of Administrative Services of changes in duties of their employees, in order that the City of Midland classification plan may be maintained. The Department Managers will recommend to the City Manager merit increases for their employees. Department Managers will have the power of appointment and removal in their departments, including the power to appoint division managers. The appointment of new employees by department managers will be made only from eligible applicants referred to them by the Director of Administrative Services with exceptions as noted under [Chapter IV, Section 2](#). Transfers and reclassification should be consummated only after a study of information contained in the individual's file and after consultation with the Director of Administrative Services.

Chapter IV

Applications, Applicants, and Conditions of Employment

Section 1 Basis of Employment

All initial employment with the City of Midland shall be based on merit, ability, and physical and moral fitness, and may include any or all of the following:

- a. Training and experience as reflected by the application form, plus other documentary evidence as to certification, registration, etc., if requested;
- b. Job related written and/or performance tests as required;
- c. A job related physical examination and/or functional capacity screening;
- d. Background check for conviction of crimes involving moral turpitude and (in connection with jobs involving the operation of motor vehicles) moving traffic violations;
- e. Character investigations made by the Administrative Services Department and/or the manager of the department concerned.

Exceptions to the procedures in this chapter may apply to: (1) Police officers, (2) Firefighters, (3) Seasonal recreation employees, (4) Department managers, (5) Council appointees and their assistants.

Section 2 Recruitment

This function is one of the services performed by the Administrative Services Department, for permanent, part-time, and seasonal employees paid by the City. The central office will maintain files of applications. These are to be obtained through personal contacts from individuals applying to the City, through contacts with established employment agencies, and/or by way of advertising. The Director of Administrative Services or those designated by him will conduct the initial recruiting, and screening. Suitable and eligible applicants will be referred to Department Managers or those designated by them for additional interview and employment.

Section 3 Requests for Personnel

When departments submit requests to the Administrative Services Department for persons to fill vacancies, such requests shall include the title of the position to be filled, contemplated initial salary or wages, desired training and/or experience qualifications and such other pertinent information as may be needed to enable the Administrative Services Department to most satisfactorily find the personnel being sought by the department. When circumstances permit, requests for personnel should be made a reasonable period of time in advance of the actual need.

Section 4 Applicant Preference

Other qualifications being equal, departments will be expected to extend hiring preference to persons currently employed by the City of Midland.

Section 5 Residence

Other qualifications being equal, applicants who live inside the corporate limits of the City of Midland should be given preference over those living outside the City limits when appointments to positions with the City are being made.

Section 6 Announcements

All positions will be opened to applicants outside the city organization, at the department's discretion, and shall be posted for at least five (5) working days. If a shorter publication period is required due to an emergency, written justification should be included with the requisition and must be approved by the City Manager or the City Manager's designee.

Section 7 Application and Selection Procedures

All persons seeking initial employment or re-employment will be required to complete an application with the Administrative Services Department. Applications will be maintained by the City of Midland's Administrative Services Office, City Hall, 300 N. Loraine. Referrals will be made from the City of Midland's applicant database. Suitable and eligible candidates will be selected according to the requirements the department places on the requisition; which will include education, skills, experience and any affirmative action requirements, etc. Candidates will be required to complete typing, data entry, aptitude and/or psychological testing when necessary.

Recruiting departments shall only interview those persons who have completed a City of Midland Application Form. No formal job offers are to be made at the time of the interview. If the interviewer determines that a candidate is acceptable, the Administrative Services office will extend an offer of employment, contingent upon the successful completion of background investigations, physical examinations and/or functional capacity screening, and drug/alcohol screening.

Section 8 Appointments

As indicated above, no person shall be employed prior to completion of the application and selection process described above. The recruiting department shall notify the Administrative Services office of the preferred candidate and the date they would like to have the candidate begin employment. The department shall schedule an appointment with the Administrative Services Department for the enrollment/orientation of all new employees.

If no candidate possessing the minimum qualifications is located or approved by the recruiting department, a lesser-qualified person in a lesser classification may fill the budgeted position.

Section 9 Physical Standards

a. Medical Examination Requirements. All new and former employees will undergo a prescribed medical and/or functional capacity examination, to be made by some officially designated medical authority. The purpose of the examination will be the determination and certification of physical fitness and ability to perform duties of the position to which appointment is being considered. Such examinations are to be made as near the effective date of employment as possible.

The Administrative Services Department has the responsibility of making appointments and arrangements for obtaining the examinations, and matters concerning the initiation and completion of the requirements should be taken up with the Administrative Services Department.

b. Exceptions. Physical standards and requirements may vary somewhat in accordance with the duties and working conditions as generally set forth in the specifications for various positions and also as to anticipated length of employment.

The Administrative Services Department will advise the examining medical officer regarding any special or unusual requirements of this nature. The opinion and recommendation of the examining medical officer will govern and determine the acceptability of any person for employment, and particular attention will be given to the present or future capacity of the prospective employee to perform the required duties of the position, with or without a reasonable accommodation.

The examining medical officer will complete and forward to the Administrative Services Department a complete report on the prescribed form indicating his specific recommendations as to the suitability of the person for employment in the position indicated.

Section 10 Age Requirements

Age limits are indicated in some specifications for various classes of positions, upon the basis of a bona fide occupational qualification or statutory requirement.

Within statutory limits and restrictions, minors may be considered for employment in positions of a non-hazardous nature. In all instances, the parents of such minors shall be required to execute a waiver and release form, which will be provided by the Administrative Services Department. Any questions relative to matters of this nature, which cannot be satisfactorily solved by the Administrative Services department, will be referred to the City Attorney, whose ruling shall be final and governing.

Section 11 Standards of Conduct

To an unusual extent, and in a peculiar sense, employees of a municipal organization are the "Good Will Ambassadors" of the City, and such status involves a degree of duty and obligation regarding public and private conduct which is not common to many other classes of employment. The attitude and deportment of City employees should at all times be such as to promote the good will and favorable attitude of the public toward City Administration and its program and policies.

Section 12 Types of Positions

a. Full-Time. Full-time employees are employees who have a required workweek equaling or exceeding the full-time, established workweek.

b. Part-Time. Part-time employees are hourly paid employees working less than 30 hours each week. Part-time employees who are not temporary employees and who work at least 1,000 hours each year shall participate in the Texas Municipal Retirement System.

Part-Time employees shall not be eligible for Paid Time Off, holidays, or participation in any benefit program, including group insurance programs and other special benefit programs, unless specifically provided for in these policies, or required by State or Federal Law.

c. Temporary. Temporary employees are employees (whether full-time or part-time) who are anticipated to be working for the City for a comparatively short or definitely limited duration, not exceeding 960 working hours within a 12 month period. If a temporary employee who has had no break of time in his service and who works a full eight-hour day and a full normal work week is transferred to permanent status, he will be eligible for all the benefits of a permanent employee retroactive to the employment date of his uninterrupted service.

Section 13 Disqualification for Employment

The Director of Administrative Services may reject any application that indicates on its face that the applicant does not possess the minimum qualifications required for the position, and he may exclude or deny certification to any application for, but not limited to, the following reasons:

- a. He does not possess the bona fide occupational qualifications necessary for the performance of the duties of the position to which he seeks appointment.
- b. He has intentionally made false statements in his application or in the examination or has practiced or attempted to practice deception or fraud in connection with such application.
- c. He is receiving pension benefits under a retirement plan of the City.
- d. He refuses to participate in a retirement system, insurance program or social security program as required in these rules under [Chapter X](#).
- e. Any other grounds set forth in [Chapter VIII](#) of these rules.

Section 14 Probation Periods

a. Every employee, including part-time, seasonal, and temporary employees, shall be on probation for a period of one (1) year (twelve (12) months), unless the City Manager otherwise specifies a shorter period. In no case shall a probation period be less than six (6) months.

b. When the employee first reports for work, he shall be notified of the fact that he will be on probation for the required number of months. During that time, the supervisor shall observe his work with particular care, train, and advise the employee in the performance of his duties and let him know whether he is progressing satisfactorily.

c. At the close of the probationary period, the Department Manager shall do one of the following:

- 1) End the employee's probationary status and process any pay increase that may be allowed under the pay plan structure;
- 2) extend the probationary period for a period not to exceed six (6) months as described in Subsection d below; or
- 3) dismiss the employee.

d. Prior to the close of an employee's probationary period, an employee's Department Manager may notify the Director of Administrative Services of the Department Manager determination that the employee's probationary period should be extended. The Department Manager and the Director of Administrative Services may subsequently recommend to the City Manager or the City Manager's designee that the employee's probationary period be extended, and the City Manager or the City Manager's designee shall decide whether to grant the extension. The City Manager or the City Manager's designee may grant one (1) extension of the probationary period for a period not to exceed six (6) months. For the avoidance of doubt, any such extension must be granted prior to the expiration of the initial probationary period and shall become effective at the close of the employee's initial probationary period.

At the close of any extension of the probationary period, the Department Manager shall do one of the following:

- 1) End the employee's probationary status and process any pay increase that may be allowed under the pay plan structure; or
- 2) dismiss the employee.

e. Probationary employees are entitled to all benefits as set out in these rules, however, probationary employees may be discharged with or without specific reason and shall not be entitled to the appeal procedure set out in these rules for any adverse action to or termination during the probation period. Probationary employees shall be entitled to a "name clearing hearing" as outlined in [Chapter VIII](#) of these rules.

f. Employees promoted or transferred within the City service shall be on probation for their first twelve months. During that time the Department Manager may cancel the promotion or transfer and assign the employee to his former or a similar position. If the former position is no longer available, nor a similar position available, the employee may be discharged under this policy.

Section 15 City of Midland Drug and Alcohol Testing Policy

a. Introduction

The City of Midland recognizes that drug and alcohol abuse ranks as one of the major health problems in the world and adversely affects an employee's performance and safety on the job.

Therefore, it is necessary and required by law for the City to provide a drug free working environment for its employees.

It is the City of Midland's intention to comply fully with the DOT's (Department of Transportation) regulations governing drug and alcohol use and testing, and these requirements have been incorporated into this Policy. In the event federal and state regulations are amended, this Policy and the applicable terms, conditions and/or requirements of this Policy shall be deemed to have been amended automatically at that time in order to reflect and be consistent with said regulations.

b. Definitions and Terms Used in This Policy

- 1) **Safety-sensitive function** - for the purpose of this Policy, means any of the following:
 - a) Driving or operating any City- owned motor driven equipment on a full time, part time or temporary basis;
 - b) Inspecting, servicing, repairing, or conditioning motor equipment; or
 - c) Loading or unloading, giving or receiving shipments being loaded or unloaded.
- 2) **DOT driver** - means any current or prospective employee who may be required to operate a motor vehicle having a gross vehicle weight rating in excess of 26,000 pounds in interstate or intrastate commerce, or driver of a motor vehicle used to transport hazardous materials in quantity that requires the vehicle to be placarded regardless of the vehicle's size.
- 3) **Safety sensitive worker** - means any current and/or prospective employee who falls into the category of:
 - a) Performers of safety-sensitive functions as described in Section 1 above;
 - b) Operators of personal vehicles which are used for city business;
 - c) Public safety personnel (Police, Fire, etc.); or
 - d) Public safety communications personnel.
- 4) **City business** - includes, but is not limited to, work performed on or in City property including a City vehicle, and work performed on or in a non-City vehicle being used for conducting City business.
- 5) **Refusing to be tested - means:**
 - a) Failing to provide adequate urine specimen for a drug test without a valid medical explanation;
 - b) Failing to provide adequate breath for an alcohol test without a valid medical explanation;
 - c) Failing to submit to a test as directed or engaging in any conduct, which clearly obstructs the testing process.

Examples of obstructing the testing process would include leaving the scene of an accident without a valid medical or safety reason; not showing up for a test at the time directed without a valid excuse; tampering with a urine specimen; tampering with an alcohol testing device; failing to provide required identification; failing to cooperate with federal, state or local law enforcement officers at the scene.

- 6) **Positive alcohol breath test** - is when the alcohol concentration level registers 0.02 or greater.

c. Prohibited Drug and Alcohol Use and Activities

- 1) The City of Midland prohibits its employees from:
 - a) Using or being under the influence of or possessing illegal drugs
 - b) Using or being under the influence of legal drugs that are being used illegally;
 - c) Using or being under the influence of legal drugs whose use can adversely affect the ability of the driver to perform his or her job safely.
 - d) Selling, buying, soliciting to buy or sell, transporting, or possessing illegal drugs while on City time or property (except for approved law enforcement activities.)

- 2) Employees are prohibited from:
 - a) Using alcohol intoxicants within 4 hours of reporting for work;
 - b) Being under the influence of alcohol at any time while at work;
 - c) Possessing any amount of alcohol intoxicants on City property or in City vehicles (except for approved law enforcement activities.);
 - d) Testing positive for alcohol;
 - e) Refusing to be tested for drugs and alcohol as defined in [Section b.5](#) of this Policy;
 - f) Violating any applicable federal and/or state requirement governing the use of drugs or alcohol (See [Chapter VIII](#)).

d. Required Tests

1) Pre-employment/Transfer Testing

Once a job offer has been made, the applicant will be required to submit to a drug and alcohol test as part of his post-job offer physical. This is to be completed before the applicant is allowed to

report for work. This also applies to an employee who transfers from a non-covered position into a position that is covered by this policy on or after January 1, 1995.

Prior to taking a pre-employment drug and alcohol test, the applicant will be asked to execute a general consent and release form to be tested for drugs and alcohol.

All employment offers made by the City of Midland to hire an applicant, or transfer an employee are conditioned upon the applicant:

- a) Completing all of the "consent to be tested" forms;
- b) Taking and passing the drug and alcohol test as described by this policy;
- c) Signing the authorization form for the City of Midland to obtain all of the applicant's past drug and alcohol test results, including any refusals to test, for the previous two years if required by DOT regulations.

Any applicant who refuses or fails to comply with this policy will not be considered qualified for the position for which they have applied and will also be subject to adverse action, up to and including termination.

2) Post-accident Drug and Alcohol Testing

Any employee who is involved in an accident while operating a City vehicle or a personal vehicle for City business must submit to a post-accident drug and alcohol test when:

- a) It involves the death of a human being;
- b) The employee receives a citation for a moving violation (or the employee's actions are cited in the official Peace Officer's report as a contributing factor) and either a person requires immediate medical attention away from the scene or one or more of the vehicles must be towed away from the scene because of disabling damage. The drug and alcohol test is to be conducted within 2 hours post-accident, or 8 hours in unusual circumstances.

An employee who is required to take a post-accident drug and alcohol test will be assigned to a non safety-sensitive function while awaiting the results of the tests.

An employee who refuses or fails to submit to a post-accident drug and alcohol test, who tests positive for drugs and/or alcohol, who unnecessarily delays reporting to the test site following an accident, or who fails to comply with the City's post accident testing procedures, will be subject to adverse action, up to and including termination.

3) Reasonable Suspicion Testing

An employee will be required to submit to a drug and alcohol test whenever the City has a reasonable suspicion to believe that an employee has used drugs and/or alcohol in violation of these policies. Reasonable suspicion shall be based on specific, objective facts and reasonable inferences drawn from those facts in light of the experience that the employee has engaged in Prohibited Conduct with regard to the use of drugs and/or alcohol, as described in Chapter VIII of the City of Midland Personnel Policies.

Reasonable suspicion exists when an employee's behavior, appearance, speech or body odor indicates drug and/or alcohol use; such must be personally observed and documented by City of Midland supervisory personnel who have received training regarding the physical, behavioral, speech, and performance indicators of probably drug and/or alcohol use.

If an employee is required to submit to a drug and alcohol test based on a reasonable suspicion regarding his/her use of drugs and/or alcohol ("Reasonable Suspicion Test"), the employee shall be informed that he/she may:

- a) Submit to a Reasonable Suspicion Test;
- b) Appeal the matter to another supervisor (to begin at the Division Manager level) authorized to act as an Appeals Officer; or
- c) Refuse the Reasonable Suspicion Test and be subject to Adverse Action (as defined in Chapter VIII) up to and including termination.

If the employee requests an appeal, a hearing shall be conducted immediately with the supervisor requesting the Reasonable Suspicion Test, the Appeals Officer, and the employee present.

The Appeals Officer shall determine whether there is a reasonable suspicion to believe that the employee engaged in Prohibited Conduct with regard to the use of drugs and/or alcohol. The Appeals Officer shall have the authority to either:

- a) Order the employee to submit to a Reasonable Suspicion Test; or
- b) Order that the allegations against the employee be dismissed.

An employee who is required or ordered to submit to a Reasonable Suspicion Test shall be escorted by supervisory personnel to a testing site.

An employee who is required or ordered to submit to a Reasonable Suspicion Test is prohibited from performing safety-sensitive functions while awaiting the results of the Reasonable Suspicion Test.

An employee who receives a positive Reasonable Suspicion Test, or fails to timely submit to a Reasonable Suspicion Test, shall be subject to Adverse Action up to and including termination.

4) Random Testing

DOT drivers and safety sensitive workers are subject to random drug and alcohol testing.

The City of Midland will conduct drug and alcohol testing on a random, unannounced basis at the beginning, during or at the end of a regularly scheduled work shift. The testing dates and times are unannounced and are with unpredictable frequency throughout the year. The number of random tests conducted will (at a minimum) equal the amount required by federal and/or state regulations for employees who possess a commercial driver's license and perform in that capacity. Non-DOT employee random testing amounts will be at the discretion of the City Manager or designee.

The City of Midland shall maintain two separate pools for random testing, one for DOT drivers and one for safety-sensitive workers as defined in this policy. Every employee in the selected job

classes or organizational divisions will have an equal chance of being selected each and every time the selection is conducted. Appropriate safeguards will be present to ensure that the identity of individuals cannot be determined prior to or at the time of their selection.

Whenever an employee is randomly selected to be tested, he or she will be instructed to report to the collection site immediately and will be given written notice of the testing procedures.

Any employee who tests positive or who refuses to submit to a test is subject to adverse action up to and including termination.

5) Return to Duty Testing

Should the City of Midland elect to consider reinstating or rehiring an employee who violates this policy, he or she will be required to submit to and pass a drug and alcohol test before he or she will be permitted to return to duty. For a return to duty alcohol test, the alcohol level must be less than 0.02.

Before being permitted to return to work, the employee must execute a "last chance agreement" and submit to at least six unannounced follow-up tests during the next 12 months.

Any employee who refuses to comply with the return-to-duty requirements, or who tests positive will be considered medically unqualified to perform his or her job and subject to adverse action up to and including termination.

6) Follow up Testing

An employee who is returned to duty after a positive drug or alcohol test is required to submit to unannounced follow-up testing as one condition of continued employment.

At a minimum, the employee will be required to submit to at least six tests during the next 12 months following the employees' return to duty. The date and time of such tests will be at the discretion of a substance abuse professional or the Division and/or Department Manager and conducted at random, without prior notice being given to the employee.

An employee who tests positive or who refuses to submit to a test, will be considered unqualified to perform his or her job and subject to adverse action up to and including termination.

e. Testing Methodology and Integrity

- 1) To insure the integrity of each test, all specimen collection, analysis, and laboratory procedures for personnel subject to 49CFR Part 40 and § 552.001, Texas Commercial Driver's License Act shall be conducted in accordance with DOT procedural protocols and safeguards. This includes, among other things:
 - a) Procedures to ensure the correct identity of each employee at the time of testing;
 - b) Strict chain of custody procedure to ensure that the specimen is not tampered with by the collection agency;
 - c) The use of a trained breath alcohol technician (BAT) and DOT approved testing devices for conducting alcohol tests;
 - d) The use of a laboratory which has been certified by the Substance Abuse and Mental Health Services Administration, a division of the U.S. Department of Health and Human Services (DHHS/SAMSHA);
 - e) The confirmation of an initial positive drug screen by a second analysis using gas chromatography/mass spectrometry (GCMS);
 - f) The confirmation of an initial positive alcohol screen by a second analysis;
 - g) The City's appointment of a qualified Medical Review Officer (MRO) to review positive drug test results before they are reported to the City of Midland's designated representative.

- 2) The City of Midland will provide employees with written and/or oral instructions regarding the conduct of the specific test before each testing event,
- 3) Drug Testing Procedures
 - a) Drug testing will require the employee to provide a specimen of his or her urine.
 - b) At a minimum, urine specimens will be analyzed for the presence of the following drugs: marijuana, cocaine, opiates, amphetamines, and/or phencyclidine (PCP).
 - c) Personnel not subject to 49 CFR Part 40 and § 522.001, Texas Commercial Driver's License Act, may be subject to the pre-employment drug test via the rapid drug test method conducted by a trained technician. Positive test results will be confirmed with City's Department of Health and Human Services approved testing facility. All other drug tests will be administered using the split sample methodology required by DOT. Under this methodology, the employee must provide at least 45 ml (milliliters) in a specimen container. The specimen will then be divided, into two specimens. The bottle containing 30 ml will be analyzed as the employee's primary specimen. The second bottle will be held by the laboratory, to be sent to another lab at the employees' request in the event that the primary specimen is verified as positive. In the event the primary specimen is verified as positive, the employee will be notified by the City's MRO or by the City's designated representative of the positive test and given the option to have the second bottle sent to a different laboratory for analysis. To exercise this option, the employee must advise the city's MRO or designated representative within 72 hours of being informed of the primary positive result. The employee will be responsible for the cost of having the second sample analyzed.
 - d) Except for the use of methadone and medications containing alcohol, nothing in this Policy prohibits the employee's use of a medication legally prescribed by a licensed physician who is familiar with the employee's medical history and specific job duties and who has advised the employee that the prescribed medications will not adversely affect the employee's ability to perform his job safely. Medications prescribed for someone other than the employee, however will not be considered lawfully used when taken by the employee under any circumstances.
 - e) A "positive" drug test may be declared "negative" by the MRO, if the employee can prove with clear and convincing evidence that the drug which was used was prescribed by a licensed physician who is familiar with the employee's medical history and specific job duties. The determination of this will be made by the MRO.
 - f) In the event that the test result of an employee's primary specimen is positive, the employee will be notified by the MRO. If the MRO is unable to reach the employee after making reasonable efforts, then the employee may be notified by the City's designated representative. The MRO or the City's designated representative shall advise the employee that he or she has 72 hours to request that the MRO send the secondary specimen to a second NIDA approved laboratory for analysis. The employee will be responsible for the cost of the second test.
 - g) Before an employee's test result will be confirmed positive for drugs, the employee will be given the opportunity to speak with the City's MRO and demonstrate that there was a legitimate medical explanation for the positive test result. If the MRO determines that a legitimate medical reason does exist, the test result will be reported to the City as a "negative," If the MRO determines that a legitimate medical reason does not exist, the test result will be reported to the City as a "confirmed positive."
- 4) Alcohol Testing Procedures
 - a) Alcohol testing under this Policy requires that an employee must provide a breath specimen for any test conducted by, or for the City of Midland.
 - b) In addition to this policy, an employee could be subject to alcohol testing conducted by a federal, state or local law enforcement officer following an accident. The employee must provide either a breath or blood specimen, as directed by the law enforcement officer.
 - c) Alcohol tests will be administered using a breath specimen, taken by a breath alcohol technician (BAT) using an approved breath-testing device (EBT).

- d) Before being tested by the City, each employee will be positively identified through presentation of a photo-identification or by other means approved by the City of Midland and will be required to execute a "Breath Alcohol Test" form provided by the BAT. An employee who refuses to provide proper identification, provides false identification, refuses to execute the forms, or who otherwise refuses or fails to cooperate will be treated as though he or she had tested positive and will be subject to adverse action, up to and including termination.
- e) Prior to each alcohol breath test, the BAT will instruct the employee on how the test will be performed.
- f) To protect each employee, the BAT will open and attach to the testing device an individually sealed mouthpiece in the employee's view. The employee will then be directed to blow forcefully into the breath-testing device until an adequate amount of breath has been maintained.
- g) In the event that the employee is unable to provide an adequate amount of breath for the initial or confirmatory test after several attempts to do so, the employee will be required to submit to an evaluation by a licensed medical physician to determine whether a valid medical condition does exist. If the physician determines that a valid medical condition does exist, the test result will be considered as "negative". If the physician determines that a valid medical condition does not exist, the test result will be considered a "confirmed positive".
- h) In the event that an employee provides an adequate breath specimen and the initial test registers an alcohol concentration level that is less than .02, the test results will be reported, as "negative" and no additional testing will be required at that time.
- i) In the event that an employee provides an adequate breath specimen and the initial test registers an alcohol concentration of .02 or greater, a second confirmatory will be performed. If the confirmatory breath test registers less than .02, the test results will be reported as a "negative." The confirmation breath test will be administered no sooner than 15 minutes from the initial breath test and no longer than 20 minutes from the initial breath test. During the wait period for the confirmation test, the employee is not allowed to put anything into his mouth and should be discouraged from belching or burping.

f. Test Results - Adverse Action

- 1) An employee who violates these prohibitions will be subject to restrictions mandated by the DOT as described in [part d, item 6](#) of this Section and subject to adverse action as described in [Chapter VIII](#) of the City of Midland's Personnel Policies Manual, up to and including termination.
- 2) Any employee whose test result is confirmed positive for drugs will be considered unqualified to perform or continue to perform his or her functions safely and subject to adverse action up to and including termination. The employee could also be subject to civil and criminal penalties imposed by DOT.
- 3) An employee whose confirmatory test registers .02 or more but less than .04 will be removed from service and placed on leave for a minimum of 24 hours. The employee will be subject to return to duty testing and follow up testing and may be subject to adverse action up to and including termination.

An employee whose confirmatory test registers .04 or greater will be removed from service and placed on leave for a minimum of 24 hours and referred to a Substance Abuse Professional (SAP). The employee may be subject to adverse action up to and including termination.

Before consideration can be given to returning an employee to duty who has had a BAC (breath alcohol concentration) of .04 or greater, the employee must complete the rehabilitation program as prescribed by the SAP and be subject to return to duty and follow up testing.

g. Confidentiality

The results of all individual drug and alcohol tests will be kept in a secure location with controlled access.

All individual test results will be considered confidential. The release of an individual employee's results will only be given with an individual employee's written authorization, or as is otherwise required by DOT regulations, or by other applicable federal or state law.

Section 16 Harassment Policy and Procedures

a. Prohibited Conduct

The City of Midland prohibits harassment based on race, color, religion, sex, age, national origin, disability or any other basis protected by federal, state or local law. It is the policy of the City of Midland that all employees shall be able to enjoy a work environment free from all forms of discrimination and harassment, including sexual harassment. In general, harassment may be defined as unsolicited words or conduct which tend to annoy, alarm or abuse another person, or a course of vexatious comment or conduct that is known or ought reasonable to be known to be unwelcome. Additionally, sexual harassment is a form of misconduct that undermines the integrity of the employment relationship. No employee, either male or female, should be subjected to unsolicited and unwelcome sexual overtures or conduct, either verbal or physical. Such actions will not be tolerated.

Each employee has the responsibility to maintain the workplace free of all types of harassment. In keeping with such, the City of Midland has the responsibility of providing this policy to all employees and assuring them that they are not to endure insulting, degrading, or exploitative sexual treatment.

Specifically, no person shall threaten or insinuate, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. In addition, while on duty or while acting in an official capacity, no employee shall knowingly or intentionally engage in conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidated, hostile, or offensive work environment; or conduct which subjects a member of the public to sexual harassment.

b. Examples of Prohibited Activity

Examples of unlawful harassment based on race, color, religion, sex, age, national origin, disability, or other protected basis includes, but is not limited to the following:

- 1) Verbal actions such as slurs, derogatory comments or jokes, epithets or unwanted sexual invitations, advances, or comments;
- 2) Physical actions such as unwanted touching, assault, blocking another's way, or interference with work;
- 3) Visual conduct such as sexually-oriented, pornographic and/or derogatory photographs, posters, drawings, cartoons, gestures, e-mail, or Internet sites;
- 4) Threats or demands to submit to sexual advances or requests as a condition of continued employment, offers of employment benefits in return for sexual favors, or to avoid some other negative employment action; and
- 5) Retaliation against any employee for making an allegation of harassment or for participating in such an investigation.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that affects an employee in any one of the following ways:

- 1) Submission to such conduct is made explicitly or implicitly a term or condition of a person's employment;
- 2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; or
- 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

c. Procedures

Any employee who believes that he or she has been subjected to general harassment as defined above should avail themselves of the grievance procedures outlined in Chapter IX of these policies. Any employee (or member of the public) who believes that he or she is or has been subject to sexual harassment by a City employee should report the alleged charge immediately, in accordance with the following procedures. (All information will be held in strictest confidence and will be disclosed only on a need to know basis to investigate and resolve the matter).

- 1) The individual alleging harassment may report the incident to their immediate supervisor, their Department Manager, the City Manager's Office or the Administrative Services Department. If an employee's immediate supervisor is involved in the alleged harassment, it is unnecessary to make a report to that individual. If accusations are made to any other person or if supervisory personnel otherwise become aware of suspected acts of harassment, the matter should be directed immediately to the Administrative Services Department. The supervisor or administrator contacted will offer the individual alleging harassment the opportunity to complete a written statement specifically outlining the complaint. If the complainant does not put the complaint in writing, the person contacted still must notify the Administrative Services Department. Employees are encouraged to promptly report the alleged harassment within three (3) calendar days of the offense. The City of Midland takes all complaints seriously and handles them as promptly, thoroughly, and confidentially as possible.
- 2) Once a written complaint is filed, the Administrative Services Department will conduct an investigation within 48 hours of their receipt of the complaint (excluding weekends and holidays).
- 3) If corrective action (other than adverse action as outlined in [Chapter VIII](#) of these policies) is deemed appropriate as a result of the investigation, the City Manager's Office may authorize the Administrative Services Department or the Department Manager to enforce said action as needed. Any adverse action recommended as a result of the investigation will be subject to approval by the Department Manager and will be subject to the appeals procedure outlined in [Chapter VIII](#) of these policies. If allegations prove not to constitute harassment, or the evidence provided does not substantiate the claim, the accused employee will not be subject to any adverse action. Employees who register complaints in good faith will not be subject to any retaliation. Employees who willfully register false accusations will face adverse action, up to and including termination.

Section 17 Workplace Violence Policy

The City of Midland is committed to maintaining a safe work environment, and has a zero tolerance policy for violence in the workplace. "Workplace violence" is defined to include:

- a. Physically aggressive, violent, or threatening behavior, such as attempts to instill fear in others or intimidation;
- b. Verbal or physical threats of any sort;
- c. Any other conduct that suggests a tendency toward violent behavior. Such behavior includes but is not limited to, excessive arguing, profanity, threats of sabotage of City property, belligerent speech or demonstrated pattern of insubordination, and refusal to follow City policies and procedures;
- d. Causing physical damage to City facilities or defacing property; or
- e. With the exception of authorized City personnel as described in Chapter II, carrying firearms or weapons of any type or kind while conducting City business in or on City buildings and property, other assigned work locations, and City vehicles and equipment.

If any employee becomes aware of or observes any of the above-referenced behavior or actions by a co-worker, consultant, customer, third party vendor, visitor, or any other party, he or she should notify his/her supervisor, any member of management, and/or the Administrative Services Department immediately.

All reports of workplace violence will be taken seriously. To the extent possible, the identity of the reporting individual(s) will be kept confidential. The City will not tolerate retaliation in any form against an employee who makes a report of workplace violence.

Any employee found to be in violation of this policy will be subject to adverse action up to and including termination.

Chapter V

Attendance and Leaves

Section 1 Hours of Work

All offices of the City, except those for which special regulations are required, shall be kept open continuously from 8:00 a.m., until 12:00 p.m. (noon) and from 1:00 p.m. until 5:00 p.m., Monday through Friday.

Section 2 Regular Working Day

For the purpose of these policies and all the following sections which deal with attendance and leave, a "regular working day" or an "accrued day" of leave shall be 8 hours for all full-time employees; provided, however, that for the Fire Department's 56-hour shift personnel ("Fire Department Shift Personnel"), a "regular working day" or "accrued day" shall be 12 hours. No employee may receive additional compensation by working during his or her leave without the express approval of the City Manager. Temporary employees will earn no Paid Time Off or other leaves except as otherwise expressly stated in these policies.

Section 3 Work Week

The work week will be determined by the needs of the City and set by the City Manager with due regard for certain State statutes.

Section 4 Overtime

Employees may be required to work overtime when necessary in order to maintain the proper City services. To the extent that an employee's supervisor has not expressly required the employee to work overtime, the employee shall, prior to working overtime, obtain the employee's supervisor's approval to work overtime. Non-exempt employees who work overtime shall be compensated at rates set pursuant to law. Except as expressly provided in these Personnel Policies, no employee leave shall be considered hours worked for purposes of overtime. Many employee classifications are eligible for compensatory time off rather than paid overtime. No more than forty (40) hours of compensatory time may be accumulated.

Section 5 Attendance

An employee shall be in attendance at his or her worksite in accordance with the rules regarding hours of work, holidays, and leaves as determined by the employee's department. Excessive tardiness, neglect of duties, or unauthorized absences will be grounds for dismissal. All departments shall keep daily attendance records of employees. Any employee absent from work without notice for three (3) consecutive days will be considered as having abandoned the job. Such abandonment shall be considered a voluntary resignation from employment, and the City will process such separation of employment as a voluntary resignation.

Section 6 Inclement Weather / Emergency Closure

The City of Midland offices and activities will remain open and in operation, during established working hours unless the City Manager declares the offices, excluding emergency services, officially closed due to inclement weather or emergency closure due to unusual circumstances.

- a. **Non-Sworn Employees.** For purposes of this Section, "non-sworn employees" are all City employees except peace officers and fire protection personnel.

- b. **Reporting to Work.** If the City has not been officially closed, employees shall make a reasonable effort to report to work. An employee who is unable to report to work due to inclement weather shall notify the employee's supervisor in accordance with these policies and applicable departmental rules and procedures. An employee who fails to so notify the employee's supervisor may be subject to adverse action, up to and including dismissal.

c. **Compensation for Inclement Weather / Emergency Closing Absences.**

Compensation for absences will be as follows:

- 1) **Official Closing.** If the City Manager closes a facility, a non-exempt non-sworn employee designated by the employee's Department Manager may work remotely to ensure department operations continue during the closure period. An employee who works remotely shall be paid for hours worked in addition to receiving the "City Closed" accrual for their scheduled shift. Hours worked remotely count as hours worked in determining overtime in accordance with the Fair Labor Standards Act. An employee who does not work remotely shall be paid for the employee's scheduled shift. Such "City Closed" hours shall not count as hours worked for the purpose of overtime. If an employee is on Paid Time Off or any other leave during the declared times of closing, the appropriate leave compensation will apply.
- 2) **No Official Closing.** If the City Manager does not close a facility and an employee is unable to report to work due to inclement weather, compensation will be handled in the following manner:
 - a) **Non-exempt Employees.** A non-exempt employee who misses work hours due to inclement weather may use accrued Paid Time Off or compensatory leave. If an employee has no paid leave available, the employee may be granted authorized leave without pay.
 - b) **Exempt Employees.** An exempt employee who misses work hours due to inclement weather or other emergencies may use accrued Paid Time Off if the absence is for a full workday.
- 3) **Delay Start / Early Closing.** If the City Manager delays the opening of a facility or closes a facility early due to inclement weather, an employee who reported for work will be paid "City Closed" for the remainder of the employee's normal shift. Employees who remain as part of a skeleton crew will be compensated for all hours worked in addition to receiving the "City Closed" accrual for hours the City was closed due to the delayed opening or early closure.
- 4) **Critical Service Personnel.** Employees designated by their Department Manager to provide critical services shall report to work on-site as provided by their department rules during an official closing. Non-exempt non-sworn employees who are required to report to work hereunder shall be paid for all hours worked in addition to receiving the "City Closed" accrual for their scheduled shift. Such personnel may include, but are not limited to, from the following:
 - a) Airport Operations Personnel;
 - b) Utilities Personnel;
 - c) Transportation Personnel;
 - d) Traffic Operations Personnel; and
 - e) Solid Waste Personnel.

Section 7 Holidays

Municipal offices with the exception of those in emergency categories, shall be closed on the following legal holidays: New Year's Day, Martin Luther King Day, Presidents Day, Good Friday, Memorial Day, Juneteenth

National Independence Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve Day, and Christmas Day. Firefighters shall be granted one (1) floating holiday designated as the "September 11th Floating Holiday." Non-exempt employees' holiday time will be considered actual hours worked to determine eligibility for overtime.

Holidays falling on Sunday or Saturday. If a holiday falls on Sunday, the following Monday shall be observed, and if a holiday falls on Saturday, the preceding Friday shall be observed. The City Manager may designate any additional holidays which he feels may be justified in particular situations after giving due regard to the need for City services.

Eligibility for Pay for Holidays. An employee shall be eligible for holiday pay provided that the employee worked the last scheduled working day before and the next scheduled working day following the holiday or is otherwise on approved leave (either paid or unpaid) for those same days. In approving leave around a holiday, directors and division managers must ensure that adequate personnel are on duty to conduct departmental business.

Section 8 Vacation / Sick Leaves

- a. Vacation
Effective October 1, 2023, vacation leave accruals shall be discontinued. The final accrual of vacation leave will be through the pay period ending September 30, 2023 (pay date of October 13, 2023). All vacation leave balances shall be converted to Paid Time Off on a one-to-one basis.
- b. Sick Leave
Effective October 1, 2023, sick leave accruals will be discontinued. The final accrual of sick leave will be through the pay period ending September 30, 2023 (pay date of October 13, 2023). All sick leave balances shall be converted to Paid Time Off on a one-to-one basis.
- c. Council Appointees, Other Employees, and Department Managers
Vacation and sick leave provided in any Council Appointee's, Other Employee's, or Department Manager's employment agreement shall be replaced with Paid Time Off.

Section 9 Paid Time Off ("PTO")

Effective October 1, 2023, the City will convert its Vacation and Sick Leave programs into a single Paid Time Off ("PTO") program. PTO is a comprehensive paid time off program that can be used for any type of time off from work that previously would have been covered under the Vacation and Sick Leave policies but does not include time taken under any of the City's other paid leave policies. In accordance with Texas Local Government Code 142.0013, PTO is equivalent to vacation time for fire protection and peace officer personnel.

Employees may not receive additional compensation by working during their PTO leave without the express approval of the City Manager. Temporary employees are not eligible for PTO.

a. PTO Accrual

All full-time employees are eligible to accrue PTO effective October 1, 2023 (Pay Date October 27, 2023) at the accrual rates listed below:

Full-Time Employees (based on a 40-hour work week)				
Years of Service	Accrue Annual (Days)	Accrue/Paycheck 26 pays (Hours)	Maximum Days	Maximum Hours
Upon hire	5			
Less than 1 year	20	6.1539		
At least 1 but less than 4 years	27	8.3077	118	944

At least 4 but less than 9 years	29	8.9231	128	1024
At least 9 but less than 15 years	31	9.5385	133	1064
At least 15 years, but not hired prior to June 1, 1990	33	10.1539	139	1112
Hired prior to June 1, 1990	44	13.5385	145	1160
Fire Department Shift Personnel (based on a 56-hour workweek)				
Years of Service	Accrue Annual (Days)	Accrue/Paycheck 26 pays (Hours)	Maximum Days	Maximum Hours
Upon hire	5			
Less than 1 year	20	9.2308		
At least 1 but less than 4 years	27	12.4616	118	1416
At least 4 but less than 9 years	29	13.3847	128	1536
At least 9 but less than 15 years	31	14.3077	133	1596
At least 15 years, but not hired prior to June 1, 1990	33	15.2308	139	1668
Hired prior to June 1, 1990	44	20.3077	145	1740

b. Requesting PTO

PTO may be used for various reasons, including personal days, vacations, and illness or injury (non-work related). PTO will be paid at the employee's regular rate of pay earned at the time the PTO is used. The City will count PTO as hours worked for the purpose of overtime.

An employee shall schedule PTO in advance with the employee's supervisor or Department Manager for approval unless the employee uses it for an unexpected illness or injury. In the event of an unexpected illness or injury, the employee shall notify the employee's immediate supervisor prior to the time set for the employee to begin the employee's shift. If an employee takes PTO without prior approval for medical or emergency reasons, the City reserves the right to require medical documentation or other documentation of the reasons given for the unapproved PTO. If the employee is unable to contact the employee's supervisor, the employee may notify the Office of Administrative Services. In general, employees should seek approval for planned absences at least five (5) days in advance. Employees may not use more than ten (10) days of PTO days at one time without approval from the employee's Department Manager. Depending on staffing and departmental needs, PTO requests will be granted to the extent feasible.

c. Payment of PTO for Terminating Employees

A regular employee, Department Manager, Other Employee, or Council Appointee (unless the employee's employment agreement states otherwise) who terminates employment with the City, or whose employment is terminated by the City, shall be paid in a lump sum for unused PTO as listed below:

Years of Service	Payout % of Accrual
Upon hire	0.00%
Less than 1 year	0.00%
At least 1 but less than 4 years	70.00%
At least 4 but less than 9 years	73.00%
At least 9 but less than 15 years	76.00%
At least 15 years, but not hired prior to June 1, 1990	79.00%
Hired prior to June 1, 1990	82.00%

d. Payment of PTO for Retiring Employees

Retiring employees may request a maximum of 250 hours of the PTO payment listed in Subsection c above to be deposited into a Retiree Medical Reimbursement Account, which may be used to reimburse out-of-pocket medical expenses on a tax-free basis as authorized by the United States Internal Revenue Code. This provision shall not apply to any employee who is not eligible to retire at the time of separation of employment or whose employment is terminated under the provisions of Chapter VIII, "Adverse Action," or Chapter XII, "Employment At Will" of the City of Midland Personnel Policies.

For the avoidance of doubt, this Subsection applies only to the following employees:

- i. An active employee who has completed a minimum of twenty (20) consecutive years of service prior to retirement;
- ii. An active employee who is at least sixty (60) years of age and has completed a minimum of five (5) consecutive years of service with the City prior to retirement; or
- iii. An active employee who is eligible for retirement through the Texas Municipal Retirement System or through the Midland Fireman's Relief and Retirement Fund.

Section 10 PTO Bank for Sick Leave

Beginning October 1, 2023, a Paid Time Off Bank ("PTO Bank") for sick leave shall be established and maintained by the City.

a. Membership

Membership in the PTO Bank shall be voluntary on the part of employees.

b. Eligibility

Any full-time employee with one full year of continuous service with the City of Midland is eligible to join.

c. Enrollment

Any eligible employee, within thirty (30) days following the completion of his or her first year of employment, may enroll in the PTO Bank by completing a membership application and donating two (2) days of the employee's accumulated PTO leave to the PTO Bank. In addition, any eligible employee may enroll during the open enrollment period. Open enrollment shall occur annually during the month of September, with the PTO donation being deducted from the 2nd paycheck of October. For the purposes of this policy, a PTO Bank Day is defined as 8 hours for regular employees and 12 hours for Fire Department Shift Personnel.

Any employee who was previously enrolled in the City's Sick Leave Bank shall be enrolled in the PTO Bank with no further donation or other action on the employee's part being necessary.

d. Procedures

1) The Administrative Services Department shall govern the operations of the PTO Bank.

2) A new employee must enroll within thirty (30) calendar days following the first-anniversary of his or her date of employment. Otherwise, participant enrollment will be held annually during the open enrollment period during the month of September.

3) An employee shall exhaust all of the employee's accrued PTO before the employee may utilize the PTO Bank.

4) An employee must be suffering from a serious health condition that makes the employee unable to perform the functions of the employee's job. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing

treatment by a health care provider, including but not limited to a stroke, a heart attack, cancer, or injuries sustained in an automobile accident.

5) A physician's statement diagnosing the condition in detail and indicating the duration of treatment is required with the Request for PTO Bank Days.

6) Employees covered under a workers' compensation program may not utilize the PTO Bank for those conditions covered under workers' compensation.

7) Additional accrual donations may be required in the event the current PTO Bank balance falls below an acceptable level.

8) The total lifetime benefit under the PTO Bank program shall not exceed ninety (90) working days per individual.

e. **Application Process**

1) Should a member of the PTO Bank incur a long-term, serious illness or injury necessitating additional days after all of the member's accumulated PTO leave days have been used, the member may submit a Request for PTO Bank Days.

2) A member who requests days from the PTO Bank shall submit to the Office of Administrative Services Employee Benefits Division the following information within thirty (30) calendar days of the date that they have exhausted their accrued PTO leave days:

- (i) A completed Request for PTO Bank Days form, which is available in the Employee Benefits Office; or
- (ii) A detailed statement from a physician verifying the illness or injury.

3) Forms for the above purpose have been prepared and are available from the Employee Benefits Office.

4) The Employee Benefits Division will not consider a request for days from the PTO that does not conform to the requirements of this subsection.

5) If a member is unable to file a Request for PTO Bank Days, the immediate supervisor or Department Manager may initiate the request at the request of the member's family.

6) An applicant may be required to undergo a medical review by a second-opinion physician of the City's choice at any time at the expense of the City.

Section 11 PTO Buy-Back

An eligible employee may elect to participate in the Paid Time Off Buy-Back ("PTO Buy-Back") program under which the City may buy back a portion of the employee's unused PTO leave as described in this Section.

a. For purposes of this Section, an eligible employee is a full-time employee who has completed at least one (1) year of continuous service before the beginning of the fiscal year (October 1st) during which the employee elects to participate in the PTO Buy-Back Program.

b. An eligible employee who elects to participate in the PTO Buy-Back program shall be subject to the following limits:

- 1) If the employee is not Fire Department Shift Personnel, the employee may elect for the City to buy back 40 hours of unused PTO leave per buy-back, with a maximum of two (2) buy-backs (80 hours) per fiscal year.

- 2) If the employee is Fire Department Shift Personnel, the employee may elect for the City to buy back 56 hours of unused PTO leave per buy-back, with a maximum of two (2) buy-backs (112) hours) per fiscal year.
 - 3) The employee must have a minimum of three (3) days of PTO leave remaining after a buy-back. There will be no incremental buy-back.
- c. An employee who elects to participate in the PTO Buy-Back program must complete and return the PTO Buy-Back form to the Administrative Services Department no less than 30 days prior to the scheduled buy-back.
 - d. An employee who elected to participate in the PTO Buy-Back and whose employment was terminated prior to receiving the PTO Buy-Back payment shall be subject to Section 9.c above and shall not receive the PTO Buy-Back payment.
 - e. A PTO Buy-Back payment will be an additional amount added to the employee's regular paycheck scheduled for the date(s) selected. Upon a PTO Buy-Back payment being made, the number of hours that were bought back will be deducted from the employee's accrued PTO leave. PTO buy-back is subject to deductions for retirement plan contributions under the Federal Insurance Contributions Act and all other applicable deductions.
 - f. The PTO Buy-Back program shall be subject to the availability of funds.
 - f. **Regulations**
 - 1) Additional accrual donations may be assessed in the event the current PTO Bank balances falls below an acceptable level.
 - 2) The Employee Benefits Division will review and act on all requests within thirty (30) working days of receipt of a Request for PTO Bank Days and necessary documents.
 - 3) If a member is not satisfied with the Employee Benefits Division's decision regarding a Request for PTO Bank Days, the member may request a conference with the City Manager or the City Manager's designee by filing a written Request for Review with the Administrative Services Director within ten (10) business days of the member's receipt of the Employee Benefits Division's decision. The written Request for Review shall set forth contain all the relevant facts as well as the specific grounds for the review of the decision.
 - (i) Upon receipt of a Request for Review, the City Manager or the City Manager's designee shall:
 1. schedule a conference to discuss the request; or
 2. take action that addresses the matter described in the Request for Review to the reasonable satisfaction of the member.
 - (ii) Following a conference to discuss the request, the City Manager or the City Manager's designee shall provide the member a written decision regarding the request within ten (10) business days.
 - (iii) The decision or action taken by the City Manager or the City Manager's designee shall be the final decision of the City regarding the Request for Review.

Section 12 Birthday Leave

Full time employees are eligible for one (1) day of paid birthday leave annually. Birthday leave shall be taken during the employee's birthday month unless the employee's Department Manager makes an exception. Exceptions may be made only after the employee's birthday and prior to December 31st.

An employee must request birthday leave from the employee's supervisor or Department Manager at least one (1) week prior to taking birthday leave.

An employee's unused birthday leave will not carry over to the next year, and an employee will not receive payment for unused birthday leave upon separation of employment.

Section 13 Bereavement Leave

All employees may be granted bereavement leave with pay for a period not to exceed three (3) days unless a longer period of time (not to exceed an additional two (2) days) is approved by the City Manager in case of death of a grandparent, grandchild or other member of their immediate family, which shall consist of the father, mother, son or daughter, husband, wife, brother or sister of the employee's spouse or the employee. Bereavement leave with pay for a period of up to ½ day may be granted to an employee by his immediate supervisor to attend funerals for other than immediate family members. This leave shall not be charged against PTO or other accrued leave.

Part-time, seasonal, and temporary employees may be granted leave of absence without pay in such cases.

Section 14 Family/Medical Leave Act (FMLA)

The City of Midland complies with the Family and Medical Leave Act (FMLA) and will grant up to 12 weeks of leave during a 12-month period to eligible employees or up to 26 weeks of military caregiver leave.

The purpose of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If you have any questions, concerns, or disputes with this policy, please contact the manager of employee benefits.

a. Definitions

As used in this Section:

- 1) **Covered active duty** means (1) with respect to a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country, or (2) with respect to a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation in accordance with 29 CFR 825.102.
- 2) **Covered service member** is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy or is in outpatient status or on the temporary disability retired list for a serious injury or illness.
- 3) **Next of kin of a covered service member** is the nearest blood relative, other than the covered service member's spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- 4) **Parent** means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."
- 5) **Qualifying exigency** includes short-notice deployment, military events and activities, childcare, and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that arise out of active duty, provided that the employer and employee agree, including the agreement on timing and duration of the leave.
- 6) **Serious health condition** means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. This can include conditions with short-term, chronic, long-term or permanent periods of incapacity.
- 7) **Serious injury or illness** is one that is incurred by a current member of the Armed Forces in the line of duty on active duty that may cause the member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the member's active duty and that were aggravated by service in the line of duty on active duty.

- 8) **Spouse** means (1) a husband or wife as defined or recognized in the state where the individual was married or (2) a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

b. **Eligibility**

To be eligible for leave under this policy, employees must meet **all** of the following requirements:

- 1) Have worked at least twelve (12) months for the City of Midland.
- 2) Have worked at least 1,250 hours for the City of Midland over the twelve (12) months preceding the date when the leave would commence.

The 12 months of employment do not have to be consecutive. All periods of absence from work due to or necessitated by service in the Armed Forces are counted as hours worked in determining eligibility.

c. **Reasons for Leave**

To qualify as FMLA leave under this policy, the leave must be for one of the following reasons:

- 1) The birth of a child or placement of a child with the employee for adoption or foster care.
- 2) To care for a spouse, child or parent who has a serious health condition.
- 3) For a serious health condition that makes the employee unable to perform the essential functions of his or her job.
- 4) For any qualifying exigency arising out of the fact that a spouse, child or parent is a member of the Armed Forces on covered active duty or on call to covered active duty status.
- 5) To care for a covered service member with a serious injury or illness.

d. **Amount of Leave**

An eligible employee may take up to 12 weeks of FMLA leave during any 12-month period. The City will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available FMLA leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee may take up to 26 weeks of FMLA military caregiver leave during a single 12-month period. The City will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

Eligible spouses who both work for the City may only take a combined total of 12 weeks of FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition. Both may only take a combined total of 26 weeks of leave to care for a covered service member (if each spouse is a parent, spouse, child or next of kin of the covered service member).

e. **Intermittent Leave or a Reduced Work Schedule**

Employees may take FMLA leave in one consecutive block of time, may take FMLA leave intermittently (e.g., take a day periodically when needed over the year) or, under certain circumstances, may take FMLA leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for a covered service member) in a 12-month period.

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, the City and the employee shall mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

When leave is needed for planned medical treatment, the employee shall make a reasonable effort to schedule treatment so as not to unduly disrupt the City's operations.

f. **Employee Notice Requirement**

An employee who takes FMLA leave must provide verbal or written notice of the need for FMLA leave to the employee's Department Manager or the manager of employee benefits.

When the need for FMLA leave is foreseeable, the employee shall provide the City with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave fewer than 30 days in advance, the employee shall provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee shall comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Within five business days after an employee has provided this notice, the manager of employee benefits, or the manager's designee, will complete and provide the employee with a Notice of Eligibility and Rights and request a medical certification or other supporting documentation as necessary.

g. **Designation of FMLA Leave**

Within five business days after an employee has submitted the required medical certification or other documentation, the manager of employee benefits, or the manager's designee, will complete and provide the employee with a written response to the employee's request for FMLA leave using the FMLA Designation Notice.

h. **Employee Status and Benefits During Leave**

The City will continue an employee's health benefits during the FMLA leave period at the same level and under the same conditions as if the employee was continuously at work.

While on paid leave, the City will continue to make payroll deductions to collect the employee's share of insurance premiums. While on unpaid leave, the employee shall continue to make this payment, either in person, by mail, or by prearranged payment agreement. The payment must be received by the 15th day of each month. If the payment is more than 30 days late, the employee's healthcare coverage may be dropped for the duration of the leave.

The City will provide 15 days' notification prior to the employee's loss of coverage.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the FMLA leave period.

If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request the continuation of such benefits and pay his or her portion of the premiums, or the City may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments and the City does not elect to maintain such coverage, the City will discontinue coverage during the leave. If

the City maintains coverage, the City may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

i. **Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty clearance from a health care provider. This requirement will be included in the City's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits, and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

j. **Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all PTO and any other accrued leaves prior to being eligible for unpaid leave. PTO shall be exhausted prior to other accrued leave. Paid leaves run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established policies.

Workers' compensation leave (to the extent that it qualifies) and injury leave will be designated as FMLA leave and will run concurrently with FMLA.

An employee who is taking leave for the adoption or foster care of a child must use all PTO and other accrued leaves prior to being eligible for unpaid leave.

An employee who is using FMLA leave for a qualifying exigency must use all PTO and other accrued leaves prior to being eligible for unpaid leave. An employee using FMLA leave to care for a covered service member must also use all PTO and other accrued leaves prior to being eligible for unpaid leave.

k. **Intent to Return to Work from FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, the City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

l. **Coordination of FMLA Leave with Other Leave Policies**

The FMLA leave policies do not affect any federal, state, or local law prohibiting discrimination or supersede any state or local law that provides greater family or medical leave rights. For additional information concerning leave entitlements and obligations that might arise when FMLA leave is either not available or exhausted, please consult the City's other leave policies or contact the manager of employee benefits.

Section 15 Military Leave

In time of war or national emergency, those employees of the City of Midland who are members of a retirement system or participating in a retirement system sanctioned by the City, or who are holding permanent positions shall be entitled to military leave or absence without pay if called to duty with the Armed Forces through the process of selective service or membership in reserve components of the Armed Forces. The City also acknowledges that time spent by employees on military leave often is relevant or complementary to their workplace responsibilities and that the skills, leadership, discipline, and teamwork experience that employees acquire during military service can prove valuable on the job.

- a. **Accrual Leave Credit.** Credit for PTO or other accrual leaves shall accrue only during military leave allowance described below. However, employees may be allowed to draw pay from their PTO, or other accrued leaves during an approved military leave.

b. Military Leave Allowance. In accordance with Section 437.202, Texas Government Code:

- 1) A person who is an officer or employee of the City and who is a member of the Texas military forces, a reserve component of the Armed Forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, or PTO.
- 2) An employee of the City who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

c. Retirement System Credits. Employees who leave their deposits with the retirement system while on military leave shall retain their membership in the retirement system. The period spent by such employees on military leave shall count toward membership service but shall not increase the retirement benefits due to the employee unless he makes retirement deposits to cover all or a portion of the time spent on military leave. If the employee does make such retirement contributions after returning from military leave, the City shall match such deposits of the employee. Employees desiring to withdraw their retirement deposits from the system when they enter upon military leave may do so. However, such action means that these employees will lose retirement credit for the years they belonged to the retirement system prior to beginning military leave. Notwithstanding the foregoing, current rules of a particular system shall control.

d. Reinstatement upon Return from Military Leave. All employees who have been granted a military leave of absence, and who apply for reinstatement with the City not later than thirty (30) days after being discharged or separated from the Armed Forces, will be re-employed in the same position or a position of like seniority and status at the then current rate of pay, provided such employees are physically and mentally qualified for reinstatement. If upon termination of such leaves of absence, employees are physically or mentally incapacitated and not qualified to perform the duties of the positions held at the time of commencement of such absences, employees shall be eligible for placement in such other positions for which they may qualify. In the event two or more employees have occupied the same position and have been called into service, the first employee occupying and leaving such position after the effective date of this policy shall have first priority on reinstatement; the second person occupying and leaving such position shall have second consideration, etc. An attempt will be made to re-employ every employee who enters the Armed Forces and upon his release desires to re-enter employment with the City of Midland.

e. Credit for Service Time. For the purpose of computing longevity pay, a military leave shall not be counted as a break in service and upon return of an employee to duty with the City his service time shall be increased by an amount equivalent to the time spent on military leave.

f. Accrued Balances of Paid Time Off and Other Accrued Leaves. Any classified full-time employee who is a member of a military reserve organization which requires participation in a training program, will be granted a leave of absence from their respective duties without loss of time or efficiency rating or Paid Time Off or salary on all days during which they shall be engaged in authorized training or duty ordered or authorized by proper authority, not to exceed fifteen (15) days in any one calendar year. For the purposes of this policy, a military leave day shall be defined as any consecutive 24-hour period. The employee must provide the City with a copy of the written orders prior to taking leave.

Any full-time employee who is a member of a military reserve organization that is called to active duty may use their accrued time to supplement their military pay. If the employee desires to return to his/her position at the City upon completion of military service, a request for "Military Leave of Absence" must be approved by the Director of Administrative Services prior to the leave. A copy of the written orders should be attached to this request. If the written order is not available upon departure, it must be provided as soon as possible thereafter.

The accrued balances of PTO, or any other leaves may be used to supplement the military pay up to a maximum of 80 hours per pay period.

Fire Department Shift Personnel will be allowed to supplement the military pay up to a maximum of 112 hours per pay period.

An employee who intends to use this benefit must notify the employee's supervisor of such intent by completing the "Military Leave of Absence" form available in the Administrative Services office. A supervisor may not designate the time without the employee's consent.

Section 16 Lactation Break

City of Midland will provide a reasonable amount of break time to accommodate employees desiring to express breast milk for their infant child, in accordance with and to the extent required by applicable law. The break time, if possible, should run concurrently with rest and meal periods already provided.

The employee's supervisor will coordinate with Employee Benefits Manager or designee to make reasonable efforts to provide employees with the use of a room or location other than a restroom to express milk in private.

The designated space:

- a) may be the place where the employee normally works if there is adequate privacy (for example, the employee's private office or a lockable conference room or another identified space);
- b) should have an electrical outlet, table and chair, lock or signage on door prohibiting entry when in use; and
- c) should be within reasonable proximity to the employee's work area.

Employees should make requests for break time in writing to their supervisor or manager as soon as practicable after an employee learns of the need for lactation break time or the need for a change in previously approved lactation break times.

Section 17 Injuries

a. On the Job Injury Leave

An employee injured in the line of duty shall receive workers' compensation or injury leave benefits under the terms and conditions prescribed in the applicable programs and as required by law.

- 1) Leave and Compensation: Injury leave is defined as fully compensable absence from work arising from an on-the-job accidental injury. An employee injured on the job, in the line of duty, may be granted injury leave, which shall not be charged against his accumulated PTO or other accrued leave, for the period of time he is disabled and unable to perform his duties but said injury leave shall not exceed one hundred eighty (180) work days. Injury leave runs concurrently with FMLA. Healthcare provider's statement is required indicating that the employee is unable to return to work and shall be required for an employee to receive injury leave. Any injury leave so granted is deemed to be purely discretionary on the part of the City and may be terminated at any time by change of these policies. The total amount of injury leave granted in conjunction with any given injury shall never exceed one hundred eighty (180) work days.

(i) An employee shall forfeit all rights to injury leave if the employee:

1. Is found to be working, either part-time or full-time for pay;
2. Resigns for any reason;
3. Is discharged for any reason;
4. Retirement or death;
5. Fails or refuses to comply with or follow, or disregards or violates the treating physician's instructions regarding treatment and/or rehabilitation of the injury;

6. Refuses to perform light, partial or part-time duty when offered by the Department Manager or designee, which does not require him to perform activities, which are restricted by the treating physician;
7. Falsifies or misrepresents his physical condition or capacity;
8. Refuses to return to duty on the working day he has been released to duty by the treating physician;
9. Fails to submit an acceptable physician's statement when requested by his supervisor or designee; or
10. Has been injured as a result of his failure to observe safety policies, procedures, or instructions as determined by the Employee's Department Manager or designee.

(ii) Injury Leave ends when:

1. The injured worker reached one hundred and eighty (180) work days of leave; or
2. The injured worker returns to work with or without restrictions; or
3. A healthcare provider determines that no further healing or recovery from the injury can be expected (maximum medical improvement); or
4. The injured worker reaches the end of the Temporary Income Benefits period, which is 104 weeks after the eighth day of work-related disability (statutory maximum medical improvement).

If the injury is controverted, the employee exhausts all leave as defined above, or the employee experiences sporadic absence from work, the employee may be eligible to begin drawing weekly benefits payable under the Workers Compensation Act. If so, the employee may use accrued leaves to supplement their workers' compensation income and retain their active status with the City of Midland

2) Procedure:

- (i) If an employee's injury meets the criteria for a serious health condition, the employee's injury leave shall run concurrently with FMLA leave, as provided in Section 14 of this Chapter.
- (ii) An employee who sustains an injury or illness in the performance of the employee's duties shall fully and promptly report the injury or illness, however minor, to the employee's supervisor as soon as possible, but no later than the end of the business day. Written notification of the injury or illness must be received by the Workers' Compensation / Leave Coordinator within 24 hours of the incident in order for the employee to be granted injury leave.
- (iii) Injury leave taken by an employee because of a substantiated and documented work-related injury sustained during the course of employment shall not be charged against the employee's PTO or other accrued leaves
- (iv) During the approved injury leave, PTO shall continue to accrue.
- (v) The Workers' Compensation / Leave Coordinator will coordinate with the employee's healthcare provider to determine whether the injury would allow an employee to perform modified temporary work or other duties.
- (vi) An employee who is on injury leave shall update the employee's supervisor or the Workers' Compensation / Leave Coordinator of the employee's status at regular intervals.
- (vii) An employee who is unable to perform the essential functions of the employee's position due to a disability, injury, illness, or medical condition (and reasonable accommodation is not possible) is not guaranteed a return to the employee's position at the conclusion of the disability, injury, illness, or medical condition.

b. **Off the Job Injury**

Injuries, Off the Job (Leave and Compensation). An employee injured off the job shall have the resulting absence from work, if any, charged against the employee's accumulated PTO leave.

Any employee so injured who has no accrued PTO leave or has exhausted the employee's PTO leave may receive compensation during his absence from work by using other accrued leave time, if any.

If an employee's injury meets the criteria for a serious health condition, the employee's time off shall run concurrently with FMLA leave, as provided in Section 14 of this Chapter.

All absence reporting requirements as outlined in Section 9, b. of this Chapter must be followed.

c. **First Responder Illness/Injury Leave**

1) Definitions. For purposes of this subsection:

- (i) "Emergency medical services personnel" means a person described by Section 773.003, Health and Safety Code, who is a paid employee of the City of Midland.
- (ii) "Firefighter" means a firefighter who is a permanent, paid employee of the City of Midland's Fire Department. The term includes the chief of the Fire Department.
- (iii) "Line of duty illness or injury" means an illness or injury that occurs during the course and scope of employment.
- (iv) "Police officer" means a paid employee who is full-time, holds an officer license issued under Chapter 1701, Occupations Code, and regularly serves in a professional law enforcement capacity in the Police Department, the Municipal Court, or other department of the City of Midland. The term includes the chief of the Police Department.

2) Illness / Injury Leave:

A firefighter, police officer, or emergency medical services personnel shall be provided a leave of absence for a line of duty illness or injury. This leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for up to one year. The City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee was continuously at work. Workers' compensation benefits shall be offset to the extent applicable by any amount for incapacity received as provided by this subsection. Leave under this subsection shall run concurrently with FMLA leave.

3) Use of PTO; Temporary Leave:

If a firefighter, police officer, or emergency medical services personnel is temporarily disabled by a line of duty injury or illness and the paid leave of absence granted under this subsection has expired, the employee may use accumulated PTO or other accumulated leaves for a period commensurate with the nature of the temporary disability. A firefighter, police officer, or emergency medical services personnel who requires additional leave shall be placed on unpaid temporary leave.

4) Medical Certification:

When requested by the Workers' Compensation / Leave Coordinator, a firefighter, police officer, or emergency medical services personnel who receives leave under this subsection shall provide medical certification and recertification documents from a health care provider to support the need for the leave.

5) Return to Duty:

If able, a firefighter, police officer, or emergency medical services personnel may return to modified duty as outlined in Section 18.a of this chapter, while recovering from a temporary disability. If medically necessary, the modified duty assignment may continue for up to one year.

A firefighter, police officer, or emergency medical services personnel who takes leave under this subsection may be required to provide a fitness for duty clearance from a health care provider upon return. After recovery from a temporary disability, a firefighter, police officer, or emergency medical

services personnel shall be reinstated at the same rank and with the same seniority the person had before going on leave.

Section 18 Return to Work / Inability to Return to Work

a. Modified Duty

"Modified Duty" is a temporary assignment which is for a specified and limited period and fulfills a necessary job function, appropriate to the employee's skills and level of experience as determined by the City, and which the employee can perform without violating any medical restriction imposed as a result of a temporary disability, illness or injury, for which the employee is compensated at the employee's normal rate of pay and benefits.

The number, availability and duration of such assignments are limited by departmental needs as determined by the Department Manager or the Department Manager's designee.

If restrictions as noted on the Physician's Release to Return to Work form are determined to be permanent, the employee shall not be eligible for a Modified Duty assignment.

1) Limitation of Modified Duty Assignment:

The Modified Duty assignment shall end on the earliest of:

- (i) The date when the employee is released to the employee's regular schedule with no restrictions as evidenced on the Physician's Release to Return to Work form;
- (ii) The date when a physician determines the employee's has permanent restrictions;
- (iii) The date the Maximum Modified Duty Assignment Period ends; and
- (iv) The date the Employee fails to take a required medical examination, without good cause.

2) Maximum Modified Duty Assignment Period:

A Modified Duty assignment may be intermittent or continuous, but in no event shall such an assignment continue for more than 180 work days after the date when the employee was initially unable to perform each and every essential function of the employee's job (the "Maximum Modified Duty Assignment Period"). At the end of the Modified Duty assignment, if an employee is unable to return to work without restrictions, the employee may be placed on the appropriate leave.

Once an employee has been unable to perform each and every essential function of the employee's position that the employee held when the disability, illness or injury arose for 90 calendar days during a 12 month period or has exhausted all leave granted under previous sections of this Chapter (whichever comes first), the employee may request a meeting with the employee's Department Manager, the Director of Administrative Services, or the City Manager or the City Manager's designee in order to determine if the City has any current vacancies for which the Employee is qualified and is currently able to physically perform.

3) Procedure:

A "Physician's Release to Return to Work" form shall be completed by a physician (for injury leave, such physician shall be one of the designated providers selected for the City's workers' compensation insurance) and shall include the probable length of the restrictions and the nature of the restrictions. An additional statement confirming the ability to perform the Modified Duty assignment may also be required.

Once an employee has seen a physician and the physician has completed the Physician's Release to Return to Work form indicating that the employee can return to work, the applicable procedures below shall be followed:

(i) Return to work with Regular Hours and No Restrictions:

The employee obtains the completed Physician's Release to Return to Work form from the physician indicating that there are no restrictions and that the employee has the

ability to work during the employee's regularly scheduled hours. This form must be submitted to the employee's supervisor and the Office of Administrative Services' Workers' Compensation / Leave Coordinator upon the employee's return to work.

(ii) Return to Work with Restrictions:

The employee obtains the completed Physician's Release to Return to Work form from the physician indicating that the employee needs (i) restricted duties (for example, limitations on lifting, walking, stooping, bending, etc.) and/or (ii) restricted number of hours worked per day or per week, with or without limitations on the duties performed.

1. If the physician releases the employee to return to work with restrictions, as evidenced by completion of the Physician's Release to Return to Work form, the form must be submitted to the employee's supervisor and the office of Administrative Services' Workers' Compensation / Leave Coordinator prior to or immediately upon return to work for consideration of a Modified Duty assignment. The supervisor and a representative from Administrative Services will review the restrictions and determine if the employee is eligible for a Modified Duty assignment. The employee must report for work at the time designated by the employee's supervisor.
2. If the employee is approved for a Modified Duty assignment, the employee shall comply with the restrictions indicated in the Physician's Release to Return to Work form. If the employee's restrictions change at any time, the employee shall notify the employee's supervisor immediately and submit to the supervisor and the office of Administrative Services Worker's Compensation / Leave Plan Coordinator a copy of the revised Physician's Release to Return to Work form. While working a Modified Duty assignment, the employee may be required to provide periodic updates from the physician up to every 30 days. Additionally, the employee may be required to submit to a periodic physical examination as a condition of continued Modified Duty status.
3. If a Modified Duty assignment is not available, a representative from Administrative Services will determine what remaining leave benefits are available to the Employee, if any.

If the employee is unable to perform the Modified Duty assignment, the employee shall contact the physician to review and potentially revise the Physician's Release to Return to Work form.

b. **Inability to Return to Work.**

When a treating physician determines that an employee is permanently incapable of returning to work in the employee's full duty capacity, the City will accommodate such disability to extent it is required under the Americans with Disabilities Act, or the employee may apply for available positions within the City for which the employee is qualified. The Department Manager or his designee, based on the assessment of a licensed medical doctor that an employee is not able to perform the required physical duties or tasks of employee's present position (regardless of whether the incapacity is due to on the job injuries, off the job injuries, or illness), then the employee will not be returned to the employee's full duty with the City until a medical doctor states in writing that the employee is able to perform all the required physical tasks or duties of the position. Wherever possible, it is the policy of the City to provide Modified Duty to employees who have been released by a physician to return to work in a limited capacity.

Once an employee has exhausted all leave granted to the employee under previous sections of this Chapter or has been unable to perform each and every essential function of the position which he held at the time of injury with the City for 90 calendar days during a 12 month period (whichever comes first), the employee may request a meeting with the employee's Department Manager, the

City's Director of Administrative Services, or the City Manager in order to determine if the City has any current vacancies for which the employee is qualified and is currently able to physically perform.

If a job vacancy exists that the employee is qualified for and can physically perform, the employee may apply for that position. The employee has the choice to either accept or decline any offered position:

- 1) If the offer is accepted, it is recognized and understood by the employee that the employee may have to take a reduction in salary.
- 2) Any employee so reassigned will be compensated at a pay rate in the pay range of the position to which the employee has been reassigned. However, the affected employee shall be entitled to start in the new band/zone equal to his previous salary if that band/zone is equal to or below the midpoint of the new pay range.
- 3) If the employee does not seek another position, or if the offer of a new position is declined, or if no job vacancy exists that the employee is qualified for and can physically perform, then the employee shall be allowed to exhaust any leave granted to the employee under previous sections of this Chapter

Under no circumstances will the City continue an employee's active status once the employee exhausts the leave granted under previous sections of this Chapter.

Once an employee is placed on inactive status, the City shall no longer pay the employee a salary, and the employee shall no longer accumulate PTO leave or other accrued leaves. The employee may continue to receive the employee's worker' compensation benefits, and the employee will also be able to retain the City's health insurance if the employee pays the rate as established by the City as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA). Such coverage shall be limited to the minimum length of time established by the Act.

An employee who has been placed on inactive status under this policy may apply for positions with the City of Midland for which the employee is qualified and physically able to perform. Should an employee who has accepted another position with the City or been placed on inactive status due to an on the job injury recover and be able and qualified to perform all the tasks required of the employee's previous position within 12 consecutive calendar months from the date of the employee's acceptance of the new position with the City or placement on inactive status, then the employee will be offered reinstatement to the previous position should said position become vacant. The employee's recovery must be confirmed by a written statement from a licensed medical doctor. The City shall have the right to request a second medical opinion, but that second opinion shall be paid for by the City. Under this policy, no employee's inactive status will continue for more than 12 consecutive months, unless required by federal, state or local law.

Section 19 Paid Quarantine Leave

a. Purpose.

The purpose of this policy is to provide for and maintain employment benefits for certain employees who are ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

b. Applicability

This policy applies to the following employees of the City:

- 1) Fire protection personnel; and
- 2) Peace officers of the Police Department and the Municipal Court.

c. Conditions

The paid leave and benefits provided by this policy are only available to an employee who is ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty by the employee's supervisor or the City's health authority. An employee may be required to provide proof of an order to quarantine and may be denied paid leave or benefits if the employee fails to provide proof within a reasonable time.

d. Benefits

If an employee is ordered to quarantine under the conditions in Subsection c above, the employee will receive all employment benefits and compensation for the duration of the leave, including paid leave accrual, pension benefits, and health benefit plan benefits that the employee would customarily be provided on paid leave.

e. Reimbursement for Expenses

If an employee is ordered to quarantine under the conditions in Subsection c above, the employee may request reimbursement for reasonable costs related to the quarantine, including lodging, medical treatment and transportation by submitting a reimbursement request via the Employee Self Service portal of the Human Resources Information System within five (5) days after returning from the leave ordered under this policy. An employee may be required to provide receipts or proof of payment with the request and reserves and may be denied reimbursement that the City deems unreasonable or unrelated to quarantine.

f. Effect on Paid Leave Balances

The City will not reduce an eligible employee's PTO or other paid leave balance for quarantine leave ordered under this policy.

Section 20 Peace Officer and Telecommunicator Mental Health Leave

a. Purpose

The purpose of this Section is to allow the use of mental health leave by peace officers and full-time telecommunicators employed by the City who experience a traumatic event while on duty.

b. Applicability

This Section applies to licensed peace officers and full-time telecommunicators employed by the City. For purposes of this Section, "telecommunicator" means a person authorized to act as a telecommunicator under Section 1701.405, Occupations Code.

c. Conditions

An employee to whom this Section applies shall be allowed up to three (3) days or (30) hours of paid mental health leave per calendar year, provided that:

- 1) the leave is:
 - (i) approved by the employee's supervisor, the Chief of Police (for Police Department peace officers and full-time telecommunicators) or the Presiding Judge (for Municipal Court peace officers); or
 - (ii) ordered by a mental health professional; and
- 2) the leave is taken as a result of a traumatic event that occurred while on duty.

d. Anonymity

The City will keep requests to take mental health leave and any medical information related to mental health leave under this policy confidential to the extent allowed by law and separate from the employee's general personnel file held by the Administrative Services Department. The City cannot guarantee the anonymity of information that is otherwise public or necessary to carry out the City's duties under applicable laws.

e. Effect on Paid Leave Balances

The City will not reduce an eligible employee's PTO, or other paid leave balance for mental health leave taken under this policy.

Section 21 Special Leave with Pay

Department Managers may grant employees special leave with pay and actual expenses to attend professional conferences, conventions or short courses or to visit other cities in the interest of the City, as authorized by the City Manager.

Section 22 Be Healthy Days

The City is committed to protecting our employees' health, safety, and well-being. Employees may access confidential free counseling through the City's Employee Assistance Program (EAP).

Each full-time employee shall receive two (2) Be Healthy Days per calendar year. Be Healthy Days shall be granted to eligible employees on January 1 each year. If practical, an employee who wishes to use a Be Healthy Day shall notify the employee's immediate supervisor before the start of the employee's scheduled shift. Documentation of the absence shall not be required. The reason for such absence (i.e., use of Be Healthy Days) shall be held confidential as reasonably practicable. Unused Be Healthy Days shall carry over into the following year; provided, however, that the maximum accrual shall not exceed ten (10) Be Healthy Days. Upon an employee's termination of employment or retirement, no payment shall be provided for unused Be Healthy Days.

Section 23 Community Service Leave

The City encourages employees to be active citizens and provides this leave to participate in organizations and activities that benefit the local community.

A full-time employee who is not Fire Department Shift Personnel is eligible to request eight (8) hours of Community Service Leave per calendar year. A full-time employee who is Fire Department Shift Personnel is eligible to request twelve (12) hours of Community Service Leave per calendar year. Community Service Leave may be taken in one (1) hour increments. An employee who wishes to take Community Service Leave shall notify the employee's supervisor thereof and obtain approval prior to taking Community Service Leave. An employee, upon request, shall provide documentation to support the taking of Community Service Leave, and a failure to provide sufficient documentation thereof may result in the City's refusal to provide Community Service Leave. Community Service Leave may not be used for events with a political or religious purpose. Community Service Leave is noncumulative and nontransferable.

Section 24 Civic Duties Leave

All employees will be allowed time off with pay to attend the civic duties of voting in elections, serving as members of jury panels, or appearing before any tribunal by virtue of subpoena or summons.

Section 25 Leave of Absence

Department Managers may grant an employee one day of paid administrative leave in regard to disciplinary or safety issues. Any additional paid administrative leave in regard to discipline, safety, or investigations must be approved by the City Manager. Department Managers may grant leaves of absence without pay to regular employees, not to exceed thirty (30) days in duration. Requests for such leave shall be in writing and submitted well in advance of the date the Employee will commence such leave. In granting such leaves, the Department Manager shall give primary consideration to the City's need for the Employee's services. Leaves of absence without pay may be granted for any legitimate purpose; however, employees will be obligated to show that the granting of such leave is to the interest of the City. Leaves of absence without pay in excess of thirty (30) days may be granted only with the approval of the City Manager and in no case shall exceed six (6) months.

Section 26 Absence without Leave

No employee may absent himself from duty for a single day or any part of a day without permission of his Department Manager. Any such absence will be without pay and the employee may be subject to adverse action. Any employee absent from work without notice for three (3) consecutive days will be considered as having abandoned the job. Any employee absent from work without notice for three (3) consecutive days will be considered as having abandoned the job. Such abandonment shall be considered a voluntary resignation from employment, and the City will process such separation of employment as a voluntary resignation.

Chapter VI

Wage and Salary Administration

Section 1 Application of Rates

All employees occupying a position in the classified or unclassified service shall be paid a salary or wage within the range currently set for that position's class under the pay plan as approved by the City Council. If an employee begins service in the middle of a pay period, he will be paid by the calculated hourly rate for the total hours worked during that time.

Section 2 Pay Rates for New Employees

Pay rates for new or probationary employees will normally be at the minimum step in the salary range established for the position that the employee is occupying. Department Managers, with the approval of the Administrative Services Director, may pay a new employee a beginning rate 15% above the minimum established in that range. Appointments with a pay rate of more than 15% above the minimum for a particular salary range may be made only with the approval of the City Manager.

Section 3 Pay Progression

Pay progression for employees in classified positions will be based on documented criteria that may include performance, attendance, certifications, training, skills testing, length of service, or other job specific factors. Pay progression dates and the amounts of the progressions shall be recommended on an annual basis by the City Manager and approved by the City Council through the budget process and/or amendments to the City's annual budget.

Section 4 Total Rate of Pay

No employee shall be paid at, or no salary advancement shall be made which would compensate an employee at, a rate more than the maximum or highest step in the salary range to which that employee's position has been assigned. Exceptions may only be made when deemed by the City Manager to be advantageous to the City service. Any such pay increases shall not exceed the assigned pay range by more than 10%. Market adjustments which impact City of Midland pay plans or cost of living adjustments which impact municipal employee salaries must be approved by the City Council.

The City of Midland takes all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on scheduled paydays. In the unlikely event that there is an error in the amount of pay an employee receives, he should promptly bring the discrepancy to the attention of his immediate supervisor or the Payroll Manager. If the employee has been underpaid, the City will pay the employee the difference as soon as possible. If the employee has been overpaid, arrangements will be made to return the overpayment to the City as soon as possible. No employee is entitled to retain any pay in excess of the amount he has earned according to his established rate of pay.

Section 5 Part-time, Temporary and Seasonal Rates

An employee who works regularly at less than the established workday or workweek shall be paid by the hour or at a salary proportional to the amount of time worked. The hourly or monthly rates for part-time, temporary or seasonal employees shall be established by the Department Manager concerned and the Administrative Services Director after giving due consideration to the ranges and pay rates in effect for similar positions in the current pay plan.

Section 6 Pay Rates for New Positions

Whenever a new position is created the Administrative Services Director shall, with the department manager involved, study the duties and responsibilities of the new position and in light of the existing positions and pay rates in the "Position Classification and Pay Plan" submit to the City Manager a recommendation for the proper pay range for the new position.

Section 7 Termination Pay

All employees who leave the service of the City for any reason shall receive all pay that may be due them with the following qualifications:

- a. Regular employees shall be paid for unused PTO leave as set out in Subsection c of Section 9 of Chapter V.
- b. An employee whose employment is terminated before the end of a pay period shall be paid for the total hours actually worked through the employee's termination date.
- c. Effective October 1, 2023, any employee who is eligible to retire under either TMRS or FRRF at the time of the employee's termination of employment or retirement shall receive payments for accrued PTO as set out in Section 9 of Chapter V.

Section 8 Longevity Pay

All regular full-time employees shall be entitled to additional compensation at a rate of six dollars (\$6.00) per month for each full year of continuous service with the City. The beginning of the pay period nearest the anniversary date the employee began employment with the City shall be the effective date of longevity pay increases. The rate of longevity pay shall coincide with the rate established by Texas Local Government Code Section 142.

Section 9 Performance Appraisal System

The purpose of the system is to improve employee productivity, to provide better communications between supervisors and those they supervise, to identify needs for training or other remedial actions among the workers, to provide upward mobility and the cultivation of skills and abilities, and to further the City service as a good place to work.

Evaluations shall be used as guides to judgment in granting permanent status to probationary employees, in offering promotions to employees, in recommending employees for merit pay increases, in determining that dismissals or other disciplinary actions based on performance are in fact for just cause, in avoiding any possibilities of discrimination or prejudice, and in other personnel matters.

The immediate supervisor of the employees being evaluated shall perform evaluations, but the evaluations may be reviewed and revised by Division and Department Managers before becoming final.

Evaluations of supervisory employees shall take into account the skill and judgment shown by such supervisors in the rating of those responsible to them.

Evaluations shall be completed shortly before the end of probation and thereafter on an annual basis.

An evaluation of an employee may also be conducted at any other time at the option of his supervisor; such specific evaluations are appropriate if the employee is being considered for promotion, is in need of remedial action, or is to be warned of possible disciplinary action.

If any employee believes that the performance evaluation is erroneous, unfair, or prejudiced, he may appeal the evaluation in the same way as is provided for any other grievance in [Chapter IX](#) of the personnel rules.

Section 10 Compensation Policy Statement

It shall be the policy of the City of Midland to maintain a pay structure for all municipal employees that will allow said employees the opportunity to receive reasonable, comparable wages in relation to comparable jobs in the relevant labor markets. The City Council shall establish both regional and statewide comparative markets consisting of municipalities in the population range of 75,000 to 200,000 (or larger if they are in the regional market) that shall be used in obtaining comparative wage data.

The City of Midland will also strive to maintain internal equity in the municipal job classification and pay structure through the use of a sound job analysis process and continue to promote the development and refinement of pay structures which reward employee performance and development.

Toward these ends, administrative regulations and pay structures have been adopted and may be modified as needed to accomplish the objectives of this policy, to comply with federal or state regulations, or to promote the efficiency of the City Service. At least one general review of the classification and pay plans should take place in each succeeding two-year period. The City Manager may appoint an Advisory Committee to conduct this review.

It shall be the responsibility of the City Manager to maintain administrative position classification and pay plan regulations in compliance with these policies.

Chapter VII

Transfer, Promotion, Resignation and Retirement

Section 1 Transfer

After notice to the Administrative Services Director, an employee may be transferred by a department manager at any time from one position to another position in the same or comparable class. If the transfer involves a change from one department to another department, both Department Managers must consent to the transfer unless the City Manager orders the transfer for the purpose of economy or efficiency. No person shall be transferred to a position for which he does not possess the necessary minimum qualifications, according to the classification plan.

Section 2 Promotion

Insofar as practical and consistent with the best interest of the City, all vacancies in the classified and unclassified service shall be filled by promotion of persons already employed by the City. If, in the opinion of the Department Manager or other person responsible for filling the vacancy, a position can best be filled by hiring a new employee, such information shall be forwarded to the Administrative Services Director who shall take the necessary steps to assist in recruiting qualified applicants for the position.

Section 3 Resignation

An employee who wishes to leave the employment of the City shall give at least two (2) weeks' notice to the supervisor before the effective date of his resignation. Such notice, either oral or written, shall state the reasons for such resignation. The Department Manager shall immediately notify the Administrative Services Director of such resignation and indicate the reasons therefore and whether the employee's services have been satisfactory.

Section 4 Exit Survey

An employee's exit survey shall be sent electronically to the employee upon the City receiving notice of resignation. Upon request, the exit survey may be sent to the employee in paper form.

Section 5 No Recommendations or References

No person is authorized to act on behalf of the City in making recommendations or giving references with respect to former or current City employees. Any City employee who gives a recommendation or reference with respect to a current or former City employee shall be acting in his or her individual capacity and not as an agent, employee, or representative of the City of Midland, Texas, said act being beyond the scope of said employee's employment. Any employee who is sued or becomes involved in a claim or civil lawsuit due in any part to his or her giving a reference or recommendation shall not be entitled to a paid or other legal defense by the City of Midland.

Section 6 Requests for Employment Verification

Information regarding the employment of all current and former City employees shall be verified by Administrative Services only upon written request signed by the current or former employee. In absence of a written request signed by the current or former employee, Administrative Services shall be authorized to verify only the following information:

- a. The date the employee began his employment with the City of Midland,

- b. The date the employee ended his employment with the City of Midland,
- c. The positions held while employed by the City of Midland,
- d. The Department(s) to which the employee was assigned while employed by the City of Midland.

No person other than the Director of Administrative Services or the Director's designee shall be authorized to act on behalf of the City of Midland with respect to the verification of employment information.

Section 7 Personnel Files

The City of Midland retains employment records in a personnel file with the Administrative Services Department. The information contained in the file is the property of the City and must be maintained for government and record-keeping purposes. Therefore, all employees are required to notify the Administrative Services Department immediately if there is any change in relevant personal or employment information such as changes in address, phone numbers, marital status, emergency contact, insurance beneficiary, number of dependents, or legal name.

All files connected with an employee are considered strictly confidential, and access will be limited to those who have a job-related need to know the information, those who have been authorized to view the file, and as required by law. If an employee wishes to view his personnel file, he must submit written request with the Administrative Services Department. Upon receipt and approval of such request, an appointment will be scheduled for the employee to view his file. An employee may not remove or alter any information in the file in any way.

If an employee believes that information in his personnel file is incorrect, he may submit a written request to Administrative Services for change(s) to be made. If such a request is denied, the employee may request a statement of disagreement be placed in his file. This statement of disagreement will become a permanent part of the employee's file.

The City of Midland considers falsification of personnel records to be a serious offense, and upon discovery can lead to disciplinary action up to and including termination.

Chapter VIII

Adverse Action

Section 1 Adverse Action

a. Purpose of Chapter

The purpose of this Chapter is to establish policies and administrative procedures for addressing Prohibited Conduct (as defined herein) and employment separation of City of Midland employees. The policies and procedures established herein are authorized and adopted, and the same shall be construed according to the plain meaning of its language unless defined otherwise. No policy or procedure established by this Chapter shall be enforced or interpreted in a manner that limits or abrogates protections afforded by law. The remedies set forth in this Chapter are exclusive.

b. Definitions.

In this Chapter:

- 1) "Adverse Action" means an administrative action taken by a Department Manager against an Employee because of the Employee's Prohibited Conduct. Said administrative actions include the following:
 - a) Oral Reprimand;
 - b) Written Reprimand;
 - c) Suspension from employment without pay;
 - d) Demotion from a current position to a lower position with lesser responsibility or compensation; and
 - e) Termination of employment.
- 2) "Appeal Hearing" is the initial proceeding at which the Employee may contest an Adverse Action.
- 3) "Business Day" means a day on which the City of Midland is open for business.
- 4) "City" means the City of Midland.
- 5) "Department Manager" means the City department manager for the department that the Employee is assigned to. For the purpose of this Chapter, "Department Manager" also means an Assistant City Manager, Deputy City Manager, or the City Manager if a City department manager, Assistant City Manager, or Deputy City Manager is deemed to have engaged in Prohibited Conduct.
- 6) "Employee" means an employee of the City of Midland. For the purpose of this Chapter, "Employee" also means a Department Manager or Employee within the City Manager's Office if such person is deemed to have engaged in Prohibited Conduct.
- 7) "Hearing Officer" means the City official that presides over the Appeal Hearing.
- 8) "Lay-Off" means the employment separation between the Employee and the City that is not the result of an Adverse Action.
- 9) "Name-Clearing Hearing" means a proceeding before the City Manager at which the Employee may address allegations made by the City or its officials relating to the Employee's termination.
- 10) "Notice of Appeal" means the written notice submitted to the Administrative Services Department by the Employee seeking administrative review of an Adverse Action.
- 11) "Notice of Appeal to the Personnel Appeals Board" means the written notice submitted to the Administrative Services Department by the Employee seeking the Personnel Appeals Board's review of an Adverse Action.
- 12) "Notice of Hearing Officer Determination" means the written notice issued by the Hearing Officer containing the Hearing Officer's final determination resulting from the administrative review of an Adverse Action following an Appeal Hearing.

- 13) "Notice of Personnel Appeals Board Determination" means the written notice issued by the Personnel Appeals Board containing its final determination resulting from its review of an Adverse Action following a Personnel Appeals Board Hearing.
- 14) "Personnel Appeals Board" means the administrative body that presides over the Personnel Appeals Board Hearing.
- 15) "Personnel Appeals Board Hearing" means the final proceeding at which the Employee may contest an Adverse Action.
- 16) "Prohibited Conduct" means conduct of a character and nature that constitutes or is reasonably related to the following:
 - a) Consumption and/or possession of alcohol or narcotics while on duty or using City-owned property;
 - b) Consumption and/or possession of alcohol or narcotics in a manner that forms the basis of a crime;
 - c) Criminal conduct;
 - d) Delinquency;
 - e) Dishonesty, including forgery, falsification of documentation, or any other falsifying action;
 - f) Disruptive behavior that limits or restricts workplace efficiency;
 - g) Failure to maintain necessary professional certifications or authorizations;
 - h) Failure to perform employment duties;
 - i) Immoral behavior, including behavior that may adversely affect the City or its officers, officials, employees, or agents, or behavior that may reasonably undermine the confidence of the public;
 - j) Misappropriation or destruction of City property or information;
 - k) Subversive behavior, including fighting, intimidation, profanity, insubordination, negligent or reckless actions, discourteousness, safety rule violations, misuse of City property, or violation of any established procedure, order, directive, or protocol;
 - l) Unsatisfactory attendance;
 - m) Failure to reasonably cooperate during an investigation involving alleged misconduct; and
 - n) Violation of any policy, standard, or provision of the City of Midland, Texas Personnel Policies.
- 17) "Supervisor" means the person charged with the daily oversight and management of the Employee contesting an Adverse Action.
- 18) "Workday" means a day (including weekend days) on which the Employee is scheduled to report to work.

c. Notice Requirements

- 1) Any notice or communication required or permitted pursuant to this Chapter shall be in writing.
- 2) Subject to Section 1.c(3), a notice or communication required or permitted pursuant to this Chapter shall be deemed to be delivered and received on the date said notice or communication is:
 - a) Personally delivered to the respective party to whom it is directed;
 - b) Deposited by certified mail; or
 - c) Sent by electronic mail.
- 3) Notwithstanding Section 1.c(2), a notice or communication that is sent to the City, or its employees or officials, shall be deemed to be delivered and received on the date that Administrative Services Department is in actual or physical receipt of said notice or communication.
- 4) The delivery of a notice or communication to the Employee shall be directed to one of the following:
 - a) The City email address of the Employee;

- b) The email address of the Employee's authorized representative;
- c) The Employee's physical address on file with the Administrative Services Department;
or
- d) The physical address of the Employee's authorized representative.
- 5) The delivery of a notice or communication to the City or its officers, officials, or employees shall be directed to one of the following unless directed otherwise:
 - a) The City email address of the current Administrative Services Director; or
 - b) City of Midland
300 N. Loraine Street
Midland, Texas 79701
Attn: Administrative Services Director.

d. Prohibited Conduct; Adverse Action

Employees shall refrain from engaging in Prohibited Conduct. An Employee that is deemed to have engaged in Prohibited Conduct may be subject to Adverse Action in accordance with the policies and procedures of this Chapter.

e. Discretionary Factors and Considerations Regarding Adverse Action Administration

If a Department Manager determines that the Employee engaged in Prohibited Conduct, the Department Manager may, in the Department Manager's sole and absolute discretion, incorporate the following factors and considerations in the Department Manager's decision regarding an Adverse Action to be administered to the Employee:

- 1) Nature of the Employee's duties;
- 2) Nature of the Prohibited Conduct;
- 3) Circumstances of the Prohibited Conduct;
- 4) The Employee's disciplinary history; and
- 5) Any other relevant facts or information.

f. Authorized Adverse Actions

Upon a Department Manager's determination that the Employee engaged in Prohibited Conduct, said Department Manager may administer (or cause to be administered) the following Adverse Actions:

- 1) Oral Reprimand – verbal discussion identifying the standard(s) of conduct that the Employee violated, and the corrective action required, if applicable. An Oral Reprimand may contain:
 - a) Additional facts and information as deemed appropriate by the Department Manager;
and
 - b) A warning that future violations may result in additional Adverse Action(s) in accordance with this Chapter.
- 2) Written Reprimand – memorandum to the Employee (with a copy to the Employee's personnel file) identifying the standard(s) of conduct that the Employee violated, and the corrective action required, if applicable. A Written Reprimand may contain:
 - a) Additional facts and information as deemed appropriate by the Department Manager;
and
 - b) A warning that future violations may result in additional Adverse Action(s) in accordance with this Chapter.
- 3) Suspension – temporary removal of the Employee from performing his/her duties and from receiving compensation. No Employee shall be suspended:
 - a) For a period exceeding thirty (30) workdays; or
 - b) More than thirty (30) workdays in any fiscal year.
- 4) Demotion – permanent reassignment of the Employee to a position with lesser responsibility or compensation.

- 5) Termination – permanent severance of the employment relationship between the Employee and the City.

g. Adverse Action Administration

Adverse Actions shall be administered in accordance with the following procedures:

- 1) Oral and Written Reprimands shall be issued as deemed appropriate by the Department Manager.
- 2) Suspension, Demotion, Termination
 - a) Prior to issuing a Notice of Adverse Action to the Employee, a Department Manager shall deliver a copy of the proposed Notice of Adverse Action to the Administrative Services Department.
 - b) Upon approval of the form of the Notice of Adverse Action by the Administrative Services Department, the Department Manager shall issue the Notice of Adverse Action to the Employee in accordance with the requirements of Section 1.c.

h. Notice of Appeal

- 1) If the Employee is issued a Notice of Adverse Action that results in a Suspension, a Demotion, or Termination, the Employee may seek administrative review of the Adverse Action by filing a Notice of Appeal.
- 2) A Notice of Appeal must be filed within two (2) Business Days of the affected Employee's receipt of a Notice of Adverse Action.
- 3) A Notice of Appeal shall consist of the following information:
 - a) Employee name;
 - b) Employee position;
 - c) Employee mailing address;
 - d) Employee non-City telephone number;
 - e) Employee non-City email address;
 - f) Department Manager name;
 - g) Supervisor name; and
 - h) General description of the basis for appeal.
- 4) A proper and timely Notice of Appeal shall be perfected upon the Administrative Services Department's receipt of the Notice of Appeal. If a Notice of Appeal does not contain the information required by Section 1.h(3), but is otherwise proper and timely, the Administrative Services Director shall notify Employee of such defect within two (2) Business Days following the Administrative Services Department's receipt of the Notice of Appeal.
- 5) Upon receiving notification that a Notice of Appeal does not contain the information required by Section 1.h(3), the Employee shall correct the defect and supplement the missing information within two (2) Business Days of the Employee's receipt of the notice required by Section 1.h(4).

i. Designation of Hearing Officer

- 1) Upon the perfection of a Notice of Appeal, the Administrative Services Director shall notify the City Manager of said Notice of Appeal within a reasonable amount of time after its delivery to the Administrative Services Department.
- 2) Upon receipt of the notice prescribed by Section 1.i(1), the City Manager shall designate a person to serve as the Hearing Officer to preside over the Appeal Hearing, which shall be:
 - a) The City Manager;
 - b) The Deputy City Manager; or
 - c) An Assistant City Manager.
- 3) The City Manager shall notify the Administrative Services Director of the designation required by Section 1.i(2) following the same.

- 4) Upon request of the City Manager and agreement of the Presiding Judge of the Municipal Court, the Presiding Judge or Associate Judge of the Municipal Court may serve as the Hearing Officer.
- 5) If none of the foregoing individuals are available to serve as the Hearing Officer, the City Manager may designate another department manager with no knowledge of the facts that give rise to the Appeal Hearing to serve as the Hearing Officer.

j. Setting of Appeal Hearing

- 1) Following the designation of the Hearing Officer, the Hearing Officer shall provide the Administrative Services Director with dates and times of availability for the scheduling of the Appeal Hearing.
- 2) The Appeal Hearing shall occur no later than fifteen (15) Business Days following the perfection of the Notice of Appeal.
- 3) Notwithstanding Section 1.j(2), the Appeal Hearing may occur later than fifteen (15) Business Days following the perfection of the Notice of Appeal upon: (i) the mutual agreement of the Department Manager and the Employee; and (ii) the consent of the Hearing Officer.
- 4) Upon final setting of the Appeal Hearing, the Administrative Services Director shall send a Notice of Hearing to the Employee, the Hearing Officer, and the Department Manager. The Notice of Hearing shall consist of the following information:
 - a) The name and position of the Employee;
 - b) The name and position of the Employee's Supervisor;
 - c) The date, time, and location of Appeal Hearing; and
 - d) The reason/basis for appeal, as indicated by the Employee in the Notice of Appeal.

k. Appeal Hearing Procedure

- 1) The Employee shall personally attend the Appeal Hearing. Regardless of whether a designated representative of the Employee attends the Appeal Hearing, if the Employee fails to personally attend the Appeal Hearing, the Employee shall be deemed to have waived administrative review of the Adverse Action.
- 2) The following persons shall be entitled to participate in an Appeal Hearing:
 - a) Hearing Officer;
 - b) Administrative Services Director;
 - c) The Employee;
 - d) A designated representative of the Employee (if any); and
 - e) Department Manager.
 - f) A representative of the City Attorney's Office may represent the Department Manager at the Appeal Hearing if the City Attorney receives and agrees to a request for representation from the Department Manager.
- 3) Minutes or Recording
 - a) The Administrative Services Director shall take minutes of the Appeal Hearing or cause a recording to be made of the Appeal Hearing.
 - b) The Administrative Services Department shall maintain the minutes or recording of an Appeal Hearing for at least three (3) years or as long as may be required by law.
 - c) The Employee may provide, at the Employee's sole cost and expense, for a court reporter to record the Appeal Hearing. If the Employee provides for a court reporter to record the Appeal Hearing, the Employee shall provide the City with a copy of said recording (at no cost to the City) upon receiving a written request for such from the Administrative Services Director.
 - d) The Employee may submit a written request for a transcript of an Appeal Hearing recording from the Administrative Services Department; provided, however, that the Employee shall pay all expenses associated with transcribing the Appeal Hearing

recording, which shall be reasonably determined by the Administrative Services Director.

- e) Upon the submission of a request for a transcript of an Appeal Hearing recording, the Employee shall submit a deposit to the Administrative Services Department in an amount equal to the cost associated with transcribing the Appeal Hearing recording.

4) Witnesses

- a) The Employee, the Department Manager, and their respective witnesses shall be entitled to testify at the Appeal Hearing.
- b) The Employee and the Department Manager shall be responsible for securing the availability of their respective witnesses.
- c) The Employee and the Department Manager shall be entitled to call and question any witness who has knowledge of the incident(s) or alleged Prohibited Conduct that resulted in the Department Manager's administration of the Adverse Action.
- d) The Hearing Officer shall have the right to exclude the testimony of any witness who is shown to not possess knowledge of the incident(s) or alleged Prohibited Conduct that resulted in the Department Manager's administration of the Adverse Action.
- e) At the request of the Employee or the Department Manager, all witnesses shall be excluded from the Appeal Hearing; provided, however, that the Employee, the Department Manager, and their respective representatives may not be excluded (provided that a representative shall not testify). A request to exclude witnesses pursuant to this Section must be made prior to the commencement of any testimony.

5) Appeal Hearing Process

The Appeal Hearing shall proceed in the following manner:

- a) Introduction; Swearing in of Witnesses

The Administrative Services Director shall make a formal introduction to the Appeal Hearing, which shall consist of the factual circumstances that form the basis for the Appeal Hearing. Said factual circumstances shall consist of, but not be limited to, the following:

- 1. Basis for Adverse Action as described in the Notice of Adverse Action;
- 2. Notice of Adverse Action administration date;
- 3. Notice of Appeal perfection date;
- 4. Identification of the Appeal Hearing participants; and
- 5. Identification of the representatives of the Employee and the Department Manager.

The Employee and the Department Manager shall notify the Administrative Services Director of their respective witnesses expected to testify during the Appeal Hearing. The Administrative Services Director shall swear in such witnesses prior to the elicitation of witness testimony.

- b) Opening Statements

- 1. The Employee and the Department Manager (or their respective representatives) are entitled to give an opening statement prior to the commencement of any testimony. The Hearing Officer shall consider the opening statements of the Employee and the Department Manager in the following order:
 - a. Department Manager
 - b. Employee
- 2. The Employee and the Department Manager may waive the right to give an opening statement.

- c) Case-in-Chief; Department Manager

- 1. The Department Manager's case-in-chief may consist of witness testimony, the submission of exhibits, and the Department Manager's testimony. The Hearing Officer shall have the sole discretion to determine the relevance of evidence presented during the Department Manager's case-in-chief.

2. Following the direct examination of a witness by the Department Manager, the Employee shall be afforded the opportunity to cross-examine said witness.
 3. Following the cross-examination of a witness, the Department Manager shall be afforded the opportunity to re-examine said witness.
 4. Following the re-examination of a witness, the Employee shall be afforded the opportunity to cross-examine said witness.
 5. The Hearing Officer may examine a witness, the Department Manager, the Employee, or a representative of the Department Manager or Employee at any time.
- d) Case-in-Chief; Employee
1. The Employee's case-in-chief may consist of witness testimony, the submission of exhibits, and the Employee's testimony. The Hearing Officer shall have the sole discretion to determine the relevance of evidence presented during the Employee's case-in-chief.
 2. Following the direct examination of a witness, the Department Manager shall be afforded the opportunity to cross-examine said witness.
 3. Following the cross-examination of a witness, the Employee or the Employee's representative shall be afforded the opportunity to re-examine said witness.
 4. Following the re-examination of a witness, the Department Manager shall be afforded the opportunity to cross-examine said witness.
 5. The Hearing Officer may examine a witness, the Department Manager, the Employee, or a representative of the Department Manager or Employee at any time.
- e) Closing Statements
1. Following the cases-in-chief of the Department Manager and the Employee, the Department Manager and the Employee are entitled to give closing statements prior to the conclusion of the Appeal Hearing. The Hearing Officer shall consider the closing statements in the following order:
 - a. Department Manager
 - b. Employee
 - c. Department Manager's rebuttal
- f) Conclusion
- The Administrative Services Director shall conclude the Appeal Hearing and notify the parties of the date and time by which the Hearing Officer shall make a final determination.
- g) The Rules of Evidence are not applicable to the Appeal Hearing; the Hearing Officer may consider all evidence submitted by the parties that the Hearing Officer deems relevant and consistent with the provisions of this Chapter.
- h) The standard of compliance for observation of the rules and procedures contained in this Chapter shall be substantial compliance. The failure to observe any rule or procedure contained in this Chapter shall not form the basis of or give rise to any claims, damages, demands, suits, proceedings, or causes of action of any kind or character whatsoever against the City or its employees, agents, representatives, officials, Council or board members, including, but not limited to, claims for declaratory relief, claims under the state or federal constitutions, contract, tort, or other statutory or common law claims.
- i) The Hearing Officer may adopt additional rules and procedures as may be deemed necessary for the orderly conduct of the Appeal Hearing. The Hearing Officer shall have the sole discretion to implement additional rules and procedures necessary for the orderly conduct of the Appeal Hearing.

- 6) Determination of Hearing Officer
 - a) The Hearing Officer shall consider the evidence presented at the Appeal Hearing and determine the following issues:
 1. Whether reasonable grounds exist to support the allegation(s) that the Employee engaged in Prohibited Conduct; and
 2. Whether a reasonable basis exists for the Department Manager's administration of the Adverse Action.
 - b) The Hearing Officer shall make his/her final determination within two (2) Business Days of the conclusion of the Appeal Hearing and issue a Notice of Appeal Hearing Determination.
 - c) Notice of Appeal Hearing Determination
 1. The Hearing Officer's final determination shall uphold, modify, or reverse the Adverse Action.
 2. The Hearing Officer shall issue a Notice of Appeal Hearing Determination to the Employee detailing said final determination, and issue a copy of the same to the Department Manager and the Administrative Services Director.
 3. If the Hearing Officer's final determination results in a suspension of five (5) Workdays or less, the Employee shall have no right to seek administrative review of the Adverse Action by the Personnel Appeals Board and the Hearing Officer's final determination shall be final.
 4. If the Hearing Officer's final determination results in a Suspension of more than five (5) Workdays, a Demotion, or Termination, the Employee shall have the right to seek administrative review of the Adverse Action by the Personnel Appeals Board. The Notice of Appeal Hearing Determination shall contain a statement indicating that the Employee has the right to seek administrative review of the Adverse Action by the Personnel Appeals Board in accordance with the requirements and procedures of this Chapter.
 5. A final determination resulting in the Employee's Suspension, Demotion, or Termination shall be stayed upon the filing of a Notice of Appeal to the Personnel Appeals Board in accordance with the requirements and procedures of this Chapter.

I. Notice of Appeal to the Personnel Appeals Board

- 1) If the Hearing Officer's final determination results in a Suspension of more than five (5) Workdays, a Demotion, or Termination, the Employee may seek administrative review of the Adverse Action by the Personnel Appeals Board by filing a Notice of Appeal to the Personnel Appeals Board.
- 2) A Notice of Appeal to the Personnel Appeals Board must be filed within two (2) Business Days of the Employee's receipt of a Notice of Appeal Hearing Determination.
- 3) A Notice of Appeal to the Personnel Appeals Board shall contain the information required by Section 1.h(3).
- 4) A proper and timely Notice of Appeal to the Personnel Appeals Board shall be perfected upon the Administrative Services Department's receipt of the Notice of Appeal. If a Notice of Appeal to the Personnel Appeals Board does not contain the information required by Section 1.h(3), but is otherwise proper and timely, the Administrative Services Director shall notify the Employee of such defect within two (2) Business Days following the Administrative Services Department's receipt of the Notice of Appeal to the Personnel Appeals Board.
- 5) Upon receiving notification that a Notice of Appeal to the Personnel Appeals Board does not contain the information required by Section 1.h(3), the Employee shall correct the defect and supplement the missing information within two (2) Business Days of the Employee's receipt of the notice required by Section 1.l(4).

m. Personnel Appeals Board; Composition

- 1) The Personnel Appeals Board shall consist of three (3) members, to include: (i) two (2) City Council members; and one (1) resident of the City who is not employed by the City.
- 2) All appointments to the Personnel Appeals Board shall be made by the Mayor.
- 3) The Mayor shall designate a Board member to serve as Chairman of the Personnel Appeals Board.

n. Setting of Personnel Appeals Board Hearing

- 1) Following the perfection of a Notice of Appeal to the Personnel Appeals Board, the Administrative Services Director shall notify the Personnel Appeals Board members of said notice and the Board members shall provide the Administrative Services Director with dates and times of availability for the scheduling of the Appeal Hearing.
- 2) The Personnel Appeals Board hearing shall occur no later than fifteen (15) Business Days following the perfection of the Notice of Appeal to the Personnel Appeals Board.
- 3) Notwithstanding Section 1.n(2), the Personnel Appeals Board hearing may occur later than fifteen (15) Business Days following the perfection of the Notice of Appeal upon mutual agreement of the Department Manager and the Employee.
- 4) Upon final setting of the Personnel Appeals Board Hearing, the Administrative Services Director shall send the Notice of Appeals Board Hearing to the Employee, Board members, and Department Manager. Upon final setting of the Personnel Appeals Board Hearing, the Administrative Services Director shall send a Notice of Personnel Appeals Board Hearing to the Employee, the Personnel Appeals Board members, and the Department Manager. The Notice of Personnel Appeals Board Hearing shall consist of the following information:
 - a) The name and position of the Employee;
 - b) The name and position of the Employee's Supervisor;
 - c) The date, time, and location of Personnel Appeals Board Hearing; and
 - d) The reason/basis for appeal, as indicated by the Employee in the Notice of Appeal.

o. Personnel Appeals Board Hearing Procedure

- 1) For purposes of the Personnel Appeals Board Hearing, the Personnel Appeals Board shall observe the rules and procedures prescribed by Section 1.k unless otherwise stated herein.
- 2) The Personnel Appeals Board shall serve as the final arbiter of all matters appealed pursuant to Section 1.i and shall have all rights, privileges, and obligations delegated to the Hearing Officer by Section 1.k for the purpose of this Section.
- 3) Open Meetings Act; Compliance
 - a) The Personnel Appeals Board shall observe all applicable requirements of Chapter 551 of the Texas Government Code, as amended, with respect to any Personnel Appeals Board Hearing conducted pursuant to this Chapter.
 - b) A Personnel Appeals Board Hearing shall commence and conclude in open session, and all final decisions of the Personnel Appeals Board shall be voted on in open session. For the purpose of this Chapter, "open session" means the portion of the Personnel Appeals Board Hearing that is conducted in a manner that is open to the public.
 - c) The Personnel Appeals Board may conduct a hearing and deliberation in a closed session.
 - d) At commencement of a Personnel Appeals Board Hearing, the Employee shall notify the Personnel Appeals Board of the Employee's election to have the hearing conducted in open session.
 - e) If the Employee wishes for the Personnel Appeals Board's deliberation of the evidence presented at the hearing to occur in open session, the Employee shall object to the

Personnel Appeals Board recessing to closed session following the announcement that the Board will recess to closed session.

- f) Upon receiving the Employee's objection pursuant to Section 1.o(3)(e), the Personnel Appeals Board shall not recess to closed session and said deliberation shall occur in open session.
 - g) Notwithstanding the Employee's objection pursuant to Section 1.o(3)(e), the Personnel Appeals Board shall have the sole and absolute discretion to include any person in a closed session whose participation necessary to the matter under consideration.
 - 4) Closed Session; Certified Agenda or Recording
 - a) The Administrative Services Director shall keep a certified agenda or make a recording of a closed session held by the Personnel Appeals Board.
 - b) A certified agenda of a closed session shall include the following:
 - 1. A statement of deliberation subject matter;
 - 2. A record of any action taken; and
 - 3. The date and time of the beginning and end of the closed session.
 - 5) Determination of the Personnel Appeals Board
 - a) The Personnel Appeals Board shall consider the evidence presented at the Personnel Appeal Board Hearing and make a determination as set forth in Section 1.k.6(a).
 - b) The Personnel Appeals Board shall make its final determination by majority vote in open session following its deliberation of the evidence presented at the hearing. The decision of the Personnel Appeals Board shall be the final and cumulative determination of an Adverse Action matter.
 - 6) Notice of Personnel Appeals Board Determination
 - a) The Personnel Appeals Board's final determination shall uphold, modify, or reverse the Adverse Action.
 - b) The Personnel Appeals Board shall issue a Notice of Personnel Appeals Board Determination to the Employee detailing said final determination, and issue a copy of the same to the Department Manager and the Administrative Services Director.
 - c) The Notice of Personnel Appeals Board Determination shall be issued within three (3) Business Days following the adjournment of the Personnel Appeals Board Hearing.
- p. Litigation; Judicial Review

The Employee who has exhausted all administrative remedies and appeals pursuant to this Chapter may file suit in a Midland County state district court.

- 1) A suit filed pursuant to this Section shall be by verified petition specifying the grounds of illegality regarding the final administrative decision. The verified petition shall be filed no later than the thirtieth (30th) day following the date on which the Employee has exhausted all administrative remedies and appeals pursuant to this Chapter.
- 2) A state district court shall confine its review of an action made pursuant to this Chapter to the City's record and any evidence of procedural errors alleged to have occurred by the Employee. In performing such review, a state district court shall apply the substantial evidence standard.
- 3) A state district court that reviews a final determination made pursuant to this Chapter shall not award any costs or attorney fees against the City.

Section 2 Lay-Off

- a. Notwithstanding any contrary provision contained in this Chapter, a Department Manager is authorized to lay-off an Employee for reasons that include, but are not limited to, the following:
 - 1) Change in the Employee's job duties and/or functions;
 - 2) Change in the organizational structure of the City's administration; and
 - 3) Lack of funding for the Employee's position or other budgetary constraint.
- b. If a Department Manager seeks to lay-off an Employee pursuant to Section 2.a, the Department Manager shall use reasonable efforts to give said Employee at least two (2) weeks' written notice

when feasible; provided, however, that no such notice shall be due for the lay-off of a temporary or part-time worker.

- c. An Employee that was previously laid off pursuant to Section 2.a and had satisfactory service while employed with the City shall be eligible for rehire upon the subsequent vacancy of a position for which such former employee is eligible.

Section 3 Exit Interview

Upon the request of a Department Manager or an Employee who is due to be laid off or terminated, an exit interview between the Department Manager or his/her designee and the Employee shall occur in the Administrative Services Office.

Section 4 Name-Clearing Hearing

Upon the finalization of any Termination and an Employee's exhaustion of all appeal procedures pursuant to this Chapter, the Employee shall be entitled to a Name-Clearing Hearing before the City Manager.

- a. An Employee seeking a Name-Clearing Hearing shall submit a written request for such hearing to the Administrative Services Director.
- b. Upon receipt of an Employee's request for a Name-Clearing Hearing, the Administrative Services Director shall deliver said written request to the City Manager within two (2) Business Days.
- c. A Name-Clearing Hearing shall occur within ten (10) Business Days of the City Manager's receipt of the Employee's written request.
- d. At the Name-Clearing Hearing, an Employee may address any allegation made by the City or its employees, agents, officials, Council or board members relating to said Employee's discharge.
- e. Following the Name-Clearing Hearing, the City Manager may issue an exculpatory statement deemed to be just or necessary. If the City Manager issues an exculpatory statement, he/she shall cause said statement to be mailed to the Employee's address on file with the Administrative Services Department and place a copy in the Employee's personnel file. It shall be in the City Manager's sole and absolute discretion whether to issue an exculpatory statement.

Chapter IX

Grievance Procedure

Section 1 Policy

It is the policy of the City to treat all employees fairly and equitably. Any employee who feels aggrieved in his/her employment with the City has a right to present a grievance to appropriate management officials for prompt consideration. The filing of a grievance by an employee shall not reflect unfavorably on the employee's standing, and the employee should not fear reprisal or retaliation for utilizing the procedures below. For the purposes of this Chapter, capitalized terms used herein without definition shall have the meanings assigned in Chapter VIII.

Section 2 Definitions

- a. "Grievance" means a formal complaint (and any relevant supporting documentation) raised by an Employee regarding an employment matter.
- b. "Immediate Supervisor" means the person charged with the daily oversight and management of the Employee claiming a grievance.

Section 3 General Provisions

- a. The City shall attempt to resolve a Grievance using reasonable efforts and due diligence with regard to the procedures prescribed by this Chapter. The time limits prescribed by Section 4 may be extended by mutual written agreement between the Employee and pertinent City representative.
- b. The Supervisor's or Department Manager's failure to address a written Grievance in accordance with the procedures prescribed by Section 4 shall permit the Employee to proceed to the following Step and file the written Grievance with the Department Manager or City Manager, as applicable.
- c. An Employee's failure to respond to a decision within the time limits specified in Section 4 shall be deemed to be an acceptance of said decision.
- d. A Grievance shall be initiated within ten (10) Business Days of: (i) the date on which the matter that is the subject of the Grievance occurred, or (ii) the date on which the matter that is the subject of the Grievance became known to the Employee.

Section 4 Procedure

- a. Informal Step: The Employee may discuss a Grievance with his/her Immediate Supervisor in an effort to resolve the matter informally.
- b. Step 1:
 - 1) The Employee may file a written Grievance with his/her Immediate Supervisor and request a conference to occur within five (5) Business Days to discuss a formal resolution of the matter.
 - 2) Upon receipt of a written Grievance, the Immediate Supervisor shall either: (i) schedule a conference to discuss a formal resolution of the matter in accordance with Section 4.b(1); or (ii) take action that addresses the matter described in the written Grievance to the reasonable satisfaction of the Employee.

- 3) Following a conference to discuss a formal resolution of a Grievance, the Immediate Supervisor shall render a written decision regarding the Grievance within ten (10) Business Days.
 - 4) Following an action taken by the Immediate Supervisor to address the matter described in the written Grievance, the Immediate Supervisor shall issue a memorandum that details the Immediate Supervisor's action.
- c. Step 2:
- 1) If the Employee is not satisfied with the Immediate Supervisor's decision pursuant Section 4.b, the Employee may file the written Grievance with the Department Manager and request a conference to occur within five (5) Business Days to discuss a formal resolution of the matter. The Employee shall file the written Grievance within five (5) Business Days of the Employee's receipt of the Immediate Supervisor's decision.
 - 2) Upon receipt of a written Grievance, the Department Manager shall either: (i) schedule a conference to discuss a formal resolution of the matter in accordance with Section 4.c(1); or (ii) take action that addresses the matter described in the written Grievance to the reasonable satisfaction of the Employee.
 - 3) Following a conference to discuss a formal resolution of a Grievance, the Department Manager shall render a written decision regarding the Grievance within ten (10) Business Days.
 - 4) Following an action taken by the Department Manager to address the matter described in the written Grievance, the Department Manager shall issue a memorandum that details the nature of the Department Manager's action.
- d. Step 3:
- 1) If the Employee is not satisfied with the Department Manager's decision pursuant to Section 4.c, the Employee may file the written Grievance with the City Manager (through the Administrative Services Director) and request a conference to occur within ten (10) Business Days. The Employee shall file the written Grievance within five (5) Business Days of the Employee's receipt of the Department Manager's decision. The written Grievance shall contain all complaints and relevant facts that pertain to the matter described in the written Grievance.
 - 2) Upon receipt of a written Grievance, the City Manager or his/her designee shall either: (i) schedule a conference to discuss a formal resolution of the matter in accordance with Section 4.d(1); or (ii) take action that addresses the matter described in the written Grievance to the reasonable satisfaction of the Employee.
 - 3) Following a conference to discuss a formal resolution of a Grievance, the City Manager or his/her designee shall render a written decision regarding the Grievance within ten (10) Business Days.
 - 4) Following an action taken by the City Manager or his/her designee to address the matter described in the written Grievance, the City Manager or his/her designee shall issue a memorandum that details the nature of the City Manager's or his/her designee's action.
 - 5) A decision or action taken by the City Manager or his/her designee shall be final and satisfy the City's obligations regarding the consideration of the Grievance.

Section 5 Written Decisions and Memorandums

A written decision or memorandum issued pursuant to Section 4 shall be sent to the Employee, the Department Manager, and the Immediate Supervisor, as applicable. A copy of a written decision or memorandum issued pursuant to Section 4 shall be attached to a copy of the written Grievance and kept in the Employee's personnel file in the Administrative Services office.

Chapter X

Retirement System and Other Benefits

Section 1 Texas Municipal Retirement System

All regular employees are required as a condition of their continued employment to enroll in the Texas Municipal Retirement System. Seasonal, part-time, temporary, Fire Department employees and others exempt by State law, are not eligible to enroll in the retirement system, unless otherwise provided for herein or by State law.

- a. Deposits.** Each member of the retirement system shall, by payroll deduction, be required to contribute a percentage not to exceed seven percent (7%) of his monthly salary. The City shall also deposit a certain percentage for the benefit of each member employee as required by law.
- b. Withdrawal of Deposits.** If an employee leaves the service of the City for any reason, he may withdraw the deposits he has made plus any interest earned on such deposits.
- c. Retirement Benefits and Restrictions.** Benefits payable upon the death or retirement of an employee and any restrictions or limitations upon participation in the retirement system shall be in accordance with the provisions of the Texas Municipal Retirement System Act, Subtitle G of Title 8, Government Code.

Section 2 Firemen's Relief and Retirement

All employees of the regular City of Midland Fire Department shall be required as a condition of employment to participate in and make contributions to the Firemen's Relief and Retirement Fund. Contributions to and participation in the Firemen's Relief and Retirement Fund shall be in accordance with the provisions of Article 6243e, V.A.T.S.

Section 3 Federal Insurance Contributions Act

- a. Old-Age, Survivors, and Disability Insurance Tax (Social Security)**
All employees, except those who contribute to and participate in the Midland Firemen's Relief and Retirement Fund and others excluded by law, shall make contributions by payroll deductions to the Old-Age, Survivors, and Disability Insurance Tax (Social Security). All employees, upon commencement of employment with the City, must possess a Social Security Card.
- b. Medicare Tax**
All employees shall make contributions by payroll deductions to the Medicare Tax except those who are excluded by law.

Chapter XI

Safety

Section 1 General

These personnel rules are subject to modification when same are required to protect the safety or health of any employee. They are also subject to modification if same are necessary to comply with any state, federal, or local safety laws and regulations.

Section 2 Accident Review Board

The City Manager appoints the members of this Board with the Safety and Risk Manager as chairman. The primary function of the Board is to review all motor vehicle accidents and personal injuries occurring on the job. The Board shall consult with the administrative body of the City as well as Department/Division Managers, supervisory personnel, and other employees concerning the removal of hazardous conditions, disciplinary actions, and other improvements of the overall safety program. The Board shall not review any accident or personal injuries where a potential or existing claim or potential or existing lawsuit is pending against the City or a City employee.

Chapter XII

Employment at Will

Section 1 Council Appointees and Other Employees

- a. When used in this Chapter, the following capitalized terms shall have the meanings set forth below:

“Council Appointees” shall mean City Manager, City Attorney, City Secretary, Municipal Court Presiding Judge, and Municipal Court Associate Judge.

“Other Employees” shall mean Deputy City Manager, Assistant City Manager, First Assistant City Attorney, and Senior Assistant City Attorney.

- b. All Council Appointees and Other Employees shall be **EMPLOYEES AT WILL** and may be terminated at any time by the City of Midland with or without cause, subject to the City's personnel policies and procedures, and the terms and conditions of any applicable employment agreement.
- c. In the event of an Involuntary Separation (as defined in this Chapter), a Council Appointee shall be entitled to receive a lump sum payment equal to six (6) months of his or her annual base salary as well as any other severance or separation compensation payment(s) set forth in his or her employment agreement. An Other Employee shall be entitled to receive a lump sum payment equal to six (6) months of his or her annual base salary.

Notwithstanding any contrary provision of this Chapter, the City shall have no obligation to pay the severance sum(s) set forth herein if a Council Appointee or Other Employee is terminated for one of the following reasons: (i) conviction of a felony; (ii) conviction of a misdemeanor involving moral turpitude (which shall mean a misdemeanor involving dishonesty, fraud or deceit); or (iii) misconduct or violation of a City policy, rule, or regulation that by its nature has an adverse effect on the City, the confidence of the public in the integrity of the City, or the relationship of the employee and other employees (a *“Policy Violation”*). The determination of whether conduct constitutes a Policy Violation shall be in the sole discretion of the City Council for Council Appointees, the City Manager for a Deputy City Manager or an Assistant City Manager, and the City Attorney for the First Assistant City Attorney or the Senior Assistant City Attorney.

“Involuntary Separation” as used in this Chapter shall have the following meaning:

- 1) Resignation of an Other Employee within sixty (60) days following a reduction in salary in a greater percentage than an applicable across-the-board reduction for all City employees;
- 2) Termination of a Deputy City Manager or an Assistant City Manager by the City Manager;
- 3) Termination of the First Assistant City Attorney or the Senior Assistant City Attorney by the City Attorney;
- 4) Termination of a Council Appointee by a vote of at least four (4) City Council members at a regular City Council meeting; or

- 5) Termination of an Other Employee or Council Appointee for a reason set forth in such employee's employment agreement with the City in accordance with the terms and conditions of such employment agreement.
- d. A Council Appointee shall enter into an employment agreement to be approved by the City Council. A Deputy City Manager shall enter into an employment agreement to be approved by the City Manager. An Assistant City Manager shall enter into an employment agreement to be approved by the City Manager. The First Assistant City Attorney shall enter into an employment agreement to be approved by the City Attorney. The Senior Assistant City Attorney shall enter into an employment agreement to be approved by the City Attorney. In the event that any conflict exists between a provision of this Chapter and a provision of any such employment agreement, then the provision of the employment agreement shall apply and take precedence over the conflicting provision contained in this Chapter.
- e. A City employee deemed to be an exempt employee under the Fair Labor Standards Act shall only be suspended for period of at least one (1) week; provided, however, that a suspension of an exempt employee in good faith for an infraction(s) of a safety rule(s) of major significance may be for a period of less than one (1) week. This subsection shall be construed, interpreted, and administered in accordance with the Fair Labor Standards Act, as amended.

Section 2 Applicability

These rules, policies and procedures shall apply to and govern all employees of the City of Midland, except when these rules affecting firefighters and police officers are inconsistent with State legislation. Words used in the singular shall be construed to read in the plural and words used in the masculine gender shall be construed to read in the feminine. Failure to comply with these policies may result in disciplinary action being taken against an employee. Nothing in these rules, policies and procedures, except Chapter XII, should be construed as an employment agreement, guarantee of or contract for continued benefits from employment by the City of Midland. Severance as defined in these rules and policies shall mean salary and all other compensation and benefits. Severance shall be paid in a lump sum upon involuntary separation. The Mayor shall have the authority to execute and approve amendments and modifications to employment agreements entered into under Chapter XII. The standard for compliance by the City with these personnel policies, rules or procedures shall be substantial compliance. A violation of or failure to follow any rule or procedure shall not form a basis for any civil or criminal action against the City or any employee or official of the City who is acting on behalf of the City except as authorized by Sections 271.151 through 271.160 of the Texas Local Government Code, as amended. The administrative remedy set out in these rules and procedures is the exclusive remedy. There shall be no appeal to or action in any court except on constitutional or statutory grounds. These personnel rules, policies and procedures shall be implemented, administered and construed to comply with applicable local, state and federal laws. That the term Other Employees or Other Employee as used in these policies shall only mean the Deputy City Manager, Assistant City Manager, First Assistant City Attorney, and Senior Assistant City Attorney. That Chapter XII and its related definitions, and its related essential terms and benefits are a contract for providing services as authorized by Sections 271.151 through 271.160 of the Texas Local Government Code, as amended. The testing of employees conducted in conjunction with the administration and enforcement of the City's drug and alcohol testing policy shall be conducted in accordance with the United States Constitution, the Texas Constitution, federal and state laws, and regulations and judicial precedent. Except as outlined in Chapter XII, an employee's at-will employment status is not modified by these policies and the Midland City Council reserves the right to amend these personnel policies in accordance with applicable statutes. As used in these rules and policies, Council Appointees shall mean the City Manager, City Attorney, City Secretary, the Presiding Municipal Court Judge and the Associate Municipal Court Judge. It is not required that employee sign these rules, policies and procedures, or any other document, in order to be bound by said rules, policies and procedures. Each employee shall be bound by these rules, policies and procedures by accepting employment with the City of Midland and performance of his or her job duties.



City Council Meeting

Item Number: 12
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Charles Blumenauer, Managing Director
Subject: RESOLUTION AUTHORIZING AN ADOPTION PARTNER AGREEMENT WITH PETSMART CHARITIES, INC., TO PARTICIPATE IN THE PETSMART CHARITIES ADOPTION PROGRAM (DISTRICT: ALL) (ANIMAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

The City of Midland, through its Animal Services division, seeks to enter into an agreement with PetSmart Charities to participate in its Adoption Program. This program provides Midland Animal Services with access to PetSmart Charities' Adoption Centers, located within PetSmart retail stores or designated event locations, to facilitate pet adoptions. The partnership aims to increase adoption opportunities for dogs, cats, and other eligible pets, ultimately supporting the City's efforts to reduce the shelter population and promote responsible pet ownership.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no fiscal impact to the City of Midland.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

This partnership will provide Midland Animal Services with access to PetSmart Charities' Adoption Centers, offering an additional, high-visibility location to facilitate pet adoptions

outside of the shelter. This opportunity will help increase adoption rates, reduce shelter overcrowding, and enhance community engagement in responsible pet ownership. Approval of this agreement aligns with the City's commitment to improving animal welfare and finding permanent homes for adoptable pets.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AN ADOPTION
PARTNER AGREEMENT WITH PETSMART
CHARITIES, INC., TO PARTICIPATE IN THE
PETSMART CHARITIES ADOPTION PROGRAM**

WHEREAS, Petsmart Charities, Inc., hosts adoption events at its adoption centers;
and

WHEREAS, participation in adoption events will help facilitate pet adoptions and
will enhance visibility for animals being held by the Midland Animal Services Department;
and

WHEREAS, the City Council finds it to be in the public interest to authorize an
Adoption Partner Agreement with Petsmart Charities, Inc., to enable participation in Petsmart
Charities' Adoption Program;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized
and directed to execute and attest, respectively, on behalf of the City of Midland, an
Adoption Partner Agreement with Petsmart Charities, Inc., for participation in Petsmart
Charities' Adoption Program. Said contract to be kept on file in the office of the City
Secretary, referenced by the date and number of this Resolution.

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., 2025, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



This Adoption Partner Agreement (this “Agreement”) is entered into between PetSmart Charities Inc., an Arizona nonprofit corporation and tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code (“Code”), whose address is 19601 N. 27th Avenue, Phoenix, AZ 85027 (“Charities”), and City of Midland (Animal Services), whose address is 1200 N. Fairgrounds Road, Midland, TX 79706 (“Adoption Partner”).

Section 1 – PetSmart Charities Adoption Program

- A. **Adoption Program.** Subject to the terms of this Agreement, Charities agrees to permit Adoption Partner to participate in the Charities’ adoption program (“Adoption Program”) located at one or more PetSmart Charities Adoption Centers or other space at PetSmart retail stores, or in the case of special events, locations specified by Charities (“Adoption Center”). The Adoption Program’s sole purpose is to help facilitate and provide a location to facilitate adoptions of dogs, cats, or other certain pets (“Pets”). Adoption Partner acknowledges that in addition to its organization, other adoption agencies may also be permitted by Charities to hold adoptions at the same time and location as the Adoption Partner.
- B. **Adoption Policies.** In addition to the terms and conditions contained in this Agreement, Adoption Partner acknowledges that it has received, and agrees that it and its employees and volunteers will comply with, any additional policies, procedures and/or manuals (collectively the “Policies”) as provided to Adoption Partner by Charities and/or PetSmart LLC (“PetSmart”), including any future changes to those policies, procedures and/or manuals. Charities reserves the right to amend such adoption policies in its sole and absolute discretion and will take reasonable steps to update Adoption Partner of any changes.
- C. **Adoption Process.** Subject to this Agreement and applicable law, Adoption Partner will use its own adoption policies and procedures when offering Pets for adoption, and will make the final decision in the adoption of a Pet. Adoption Partner shall retain ownership of each Pet until the adoption process for such Pet is complete. Adoption Partner will require an adoption release form or other similar document specified by Charities to be signed by the adopting party.
- D. **Adoption Assistance.** If mutually agreed upon by Adoption Partner, Charities, and PetSmart, Charities may, through its relationship with PetSmart, facilitate use of PetSmart employees to support the Adoption Center, which may include conducting adoptions, providing care for Pets, and maintaining the facilities. In such event, Adoption Partner hereby authorizes Charities and/or PetSmart to carry out those activities agreed upon and to provide all reasonably necessary training on Adoption Partner’s practices, policies, and procedures.
- E. **Adoption Center.** Adoption Partner shall have the use of the Adoption Center free of rent or costs. The parties will mutually agree upon one or more Adoption Center locations and the date Adoption Partner will begin use of each Adoption Center. Additional locations may be added from time to time as deemed necessary by both parties. Additional locations and/or change of locations can be accomplished upon written request by Adoption Partner and written approval of such request by Charities in its sole and absolute discretion.
- F. **Damage to Adoption Center.** Adoption Partner will be responsible for any damage to the Adoption Center or related equipment caused by Adoption Partner, its staff, volunteers, Pets, or any other person or animal acting on or under Adoption Partner’s direction or control. Adoption Partner will, at its sole expense, maintain the Adoption Center in a clean, sanitary and orderly fashion and take preventative action to minimize the spread of communicable diseases among Pets. Adoption Partner is responsible for ensuring that the area is clean, fully sanitized and disinfected prior to departure.
- G. **Adoption Rewards.** Charities may elect to provide certain monetary grants in conjunction with the Adoption Program (“Rewards”). Charities, in its sole and absolute discretion may determine the election, amount, modification, or termination of Rewards. Adoption Partner agrees to use such Rewards in the furtherance of its charitable purpose, specifically its Pet adoption program, or if permitted by Charities, other charitable purposes advancing animal welfare. Adoption Partner may not use Rewards for lobbying or political activities, or any purpose not permitted by the Code.

- H. Adoption Center Supplies. Charities may elect to provide products or pet food (collectively “Product”) for use by Adoption Partner solely for the operation of the Adoption Center. Charities, in its sole and absolute discretion may determine the election, modification, or termination of Product. Adoption Partner understands and agrees that Product is provided in “as-is” condition and that Charities and PetSmart make NO WARRANTY, COVENANT OR REPRESENTATION, EXPRESSED OR IMPLIED, REGARDING THE PRODUCT, INCLUDING WITHOUT LIMITATION, THEIR DESIGN OR MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE (EXCEPT CHARITIES WARRANTS IT HAS GOOD TITLE TO THE PRODUCT AND CAN TRANSFER GOOD TITLE TO ADOPTION PARTNER). NEITHER CHARITIES NOR PETSMART SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSSES SUFFERED OR INCURRED BY ADOPTION PARTNER OR A THIRD PARTY AS A RESULT OF THE USE, OR CONSUMPTION OF THE PRODUCT. Adoption Partner waives any and all claims against and releases Charities and/or PetSmart from all liability associated with the use or consumption of the Product. Adoption Partner further understands and agrees that the U.S. Food and Drug Administration (“FDA”) regulations specify that protein derived from mammalian tissues is not to be used in ruminant feed and that the feeding of any pet food included with any Product to cattle or other ruminant animals is expressly prohibited by federal regulations.
- I. Reporting. Adoption Partner is required to submit the impact report(s) related to the Adoption Program specified by Charities along with any other information reasonably requested by Charities (subject to confidentiality obligations as set by the Texas Public Information Act).
- J. Pet Eligibility. Except as specified in the Policies, all Pets must be spayed or neutered, and evaluated and deemed to be healthy, safe for interaction, adoptable, and in compliance with any applicable laws and regulations prior to placement in the Adoption Program. Pets showing or previously having shown any signs of aggression are strictly prohibited from the Adoption Program. Adoption Partner will isolate Pets at the first sign of illness or aggression and remove such Pets immediately from the Adoption Center and PetSmart premises.
- K. Request for Removal of Pet. Charities or its designee may require Adoption Partner to immediately remove any Pet from the Adoption Center or PetSmart premises as may be reasonably necessary to comply with Charities’ Adoption Policies, operate the Adoption Program, ensure the safety or well-being of any Pet or person, or comply with any applicable law or regulation, in Charities’ sole discretion.
- L. Employees and/or Volunteers. Adoption Partner agrees that Adoption Partner’s employees who are working or facilitating adoptions in the Adoption Program must be at least 18 years old. Adoption Partner’s volunteers must be at least 16 years old and properly supervised by the Adoption Partner. Volunteers under the age of 18 must always be accompanied and supervised by an adult. Adoption Partner and its employees and volunteers must always maintain a clean, neat and professional appearance, and conduct themselves in a professional and courteous manner. Adoption Partner shall only permit its employees and volunteers to participate in the Adoption Program.
- M. Agreement. Adoption Partner agrees to require all employees and volunteers working on behalf of Adoption Partner in conjunction with the Adoption Program to sign an agreement with Adoption Partner acknowledging that they are aware of and agree to comply with all policies, procedures and/manuals, including this Agreement, and agreeing to waive all claims and liability against Charities and PetSmart resulting from participation in the Adoption Program.
- N. Potential Removal. In the event Charities or PetSmart has any objection to any Adoption Partner employee or volunteer, Charities or PetSmart shall have the right to require Adoption Partner to commence appropriate procedures to remedy the basis of any such objection. Upon reasonable request, PetSmart or Charities, in its sole discretion, may require the removal of the employee or volunteer from the Adoption Center or any other designated areas.
- O. Prohibited Conduct. Adoption Partner, its employees, volunteers or agents, may not, directly or indirectly during or after the term of this Agreement:
1. Sell, gift or generally compete with any of the products and/or services sold by PetSmart (such as grooming, pet training and veterinary services) while in the Adoption Center or on PetSmart premises.
 2. Conduct fundraising activities while in the Adoption Center or on PetSmart premises, including directly soliciting donations; except Adoption Partner is welcome to collect donations through use of a donation collection canister located where adoptions are being performed.

3. Interfere in any way with the conduct of the business of PetSmart, Charities or any customer, tenant or occupant of the PetSmart store or shopping center at any time.
4. Allow any person or other organization to use its Adoption Group Number as assigned by Charities, its tax identification number, or participate in the Adoption Program using its name or identity.
5. Make, directly or indirectly, any negative statements, whether written or oral (including in any digital electronic format) or disparage any of the following: Charities, PetSmart, Banfield Pet Hospital, or any customer, tenant or occupant of the PetSmart store or shopping center; PetSmart or Charities product, service, employee, representative, volunteer or agent; or the activities or reputations of any other organization participating in the Adoption Program.

Section 2 – General Provisions

- A. Representations. Adoption Partner represents to Charities, as of the date of this Agreement and at all times during the term, that:
1. Adoption Partner is either: (i) an organization exempt from federal income tax under Section 501(c)(3) of the Code, (ii) a governmental entity under Section 170(c)(1) of the Code that will use any Rewards exclusively for public purposes, or (iii) an “Indian tribal government,” under Section 7701(a)(40) of the Code, that is treated as a State that will use any Rewards exclusively for public purposes.
 2. Adoption Partner holds and will maintain any and all licenses, permits and registrations necessary or appropriate to operate and fulfill Adoption Partner’s mission.
 3. Adoption Partner is in compliance (and will comply) with all applicable federal, state, local and tribal laws, regulations and other requirements.
 4. Adoption Partner is not on any federal terrorism “watch list” and any Rewards will be used in compliance with all applicable anti-terrorist financing and asset control laws, statutes and executive orders.
 5. Adoption Partner agrees that all representations or statements made by Adoption Partner in any application or any related communications from or on behalf of Adoption Partner are true and accurate in all material respects. Adoption Partner will notify Charities promptly in writing of any changes in such representations or statements.
- B. Audit. Adoption Partner agrees to maintain adequate books, records and other documents showing compliance with this Agreement. During the term of the Agreement and for two (2) years afterwards, Charities or its designee may audit or review Adoption Partner’s books, records, and operations to confirm Adoption Partner’s compliance with the terms of the Agreement. Any such request will be made with at least ten (10) business days’ prior notice and during normal business hours; provided however, that in the event Charities has a bonafide reason to believe, in its sole discretion, that there may be issues related to the welfare of any of people or animals associated with Adoption Partner, Adoption Partner shall permit such audit with no notice. Adoption Partner will provide Charities with the requested records and will fully cooperate with Charities. Adoption Partner acknowledges and agrees that any such audit may include, without limitation, (i) an on-site or in person inspection, (ii) observation of Adoption Partner’s facilities and operations, and (iii) personnel interviews, including without limitation, employees and volunteers. During any such audit or review, Charities may, in its sole discretion, suspend participation in the Adoption Program and withhold any unpaid Rewards pending the outcome of the audit or review. Adoption Partner expressly grants permission to Charities or its designees to discuss with, or request documentation from, third parties about Adoption Partner related to performance under this Agreement. Adoption Partner agrees to cooperate with Charities in supplying additional information required for Charities to comply with governmental requests related to this Agreement. In addition, Adoption Partner agrees to retain and make available all records for Pet licensing and registration, adoptions and adopter information, adoption policies and procedures, as well as any other records required by law related to any Pet or operation of the Adoption Center. The foregoing is subject to confidentiality obligations as set by the Texas Public Information Act.
- C. Independent Entities. Nothing in this Agreement is intended or will be construed to create any type of partnership, joint venture, employment, franchise or other similar relationship between the parties. The parties agree that Adoption Partner is an independent entity solely responsible for itself, its employees, volunteers, agents, and its Pets. Each party shall be solely responsible for the acts and omissions of its respective officers, agents, servants, employees, representatives and subcontractors during and after the term of this Agreement. The doctrine of respondeat superior shall not apply as between Charities and PetSmart or Adoption Partner and its respective agents, employees, representatives or subcontractors.
- D. Indemnification. Adoption Partner shall defend, indemnify and hold harmless Charities and PetSmart, including their respective affiliates, directors, officers, managers, employees, representatives, agents, assigns and successors, from and against all costs, claims, losses, liabilities, property damage, bodily injury or death, or intellectual property infringement

(including reasonable attorneys' fees and expenses), incident to or arising out of Adoption Partner's: breach of this Agreement; willful misconduct or negligent act(s) or omission(s); receipt or use of the Rewards; participation in the Adoption Program, including injury or damage caused by or involving Adoption Partner's Pets; possession, storage, use, consumption and disposal of any Product; employment and/or worker compensation claims; or violation of applicable law. Notwithstanding the foregoing, this provision shall not be applicable if Adoption Partner is a governmental entity and as such, is prohibited by law from indemnifying Charities.

- E. Equal Opportunity. Adoption Partner agrees that it will not discriminate by reason of race, color, creed, religion, national original, age, sexual orientation, disability, veteran status, gender, marital status or any other legally protected status.
- F. Publicity. Adoption Partner agrees that it will acknowledge Charities' support in any promotional materials, including websites and social media platforms. Adoption Partner must obtain prior written approval by Charities and will provide Charities at least ten (10) business days to review, for quality control purposes, the proposed use. If Charities permits Adoption Partner use of its logo, such use is a limited, non-exclusive, revocable right to use. Adoption Partner may not use Charities' logo for any purpose other than the use permitted by Charities, and Charities may immediately terminate use if it is determined by Charities to be unacceptable. Adoption Partner will not use either Charities' name or logo in a negative light or critical manner. Any right given to Adoption Partner for the use of Charities name or logo may not be transferred, assigned or sublicensed. Charities has the limited, non-exclusive, revocable right to publish, print, transmit, display or otherwise use Adoption Partner's name and logo. Such use may be in electronic or digital format (including e-mail, social media platforms or websites) or in printed form. Charities will not use Adoption Partner's name or logo in a negative light or critical manner. Charities' use of Adoption Partner's name or logo will be used only to support or further Charities' mission.
- G. Governing Law; Legal Fees. Adoption Partner also agrees and understands that this Agreement may be enforced by legal action, including but not limited to injunctive or other equitable relief. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas in the United States without regard to conflict of law provisions or international treaties or conventions, unless prohibited by law.
- H. Termination. This Agreement shall remain in effect until terminated by either party as set forth herein. Either party may terminate this Agreement at any time, with or without cause, upon at least thirty (30) days written notice of such termination to the other party. Charities may immediately terminate this Agreement upon written notice to Adoption Partner if Charities determines, in its sole discretion, that Adoption Partner: has breached any term of this Agreement; is the subject of any legal, regulatory or media investigation or is engaged in any action or course that appears to be unprofessional, uncharitable, disreputable, or otherwise inappropriate; ceases to operate or materially and adversely changes its method of operation, is insolvent, or files for or is the subject of any type of receivership, bankruptcy or similar proceeding; or has not complied with the requirements of any other agreement with Charities. If Charities terminates this Agreement for cause, it may, in its sole and absolute discretion: withhold any pending or future Rewards; or revoke any Rewards not used in accordance with this Agreement and require that all previously provided Rewards be returned. All representations, warranties and obligations of Adoption Partner shall survive after the termination date of this Agreement.
- I. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all other prior and contemporaneous communications, discussions, understandings, negotiations, arrangements and agreements, whether written or oral, relating to the subject matter of this Agreement. Adoption Partner will not assign or sublicense, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of Charities. Waivers must be in writing, signed by the party against whom enforcement is sought. The parties shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control. If one or more provisions of this Agreement are held to be unenforceable under applicable laws by a court of competent jurisdiction, those provisions must be limited or eliminated to the minimum extent necessary and only in the applicable jurisdiction such that the balance of this Agreement remains enforceable and in full force and effect. This Agreement shall not be construed for or against any party based on which party drafted this Agreement, and each party had the opportunity to review this Agreement with their respective legal counsel to the party's satisfaction. PetSmart shall be a third party beneficiary under this Agreement. Charities and Adoption Partner each represent that the individuals signing are duly authorized to execute this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an enforceable original, but all of which together shall constitute one and the same instrument. Facsimile and other electronic signatures shall be as effective and binding as original signatures.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this Agreement, all effective as of the last date written below.

“CHARITIES”

PetSmart Charities, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

“ADOPTION PARTNER”

City of Midland (Animal Services)

Signature: _____

Name: _____

Title: _____

Date: _____



City Council Meeting

Item Number: 13
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Sara Harris,
Subject: MOTION AUTHORIZING THE EXECUTION OF A CONSULTANT SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND INTERFLIGHT GLOBAL CORPORATION IN AN AMOUNT NOT TO EXCEED \$192,500.00 FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT. (DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on February 3, 2025 a resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$192,500.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park.

Recommended City Council Action:

Approve

Fiscal Impact:

\$192,500.00

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

In 2024, InterFlight Global supported familiarization tours with 20 different aerospace companies, and High-Speed Aerospace Transportation Workshop with over 75 aerospace

industry participants, including AIAA, Boeing, and NASA. In 2024, IFG introduced Midland to new aerospace company Starfighters International, leading to an economic development agreement. Contract for 2025 continues work of aerospace prospect development, hosting the 2025 High Speed Aerospace Transportation Workshop, and industry advocacy.



City Manager's Office

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 25th day of February, 2025, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (“*MDC*”), and INTERFLIGHT GLOBAL CORPORATION (“*COMPANY*”).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall provide consulting services and deliverables (the “*services*”) in connection with procuring new tenants for City of Midland-owned properties located at Midland International Air & Space Port Business Park.

ARTICLE II. SERVICES TO BE PERFORMED

1. *COMPANY* shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
2. *COMPANY* shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. *COMPANY* represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

1. *MDC* agrees to pay *COMPANY* in an amount not to exceed \$192,500.00 for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A**. The *MDC* Executive Director, or his/her designee, must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which *COMPANY*’s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice; provided, however, that if *MDC* objects to any portion of an invoice, *MDC* shall notify *COMPANY* of *MDC*’s objection and the grounds thereof within fifteen (15) days of the date of receipt of the invoice, and the parties shall immediately make every effort to settle the disputed

portion of the invoice. MDC in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

2. Expenses will be invoiced separately. Additional travel, lodging, and other direct or incidental expense guidelines include the following:

- a. Privately-owned vehicle mileage will be reimbursed at the current GSA mileage rate;
- b. When mileage is charged, a mileage usage log or approved alternate method must be maintained to support the charge. If mileage usage log is submitted, it must include at a minimum travel dates, times, locations and mileage traveled;
- c. Car rental reimbursement will be limited to cost of full-sized vehicle, or SUV if multiple passengers, and necessary fuel;
- d. Airfare reimbursement will be limited to cost of economy class fares;
- e. Lodging reimbursement will be limited to the cost of standard rooms, upgrade expenses for studios and suites are not an allowable reimbursement expense;
- g. Tips for service, i.e. meals, and parking greater than 20% are not an allowable reimbursement expense; and
- h. Profit mark-ups are not allowable expense on other direct or incidental expenses.

ARTICLE IV. TERM

The term of this Agreement shall be from **March 1, 2025 until February 28, 2026**, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

Notwithstanding MDC's right to exercise an immediate termination of this Agreement pursuant to Article VII.D, MDC may terminate this Agreement at will for no or any reason upon giving at least thirty (30) days' written notice to COMPANY. The parties to this Agreement understand and agree that it is in MDC's sole discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

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

ARTICLE VII. CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS

A. Disclosure of Business Relationships and Investments. COMPANY shall provide written disclosure to MDC of any existing or anticipated business relationship with or investment in any current or new business prospect introduced to MDC by COMPANY. Such disclosure shall include: (i) the nature of the business relationship and/or investment, including the specific services provided by COMPANY to the business prospect and vice versa; (ii) the nature of any financial investment held by COMPANY in the business prospect; and (iii) any other relevant information that may reasonably assist MDC in ascertaining the nature and extent of COMPANY's business relationship and/or investment in the business prospect.

B. Inclusion of Affiliates and Entities Under Common Ownership. For purposes of this Article, the term "COMPANY" shall include: (i) any parent company, subsidiary, or affiliate of InterFlight Global Corporation; and (ii) any other entity under common ownership of an owner, officer, member, or principal of InterFlight Global Corporation.

C. Timing of Disclosure. COMPANY shall provide the required written disclosure to MDC promptly upon the establishment of any such business relationship or investment, or upon becoming aware of the potential for such business relationship or investment.

D. Acknowledgement of Obligations; Immediate Termination. COMPANY acknowledges that the disclosure obligations set forth in this Article are material terms of this Agreement. Failure to comply with these obligations may result in immediate termination of this Agreement at no cost or penalty to MDC, and other remedies available to MDC at law or in equity.

E. Confidentiality of Disclosures. To the extent permitted by applicable law including the Texas Public Information Act, MDC agrees to treat all disclosures made under this Article as confidential; provided, however, that such confidentiality shall not prevent MDC from taking any action it deems necessary to address any conflict of interest or potential conflict of interest. This

Article shall not be interpreted to limit or modify MDC's rights or obligations under the Texas Public Information Act.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

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

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-

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

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

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

Notwithstanding any contrary provision contained herein, MDC's Executive Director, in her sole and absolute discretion, may modify the insurance requirements contained in this Article.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDED), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND

PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL (i) RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND (ii) ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDMED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COMPANY AND MDC. THIS ARTICLE SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement

shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. INDEMNITY

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

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH,

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

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

**THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION
OF THIS AGREEMENT.**

ARTICLE XV. GENERAL PROVISIONS

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

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

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

If to MDC: Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, Texas 79701

If to COMPANY: InterFlight Global Corporation
1434 Spruce Street, Suite 100
Boulder, Colorado 80302

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within ninety (90) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and

the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

K. Compliance. COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

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

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

discriminate during the term of this Agreement against any firearm entity or firearm trade association.

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

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

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

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

P. Interpretation. By executing this Agreement, the Parties acknowledge and agree that this

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

[Signature Pages Follow]

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

MIDLAND DEVELOPMENT CORPORATION

P. Lourcey Sams, Chairman

ATTEST:

Elvie Brown, Secretary

[Signature Page Follows]

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__, personally appeared, _____ of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said 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 _____, 20__.

Notary Public, State of _____

EXHIBIT A. FIXED FIRM PRICE OVERVIEW – ALL ELEMENTS

Project Task List and Price:

PROJECT NAME: MIDLAND AIR AND SPACEPORT BUSINESS DEVELOPMENT		2025
	PROJECT ACTIVITY	FIXED FIRM PRICE
Element 1	STRATEGIC-BUSINESS PLAN REVIEWS AND UPDATES	\$22,500
1.1	Marketing, Communications and Economic Development Plan Execution	
1.2	Spaceport Strategic and Business Plan Aligned with Midland Airport Master Plans	
1.3	Workshop Design / Integration MAF Master- W/Master, Business & Marketing Plan	
Element 2	FAMILIARIZATION (FAM) TRIPS (MINIMUM 3)	\$42,500
2.1	Fam Trips to bring potential tenants, businesses and relationships to the Spaceport Business Park	
2.2	Organization and execution of Fam Trips	
2.3	Identification, Selection, Capture and Closing of new Tenants and Customers for Spaceport and Business Park	
2.4	Three to four Fam Trips per year, with multiple invitees each, 3-day span	
2.5	Follow ups from Fam Trips- Retention and Closing support to MDC	
Element 3	MDC REPRESENTATION YEAR-ROUND	\$55,000
3.1	Multiple Trips to represent MDC, e.g. Commercial Spaceflight Federation in Washington DC	
3.2	Strategic Relationships Building- Economic Development (Tenants)	
3.3	Strategic Relationships Building-Regulatory, Legislative and PPP (CSF, GSA, FAA, DOT/C/D)	
Element 4	HIGH SPEED AEROSPACE TRANSPORTATION (HSAT) WORKSHOP	\$72,500
4.1	Organization, arrangement and execution of HSAT Workshop	
4.2	Alignment with MAF General Business Dev Mission/Vision/Values Statements	
4.3	Workshop Design and Integration MAF Master-Business Plan	
4.4	Workshop Contents-Leading to sales, leasing and investment in MAF	
4.5	Workshop Marketing Collaterals, Promotion and PR	
4.6	Final Preparations-Logistics	
4.7	Post Workshop Reports and Materials to Attendees and MAF, and Follow Ups	
4.8	Meetings/Workshop Delivery	
4.9	Production Costs - e.g. year-round marketing/strategic alignment with MDC interests, paid travel for key influencers, thought leaders and guest speakers to enhance the event	
4.10	Marketing, Communications and PR Costs-Included	
TOTAL COST		\$192,500



City Council Meeting

Item Number: 14
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Garrick Clayton, Oil and Gas Coordinator
Subject: RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,797 FEET AND 1,837 FEET EAST OF NORTH A STREET, AND 1,827 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Resolution approving the issuance of permits to Permian Deep Rock Oil Co., LLC (“Operator”) for the drilling of the following oil and gas wells: KNIGHT 110 MIPA UNIT H110NB; KNIGHT 120 MIPA UNIT 120NW; AND KNIGHT 130 MIPA UNIT H130NB; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,797 FEET and 1,837 FEET EAST OF NORTH A STREET AND 1,827 FEET SOUTH OF W LOOP 250 N. Council may consider these permits following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval. Permian Deep Rock Oil Co., LLC will be using 24 ft. tall sound walls around the perimeter of the location during drilling and fracing. In addition, a quiet type frac system that will utilize an electric frac fleet, with power generation equipment that will be staged on pad behind sound barriers. A closed loop system will be used for drilling operations so no reserve pits or cuttings will be kept on the property and the Tank Battery for these wells will be located in the county. Permian Deep Rock Oil Co., LLC is requesting the following variances:

- (1) To Fencing and shall conform to the surface use agreement
- (2) To Landscaping and irrigation and shall conform to the surface use agreement.
- (3) To allow for twenty-four hour Hydraulic fracturing operations.
- (4) To remove drill cuttings from the surface location.

Attachments: Applications; Location maps; Exhibit - Drill site map, Exhibit – Flow Line Location.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,797 FEET AND 1,837 FEET EAST OF NORTH A STREET, AND 1,827 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells 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 14, 2025; 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 applications to drill oil and gas wells 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 permits to Operator to drill oil and gas wells 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 permits to Operator to drill oil and gas wells 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 permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

KNIGHT 110 MIPA UNIT H110NB; KNIGHT 120 MIPA UNIT 120NW;
and KNIGHT 130 MIPA UNIT H130NB;

located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "C" and incorporated herein for all legal purposes.

SECTION THREE. That said permits do not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of

the City of Midland at a regular meeting on the _____ day of _____, A.D.,
2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

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 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 110 MIPA Unit H110NB oil and gas well shall be 1,827 feet from the north line and 1,837 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, 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 are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. Landscaping and irrigation shall conform to the surface use agreement.
4. Drill cuttings shall be removed from the surface location.

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

OIL AND GAS WELL PERMIT

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The location of Operator's Knight 120 MIPA Unit H120NW oil and gas well shall be 1,827 feet from the north line and 1,817 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of February 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

OIL AND GAS WELL PERMIT

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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 Knight 130 MIPA Unit H130NW oil and gas well shall be 1,827 feet from the north line and 1,797 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
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4. Drill cuttings shall be removed from the surface location.

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This permit shall constitute a written contract for purposes of insurance requirements.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of February 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,797 FEET AND 1,837 FEET EAST OF NORTH A STREET, AND 1,827 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells 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 14, 2025; 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 applications to drill oil and gas wells 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 permits to Operator to drill oil and gas wells 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 permits to Operator to drill oil and gas wells 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 permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

KNIGHT 110 MIPA UNIT H110NB; KNIGHT 120 MIPA UNIT 120NW;
and KNIGHT 130 MIPA UNIT H130NB;

located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "C" and incorporated herein for all legal purposes.

SECTION THREE. That said permits do not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of

the City of Midland at a regular meeting on the _____ day of _____, A.D.,
2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

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 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of February 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. 2. 3. ATTACHED AS EXHIBIT C is List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture See Exhibit "D" ATTACHED AS EXHIBIT D is Current Tax Roll from Midland Central Appraisal District, which lists the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(26)]		

PACKET

11425

February 25, 2025

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: Knight 110 MIPA Unit H110NB

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1827' FNL & 1837' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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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: Road use and repair agreement attached

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

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

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

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

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

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

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

ATTACHED AS EXHIBIT V: Applicants variances

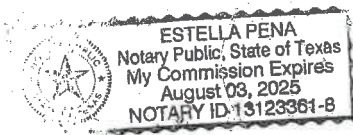
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

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.



[SEAL]

Estella Peña
Notary Public, State of Texas



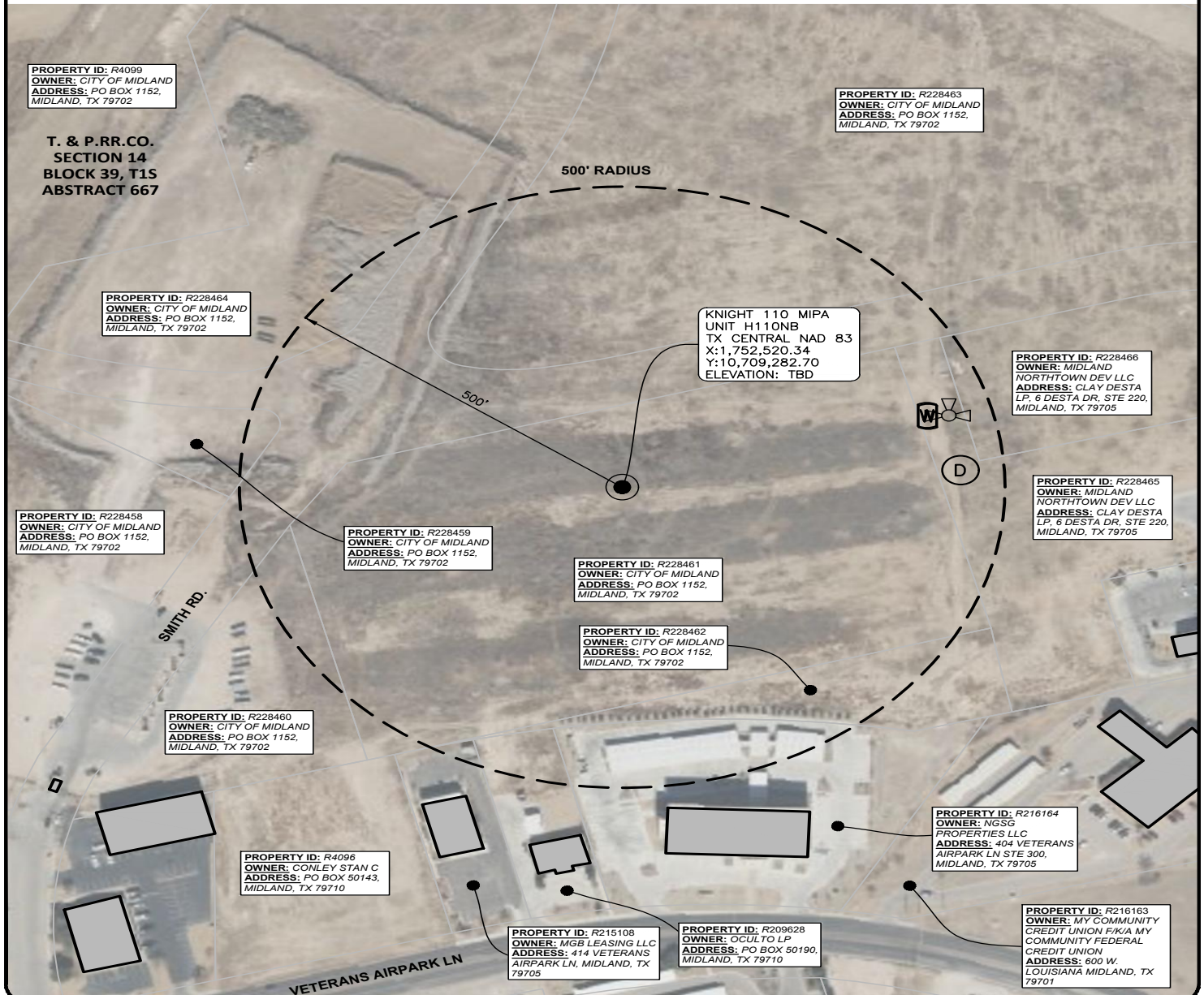
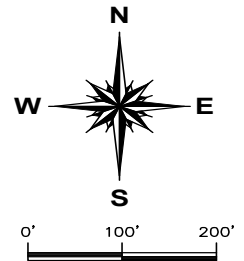
9/16/24
WILLIAM S. ABRAHAM,
REGISTERED PROFESSIONAL LAND
SURVEYOR TEXAS REGISTRATION NO. 2052

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS. THIS IS NOT A "BOUNDARY SURVEY".
3. THE PROPOSED WELL LOCATION WAS SURVEYED ON ---

SYMBOL LEGEND:

- FIRE HYDRANT
- STORM DRAIN MANHOLE
- WATER VALVE



WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES. USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

WELL RADIUS

PROPOSED KNIGHT 110 MIPA UNIT H110NB

T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 1,837' FSWL & 1,827' FNWL

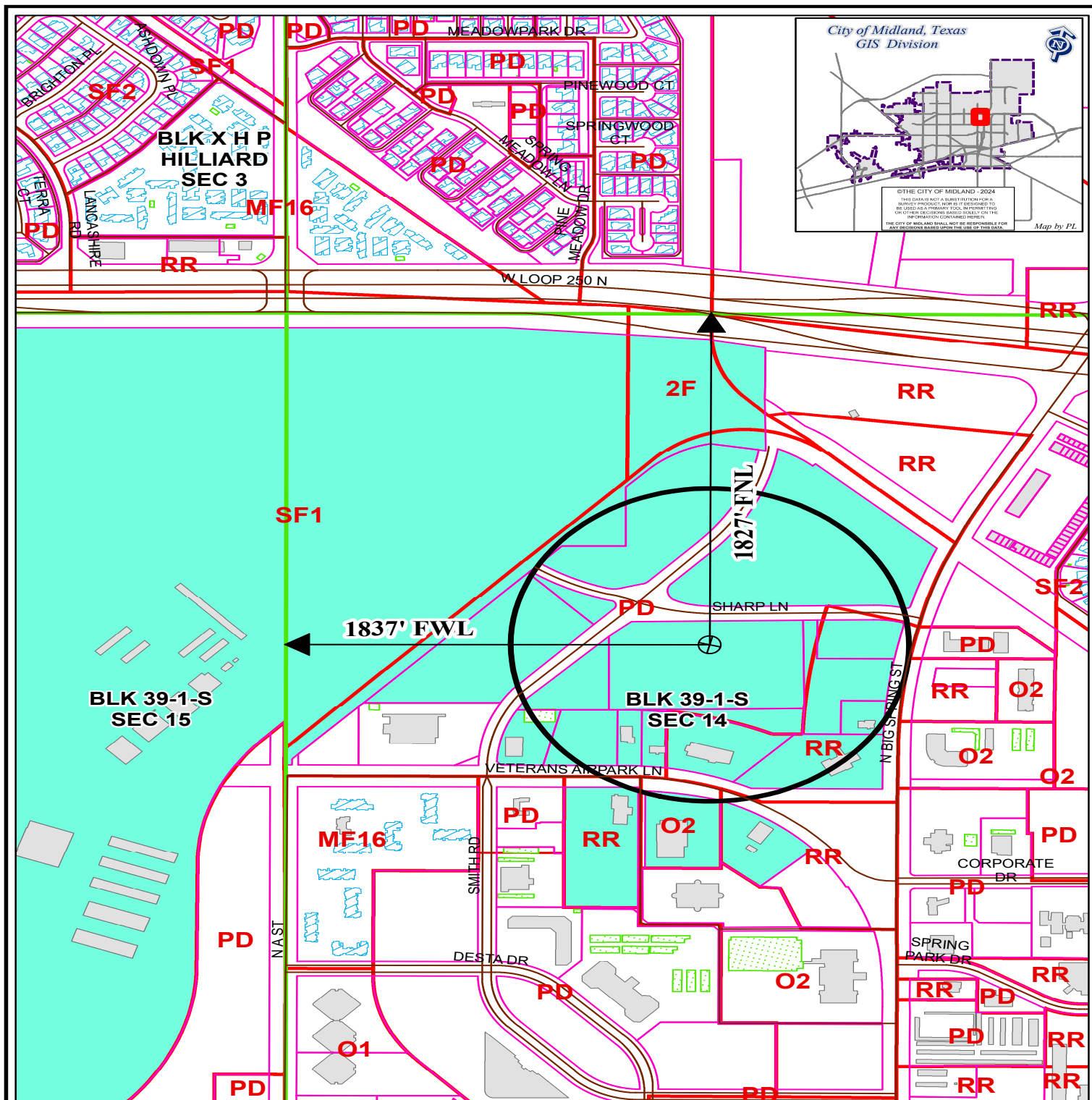
- NOTES:
1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
 2. ALL BEARING AND GRID COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83.
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DRAWN	EL	DATE	8/23/24
CHECKED		DATE	
APP'D		DATE	
SCALE	1"=200'	PAGE	4 OF 4
REV#	DATE	DESC.	
JOB NAME	KNIGHT 110 MIPA UNIT H110NB		
	0005507		

14.29

February 25, 2025



LOCATION AND ZONING MAP

Oil - 064962 - 2024

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,827' FNL and 1,837' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,827 feet east of North A Street extension and 1,827 feet south of W Loop 250 N.

Knight 110 MIPA Unit H110NB

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
14.30	COUNTRY ESTATE	01, 02	NEIGHBORHOOD SERVICE
MF1, MF2	ONE-FAMILY DWELLING	C1, C2, C3	RETAIL
	MOBILE HOME DWELLING	IP, JPI, IP2, IP3	COMMERCIAL
	TWO-FAMILY DWELLING	LI	INDUSTRIAL PARK
	TOWNHOUSE DWELLING	HI	LIGHT INDUSTRY
	MULTIPLE FAMILY DWELLING		HEAVY INDUSTRY

February 25, 2025

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 120 MIPA Unit H120NW oil and gas well shall be 1,827 feet from the north line and 1,817 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, 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 are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. Landscaping and irrigation shall conform to the surface use agreement.
4. Drill cuttings shall be removed from the surface location.

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1.		
2.		
3.		
<i>ATTACHED AS EXHIBIT C is</i> List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture		
See Exhibit "D"		
<i>ATTACHED AS EXHIBIT D is</i> _____, <i>Current Tax Roll from Midland Central Appraisal District), which lists</i> the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(26)]		

PACKET

11435

February 25, 2025

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: Knight 120 MIPA Unit H120NW

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1827' FNL & 1817' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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See Exhibit "N"

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See Exhibit "O"

V. Additional Required Exhibits

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ATTACHED AS EXHIBIT V: Applicants variances

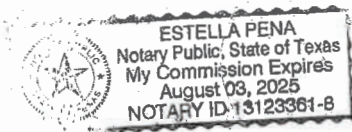
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

County of Midland)

State of TEXAS)

, 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.



[S E A L]

Estella Peña
Notary Public, State of Texas



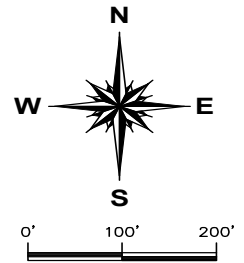
W.S. Abraham
WILLIAM S. ABRAHAM
REGISTERED PROFESSIONAL LAND
SURVEYOR TEXAS REGISTRATION NO. 2052

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS. THIS IS NOT A "BOUNDARY SURVEY".
3. THE PROPOSED WELL LOCATION WAS SURVEYED ON ---

SYMBOL LEGEND:

- FIRE HYDRANT
 STORM DRAIN MANHOLE
 WATER VALVE



PROPERTY ID: R4099
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

T. & P. RR. CO.
SECTION 14
BLOCK 39, T1S
ABSTRACT 667

PROPERTY ID: R228464
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228458
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228459
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228461
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228462
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228460
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R4096
OWNER: CONLEY STAN C
ADDRESS: PO BOX 50143,
MIDLAND, TX 79710

PROPERTY ID: R215108
OWNER: MGB LEASING LLC
ADDRESS: 414 VETERANS
AIRPARK LN, MIDLAND, TX
79705

PROPERTY ID: R209628
OWNER: OCULTO LP
ADDRESS: PO BOX 50190,
MIDLAND, TX 79710

PROPERTY ID: R216164
OWNER: NGSG
PROPERTIES LLC
ADDRESS: 404 VETERANS
AIRPARK LN STE 300,
MIDLAND, TX 79705

PROPERTY ID: R216163
OWNER: MY COMMUNITY
CREDIT UNION FKA MY
COMMUNITY FEDERAL
CREDIT UNION
ADDRESS: 600 W.
LOUISIANA MIDLAND, TX
79701

PROPERTY ID: R228463
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228466
OWNER: MIDLAND
NORTHTOWN DEV LLC
ADDRESS: CLAY DESTA
LP, 6 DESTA DR, STE 220,
MIDLAND, TX 79705

PROPERTY ID: R228465
OWNER: MIDLAND
NORTHTOWN DEV LLC
ADDRESS: CLAY DESTA
LP, 6 DESTA DR, STE 220,
MIDLAND, TX 79705

KNIGHT 120 MIPA
UNIT H120NW
TX CENTRAL NAD 83
X:1,752,501.03
Y:10,709,277.50
ELEVATION: TBD

WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES.
USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

WELL RADIUS

PROPOSED KNIGHT 120 MIPA UNIT H120NW

T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 1,817' FSWL & 1,827' FNWL

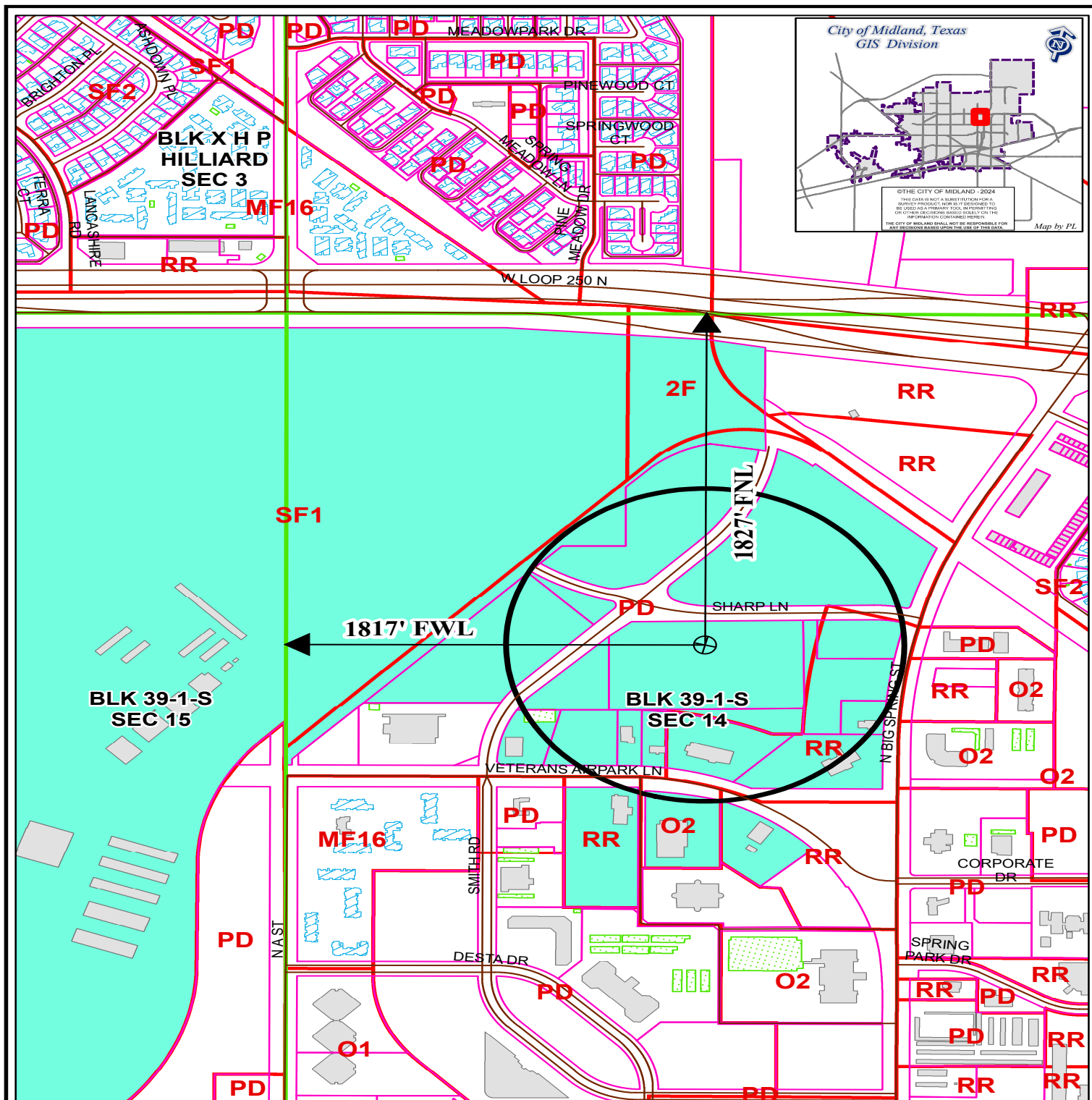
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DRAWN	EL	DATE	8/23/24
CHECKED		DATE	
APP'D		DATE	
SCALE	1"=200'	PAGE	4 OF 4
REV#	DATE	DESC.	
JOB NAME		KNIGHT 120 MIPA UNIT H120NW	
		2005507	

14.39

February 25, 2025



LOCATION AND ZONING MAP

Oil - 064963 - 2024

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,827' FNL and 1,817' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,827 feet east of North A Street extension and 1,827 feet south of W Loop 250 N.

Knight 120 MIPA Unit H120NW

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
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MF16	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL RETAIL
MF16	MOBILE HOME DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		

February 25, 2025

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The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 130 MIPA Unit H130NW oil and gas well shall be 1,827 feet from the north line and 1,797 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, 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 are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. Landscaping and irrigation shall conform to the surface use agreement.
4. Drill cuttings shall be removed from the surface location.

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. 2. 3. ATTACHED AS EXHIBIT C is List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture See Exhibit "D" ATTACHED AS EXHIBIT D is Current Tax Roll from Midland Central Appraisal District, which lists the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(26)]		

PACKET

11445

February 25, 2025

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: Knight 130 MIPA Unit H130NB

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1827' FNL & 1797' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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

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

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

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

ATTACHED AS EXHIBIT M: Road use and repair agreement attached

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

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

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

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

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

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

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

ATTACHED AS EXHIBIT V: Applicants variances

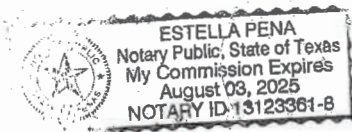
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

County of Midland)

State of TEXAS)

, 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.



[S E A L]

Estella Peña
Notary Public, State of Texas



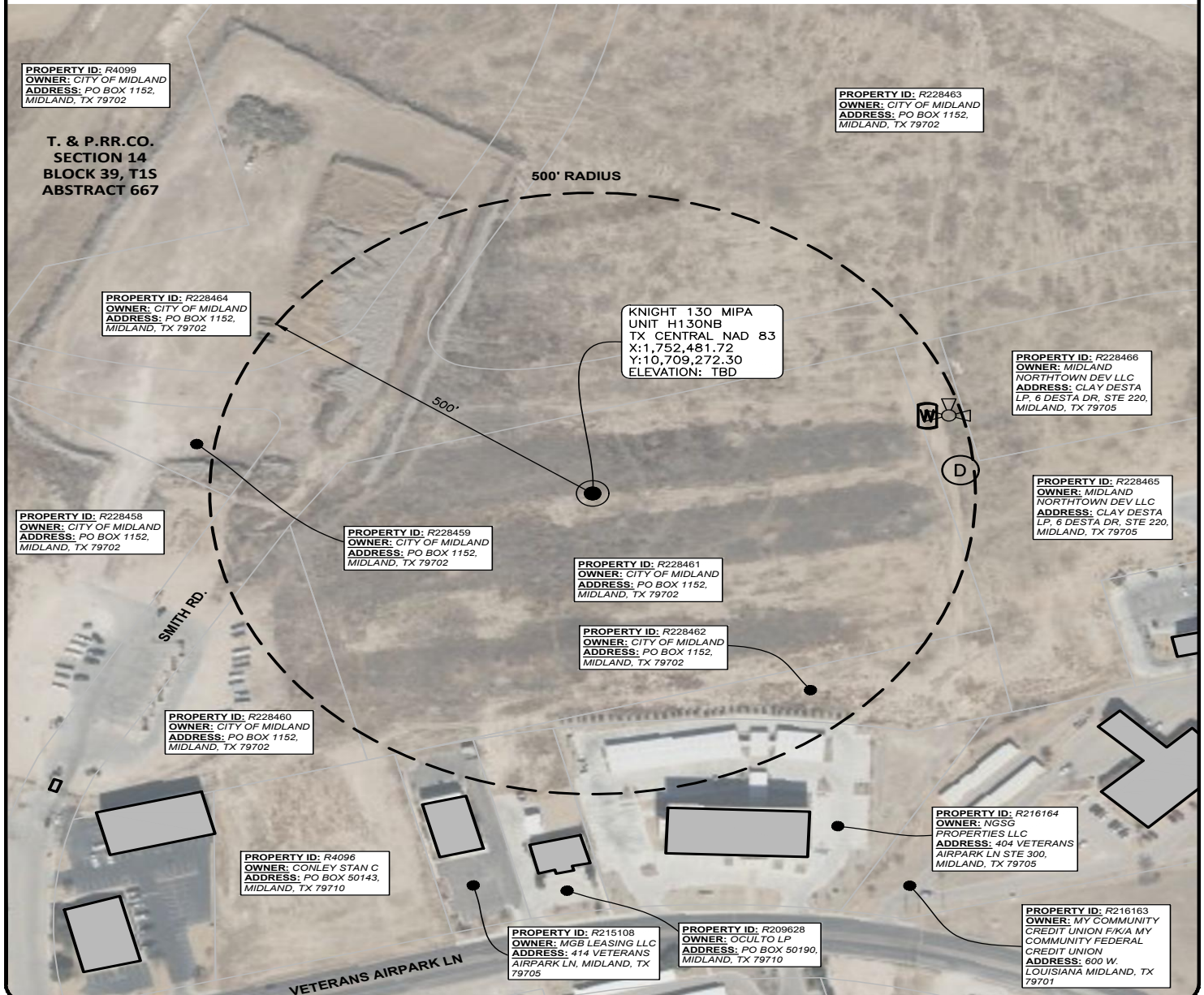
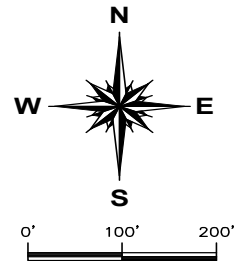
9/16/24
WILLIAM S. ABRAHAM,
REGISTERED PROFESSIONAL LAND
SURVEYOR TEXAS REGISTRATION NO. 2052

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS. THIS IS NOT A "BOUNDARY SURVEY".
3. THE PROPOSED WELL LOCATION WAS SURVEYED ON ---

SYMBOL LEGEND:

- FIRE HYDRANT
 STORM DRAIN MANHOLE
 WATER VALVE



WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES. USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

WELL RADIUS

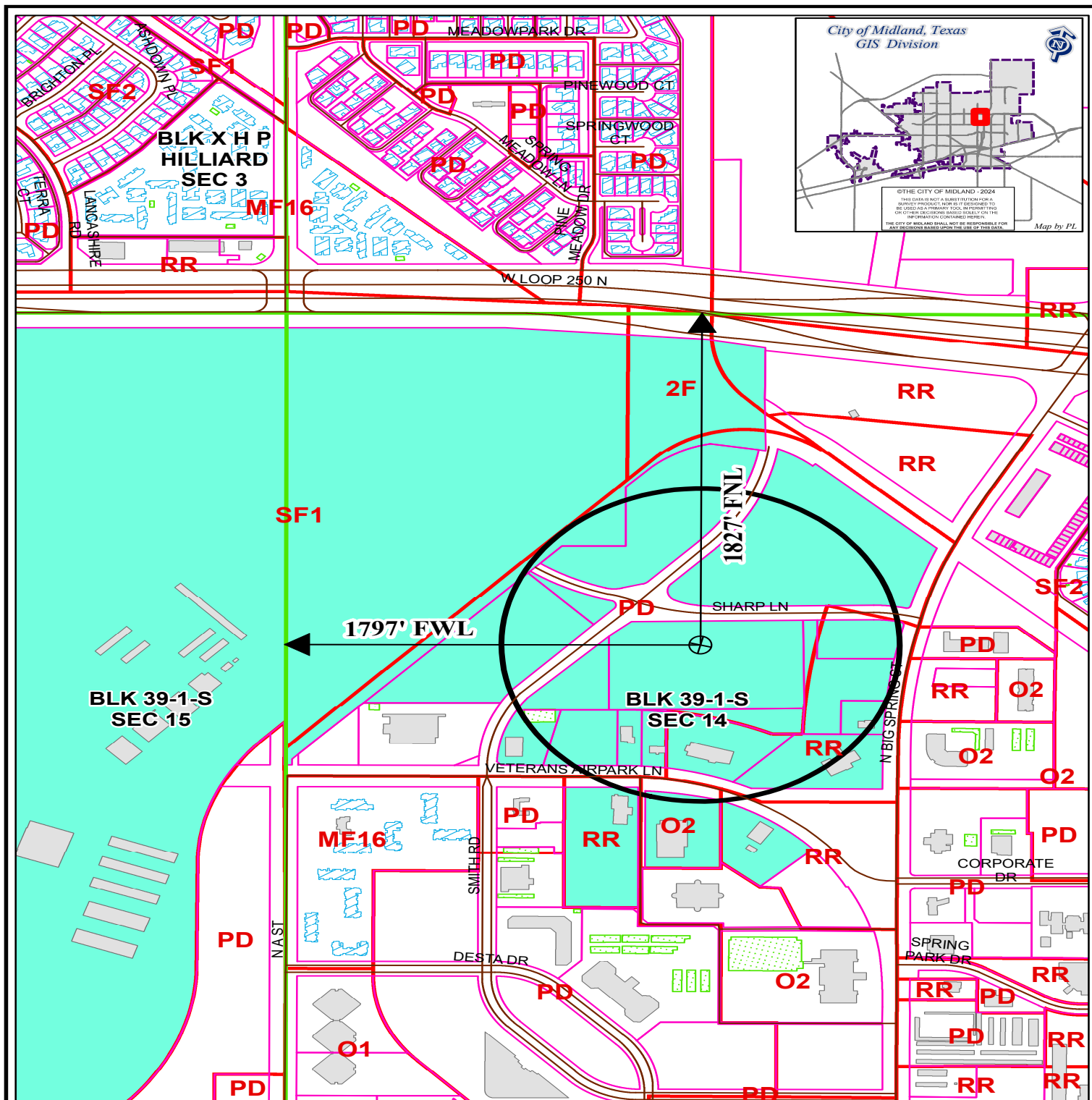
PROPOSED KNIGHT 130 MIPA UNIT H130NB

T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 1,797' FSWL & 1,827' FNWL

- NOTES:
1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
 2. ALL BEARING AND GRID COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83.
 3. THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY.



DRAWN	EL	DATE	8/23/24
CHECKED		DATE	
APP'D		DATE	
SCALE	1"=200'	PAGE	4 OF 4
REV#	DATE	DESC.	
JOB NAME		KNIGHT 130 MIPA UNIT H130NB	
		20005507	



LOCATION AND ZONING MAP

Oil - 064964 - 2024

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,827' FNL and 1,797' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,827 feet east of North A Street extension and 1,827 feet south of W Loop 250 N.

Knight 130 MIPA Unit H130NB

LEGEND

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

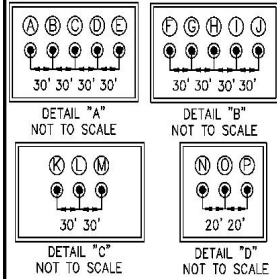
ZONING DISTRICTS:

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

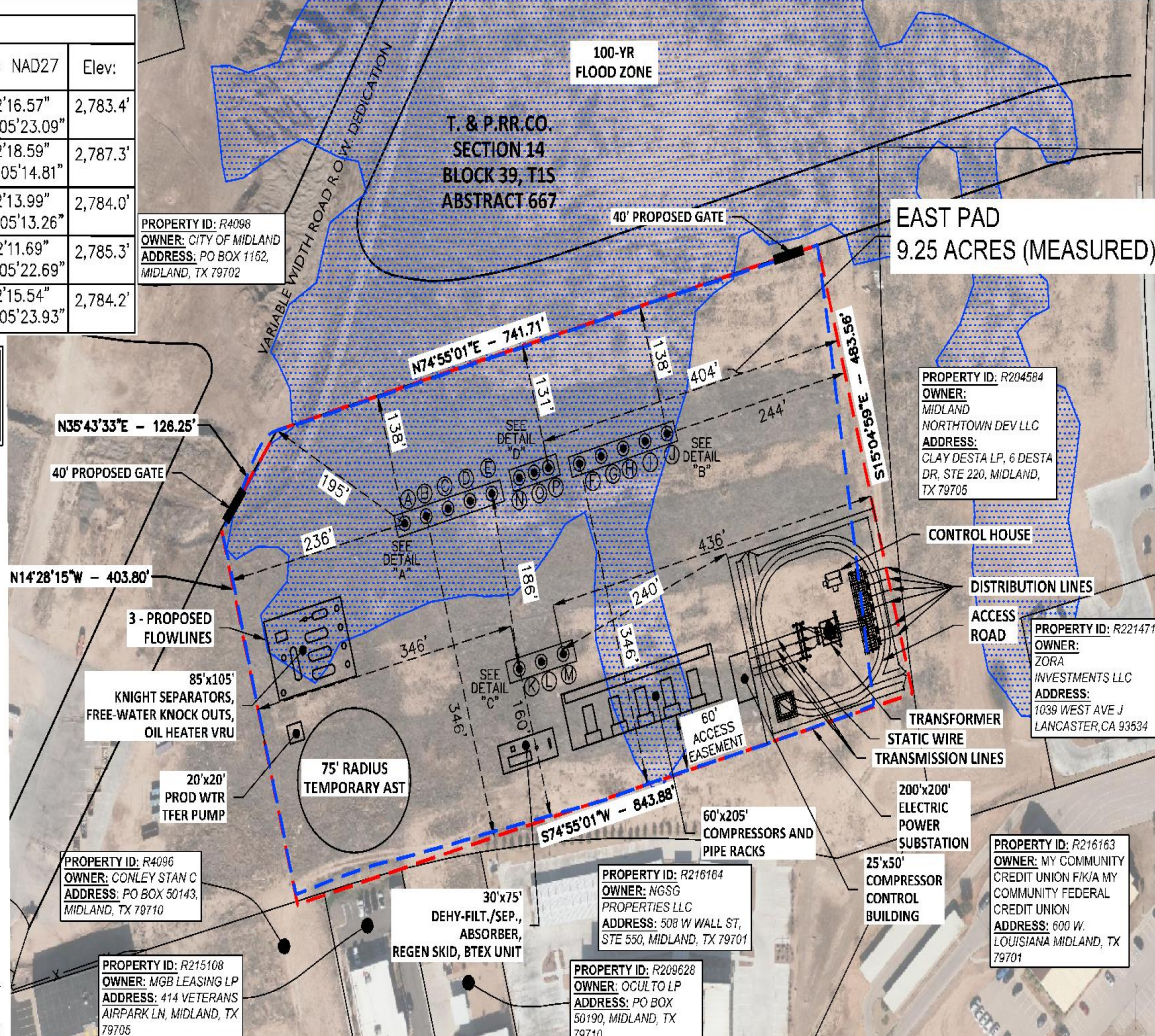
February 25, 2025

MIDLAND COUNTY, TEXAS

Coordinates			
Corner No.	State Plane TX-C NAD27	Geographic NAD27	Elev.
①	N: 866745.51 E: 1455693.62	Lat: 32°02'16.57" Long: -102°05'23.09"	2,783.4'
②	N: 866938.51 E: 1456409.77	Lat: 32°02'18.59" Long: -102°05'14.81"	2,787.3'
③	N: 866471.61 E: 1456535.60	Lat: 32°02'13.99" Long: -102°05'13.26"	2,784.0'
④	N: 866252.03 E: 1455720.80	Lat: 32°02'11.69" Long: -102°05'22.69"	2,785.3'
⑤	N: 866643.02 E: 1455619.90	Lat: 32°02'15.54" Long: -102°05'23.93"	2,784.2'



WILLIAM S. ABRAHAM,
REGISTERED PROFESSIONAL LAND
SURVEYOR TEXAS REGISTRATION NO. 2052



Well Information			
Well No.	State Plane TX-C NAD27	Geographic NAD27	Elev.
(A) KNIGHT 135 MIPA UNIT #H135WA	N: 866648.48 E: 1455862.69	Lat: 32°02'15.63" Long: 102°05'21.11"	2,781.6'
(B) KNIGHT 130 MIPA UNIT #H130SS	N: 866656.28 E: 1455891.65	Lat: 32°02'15.71" Long: 102°05'20.78"	2,782.2'
(C) KNIGHT 130 MIPA UNIT #H130LS	N: 866664.08 E: 1455920.62	Lat: 32°02'15.80" Long: 102°05'20.44"	2,782.0'
(D) KNIGHT 130 MIPA UNIT #H130WB	N: 866671.88 E: 1455949.59	Lat: 32°02'15.88" Long: 102°05'20.11"	2,782.7'
(E) KNIGHT 125 MIPA UNIT #H125WA	N: 866679.67 E: 1455978.56	Lat: 32°02'15.96" Long: 102°05'19.77"	2,783.3'
(F) KNIGHT 115 MIPA UNIT #H115WA	N: 866710.78 E: 1456094.49	Lat: 32°02'16.29" Long: 102°05'18.43"	2,783.6'
(G) KNIGHT 110 MIPA UNIT #H110SS	N: 866718.67 E: 1456123.40	Lat: 32°02'16.37" Long: 102°05'18.10"	2,783.7'
(H) KNIGHT 110 MIPA UNIT #H110LS	N: 866726.47 E: 1456152.37	Lat: 32°02'16.45" Long: 102°05'17.76"	2,783.9'
(I) KNIGHT 110 MIPA UNIT #H110WB	N: 866734.27 E: 1456181.34	Lat: 32°02'16.53" Long: 102°05'17.43"	2,784.6'
(J) KNIGHT 110 MIPA UNIT #H110UH	N: 866742.06 E: 1456210.31	Lat: 32°02'16.61" Long: 102°05'17.09"	2,786.0'
(K) KNIGHT 120 MIPA UNIT #H120MS	N: 866496.84 E: 1456014.91	Lat: 32°02'14.16" Long: 102°05'19.32"	2,783.0'
(L) KNIGHT 120 MIPA UNIT #H120LS	N: 866504.64 E: 1456043.88	Lat: 32°02'14.24" Long: 102°05'18.98"	2,782.6'
(M) KNIGHT 120 MIPA UNIT #H120WB	N: 866512.44 E: 1456072.85	Lat: 32°02'14.32" Long: 102°05'18.65"	2,782.6'
(N) KNIGHT 130 MIPA UNIT #H130NB	N: 866696.20 E: 1456014.92	Lat: 32°02'16.13" Long: 102°05'19.35"	TBD
(O) KNIGHT 120 MIPA UNIT #H120NW	N: 866701.40 E: 1456034.23	Lat: 32°02'16.18" Long: 102°05'19.13"	TBD
(P) KNIGHT 110 MIPA UNIT #H110NB	N: 866706.60 E: 1456053.54	Lat: 32°02'16.24" Long: 102°05'18.91"	TBD

TOTAL AREA OF WELL PAD
= 9.25 ACRES
= 402,945 SQ. FEET

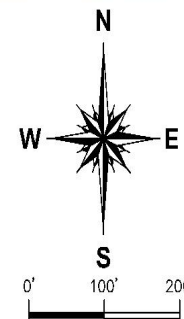
EXHIBIT "G"

KNIGHT 135 MIPA UNIT #H135WA, KNIGHT 130 MIPA UNIT #H130SS, KNIGHT 130 MIPA UNIT #H130LS, KNIGHT 130 MIPA UNIT #H130WB, KNIGHT 125 MIPA UNIT #H125WA, KNIGHT 115 MIPA UNIT #H115WA, KNIGHT 110 MIPA UNIT #H110SS, KNIGHT 110 MIPA UNIT #H110LS, KNIGHT 110 MIPA UNIT #H110WB, KNIGHT 110 MIPA UNIT #H110UH, KNIGHT 120 MIPA UNIT #H120MS, KNIGHT 120 MIPA UNIT #H120LS, KNIGHT 120 MIPA UNIT #H120WB, KNIGHT 130 MIPA UNIT #H130NB, KNIGHT 120 MIPA UNIT #H120NW & KNIGHT 110 MIPA UNIT #H110NB

SITUATED IN
T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S, ABSTRACT 667 OF THE CITY MIDLAND, MIDLAND COUNTY, TEXAS.



DRAWN	MA	DATE	01/03/22
CHECKED	LF	DATE	01/03/22
APP'D		DATE	
SCALE	1"=200'	PAGE	1 OF 2
REV#	DATE	DESC.	
6 - RS	07/07/23	WELL REVISION	
7 - EL	12/01/23	CLIENT REVISIONS	
8 - RS	10/10/24	WELL REVISION	
JOB NO.	21003805		



LEGEND

- PAD LINE
- EXISTING GRAVEL LINE
- SURFACE HOLE LOCATION

NOTES

- ALL BEARINGS & DISTANCES SHOWN HEREON ARE GRID BASED UPON TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927, US SURVEY FOOT, AS DERIVED FROM THE GROUND SURVEY PERFORMED BY ATWELL, LLC ON MARCH 2023.



City Council Meeting

Item Number: 15
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Garrick Clayton, Oil and Gas Coordinator
Subject: RESOLUTION GRANTING VARIANCES FOR THREE OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 878 FEET AND 913 FEET EAST OF NORTH A STREET, AND BETWEEN 1,885 AND 1,921 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Resolution approving the issuance of permits to Permian Deep Rock Oil Co., LLC ("Operator") for the drilling of the following oil and gas wells: : KNIGHT 140 MIPA UNIT H140 NB; KNIGHT 150 MIPA UNIT H150 NB; and KNIGHT 160 MIPA UNIT H160 NW; said wells being generally located between 878 feet and 913 feet east of North A street and between 1,885 feet and 1,921 feet south of W loop 250 N. Council may consider these permits following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval. Permian Deep Rock Oil Co., LLC will be using 24 ft. tall sound walls around the perimeter of the location during drilling and fracing. In addition, a quiet type frac system that will utilize an electric frac fleet, with power generation equipment that will be staged on pad behind sound barriers. A closed loop system will be used for drilling operations so no reserve pits or cuttings will be kept on the property and the Tank Battery for these wells will be located in the county. Permian Deep Rock Oil Co., LLC is requesting the following variances:

- (1) requests variance to spacing for a residence or commercial structure within 500 feet.
 - a. KNIGHT 140 MIPA UNIT H140 NB variance of 240 feet
 - b. KNIGHT 150 MIPA UNIT H150 NB variance of 231 feet
 - c. KNIGHT 160 MIPA UNIT H160 NW variance of 224 feet
- (2) To Fencing and shall conform to the surface use agreement
- (3) To Landscaping and irrigation and shall conform to the surface use agreement.
- (4) To allow for twenty-four hour Hydraulic fracturing operations.
- (5) To remove drill cuttings from the surface location.

Attachments: Applications; Location maps; Exhibit - Drill site map, Exhibit – Flow Line Location.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION GRANTING VARIANCES FOR THREE OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 878 FEET AND 913 FEET EAST OF NORTH A STREET, AND BETWEEN 1,885 AND 1,921 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, pursuant to Section 6-1-23(H)(2)(a) of the City Code of Midland, Texas, Operator has requested variances in order to allow said oil and gas wells to be closer than 500 feet of an occupied residence or commercial structure; 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 14, 2025; 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 applications to drill oil and gas wells 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 permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds and determines that granting permits to Operator to drill oil and gas wells on the property described in Section Two hereof will not present a health or safety risk; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells 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, and variances are hereby granted for oil and gas wells to be located on the property described in Section Two hereof by allowing said oil and gas wells to be closer than 500 feet of an occupied residence or commercial structure subject to the conditions of the permits authorized in Section Two.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits “A” through “C” and incorporated herein for all legal purposes.

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., 2025, by the following vote: Council members voting “AYE”:

Lori Merritt Blong, Mayor

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

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 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 140 MIPA Unit H140NW oil and gas well shall be 1,885 feet from the north line and 913 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 240 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 150 MIPA Unit H150NB oil and gas well shall be 1,903 feet from the north line and 896 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 231 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 160 MIPA Unit H160NW oil and gas well shall be 1,921 feet from the north line and 878 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 224 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager

RESOLUTION NO. _____

RESOLUTION GRANTING VARIANCES FOR THREE OIL AND GAS WELLS TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 878 FEET AND 913 FEET EAST OF NORTH A STREET, AND BETWEEN 1,885 AND 1,921 FEET SOUTH OF WEST LOOP 250 NORTH); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, pursuant to Section 6-1-23(H)(2)(a) of the City Code of Midland, Texas, Operator has requested variances in order to allow said oil and gas wells to be closer than 500 feet of an occupied residence or commercial structure; 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 14, 2025; 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 applications to drill oil and gas wells 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 permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds and determines that granting permits to Operator to drill oil and gas wells on the property described in Section Two hereof will not present a health or safety risk; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells 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, and variances are hereby granted for oil and gas wells to be located on the property described in Section Two hereof by allowing said oil and gas wells to be closer than 500 feet of an occupied residence or commercial structure subject to the conditions of the permits authorized in Section Two.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits “A” through “C” and incorporated herein for all legal purposes.

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., 2025, by the following vote: Council members voting “AYE”:

Lori Merritt Blong, Mayor

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

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 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 140 MIPA Unit H140NW oil and gas well shall be 1,885 feet from the north line and 913 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 240 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. 2. 3. <i>ATTACHED AS EXHIBIT C</i> is List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture See Exhibit "D" <i>ATTACHED AS EXHIBIT D</i> is Current Tax Roll from Midland Central Appraisal District, which lists the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(15)(27)]		

PACKET

1527

February 25, 2025

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: Knight 140 MIPA Unit H140NW

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1885' FNL & 913' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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

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

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

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

ATTACHED AS EXHIBIT M: Road use and repair agreement attached

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

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

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

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

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

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

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

ATTACHED AS EXHIBIT V: Applicants variances

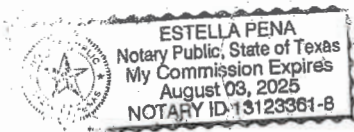
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

County of Midland)

State of TEXAS)

, 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.

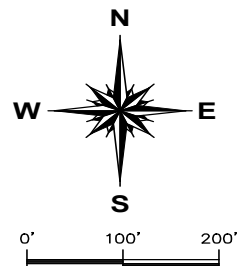


[S E A L]

Estella Peña
Notary Public, State of Texas



1.ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2.THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING
A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.
THIS IS NOT A "BOUNDARY SURVEY".
3.THE PROPOSED WELL LOCATION WAS SURVEYED ON ---



	FIRE HYDRANT
	STORM DRAIN MANHOLE
	WATER VALVE



PROPOSED KNIGHT 140 MIPA UNIT H140NW

T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 913' FSWL & 1.885' FNWL



DRAWN		EL	DATE	8/23/24
CHECKED			DATE	
APP'D			DATE	
SCALE 1"=200'			PAGE 4 OF 4	
REV#	DATE	DESC.		
JOB NAME		KNIGHT 140 MIPA		
JOB NO.		24005507		

NOTES:

1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
2. ALL BEARING AND ORIGIN COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83, CENTRAL ZONE.
3. THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY.

15.31

February 25, 2025

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 150 MIPA Unit H150NB oil and gas well shall be 1,903 feet from the north line and 896 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 231 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. 2. 3. <i>ATTACHED AS EXHIBIT C</i> is List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture See Exhibit "D" <i>ATTACHED AS EXHIBIT D</i> is Current Tax Roll from Midland Central Appraisal District, which lists the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(26)]		

PACKET

1537

February 25, 2025

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: Knight 150 MIPA Unit H150NB

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1903' FNL & 896' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

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V. Additional Required Exhibits

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

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

ATTACHED AS EXHIBIT V: Applicants variances

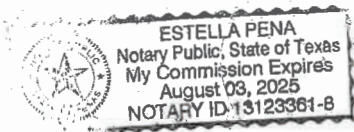
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

County of Midland)

State of TEXAS)

, 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.

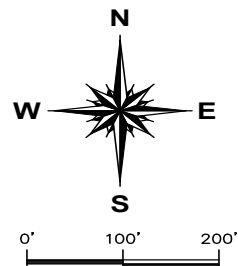


[S E A L]

Estella Peña
Notary Public, State of Texas



1.ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2.THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING
A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.
THIS IS NOT A "BOUNDARY SURVEY".
3.THE PROPOSED WELL LOCATION WAS SURVEYED ON ---



	FIRE HYDRANT
	STORM DRAIN MANHOLE
	WATER VALVE

PROPERTY ID: R228459
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228464
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R4099
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228458
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

KNIGHT 150 MIPA
UNIT H150NB
TX CENTRAL NAD 83
X:1,751,628.38
Y:10,708,971.92
ELEVATION: TBD

PROPERTY ID: R228461
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R228460
OWNER: CITY OF MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R4096
OWNER: CONLEY STAN C
ADDRESS: PO BOX 50143,
MIDLAND, TX 79710

PROPERTY ID: R13635
OWNER: CRAIG
INVESTMENT CO
ADDRESS: PO BOX 50143,
MIDLAND, TX 79710

PROPERTY ID: R13632
OWNER: US POSTAL SERVICE
ADDRESS: 612 VETERANS
AIRPARK LN, MIDLAND, TX
79705

PROPERTY ID: R13634
OWNER: CITY OF
MIDLAND
ADDRESS: PO BOX 1152,
MIDLAND, TX 79702

PROPERTY ID: R13633
OWNER: CLAYDESTA LP
ADDRESS: 6 DESTA DR,
STE 5725, MIDLAND, TX
79705

WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES.
USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

PROPOSED KNIGHT 150 MIPA UNIT H150NB

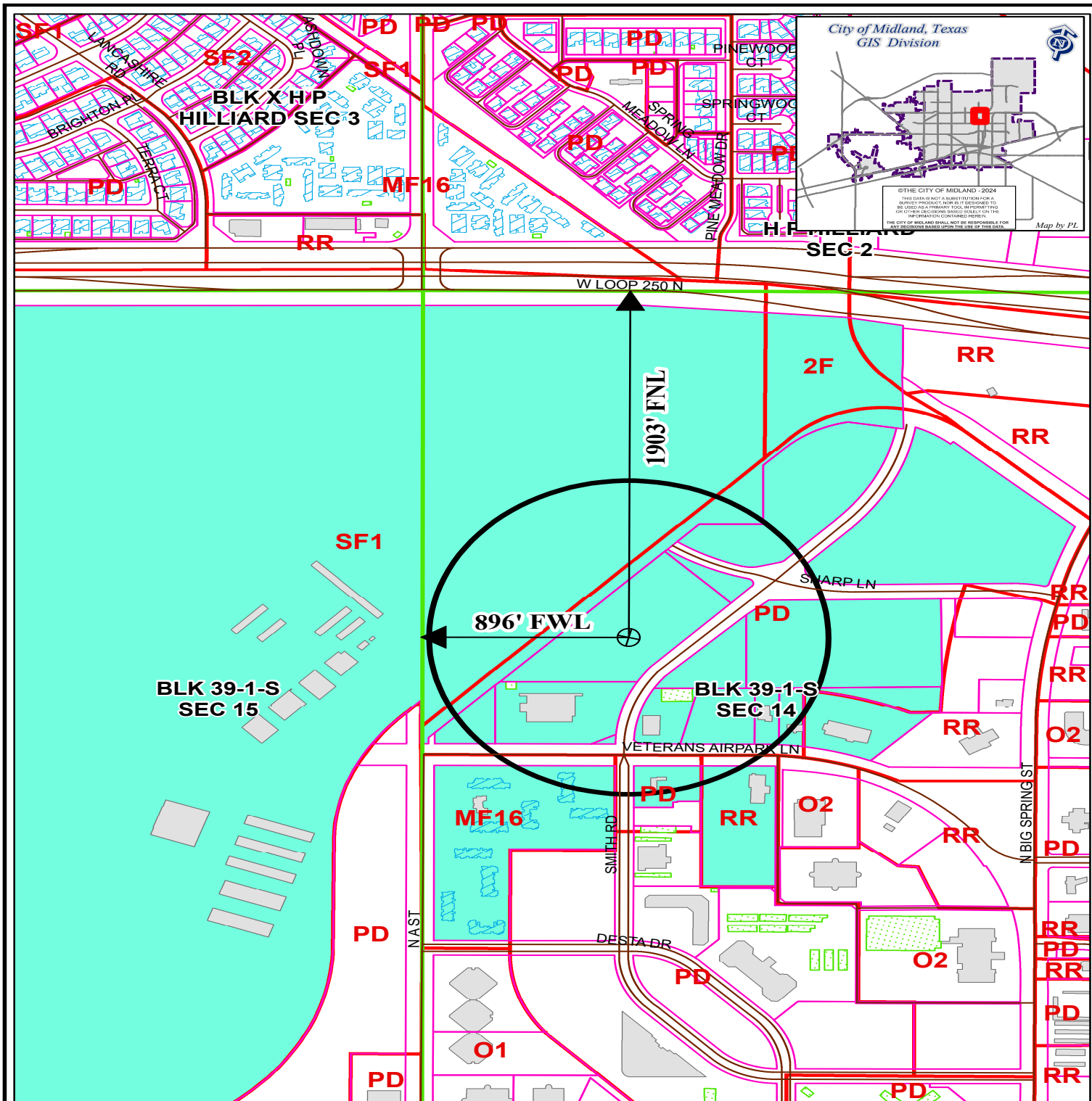
T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 896' FSWL & 1.903' FNWL

NOTES:

1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
2. ALL BEARING AND GRADE COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83, CENTRAL ZONE.
3. THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY.



DRAWN		EL	DATE	8/23/24
CHECKED			DATE	
APP'D			DATE	
SCALE 1"=200'			PAGE 4 OF 4	
REV#	DATE	DESC.		
JOB NO.		KNIGHT 150 MIPA T H150NB		
JOB NO.		24005507		



LOCATION AND ZONING MAP

Oil - 064966 - 2024

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,903' FNL and 896' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 896 feet east of North A Street extension and 1,903 feet south of W Loop 250 N.

Knight 150 MIPA Unit H150NB

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
15.42	COUNTRY ESTATE	15.42	NEIGHBORHOOD SERVICE
MF16	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL RETAIL
MF16	MOBILE HOME DWELLING	IP, JPI, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		

February 25, 2025

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on February 25, 2025, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated November 1, 2024, 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 Knight 160 MIPA Unit H160NW oil and gas well shall be 1,921 feet from the north line and 878 feet from the west line, Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from February 25, 2025 through February 25, 2026, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY’S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY’S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR’S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well’s location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. The well shall be no closer than 224 feet of an occupied residence or commercial structure.
2. Twenty-four hour hydraulic fracturing operations are permitted.
3. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
4. Landscaping and irrigation shall conform to the surface use agreement.
5. Drill cuttings shall be removed from the surface location

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 2025.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____ day of February 2025.

Permian Deep Rock Oil Co., LLC

By: _____

Kyle M. Hammond

General Manager



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 11/01/2024	Operator Name (must match W-1) Permian Deep Rock Oil Co., LLC	Operator Address P.O. Box 11405 Midland, TX 79702
Representative Name Kyle M. Hammond	Representative Address (within Midland City Limits) 500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]): See Exhibit "B"		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1.		
2.		
3.		
<i>ATTACHED AS EXHIBIT C</i> is List of subdivisions See Exhibit "C"		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Office buildings, City Collection Center, undeveloped pasture		
See Exhibit "D"		
<i>ATTACHED AS EXHIBIT D</i> is _____, Current Tax Roll from Midland Central Appraisal District, which lists the names and address(es) of all surface owners within 860 feet of the surface well location. [See § J(26)]		

PACKET

1547

February 25, 2025

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: Knight 160 MIPA Unit H160NW

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1921' FNL & 878' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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

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

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

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

ATTACHED AS EXHIBIT M: Road use and repair agreement attached

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

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

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

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

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

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

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

ATTACHED AS EXHIBIT V: Applicants variances

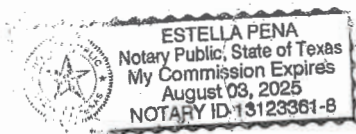
Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By [Signature]
Its General Manager

County of Midland)

State of TEXAS)

, 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.

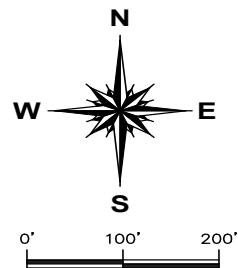


[S E A L]

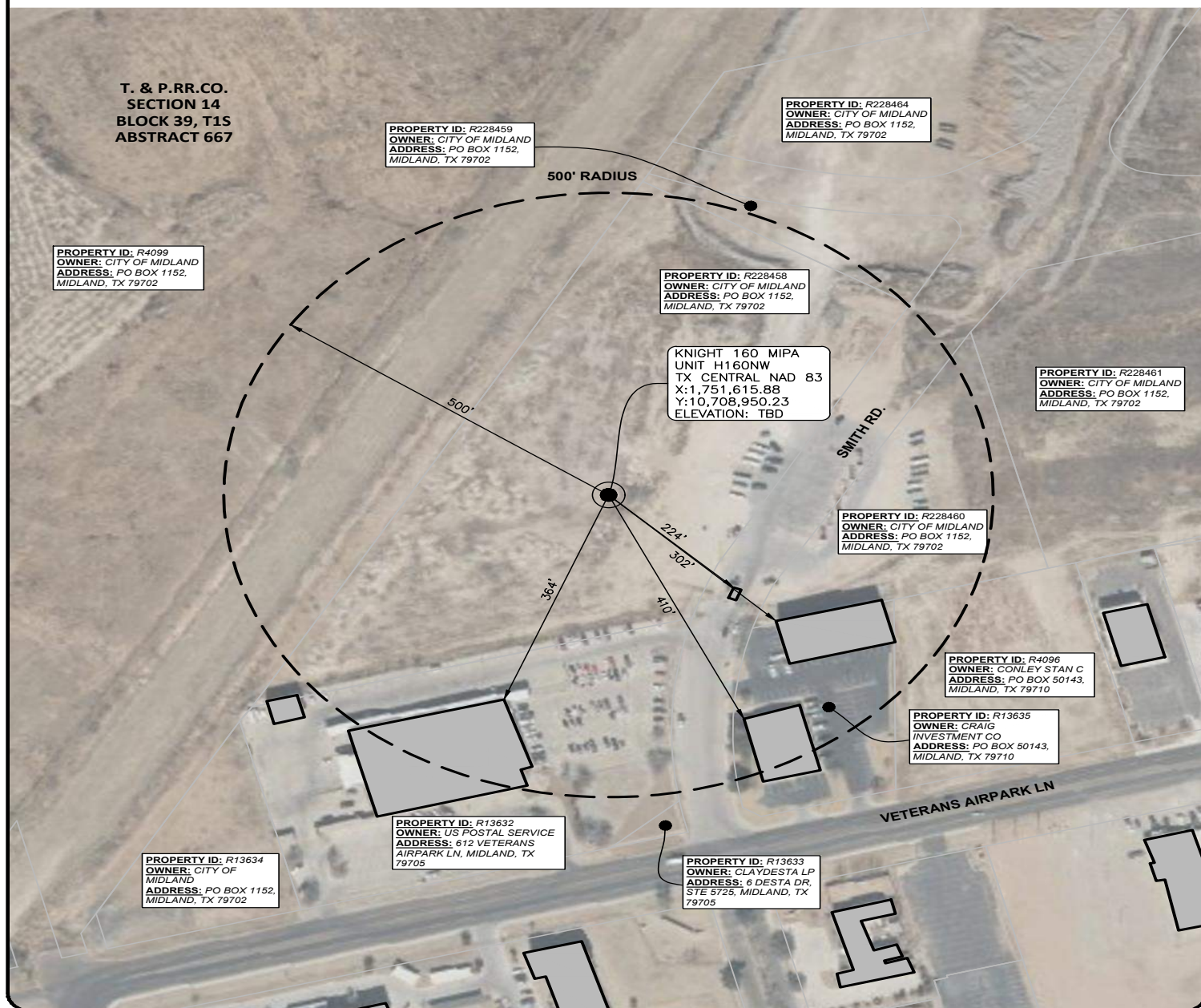
Estella Peña
Notary Public, State of Texas



1.ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2.THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING
A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.
THIS IS NOT A "BOUNDARY SURVEY".
3.THE PROPOSED WELL LOCATION WAS SURVEYED ON ---



	FIRE HYDRANT
	STORM DRAIN MANHOLE
	WATER VALVE



WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES.
USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

PROPOSED KNIGHT 160 MIPA UNIT H160NW

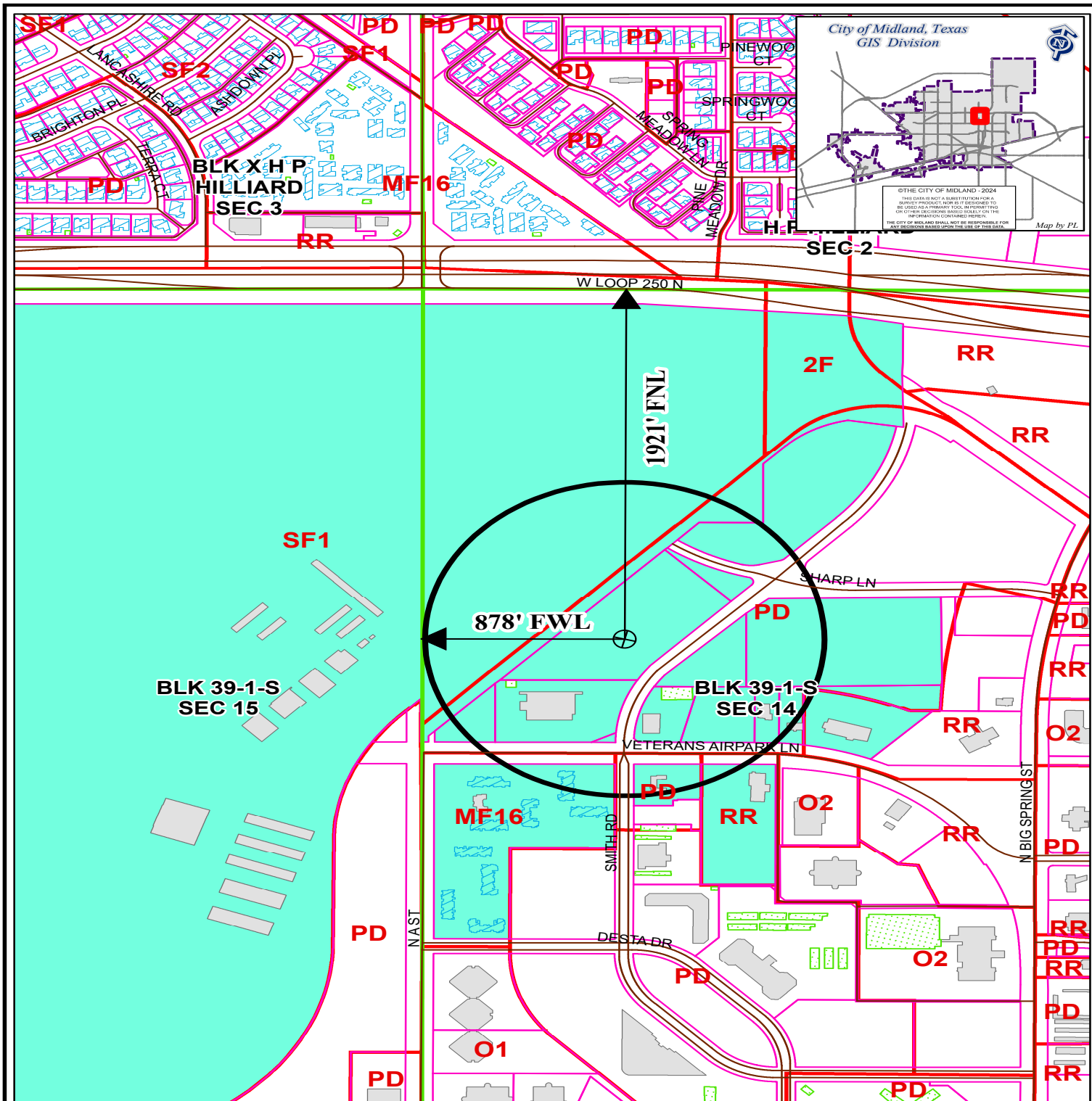
T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S,
ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 878' FSWL & 1.921' FNWL

NOTES:

1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
2. ALL BEARING AND ORIGIN COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83, CENTRAL ZONE.
3. THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY.



DRAWN		EL	DATE	8/23/24
CHECKED			DATE	
APP'D			DATE	
SCALE 1"=200'			PAGE 4 OF 4	
REV#	DATE	DESC.		
JOB NO.		KNIGHT 160 MIPA T H160NW		
JOB NO.		24005507		



LOCATION AND ZONING MAP

Oil - 064967 - 2024

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,921' FNL and 878' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 878 feet east of North A Street extension and 1,921 feet south of W Loop 250 N.

Knight 160 MIPA Unit H160NW

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
MF16	COUNTRY ESTATE	O2	NEIGHBORHOOD SERVICE
MH	ONE-FAMILY DWELLING	C1, C2, C3	RETAIL
TH	MOBILE HOME DWELLING	IP, JPI, IP2, IP3	COMMERCIAL
2F	TOWNHOUSE DWELLING	LI	INDUSTRIAL PARK
MF1, MF2	TWO-FAMILY DWELLING	HI	LIGHT INDUSTRY
	MULTIPLE FAMILY DWELLING		HEAVY INDUSTRY

February 25, 2025



City Council Meeting

Item Number: 16
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Elizabeth Triggs, Director
Subject: RESOLUTION CONSENTING TO THE CREATION OF A DISTRICT TO BE KNOWN AS THE PRESERVE MUNICIPAL MANAGEMENT DISTRICT (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

This resolution grants conditional consent for the Texas Legislature to establish The Preserve Municipal Management District (MMD) during its 89th Regular Session. The City's support is contingent upon finalizing a development agreement to ensure strategic investment in infrastructure and public amenities.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The Preserve at Midland is a 173-acre mixed-use development that prioritizes green space, trails, and pedestrian connectivity. Establishing an MMD allows for the efficient financing of public improvements, ensuring long-term maintenance and quality enhancements without burdening the City.

This resolution supports the City's Strategic Plan by:

- Goal 1: Strong Economy with More Quality Jobs – Quality of life is a workforce attraction tool. Investments in parks, trails, and vibrant mixed-use spaces make Midland more appealing to residents and businesses.
- Goal 3: Quality of Life and Place – Public amenities funded by the MMD, such as trails, open spaces, and gathering areas, contribute to a livable and thriving community.
- Goal 6: Strengthen and Sustain our Infrastructure – The MMD will fund pedestrian and roadway improvements that enhance connectivity and ease congestion.

An MMD offers a financing mechanism where its debt is not City debt—it is issued and repaid by the district through assessments or tax increments within its boundaries. This structure enables larger-scale public improvements compared to traditional financing or no financing, allowing for more extensive and higher-quality infrastructure without impacting the City's debt capacity. Additionally, a negotiated development agreement will outline a capital plan detailing infrastructure project to be financed by the MMD, ensuring accountability and strategic alignment with City priorities.

The process of creating an MMD involves multiple steps, with this resolution serving as an early but critical component. The process includes:

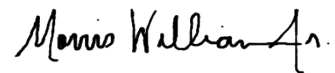
1. City Consent (Current Step) – The City Council grants conditional support and consent for the creation of the MMD.
2. Legislative or Administrative Creation – The MMD is established by a special act of the Texas Legislature during its 89th Regular Legislative Session.
3. Development Agreement Negotiation – Before final implementation, the City and The Preserve must negotiate a binding development agreement to outline how the land will be developed.
4. Governance and Implementation – The MMD will be managed by a board of directors responsible for overseeing projects, services, and funding mechanisms within the district.

The MMD self-funds its improvements, reducing financial risk for the City while maximizing public benefits. Key advantages include:

- Debt Issuance Without City Liability – MMD-issued debt funds infrastructure without affecting the City's balance sheet or credit rating.
- Increased Investment in Public Amenities – Larger-scale parks, trails, and streetscape improvements are possible compared to traditional financing.
- New Revenue Generation – Sales and property tax growth from increased commercial activity supports City services and economic expansion.

- Long-Term Cost Savings – The MMD may assume responsibility for maintenance and operations of its funded improvements, reducing City obligations.

This resolution is a necessary step in forming the MMD, but final approval is contingent upon a development agreement that ensures alignment with City priorities and defines project funding. The City retains full zoning and oversight authority to ensure alignment with Midland's long-term development goals.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION CONSENTING TO THE CREATION OF
A DISTRICT TO BE KNOWN AS THE PRESERVE
MUNICIPAL MANAGEMENT DISTRICT**

WHEREAS, the landowner within the proposed Preserve Municipal Management District (the “District”) intends to either (i) cause the introduction of legislation for the creation of the District by special act of the Texas Legislature, (ii) petition the Texas Commission on Environmental Quality (the “TCEQ”) for the creation of the District, or (iii) initiate creation of the District by other statutory procedure to finance and provide public improvements and services to benefit both the property within the District and the City of Midland, Texas (the “City”); and

WHEREAS, the City wishes to evidence its conditional support and consent for the creation of the District within the City’s corporate limits, subject to the terms of a development agreement to be negotiated between the City and the landowner within the District (the “Development Agreement”) and the terms of this Resolution;

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

SECTION ONE. That the City Council of the City (the “City Council”) hereby (i) supports the introduction and passage of legislation (the “District Legislation”) by the Texas Legislature creating the “Preserve Municipal Management District”; (ii) grants its conditional support and consent for the creation of a municipal management district by the Texas Legislature, the TCEQ, or by virtue of other statutory procedure, such District operating pursuant to Article XVI, Section 59 and Article III, Section 52, Texas Constitution, Chapter 375, Texas Local Government Code, as amended , and/or the District Legislation within the City’s corporate limits; (iii) consents to the inclusion of the lands within the District as described more fully in the field notes attached as Exhibit A; and (iv) authorizes the City Manager, or the City Manager’s designee, to execute any documents necessary to effectuate this Resolution.

SECTION TWO. That the City Council’s conditional support and consent for the creation of the District is expressly subject to the terms of a binding Development

Agreement being negotiated and executed by the City and the landowner within the District. Notwithstanding any contrary provision contained herein, the Development Agreement shall not become effective unless and until approved by the City Council.

SECTION THREE. That the City Council further states that the City has not relinquished any rights, duties or powers relating to the inclusion of the District within its corporate limits, including, but not limited to, the City's zoning authority. The City hereby reserves all its rights, duties and powers relating to the inclusion of the District within its corporate limits.

SECTION FOUR. That this Resolution shall take effect immediately from and after its passage.

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., 2025, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

EXHIBIT A

Metes and Bounds Description of the Subject Property

TRACT ONE (1):

LOT ONE (1), BLOCK TWENTY-ONE (21), GRASSLAND ESTATES SECTION 16, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof, recorded in Cabinet F, Page 157, Plat Records of Midland County, Texas.

SAVE AND EXCEPT:

A 0.279 Acre Tract of Land recorded in Document Number 2020-32262, Official Public Records of Midland County, Texas, and being further described as:

A 0.279 acre Right-of-Way tract located in Lot 1, Block 21, Grassland Estates, Section 16, an addition to the City of Midland, Midland County, Texas as recorded in Cabinet F, Page 157 of the Midland County Plat Records and being a portion of the land conveyed to Midland-Odessa Golf Corp. by deed as recorded in Doc. No. 2014-20729 of the Midland County Deed Records and being more fully described as follows;

Beginning at an iron rod with cap found in the west line of said Lot 1 at the beginning of a curve to the right and having a coordinate of N= 10,699,283.30 ft., E= 1,725,850.30 ft., an iron rod with cap found for the northwest corner of said Lot 1 as shown on Grassland Estates, Section 16 plat bears N 14°32'51" W a distance of 13.78 ft.,

Thence along said curve to the right having a radius of 15.00 ft., an arc length of 22.29 ft. with a chord of 20.29 ft. and chord bearing of N 27°46'01" E to a found iron rod with cap at the end of this curve and the beginning of another curve to the right,

Thence along the north line of said Lot 1 and said curve to the right having a radius of 1450.00 ft., an arc length of 124.32 ft. with a chord of 124.28 ft. and a chord bearing of N 73°03'32" E to a found iron rod with cap at the end of this curve,

Thence N 75°30'54" E along the north line of said Lot 1 a distance of 236.77 ft. to a set 1/2" diameter iron rod with cap for the east corner of the herein described tract,

Thence S 71°07'15" W along the southerly line of the herein described tract a distance of 38.13 ft. to a set 1/2" diameter iron rod with cap at the beginning of a curve to the left,

Thence along said curve to the left having a radius of 940.00 ft., an arc length of 350.00 ft. with a chord bearings of S 60°26'20" W and a chord distance of 348.48 ft. to a set 1/2" diameter iron rod with cap in the west line of said Lot 1 and the east line of a tract to the City of Midland, Texas as recorded in Vol. 1798, Pg. 305 of the said deed records,

Thence N 14°32'52" W along the west line of said Lot 1 a distance of 73.21 ft. to the place of beginning and containing 0.279 acres.

AND SAVE AND EXCEPT:

A 51.097 Acre Tract of Land located in Lot 1, Block 21, Grassland Estates, Section 16, City of Midland, Midland County, Texas.

Boundary more fully described by metes and bounds as follows:

Beginning at (N: 10697067.74', E: 1727657.05') a 1/2 inch iron rod with cap marked 'ASB 5689' set for the northeast corner of this tract, whence a 1/2 inch iron rod found at the southeast corner of Lot 1, Block 21, Grassland Estates, Section 16 recorded in Cabinet F Page 157, Midland County Plat Records bears South 50°46'24" East, a distance of 1638.39 feet;

Thence South 00°25'37" West, a distance of 1022.20 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for the southeast corner of this tract;

Thence South 48°04'59" West, a distance of 356.62 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for a point of deflection in the south line of this tract;

Thence South 81°21'17" West, a distance of 375.27 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for a point of deflection in the south line of this tract;

Thence North 58°58'30" West, a distance of 1389.76 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for the southwest corner of this tract;

Thence with a curve to the right in a northwesterly direction, said curve having a radius length of 339.42 feet, an arc length of 373.03 feet, a delta angle of 62°58'09", and a chord length of 354.54 feet bearing North 08°57'57" West to a 1/2 inch iron rod with cap marked 'ASB 5689' set for a point of tangency in the west line of this tract;

Thence North 30°55'47" East, a distance of 840.21 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for the northwest corner of this tract;

Thence South 60°03'19" East, a distance of 401.44 feet to a 1/2 inch iron rod with cap marked 'ASB 5689' set for a point of curvature in the north line of this tract;

Thence with a curve to the left in a southeasterly direction, said curve having a radius length of 2038.67 feet, an arc length of 1158.35 feet a delta angle of 32°33'17", and a chord length of 1142.83 feet bearing South 76°19'58" East to the Point of Beginning.

Containing 51.097 acres of land.

TRACT TWO (2):

A 0.049 acre Tract of Land in Section 25, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas and recorded in Document Number 2020-38555, Official Public Records of Midland County, Texas, and further described as:

A 0.049 acre tract located in Section 25, Block 40, T-1-S, T.&P. RR. Co. Survey, Midland County, Texas and being a portion of the land conveyed to the City of Midland, Texas by deeds as recorded in Doc. No. 2019-36116 and Vol. 1934, Pg. 276 of the Midland County Deed Records and being more fully described as follows:

Beginning at a set 1/2" diameter iron rod for the most westerly corner of the herein described tract in the south line of a 1.855 acre tract conveyed to the City of Midland, Texas by deed as recorded in said Doc. No. 2019-36116 of the said deed records and being in the north line of a tract to Midland-Odessa Golf Corp. as recorded in Doc. No. 2014-20729 of the said deed records and also being in the north line of Lot 1, Block 21 of the

Grassland Estates, Section 16 an addition to the City of Midland, Texas and having a coordinate of N= 10,699,396.70 ft., E= 1,726,207.89 ft., a found 1/2" diameter iron rod for the southeast corner of the said 1.855 acre tract bears N 74°41'32" E a distance of 124.96 ft.,

Thence N 71°07'14" E along the north line of the herein described tract a distance of 494.99 ft. to a set 1/2" diameter iron rod with cap for the most easterly corner of the herein described tract at the beginning of a curve to the left,

Thence along the north line of said Lot 1 and said curve to the left having a radius of 1925.65 ft., an arc length of 97.44 ft. with a chord bearing of S 70°28'34" W and a chord distance of 97.43 ft. to a point at the end of this curve,

Thence S 68°59'57" W along the north line of said Lot 1 a distance of 172.00 ft. to a point at the beginning of a curve to the right,

Thence along the north line of said Lot 1 and said curve to the right having a radius of 1550.00 ft., an arc length of 175.41 ft. with a chord bearing of S 72°17'37" W and a chord distance of 175.31 ft. to a point at the end of this curve,

Thence S 75°30'57" W along the north line of said Lot 1 a distance of 50.55 ft. to the place of beginning and containing 0.049 acres.



City Council Meeting

Item Number: 17 **Meeting Date:**
February 25, 2025

To: City Council / City Manager

From: Lindsey Adams, Intergovernmental Relations Officer

Subject: RESOLUTION OF THE CITY OF MIDLAND, TEXAS FINDING THAT THE STATEMENT OF INTENT FILED BY ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE "COMPANY") TO CHANGE RATES WITHIN THE CITY SHOULD BE DENIED; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL (DISTRICT: ALL) (ENGINEERING SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

The City of Midland is a gas utility customer of Atmos Energy Corporation within the West Texas Division and is the regulatory authority with an interest in the rates and charges of Atmos. In a review of the recent rate case by Atmos, it was found that the rates proposed by Atmos were unreasonable and shall be denied.

Recommended City Council Action:

Approve

Fiscal Impact:

Should this resolution fail, the rate Atmos is seeking to increase the cost of natural gas would lead to a \$66.1 million impact to customers residing in the city.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

On October 25, 2024, Atmos filed with the city a Statement of Intent to Increase Rates. On November 12, 2024, the City Council took action to suspend this rate for 90 days. This will be the final action on the Company's rate request. This denial resolution denies the companies proposed rates as they are unreasonable and excessive.

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF MIDLAND, TEXAS
FINDING THAT THE STATEMENT OF INTENT
FILED BY ATMOS ENERGY CORP., WEST TEXAS
DIVISION (THE “COMPANY”) TO CHANGE RATES
WITHIN THE CITY SHOULD BE DENIED; FINDING
THAT THE CITY’S REASONABLE RATE CASE
EXPENSES SHALL BE REIMBURSED BY THE
COMPANY; FINDING THAT THE MEETING AT
WHICH THIS RESOLUTION IS PASSED IS OPEN TO
THE PUBLIC AS REQUIRED BY LAW; AND
AUTHORIZING AND DIRECTING THE CITY
SECRETARY TO DELIVER THIS RESOLUTION TO
THE COMPANY AND LEGAL COUNSEL**

WHEREAS, the City of Midland, Texas (the “City”) is a gas utility customer of Atmos Energy Corp. (“Atmos” or the “Company”) within the West Texas Division, and a regulatory authority with an interest in the rates and charges of Atmos; and

WHEREAS, the City is a member of Cities Served by Atmos West Texas (“Cities”), a coalition of similarly situated cities served by Atmos that have joined together to efficiently and cost effectively review and respond to natural gas issues affecting rates charged in the West Texas Division; and

WHEREAS, on or about October 25, 2024, Atmos filed with the City a Statement of Intent to Increase Rates seeking to increase natural gas rates by \$66.1 million annually and to all customers residing in the City; and

WHEREAS, Cities is coordinating its review of the Company’s Statement of Intent filing with designated attorneys and consultants to resolve issues in the Company’s filing; and

WHEREAS, through review of the application, Cities’ consultants determined that the Company’s proposed rates are excessive; and

WHEREAS, Cities’ members and attorneys recommend that Cities members deny the Statement of Intent; and

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

SECTION ONE. That the rates proposed by Atmos to be recovered through its gas rates charged to customers located within the City limits are hereby found to be unreasonable and shall be denied.

SECTION TWO. That the Company shall continue to charge its existing rates to customers within the City.

SECTION THREE. That the City's reasonable rate case expenses shall be reimbursed in full by Atmos West Texas.

SECTION FOUR. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and public notice of the time, place, and purpose of said meeting was given as required.

SECTION FIVE. That the City Secretary is hereby authorized and directed to send copies of this Resolution to Atmos West Texas, care of Philip Littlejohn, Vice President of Rates and Regulatory Affairs, West Texas Division, 6606 66th Street, Lubbock, Texas 89424 (Philip.littlejohn@atmosenergy.com), and to Thomas Brocato at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 (tbrocato@lglawfirm.com).

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., 2025, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

PACKET

17.4

February 25, 2025

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Assistant City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 18
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Charles Blumenauer, Fire Chief
Subject: RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MIDLAND COUNTY, TEXAS, ALLOWING FOR CITY UTILIZATION OF OFFICE AND OPERATIONAL SPACE IN THE EMERGENCY MANAGEMENT WING OF THE MIDLAND COUNTY SHERIFF'S OFFICE FACILITY (DISTRICT: ALL) (FIRE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

The purpose of this Interlocal Agreement is to establish the terms under which the City of Midland will utilize office and operational space in the emergency management wing of the Midland County Sheriff's Office facility. This agreement enhances collaboration between the City and County, supports emergency preparedness efforts, and provides a no-cost solution for housing key City departments involved in public safety and health services.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

This Interlocal Agreement between the City of Midland and Midland County provides office and operational space for the City's Fire Marshals, Emergency Management, Health Department

Environmental Division, and Health Department Emergency Preparedness Coordinator within the emergency management wing of the Midland County Sheriff's Office facility. This arrangement enhances interagency collaboration, strengthens emergency preparedness efforts, and maximizes available resources at no cost to the City. The agreement includes provisions for IT infrastructure setup and maintenance, compliance with applicable laws, and termination procedures, ensuring a structured and beneficial partnership for both parties.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN INTERLOCAL AGREEMENT
WITH MIDLAND COUNTY, TEXAS, ALLOWING FOR
CITY UTILIZATION OF OFFICE AND OPERATIONAL
SPACE IN THE EMERGENCY MANAGEMENT WING
OF THE MIDLAND COUNTY SHERIFF'S OFFICE
FACILITY**

WHEREAS, the City of Midland, Texas ("City") and Midland County, Texas ("County") desire to enter into an interlocal agreement allowing City to utilize office and operational space in the emergency management wing of the Midland County Sheriff's Office facility; and

WHEREAS, the Midland City Council finds that the agreement serves a beneficial public purpose;

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

THAT the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, an interlocal agreement with County allowing City to utilize office and operational space in the emergency management wing of the Midland County Sheriff's Office facility. Said agreement to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

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., 2025, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

INTERLOCAL AGREEMENT FOR FIRE AND HEALTH

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between **Midland County, Texas** (“County”) and the **City of Midland, Texas** (“City”). County and City are each referred to individually herein as a “party”, and collectively as the “parties.”

WITNESSETH:

WHEREAS, County operates that certain Midland County Sheriff’s Office facility (“facility”) located at 1703 East County Road 120, which includes an emergency management wing;

WHEREAS, City has determined a need for office and operational space for City’s Fire Marshals, Emergency Management, Health Department Environmental Division, and Health Department Emergency Preparedness Coordinator;

WHEREAS, County is willing to allow the City use of space in the emergency management wing of the facility at no cost;

WHEREAS, both parties recognize the mutual benefits and opportunities for collaboration that this shared arrangement provides;

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

I.

Purpose. The purpose of this Agreement is to establish the terms and conditions under which the City will utilize space in the County’s emergency management wing.

II.

Terms of Use.

1. County agrees to provide office and operational space in the Emergency Management wing of the Midland County Sheriff’s Office facility for the following City departments:
 - a. Fire Marshal;
 - b. Emergency Management;
 - c. Health Department Environmental Division; and
 - d. Health Department Emergency Preparedness Coordinator.

2. City agrees to utilize the space for its designated purposes and collaborate with County on mutual needs and projects as they arise.
3. City Information Technology (“City IT”) personnel shall have access to designated City sections of the facility to set up and maintain IT infrastructure, including but not limited to, network connections, servers, and other necessary technology to support City operations. County agrees to provide reasonable accommodations and access to facilitate such setup and maintenance.

III.

No Cost to City. County shall not charge City for the use of the space provided under this Agreement.

IV.

Termination. Either party may terminate this Agreement by providing written notice to the other party no less than 180 days prior to the effective date of termination.

V.

Term and Renewal. This Agreement shall be effective upon execution by both parties and shall automatically renew annually unless terminated in accordance with Article IV.

VI.

Assignment. Neither party may assign this Agreement, in whole or in part, without prior written consent of the other party.

VII.

Independent Operations. At no time while operating under this Agreement shall any officer, employee, agent, or volunteer of a party be considered an officer, employee, or agent of the other party.

VIII.

Immunity and Liability. It is expressly understood and agreed that no provision of this Agreement is in any way intended to constitute a waiver by either party of any immunity from suit or liability that the party or any of its officers and employees may have by operation of law. Each party shall be responsible for any wrongful or negligent acts committed by its employees or agents.

IX.

Compliance with Laws The parties shall observe and comply with all applicable federal, state, and local laws, rules, ordinances, and regulations in any manner affecting this Agreement.

X.

Severability If any provision of this Agreement is declared unconstitutional, or the applicability to any persons or circumstances is held invalid, the constitutionality of the remainder of the Agreement and its applicability to other persons and circumstances shall not be affected.

XI.

No Third-Party Beneficiaries The parties to this Agreement do not intend to create a third-party beneficiary or for any third party to obtain a right by virtue of this Agreement. Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

EFFECTIVE DATE: The _____ day of _____, 2025.

MIDLAND COUNTY, TEXAS

By: _____
Terry Johnson
Midland County Judge

ATTEST:

By: _____
Alison Haley
Midland County Clerk

CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez
City Manager

ATTEST:

By: _____
Marcia Bentley-German
City Secretary



City Council Meeting

Item Number: 19
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Laurie M. Williams, Parks and Recreation Director
Subject: MOTION AUTHORIZING THE EXECUTION OF SPORTS AGREEMENTS WITH THE FOLLOWING ORGANIZATIONS: BOYS AND GIRLS CLUB OF THE PERMIAN BASIN; GREATER MIDLAND FOOTBALL LEAGUE; POW5R SPORTS LEAGUE; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED ACTIVITIES THROUGH THE USE OF CERTAIN CITY-OWNED PROPERTY AND FACILITIES (DISTRICT: ALL) (PARKS AND RECREATION) (QUALITY OF LIFE AND PLACE)

Purpose:

Motion authorizing the execution of sports agreements with the following organizations: Boys and Girls Club of the Permian Basin; Greater Midland Football League; Pow5r Sports League; Midland Junior Baseball Association, Inc.; Midland Soccer Association, Inc.; Midland Softball Association, Inc.; Midland United Girls Softball Association; Texas Cricket Club; Under the Lights Flag Football League; West Texas BMX; and the YMCA of Midland. Said agreements providing for the organizations' administration of recreational programs, special events, and other related services through the use of city-owned property and facilities.

Recommended City Council Action:

Approve

Fiscal Impact:

Maintenance of the City's athletic facilities is carried in the current operating budgets of the Parks and Sports Complex Divisions. The city, if funds are available and budgeted, can match an association's funds for capital improvement projects, as provided by the sports agreements.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Through the annual sports agreements, the associations agree to provide recreational sports programs to the citizens of Midland. The associations handle advertisement, sign-ups, and scheduling of seasonal competition and tournaments. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

The sports agreements will again require \$1 million liability insurance naming the City of Midland as an additional insured.



City Manager's Office

BOYS AND GIRLS CLUB OF THE PERMIAN BASIN
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (City), and Boys and Girls Club of the Permian Basin (Association).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to flag football and soccer activities for youth and adult participants at Taylor Park. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football/soccer events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which shall include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's

expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.

- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled flag games and practice sessions. Appropriateness shall be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of the activities contemplated by this Agreement, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct

the games.

- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November 2025, during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one (1) officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association’s Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, mowers, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by The Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association’s events and shall store equipment off site after season ends.

- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields “unplayable” for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this

Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025 through December 31, 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas,

selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY

SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon a non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

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

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

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Parks and Recreation
 and Parks and Recreation Manager
 at the same address

If to Boys and Girls Club of the Permian Basin
Association: Taylor Park Facility

1321 S. Goode St.
Midland, Texas
79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement

conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains

all immunity from suit. City is not granting consent to be sued by legislative resolution or action.
THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

**ARTICLE XIX -
RELEASE**

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged

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

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT AND
COMPLETENESS:

Laurie Williams, Parks and Recreation Director

BOYS AND GIRLS CLUB
OF THE PERMIAN
BASIN

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this _____ day of _____, 2025, personally appeared _____, _____ of the Boys and Girls Club of the Permian Basin, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Boys and Girls Club of the Permian Basin.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

GREATER MIDLAND FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Greater Midland Football League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to football activities for youth ages four (4) to twelve (12) at the Scharbauer Sports Complex’s Blue and White Fields and Reyes Mashburn Nelms Park’s Football Fields. Association shall have the right to collect fees and income generated by Association’s football activities for youth ages four (4) to twelve (12). This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.

- D. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games.
- E. Provide general field maintenance which shall include making major repairs to City-owned equipment, grooming of turf fields at least once biweekly during Association's football season, and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled camp taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Coordinate with Association regarding provision and permitting/licensing of vendors.
- K. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and Camp sessions. Appropriateness shall be determined by City.

- L. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and camp to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, chains, markers, goals and pylons;
 - 3. Providing personnel, equipment and materials necessary to prepare playing fields;
and
 - 4. Preparing playing fields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November 2025 during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025, deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with City's Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said

fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.

- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its

officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per project aggregate and on an occurrence basis. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use,

or condition of the premises. The Commercial General Liability insurance shall be on a per project aggregate and on an occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.

- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual

orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue of whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion,

allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County,

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

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Parks and Recreation and
 Parks and Recreation Manager at the same address

If to
Association: Greater Midland Football League
 2510 Regency Oaks
 Midland, Texas 79705

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and

this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property during scheduled games sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

Before the Association may file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for

the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

By: _____

Title: _____

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Greater Midland Football League.

Notary Public, State of Texas

POW5R SPORTS LEAUGE
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Pow5r Sports League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to football activities for youth ages four (4) to twelve (12) at the Reyes Mashburn Nelms Park’s Football Fields and the Scharbauer Sports Complex’s Blue and White Fields. Association shall have the right to collect fees and income generated by Association’s football activities for youth ages four (4) to twelve (12). This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.

- D. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games.
- E. Provide general field maintenance which shall include making major repairs to City-owned equipment, grooming of turf fields at least once biweekly during Association's football season, and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled camp taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Coordinate with Association regarding provision and permitting/licensing of vendors.

- K. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games, practices, and Camp sessions. Appropriateness shall be determined by City.
- L. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games, practices, and camp(s) to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City

property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, chains, markers, goals and pylons;
 - 3. Providing personnel, equipment and materials necessary to prepare playing fields; and
 - 4. Preparing playing fields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole

and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with City's Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.

- T. City reserves the right to declare the fields “unplayable” for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this Agreement pursuant to this Section shall become effective upon Association’s receipt of City’s written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per project aggregate and

on an occurrence basis. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per project aggregate and on an occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE

REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from

participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue of whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and

interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of

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 Pow5r Sports League
Association: PO Box 11085
Midland, Texas 79702

February 25, 2025

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or

to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

Before the Association may file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for

the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

Title: _____

Notary Public, State of Texas

MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Junior Baseball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to baseball activities for young men ages nineteen (19) and younger at Beal Park, Butler Park, CJ Kelly Park, Hogan Park, Reyes/Mashburn/Nelms Park, and Windlands Park. Association shall have the right to collect fees and income generated by Association’s baseball activities for young men ages nineteen (19) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I.
DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - nine (9) playing fields, as agreed by Association, the City

Manager, Parks and Recreation Director and the Parks and Recreation Manager, reserved for Association's championship games or tournaments, comprised of Little League Fields #1 and #2 at Beal Park, Little League Fields #1 and #2 at Butler Park, Little League Field #1 at C.J. Kelly Park, Little League Fields #1 and #2 at Reyes/Mashburn/Nelms Park, and Little League Fields #1 and #2 at Windlands Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the nine (9) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field(s) must be

approved by the City Manager, with Association paying all costs associated with said fence;

3. Association shall deposit with the Director of Parks and Recreation one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

- E. Provide general field maintenance which shall include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
 5. Making major repairs to City-owned equipment and fixtures; and
 6. Grooming of turf fields at least once biweekly during Association's baseball season.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness shall be determined by City.

- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
 - 5. Ensure no competitor wears metal spikes on turf fields.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit
 - (i) a written request on or before the 15th day of November 2025 during the term of this Agreement, and
 - (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost.Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025, deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before

the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division about facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Association agrees to keep park property, parking lots, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of the City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.

Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park

Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025

ARTICLE V. INDEPENDENT CONTRACTOR

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

contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association

maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this

Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, the premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT

FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue

on whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding

breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

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

If to City: City of Midland
P.O. Box 1152
Midland, Texas
79702 Attention:
City Manager

with copies to: City Attorney and
Director of Parks and Recreation and Parks

and Recreation Manager
at the same address

If to
Association: Midland Junior Baseball Association, Inc.
P.O. Box 52101
Midland, Texas
79710

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property pursuant to the terms of this Agreement during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach

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

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

MIDLAND JUNIOR BASEBALL
ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

'

COUNTY OF MIDLAND '

'

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Junior Baseball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Soccer Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to recreational soccer for adults at the Scharbauer Sports Complex and youth at Butler Park and Hogan Park. Association shall have the right to collect fees and income generated by Association’s soccer activities for adults and youth. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I.
DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland, Texas, and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City

of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Provide general field maintenance which shall include:
 - 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields; and
 - 4. Making major repairs to City-owned equipment and fixtures.
- E. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- F. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- G. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- H. Respond to emergency maintenance requests on a priority basis as determined by City.
- I. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other

chemicals or treatment must be approved by City.

- J. Coordinate with Association regarding provision and permitting/licensing of vendors.
- K. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled recreational games and practice sessions. Appropriateness shall be determined by City.
- L. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be

considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields; and
 - 2. Providing any and all necessary bases, markers or goals.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November, 2025, during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025, deadline shall not be considered by City.

- G. Submit any other request to the City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application

and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare fields "unplayable" for games and practice due to wet or adverse weather.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s)

by third parties under this Agreement. For the avoidance of doubt, the term “third party” as used herein shall apply to non-recreational teams, including, but not limited to, select teams and academy teams. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this Agreement pursuant to this Section shall become effective upon Association’s receipt of City’s written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating

a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which

names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's Office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association

does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. The Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF

THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation

and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The decision regarding whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon the non-defaulting party's election to terminate, this Agreement shall cease and come to an end. The non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of the non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

**ARTICLE XIV. GENERAL
PROVISIONS**

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed

as follows:

If to City: City of Midland
P.O. Box 1152
Midland, Texas
79702 Attention: City
Manager

with copies to: City Attorney and
Director of Parks and Recreation and Parks
and Recreation Manager
at the same address

If to Association: Midland Soccer Association, Inc.
3500 N. A
Street Suite
1600
Midland, TX 79705

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated after the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which

shall be deemed as original, and all of which shall constitute one and the same instrument.

- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. ASSOCIATION ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE ASSOCIATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND

ASSOCIATION. THIS ARTICLE SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX.
RELEASE

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

NEGLIGENCE.

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES**

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant

to Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT AND
COMPLETENESS:

Laurie Williams, Parks and Recreation Director

MIDLAND SOCCER ASSOCIATION, INC.

By:

Name:

Title:

THE STATE OF TEXAS '

'

COUNTY OF MIDLAND '

'

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Soccer Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball activities for persons ages fifteen (15) and older at the Bill Williams Softball Complex at Hogan Park. Association shall have the right to collect fees and income generated by Association’s softball activities for persons ages fifteen (15) and older. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - six (6) playing fields, as agreed by Association, the City Manager and the Parks and Recreation Manager, reserved for Association’s championship

games or

tournaments, comprised of the six (6) adult softball fields within the Bill Williams Softball Complex at Hogan Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the six (6) Championship Fields for the sole purpose of conducting games and practice sessions with one blackout date being the Thursday before easter. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;

3. Association shall deposit with the Director of Parks and Recreation one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which shall include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;

2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Marking necessary field lines prior to each Association season and prior to national tournaments if applicable;
 5. Dragging infields prior to tournaments;
 6. Making major repairs to City-owned equipment and fixtures;
 7. Picking up fencing after tournaments; and
 8. Grooming of turf fields at least once biweekly during Association's softball season.
9. Set up and take down of temporary fences on playing fields for \$200/field.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness shall be determined by City.

- M. Provide Association with exclusive access and use of certain designated concession and umpire facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession and umpire facilities to other persons or entities when Association is not using the concession or umpire facilities during a scheduled event. The decision regarding which concession and umpire facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, game officials, and custodial staff needed to conduct the games.
- E. Prepare playing fields prior to games, including:
1. Marking any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields and set pitching mounds, foul lines or batter boxes if applicable;
 4. Setting pitching mounds for all games if applicable; and
 5. Erecting temporary fencing as needed or pay the City \$200/field for set up and tear down.
 6. Ensure no competitor wears metal spikes on turf fields.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the

subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Association agrees to keep park property, parking lots, and surrounding area clean and orderly by picking up trash after Association's events. For the avoidance of doubt, "Park Property and surrounding area" as referenced in the preceding sentence shall include the fields, dugouts, common areas and the parking lot. Association also agrees to place its equipment in storage off site following the end of the softball season.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the field "unplayable" for games or practice due to wet and adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to

administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any

and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association,

take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY

AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE,

IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The decision regarding whether or not to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:

City of Midland
P.O. Box 1152 Midland,
Texas 79702 Attention:

City Manager

with copies to:

City Attorney and
Director of Parks and Recreation and Parks
and Recreation Manager
at the same address

If to
Association:

Midland Softball Association, Inc.
4487 Hackberry Ct.
Midland, Texas 79707

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or

permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

- I. Ownership. Association understands and agrees that ownership of Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

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

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

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

MIDLAND SOFTBALL ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '
 '
COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION,
INCORPORATED SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland United Girls Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball for young women ages eighteen (18) and younger at MUGS Softball Complex at Ulmer Park. Association shall have the right to collect fees and income generated by Association’s activities for young women ages eighteen (18) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I.
DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - eleven (11) playing fields, as agreed by Association, the City

Manager and the Parks and Recreation Manager, reserved for Association's championship games or

tournaments, comprised of the nine (9) softball fields and two (2) tee ball fields within the Freddie Ezell Complex at Ulmer Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the eleven (11) Championship Fields for the sole purpose of conducting recreational games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Association shall deposit with the Director of Parks and Recreation one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
 - 2. Association understands and agrees that City retains an unlimited right of entry

upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;

3. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
4. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager.

E. Provide general field maintenance which shall include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
2. Fertilizing in April and September with a third application if feasible as determined by City;
3. Filling significant holes in fields;
4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
5. Making major repairs to City-owned equipment and fixtures; and
6. Grooming of turf fields at least once biweekly during Association's softball season.

F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing,

roadways and parking areas as applicable.

- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness shall be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession and umpire facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession and umpire facilities to other persons or entities when Association is not using the concession or umpire facilities during a scheduled event. The decision regarding which concession and umpire facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Parks and Recreation or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played

during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
 - 5. Ensure no competitor wears metal spikes on an artificially turfed field.
- F. If Association wishes to request that City make a capital improvement that exceeds a total

cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.

- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep park property, parking lot, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion

of the tournament.

- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V. INDEPENDENT CONTRACTOR

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its

officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII-ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The

insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of

insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX.
INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR,

ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue of whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding

breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

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

If to City:	City of Midland
	P.O. Box 1152
	Midland, Texas 79702
	Attention: City
	Manager

with copies to: City Attorney and
Director of Parks and Recreation and Parks
and Recreation Manager
at the same address

If to Midland United Girls Softball Association, Inc.
Association: P.O. Box 10574
Midland, Texas
79702

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or

permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE

EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable

consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the

requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

MIDLAND UNITED GIRLS SOFTBALL
ASSOCIATION, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS ' '
COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland United Girls Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Texas Cricket Club (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to cricket at Beal Park. Association shall have the right to collect fees and income generated by Association’s cricket activities. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one playing field, as agreed by Association and the City Manager, reserved for Association’s championship games or tournaments, comprised of one (1) cricket field at Beal Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
 - 1. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions. Association shall deposit with the Director of Parks and Recreation one (1) copy of any and all keys necessary to gain access to said Championship Field;
 - 2. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
 - 3. Association shall abide by all conditions and requirements as set out in this Agreement;
 - 4. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement; and

5. Association understands that in the event of construction at said championship field, Association shall work with the Director of Parks and Recreation and the Parks and Recreation Manager to find an alternative field during the construction project.
- D. Provide general field maintenance which shall include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- E. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways, and parking areas as applicable.
- F. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- G. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- H. Respond to emergency maintenance requests on a priority basis as determined by City.
- I. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- J. When feasible, coordinate with Association at least thirty (30) days in advance of any

closure of the playing fields due to construction for the purpose of identifying alternative playing fields for Association's use during said construction.

- K. Coordinate with Association regarding provision and permitting/licensing of vendors. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness shall be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.

- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors

as a non-voting member known as the City Liaison.

- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep park property, parking lot, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games and practice due to wet and adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team

that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.

- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3)

years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or

condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, "premises" shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned

by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.

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

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS,

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement

understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement, or the performance of this Agreement, shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter

of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Parks and Recreation and Parks
 and Recreation Manager
 at the same address

If to Texas Cricket Club
Association: 5200 Sunshine
 Parkway Midland, TX
 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context

otherwise requires.

- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH

ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation

to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

By: _____

Title: _____

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Texas Cricket Club.

Notary Public, State of Texas

UNDER THE LIGHTS FLAG FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Under the Lights Flag Football League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to flag football activities for youth participants at CJ Kelly Park and the Scharbauer Sports Complex. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I-
DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Parks and Recreation** - the Parks and Recreation for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which shall include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's

expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.

- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness shall be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of flag football events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct

the games.

- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 - 4. Preparing playing field for all flag football events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property, parking lots, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.

- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields “unplayable” for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this Agreement pursuant to this Section shall become effective upon

Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The

insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of

insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S

USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part

of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state, and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation, and police departments, for the correction, prevention, and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-

defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed

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 Under the Lights Flag Football
Association: 6007 Oak Creek
Drive Midland, TX

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that

Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice

in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT AND
COMPLETENESS:

Laurie Williams, Parks and Recreation Director

UNDER THE LIGHTS FLAG FOOTBALL LEAGUE

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Under The Lights Flag Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

WEST TEXAS BMX
SPORTS AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and West Texas BMX (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to BMX riding and racing at Reyes/Mashburn/Nelms Park. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national BMX events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Racetrack** - any single area of Park Property, located at Reyes/Mashburn/Nelms Park, which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one racetrack, as agreed by Association and the City Manager, reserved for Association’s championship BMX events or tournaments.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of

Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting BMX events and practice sessions. In addition, at the discretion of the City Manager and with advice from the Parks and Recreation Manager, Association may be allowed to designate one

(1) racetrack as a Championship Field. Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
 - 3. Association shall deposit with the Director of Parks and Recreation one (1) copy of any and all keys necessary to gain access to said Championship Field;
 - 4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and

for any purpose whatsoever;

5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
 6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager at his sole discretion;
 7. Association shall abide by all conditions and requirements as set out in this Agreement; and
 8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which shall include:
1. Mowing of Racetrack area once a week during the growing season, adjustments may be made for BMX events;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in track areas;
 4. Making major repairs to City-owned equipment and fixtures; and
 5. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing,

roadways and parking areas as applicable.

- G. Provide water, electricity and sewer service for scheduled BMX events, and electricity for scheduled practices.
- H. Provide all maintenance for trees and shrubs surrounding Racetrack as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled BMX events and practice sessions. Appropriateness shall be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of BMX events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all BMX events and practices to occur during the season, including all races and special BMX events. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time,

on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the BMX events.
- E. Prepare racetracks prior to BMX events, including:
 - 1. Marking any and all necessary lines on racetracks;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare BMX facility; and
 - 4. Preparing racing surface for all BMX events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City. Submit

any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- G. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- H. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- I. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- J. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- K. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- L. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- M. Post an Association lightning policy on site at all locations and provide a lightning detector.
- N. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- O. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other

chemicals or treatment must be approved by City.

- P. Keep Park Property, parking lot, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- Q. Ensure that all vending operations are properly permitted by City.
- R. Abide by all requirements and obligations as set out in this Agreement.
- S. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- T. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.

Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including

supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per

occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall

receive thirty (30) days' prior written notice before any change or cancellation of the policy.

- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE

REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from

participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate,

this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of

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 West Texas BMX
Association: PO Box 9602
Midland, TX 79708

D. Severability. In case any one or more of the provisions contained in this Agreement shall

for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other

Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled BMX events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing

addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Director

WEST TEXAS BMX

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '
 '
COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of West Texas BMX.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas

YMCA OF MIDLAND
SPORTS
AGREEMENT

This Agreement entered into and effective this 11th day of February, 2025, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and YMCA of Midland (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, and other services related to flag football, kickball, and soccer activities for youth and adult participants at Hogan Park. Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Parks and Recreation** - the Director of Parks and Recreation for the City of

Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which shall include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.

- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness shall be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of youth sporting events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with

Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare for youth sporting activities; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 15th day of November during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the November 15, 2025 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the

subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides shall be applied only by a licensed applicator which is licensed by The Texas Department of Agriculture. Further, Association shall supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and

furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.

- Q. Association agrees to keep Park Property, parking lot, and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment off site after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Manager no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Manager.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use

of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 11, 2025, through December 31, 2025.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII – ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its

employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined-single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices shall take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall

reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY

DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN

ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:

City of Midland
P.O. Box 1152 Midland,
Texas 79702

Attention: City Manager

with copies to: City Attorney and
Director of Parks and Recreation and Parks
and Recreation Manager
at the same address

If to Association: YMCA of Midland
800 N. Big Spring Street
Midland, Texas 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or

permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Parks and Recreation or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES

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

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

regardless if City has actual or constructive notice or knowledge of said claim or alleged damages.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Parks and Recreation Services Director

YMCA OF MIDLAND

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS '

COUNTY OF MIDLAND '

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of YMCA of Midland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2025.

Notary Public, State of Texas



City Council Meeting

Item Number: 20
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Laurie Williams, Parks and Recreation Director
Subject: RESOLUTION REAPPOINTING SHARLA HOTCHKISS TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (DISTRICT 2) (PARKS AND RECREATION) (QUALITY OF LIFE AND PLACE)

Purpose:

Consider a resolution reappointing Sharla Hotchkiss to the Midland Downtown Park Conservancy Board of Directors; and directing the City Manager to deliver a copy of this resolution to the Midland Downtown Park Conservancy.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

None

Strategic Priority:

(Quality of Life and Place)

Discussion:

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 are appointed by the City, one is appointed by the Scharbauer Foundation, one is appointed by Concho (now Conoco-Phillips), one is appointed by the Downtown Midland Management District, and one is an at-large appointment.

In August 2018, the City Council appointed three (3) directors to the Midland Downtown Park Conservancy Board of Directors. The three directors have staggered terms. Ms. Hotchkiss initial term expired on September 30, 2022. On February 22, 2022, Midland City Council appointed Sharla Hotchkiss to her second term which will expire on September 30, 2025. Ms. Hotchkiss desires to be appointed for her third term. If approved, the third and final term would extend until September 30, 2028.

The current City appointed directors include: Sharla Hotchkiss, Traci Proctor, and Elvie Brown.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION REAPPOINTING SHARLA
HOTCHKISS TO THE MIDLAND DOWNTOWN PARK
CONSERVANCY BOARD OF DIRECTORS; AND
DIRECTING THE CITY MANAGER TO DELIVER A
COPY OF THIS RESOLUTION TO THE MIDLAND
DOWNTOWN PARK CONSERVANCY**

WHEREAS, the City of Midland, Texas (the “*City*”), and the Midland Downtown Park Conservancy (the “*Conservancy*”) entered into that certain Downtown Open Space Development Agreement for the purpose of developing Lot 1A, Block 54, and Lot 1A, Block 55, Original Town Addition, Section 14, City and County of Midland, Texas, as a high-quality urban park and open space, with related facilities and amenities for the use and enjoyment of residents and visitors of the City for recreational and educational purposes, and for the beautification of and to attract business and business patrons to downtown Midland; and

WHEREAS, the bylaws of the Conservancy provide that three (3) positions on the Conservancy’s Board of Directors shall be filled by a duly-approved resolution of the City Council of the City of Midland, Texas; and

WHEREAS, the term of one of the three positions on the Conservancy’s Board of Directors is set to expire; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to reappoint Sharla Hotchkiss to the Conservancy’s Board of Directors;

Downtown Park Conservancy Board - Reappoint Sharla Hotchkiss

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

SECTION ONE. That Sharla Hotchkiss is hereby reappointed to the Board of Directors of the Midland Downtown Park Conservancy.

SECTION TWO. That the City Manager is hereby directed to deliver a copy of this Resolution to the Midland Downtown Park Conservancy.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2025, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

Downtown Park Conservancy Board - Reappoint Sharla Hotchkiss

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

Downtown Park Conservancy Board - Reappoint Sharla Hotchkiss



City Council Meeting

Item Number: 21
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Jeff Pinkstaff, Building Official
Subject: AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 1, "BUILDING CODE", SECTION 3, "CHANGES AND ADDITIONS TO ADOPTED BUILDING CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY'S BUILDING CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES USED AS TOOL AND STORAGE SHEDS, PLAYHOUSES AND SIMILAR USES, PROVIDED THAT THE FLOOR AREA IS NOT GREATER THAN 120 SQUARE FEET, AND (2) SIDEWALKS AND DRIVEWAYS NOT MORE THAN 30 INCHES ABOVE ADJACENT GRADE, AND NOT OVER ANY BASEMENT OR STORY BELOW AND ARE NOT PART OF AN ACCESSIBLE ROUTE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

This ordinance amendment streamlines the permitting process for commercial property owners by exempting certain minor structures from permit requirements, consistent with industry standards established by the International Building Code (IBC). The exemptions include:

1. One-story detached accessory structures (e.g., small tool sheds, storage enclosures, utility closets) not exceeding 120 square feet in floor area.
2. Sidewalks and driveways that are not more than 30 inches above adjacent grade, do not extend over a basement or story below, and are not part of an accessible route.

By removing permitting requirements for these minor improvements, this ordinance reduces administrative burdens on commercial property owners, allowing them to make routine modifications without delays. Zoning setbacks will still apply, but compliance will be based on property owner responsibility, ensuring an efficient balance between property rights and regulatory oversight.

Recommended City Council Action:

Approve

Fiscal Impact:

The City can only charge permit fees for the work it performs. By eliminating permit requirements for these minor structures and improvements, the City will no longer conduct plan reviews or inspections for them and, therefore, will not collect associated permit fees. However, this change allows staff to redirect time and resources to more complex permits and process improvements, improving overall efficiency in the permitting process and enhancing customer service for projects that have a greater impact on safety and development.

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

The proposed exemptions reflect standard industry practice as outlined in the International Building Code (IBC), which recognizes that small accessory structures and minor hardscape improvements pose minimal risk and do not warrant a formal permitting process. Many municipalities have adopted similar exemptions to reduce red tape and improve efficiency for property owners and City staff alike.

By removing the permit requirement for minor structures, commercial property owners can more easily make practical improvements without unnecessary delays. Examples of structures 120 square feet or smaller include:

- A 10' x 12' outdoor storage shed for tools and maintenance supplies.
- A freestanding trash enclosure for a small business.
- A utility closet for electrical or irrigation equipment.

Similarly, sidewalks and driveways that meet the stated criteria are low-risk, common improvements that do not require additional regulatory oversight. By exempting these minor projects from permitting, staff time can be redirected to more complex permits and process improvements, reducing wait times and increasing efficiency for businesses and property owners.

This ordinance represents another step toward improving and streamlining the City's permitting processes, ensuring that resources are allocated where they are most needed while maintaining

essential land use regulations.

Monnie Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 1, “BUILDING CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED BUILDING CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S BUILDING CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES USED AS TOOL AND STORAGE SHEDS, PLAYHOUSES AND SIMILAR USES, PROVIDED THAT THE FLOOR AREA IS NOT GREATER THAN 120 SQUARE FEET, AND (2) SIDEWALKS AND DRIVEWAYS NOT MORE THAN 30 INCHES ABOVE ADJACENT GRADE, AND NOT OVER ANY BASEMENT OR STORY BELOW AND ARE NOT PART OF AN ACCESSIBLE ROUTE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 9921, the City Council adopted the 2018 Edition of the International Building Code and local amendments thereto as the Building Code of the City of Midland; and

WHEREAS, the Council finds it to be in the public interest to amend Title IV, “Building Regulations”, Chapter 1, “Building Code”, Section 3, “Changes and Additions to Adopted Building Code”, of the City Code of the City of Midland, Texas, so as to exempt from the permit requirements of the City’s Building Code (1) one-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided that the floor area is not greater than 120 square feet, and (2) sidewalks and driveways not more than 30 inches above adjacent grade, and not over any basement or story below and are not part of an accessible route; and

WHEREAS, the Council finds that all legal requirements and conditions precedent to the adoption of this ordinance have been satisfied; and

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 1, "Building Code", Section 3, "Changes and Additions to Adopted Building Code", of the City Code of the City of Midland, Texas, is hereby amended to read in its entirety as follows:

4-1-3. Changes and additions to adopted building code.

Notwithstanding any provisions of this Chapter or said adopted Building Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

101.1 Title. Section 101.1 shall read in its entirety as follows:

These regulations shall be known as the Building Code of the City of Midland, hereinafter referred to as "this code ".

101.4.4 Property Maintenance. Section 101.4.4 is deleted in its entirety.

103.2 Appointment. Section 103.2 shall read in its entirety as follows:

The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

105.1.1 Annual Permit. Section 105.1.1 is renamed *Fence Permit Required* and shall read in its entirety as follows:

A building permit shall be obtained prior to the erection or construction of any fence or wall to be located within the front yard or the side yard adjacent to a street (public or private) of any lot or tract, as such yard is required by Title XI, Chapter 1, Zoning, of the Midland City Code.

105.1.2 Annual Permit Records. Section 105.1.2 is deleted in its entirety.

105.2 Work Exempt from Permit. The following exemption is deleted in its entirety:

Building subsection 2.

105.8 Contractor's Responsibilities. Section 105.8 is added and shall read in its entirety as follows:

- (a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of buildings or structures, residential or commercial, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars

(\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

- (b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.
- (c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefore.

105.8.1 Construction Site Debris. Section 105.8.1 is added and shall read in its entirety as follows:

It shall be the responsibility of each permit holder to make provisions for containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. The particular method, which may include but is not limited to refuse containers, roll-offs, fenced areas or other types of wire enclosures, shall be specified by the applicant prior to obtaining a building permit. The applicant may specify City of Midland container service if available, provided it is a container assigned for use at the particular job site. Said container may only be used for materials for which it is suitable, as determined by the City Sanitation Division or as specified by Title 8, Chapter 6 of the Midland City Code. Blowing trash, paper, building material packaging, and other construction site related debris, allowed to collect or accumulate outside the property boundaries for which a permit has been issued, in other than an approved container, shall constitute a violation of this section of the City of Midland Code. Such violations shall be subject to enforcement provisions as provided for in the Building Code, including stop work order, revocation of permit and fine.

109.2 Schedule of Permit Fees. Section 109.2 shall read in its entirety as follows:

The fees for all work requiring a permit shall be indicated in the current adopted Fee Schedule.

109.6 Refunds. Section 109.6 shall read in its entirety as follows:

Refunds shall be in accordance with the current adopted Fee Schedule.

903.3.1.2.3 Attics. Section 903.3.1.2.3 shall read in its entirety as follows:

- (1) Attics that are used or intended for living purposes or storage shall be protected by an automatic sprinkler system.
- (2) Where fuel-fired equipment is installed in an unsprinkled attic, not fewer than one quick-response intermediate temperature sprinkler shall be installed above the equipment.
- (3) Attics of buildings two or more stories in height including attics of attached garages.
- (4) Group R-4, Condition 2 occupancy attics.

1101.2 Design. Section 1101.2 shall read in its entirety as follows:

Buildings and facilities shall be designed and constructed to be accessible in accordance with the Texas Accessibility Standards, pursuant to Article 9102, Texas Civil Statutes, as promulgated by the Texas Department of Licensing and Regulation.

3308.1.2 Insurance Required. Section 3308.1.2 is added and shall read in its entirety as follows:

The person or persons in Section 3308.1 desiring to use streets or public property for the storage or handling of equipment shall provide the City with an owner's, landlord's, and tenant's liability policy of insurance naming the City as the named insured, with limits of not less than five hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, protecting the City from liability that is or may be imposed on it as owner of such street, sidewalk, or other public property under the laws of this State on account of or in any way arising out of any such use of such public streets, sidewalks or other public property, such insurance policy to remain in force and effect until such time as the use of such public property by such persons has ceased.

3308.1.3 Street / Sidewalk Permit. Section 3308.1.3 is added and shall read in its entirety as follows:

Building permits shall not include permission to occupy any part of the public street, sidewalks or alleys with building materials or equipment without first obtaining a permit for the use of public streets, sidewalks or alleys from the Building Official before operations have commenced. The fee for said permit shall be per the current adopted Fee Schedule. The permit for street, sidewalk or alley occupancy shall be only for the duration of construction or such lesser time as the Building Official may determine.

3308.1.4 Waiver. Section 3308.1.4 is added and shall read in its entirety as follows:

Up to one-third (1/3) of the width of the street right of way adjacent to the property on which the building being erected and for which a permit has been issued may be occupied in connection with the building construction provided that the free flow of traffic is not significantly impeded. If the street in front

of the property adjoining such building is to be used for similarly limited storage, a due waiver of claim against the applicable governing authority for damages on account of such use, issued by the owner of such property, must be filed with the Building Official before such use shall be allowed.

3308.1.5 Street Repair - Special Permit Requirements. Section 3308.1.5 is added and shall read in its entirety as follows:

- (a) When any application is made pursuant to the provisions of Section 105 of this Code for a permit for the construction, enlargement or alteration of any building or structure, the owner, authorized agent or contractor applying for such permit shall, as a condition to the granting of such permit, pay to the City the fee specified in subsection (b) hereof to cover the unusual wear and tear to public streets, alleys and/or sidewalks growing out of the construction activities performed by said applicant or anyone in any way under his or its supervision and direction, including the use, movement, parking, loading and/or placement of cranes and other heavy construction equipment and vehicles or trailers laden with construction materials.
- (b) The fee specified in subsection (a) above shall be per the current adopted Fee Schedule.
- (c) In addition to the above, any damaged or deteriorated concrete, curb, gutter and paved sidewalk areas abutting the property of the construction site and associated with the project will be replaced or put in new condition by the applicant prior to issuance of final approval of the project by the Building Official.
- (d) All proceeds from the special fee set out in subsection (b) above shall be credited to the Street Improvement Fund.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION FIVE. This ordinance shall become effective on the 30th day after its final approval and adoption.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Assistant City Manager

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Summary of Changes

Current Code

§ 4-1-3 Changes and additions to adopted building code.

Notwithstanding any provisions of this Chapter or said adopted Building Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

105.2 Work Exempt from Permit. The following exemptions are deleted in their entirety: Subsections 1, 2 and 6.

***Where Subsection 1, 2, and 6 are:**

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided that the floor area is not greater than 120 square feet.
2. Fences not over 7 feet high.
6. Sidewalks and driveways not more than 30 inches above adjacent grade, and not over any basement or story below and are not part of an accessible route.

Proposed Change:

Notwithstanding any provisions of this Chapter or said adopted Building Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

105.2 Work Exempt from Permit. The following exemption is deleted in its entirety: Subsection 2.



City Council Meeting

Item Number: 22
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Jeff Pinkstaff, Building Official
Subject: AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 11, "RESIDENTIAL CODE", SECTION 3, "CHANGES AND ADDITIONS TO ADOPTED RESIDENTIAL CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY'S RESIDENTIAL CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES, PROVIDED THAT THE FLOOR AREA DOES NOT EXCEED 200 SQUARE FEET, (2) WATER TANKS SUPPORTED DIRECTLY UPON GRADE IF THE CAPACITY DOES NOT EXCEED 5,000 GALLONS AND THE RATIO OF HEIGHT TO DIAMETER OR WIDTH DOES NOT EXCEED 2 TO 1, AND (3) DECKS NOT EXCEEDING 200 SQUARE FEET IN AREA, THAT ARE NOT MORE THAN 30 INCHES ABOVE GRADE AT ANY POINT, ARE NOT ATTACHED TO A DWELLING AND DO NOT SERVE THE REQUIRED EXIT DOOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

This ordinance amendment simplifies the permitting process for homeowners by exempting certain minor structures from permit requirements, aligning with industry standards set by the International Residential Code (IRC). The exemptions include:

1. One-story detached accessory structures (e.g., small storage sheds, playhouses, garden structures) not exceeding 200 square feet in floor area.
2. Water tanks supported directly on the ground with a capacity of 5,000 gallons or less,

provided the height-to-width ratio does not exceed 2:1.

3. Decks up to 200 square feet in area, not more than 30 inches above grade, not attached to a dwelling, and not serving a required exit door.

By removing permitting requirements for these minor structures, the ordinance supports the City's goal of improving customer service and streamlining permitting processes, making it easier for homeowners to enhance their properties. While zoning setbacks still apply, compliance will be based on homeowner responsibility, ensuring a balance between flexibility for property owners and reasonable land use regulations.

Recommended City Council Action:

Approve

Fiscal Impact:

The City can only charge permit fees for the work it performs. By removing the permit requirement for these minor structures, the City will no longer conduct plan reviews or inspections for them, and therefore, no permit fees will be collected. However, this change allows staff to redirect time and resources to more complex permits and process improvements, ensuring that City services are focused where they are most needed. While there may be a slight and insignificant reduction in permit revenue, the overall impact is positive, as it eliminates unnecessary administrative work and enhances efficiency in the permitting process.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The proposed exemptions are industry standard under the International Residential Code (IRC), which recognizes that these small structures pose minimal risk and should not require a permit. Many cities across the country have already adopted similar exemptions to cut red tape and improve the permitting experience for residents.

By removing the permit requirement for minor structures, this ordinance helps homeowners make practical property improvements without unnecessary delays. For example:

- A 10' x 20' tool shed for lawn equipment storage.
- A small greenhouse for backyard gardening.
- A raised deck for patio seating that is independent of the house.

These projects are common, low-risk, and often homeowner-installed, making permit requirements an unnecessary burden. Staff time previously spent reviewing and issuing permits for these minor structures can now be redirected toward higher-priority permits and process improvements. By adopting this ordinance, the City continues its efforts to improve permitting,

ensuring that staff resources are used efficiently while still maintaining essential zoning regulations.



City Manager's Office

Summary of Changes:

Current Code

§ 4-11-3 **Changes and additions to adopted Residential Code.**

Notwithstanding any provisions of this Chapter or said adopted Residential Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

R105.2 *Work Exempt from Permit.* The following deletions and additions are made to Section R105.2:

Building subsections 1, 2, 4 and 10 are deleted; and

Building subsection 11 is added and shall read as follows:

Tree forts or other play structures supported partially or entirely by a tree.

***Where Building subsections 1, 2, 4, and 10 are as follows:**

1. One-story detached accessory structures, provided that the floor area does not exceed 200 square feet.
2. Fences not over 7 feet high.
4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.
10. Decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and do not serve the exist door required by Section R311.4.

Proposed Change:

§ 4-11-3 **Changes and additions to adopted Residential Code.**

Notwithstanding any provisions of this Chapter or said adopted Residential Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

R105.2 *Work Exempt from Permit.* The following deletions and additions are made to Section R105.2:

Building subsection 2 is deleted; and

Building subsection 11 is added and shall read as follows:

Tree forts or other play structures supported partially or entirely by a tree.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 11, “RESIDENTIAL CODE”, SECTION 3, “CHANGES AND ADDITIONS TO ADOPTED RESIDENTIAL CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO EXEMPT FROM THE PERMIT REQUIREMENTS OF THE CITY’S RESIDENTIAL CODE (1) ONE-STORY DETACHED ACCESSORY STRUCTURES, PROVIDED THAT THE FLOOR AREA DOES NOT EXCEED 200 SQUARE FEET, (2) WATER TANKS SUPPORTED DIRECTLY UPON GRADE IF THE CAPACITY DOES NOT EXCEED 5,000 GALLONS AND THE RATIO OF HEIGHT TO DIAMETER OR WIDTH DOES NOT EXCEED 2 TO 1, AND (3) DECKS NOT EXCEEDING 200 SQUARE FEET IN AREA, THAT ARE NOT MORE THAN 30 INCHES ABOVE GRADE AT ANY POINT, ARE NOT ATTACHED TO A DWELLING AND DO NOT SERVE THE REQUIRED EXIT DOOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 9925, the City Council adopted the 2018 Edition of the International Residential Code and local amendments thereto as the Residential Code of the City of Midland; and

WHEREAS, the Council finds it to be in the public interest to amend Title IV, “Building Regulations”, Chapter 11, “Residential Code”, Section 3, “Changes and Additions to Adopted Residential Code”, of the City Code of the City of Midland, Texas, so as to exempt from the permit requirements of the City’s Residential Code (1) one-story detached accessory structures, provided that the floor area does not exceed 200 square feet, (2) water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1, and (3) decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and do not serve the required exit door; and

WHEREAS, the Council finds that all legal requirements and conditions precedent

to the adoption of this ordinance have been satisfied; and

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

SECTION ONE. That Title IV, "Building Regulations" Chapter 11, "Residential Code", Section 3, "Changes and Additions to Adopted Residential Code", of the City Code of the City of Midland, Texas, is hereby amended to read in its entirety as follows:

4-11-3. Changes and additions to adopted Residential Code.

Notwithstanding any provisions of this Chapter or said adopted Residential Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

R101.1 Title. Section R101.1 shall read in its entirety as follows:

These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Midland, and shall be cited as such and will be referred to herein as "this code".

R103.2 Appointment. Section R103.2 shall read in its entirety as follows:

The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

R105.2 Work Exempt from Permit. The following deletions and addition are made to Section R105.2:

Building subsection 2 is deleted; and

Building subsection 11 is added and shall read as follows:

Tree forts or other play structures supported partially or entirely by a tree.

R105.8 Contractor's Responsibilities. Section R105.8 shall read in its entirety as follows:

- (a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of residential buildings or structures, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds

required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

- (b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.
- (c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefore.

R108.2 Schedule of Permit Fees. Section R108.2 shall read in its entirety as follows:

The fees for all work requiring a permit shall be as indicated in the current adopted Fee Schedule.

R108.5 Refunds. Section R108.5 shall read in its entirety as follows:

Refunds shall be in accordance with the current adopted Fee Schedule.

R112.1 General. Section R112.1 is renamed *Application for Appeal* and shall read in its entirety as follows:

A person shall have the right to appeal a decision of the code official to the board of appeals, per International Building Code section 113. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within twenty (20) days after the notice was served.

R112.2 - R112.4. Sections R112.2 through R112.4 are deleted in their entirety.

TABLE R301.2(1) Climatic and Geographic Design Criteria. TABLE R301.2(1) shall read in its entirety as follows:

Ground Snow Load	3.5 PSF
Basic Wind Speed	115 MPH
Topographic effects	No
Seismic Design Category	A
Weathering	Moderate
Frost Line Depth	12 inches
Termite	Moderate to Heavy
Decay	Slight to Moderate
Winter Design Temp	21 degrees F
Ice Barrier Underlayment Required	No

Flood Hazards	Adoption Date NFIP 09/27/91 Current FIRM 09/15/05
Air Freezing Index	1500 or less
Mean Annual Temp	65 degrees F
Elevation	2851
Latitude	32 degrees
Winter Heating	21 degrees F
Summer Cooling	103 degrees F
Altitude Correction Factor	0.901
Indoor Design Temperature	68 degrees F
Design Temperature Cooling	75 degrees F
Heating Temperature Difference	47 degrees F
Cooling Temperature Difference	28 degrees F
Wind Velocity Heating	15 mph
Wind Velocity Cooling	10 mph
Coincident Wet Bulb	67
Daily Range	High
Winter Humidity	57%
Summer Humidity	51%

Section R313 Automatic Fire Sprinkler Systems. Section R313 is deleted in its entirety.

G2417.4 Test Pressure Measurement. Section G2417.4 shall read in its entirety as follows:

Test pressure shall be measured with an ounce gauge, manometer or with a mercury gauge designed and calibrated to read, record or indicate a pressure loss due to leakage during the test period. The source of pressure shall be isolated before the pressure tests are made.

G2417.4.1 Test Pressure. Section G2417.4.1 shall read in its entirety as follows:

Low pressure (not in excess of 0.5 psi) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi, ninety (90) ounces, or twelve inches (12") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure. Higher pressure piping (2-psi gas) shall withstand a pressure of at least 10 psi or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

G2420.1.4 Service Line Shutoff Valve. Section G2420.1.4 is added and shall read in its entirety as follows:

An approved shutoff valve shall be installed above ground outside on the service line at the building entrance on all new gas line installations and on all replaced gas lines.

P2503.4 Building Sewer Testing. Section P2503.4 shall read in its entirety as follows:

Building sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining

such pressure for fifteen (15) minutes. The building sewer shall be watertight at all points.

P2902.1.1 Backflow Ordinance. Section P2902.1.1 is added and shall read in its entirety as follows:

All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

TABLE P2906.4 Water Service, Pipe. The following footnotes are added to Table P2906.4:

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

Footnote 2. Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty-six inches (36") of minimum Type "L" copper.

P2906.20 Underground Joints. Section P2906.20 is added and shall read in its entirety as follows:

For purposes of repair only, joints in polybutylene (PB) plastic pipe or tubing underground or under a concrete floor slab shall be installed using heat fusion, in accordance with the manufacturer's installation instructions. Joints in copper pipe or tubing installed in a concrete floor slab or under a concrete floor slab on grade shall be installed using wrought-copper fittings and brazed joints.

P3103.1.1 Roof Extension. Section P3103.1.1 shall read in its entirety as follows:

Open vent pipes that extend through a roof that do not meet the conditions of Section P3103.1.2 or P3103.1.3 shall terminate not less than twelve inches (12") above the roof.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION FIVE. This ordinance shall become effective on the 30th day after its final approval and adoption.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Assistant City Manager

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 23
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Jeff Pinkstaff,
Subject: AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS" OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, "CONSTRUCTION WORK HOURS", SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

This ordinance amendment establishes permitted hours for construction activity within 600 feet of an occupied residential property or hospital to minimize disruptions caused by noise, vibrations, and lighting during nighttime hours. It ensures that residents and patients are not unreasonably disturbed by late-night construction while still allowing flexibility for work beyond standard hours in extraordinary circumstances through an administrative permit process.

Recommended City Council Action:

Approve

Fiscal Impact:

None. An after-hours permit fee is not currently proposed.

Strategic Priority:

(Quality of Life and Place)

Discussion:

This ordinance responds to concerns from residents regarding construction noise, vibrations, and bright lights occurring during late-night and early-morning hours. Currently, there are no city-wide regulations limiting construction hours in proximity to homes and hospitals, leading to complaints about disruptions that impact rest and recovery.

Under the proposed ordinance, construction activity within **600 feet of an occupied residence or hospital will be permitted from 7:00 AM to 7:00 PM, Monday through Sunday**. Work outside these hours will require an administrative permit, which may be granted in extraordinary circumstances. Permit holders will also be required to notify affected properties in advance.

By establishing clear construction work hours while providing a pathway for necessary exceptions, this ordinance helps protect residents' quality of life while ensuring that critical development projects can continue when justified.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS" OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, "CONSTRUCTION WORK HOURS", SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION

WHEREAS, construction and earth-disturbing activities during the evening hours have the effect of disturbing the peace of those in nearby residences and hospitals; and

WHEREAS, the Council finds it to be in the public interest to amend Title IV, "Building Regulations" of the City Code of the City of Midland, Texas, by adding Chapter 13, "Construction Work Hours", so as to establish permitted hours of construction activity within 600 feet of an occupied residential use or a hospital and provide for the issuance of after-hours construction permits; containing a cumulative clause; and

WHEREAS, the Council finds that all legal requirements and conditions precedent to the adoption of this ordinance have been satisfied; and

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

SECTION ONE. That Title IV, "Building Regulations" of the City Code of the City of Midland, Texas, is hereby amended to add Chapter 13, "Construction Work Hours", which shall read in its entirety as follows:

4-13-1. Definitions.

As used in this Chapter:

- (A) *After-hours construction activity* means construction activity during hours other than the established construction hours.
- (B) *After-hours construction permit* means a permit issued by the Building Official that authorizes after-hours construction activity.

- (C) *After-hours emergency construction activity* means after-hours construction activity that must be immediately performed to prevent or mitigate harm to the health and safety of the public or a building's occupants that may reasonably arise, or that has arisen, from a sudden and unexpected event.
- (D) *Building Official* means the City of Midland's Building Official or the Building Official's designee.
- (E) *Construction activity* means any construction, earth-disturbing activity, or stockpiling related to the erection, excavation, demolition, alteration, or repair of any building, or the clearing, grading, excavating, filling, or demolition of any construction site, or curb, gutter, or sidewalk construction.
- (F) *Established construction hours* means the hours of 7:00 a.m. to 7:00 p.m.
- (G) *Hospital* means an acute care hospital or a chronic care hospital, as such terms are defined in Section 11-1-2.01 of the City Code.
- (H) *Occupied* means being used by a person or being associated with an active City utility account.
- (I) *Residential use* has the meaning given that term in Section 11-1-2.01 of the City Code.

4-13-2. Prohibited activity.

- (A) *Prohibited after-hours construction activity.* A person shall not perform after-hours construction activity within 600 feet of an occupied residential use or a hospital.
- (B) *Exception.* It is an exception to the application of Subsection (A) that the person possessed an after-hours construction permit or was working at the direction of another who possessed an after-hours construction permit at the time the person performed the after-hours construction activity, and the person was acting in compliance with the conditions of the after-hours construction permit.

4-13-3. After-hours construction permit.

- (A) *Application.* A person may submit to the Building Official an application for an after-hours construction permit that satisfies the following requirements.
 1. The application shall contain a written explanation of the reasons for the request, including facts establishing:
 - (a) that the after-hours construction activity is of urgent necessity;
 - (b) that the public interest will be served by the performance of the after-hours construction activity; or
 - (c) that the after-hours construction activity will not disturb the peace and quiet of nearby occupied residential uses or hospitals.
 2. The application must be received by the Building Official at least five business days prior to the date of commencement of the after-hours construction activity.

(B) *Decision.* Within five business days of receiving an application for an after-hours construction permit, the Building Official shall make a determination on the application and notify the applicant thereof as provided in this Subsection.

1. If, based on the information contained in the application, the Building Official finds that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the Building Official shall issue an after-hours construction permit. The after-hours construction permit shall contain the following condition: "The Permittee shall take reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit." The Building Official may make the after-hours construction permit subject to additional conditions determined by the Building Official to be reasonable. If the Building Official makes the after-hours construction permit subject to additional conditions, the Building Official shall specify the additional conditions in the after-hours construction permit.
2. If, based on the information contained in the application, the Building Official does not find that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the Building Official shall issue a written decision denying the after-hours construction permit.

(C) *Duties of after-hours construction permittee.* A person to whom an after-hours construction permit is issued shall comply with the following requirements:

1. Complete a notice form, to be provided by the Building Official, and provide the completed notice form to the occupants of property located within 600 feet of the site of the after-hours construction activity prior to the commencement of the after-hours construction activity.
2. Conspicuously post a written notice of the after-hours construction activity on the site of the after-hours construction activity, and maintain the posting of the notice for the term of the after-hours construction permit. The notice shall identify:
 - (a) the name and telephone number of the property owner or the property owner's authorized agent; or
 - (b) the name and telephone number of the contractor or the contractor's authorized agent.
3. Comply with the conditions of the after-hours construction permit, including taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit.

(D) *Revocation.* At any time, the Building Official may revoke an after-hours construction permit if the Building Official determines that a permittee or a permittee's agents or employees are not acting in compliance with a condition of the permit, a provision of this Chapter, or a provision of any other applicable ordinance or law.

(E) *Effect on local noise regulations.* It is an affirmative defense to prosecution of a noise-related offense, including a violation of Section 6-6-13 of the City Code, that the noise was directly caused by the person's performance of after-hours construction activity in accordance with an after-hours construction permit and that

the person was taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location of the after-hours construction activity.

4-13-4. Offense; affirmative defense.

- (A) *Offense.* A person who violates a provision of this Chapter shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00. A person commits a separate and distinct offense for each separate violation of a provision of this Chapter.
- (B) *Culpable mental state not required.* Evidence of a culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared that, for all offenses under this Chapter, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (C) *Affirmative defense.* It is an affirmative defense to prosecution of an offense under this Chapter that the person was performing after-hours emergency construction activity.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).

SECTION FIVE. This ordinance shall become effective on the 30th day after its final approval and adoption.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Assistant City Manager

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 24
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Daniel Humbert, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 1, 349 RETAIL ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUSINESS STATE HIGHWAY 349-C (NORTH BIG SPRING STREET), APPROXIMATELY 390 FEET NORTH OF TEJAS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Maverick Engineering, on behalf of Fierce Property Investments LLC, for a zone change from RR, Regional Retail District, to C, Commercial District, to develop Mini Storage-Units on property located at 6405 North Highway 349.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

RR, Regional Retail District

Surrounding Zoning and Land Use:

Surrounding zoning consists of PD, Planned Development District, for an Industrial District to the north, PD, Planned Development District, for a Shopping Center to the south, PD, Planned Development District, for a Recreation Center to the west and RR, Regional Retail District, to the east.

Surrounding land uses include industrial services such as air conditioning and heating, oil and gas and electrical repair and maintenance to the north. Adjacent land use to the south is a Tractor Supply and the Midland Country Club to the east. Both lots to the east are vacant and undeveloped.

Analysis:

The subject property is zoned RR, Regional Retail District. Fierce Property Investments LLC is seeking this zone change to permit Mini Storage-Units, which is not an allowed use in the RR, Regional Retail District [Midland City Code 11-1-4.03].

This request is not in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, "Future Land Use Map" as it designates this area for Urban Residential-low (UR-L). This designation calls for any single-family zoning district with civic uses being generally allowed and special permission for higher intensity uses.

However, given that the zoning to the east and the adjacent property uses to the north, south and west are nonresidential, the proposed use will be compatible with the surrounding area.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments or objections.

Oil and Gas: (Approved)

No Oil & Gas issues.

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. Our staff has examined the FEMA flood map and it appears that this property lies partially within Zone AH, which is a Special Flood Hazard Area subject to inundation by the 1% annual chance flood. An elevation certificate based off of construction drawings will be required to get a building permit to show compliance to the 1 foot of freeboard above the base flood elevation for residential structures. An elevation certificate based off of finish construction or a LOMR-F will be required for the Certificate of Occupancy.

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Transportation: (Approved)

No objection to zone change. [For the Applicant's information only.]

Planning: (Approval)

Therefore, staff recommends approval of this zone change from RR, Regional Retail District, to C, Commercial District.

Letters of Objection:

Staff has not received any letters of objection as of February 7, 2025.

Attachments:

Application
Maps
PowerPoint



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 1, 349 RETAIL ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO C, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUSINESS STATE HIGHWAY 349-C (NORTH BIG SPRING STREET), APPROXIMATELY 390 FEET NORTH OF TEJAS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 3, Block 1, 349 Retail Addition, City and County of Midland, Texas (the "Property") to C, Commercial District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to C, Commercial District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: FIERCE PROPERTY INVESTMENTS LLC

Phone (432) 413-3079

Email
chris@cmbcllc.comAddress
4416 BRIARWOOD, SUITE 110 BOX 23City
MIDLAND

State TX

Zip 79707

Property Owner

Printed Name: SEE APPLICANT

Phone ()

Email

Address

City

State

Zip

Representative (if different from Applicant or Property Owner)

Firm: MAVERICK ENGINEERING

Printed Name: ASHLEE DEVINE

Phone (432) 262-0999

Email
adevine@maverick-eng.comAddress
1909 W WALL STREET, SUITE K

City MIDLAND

State TX

Zip 79701

Street Address: 6405 N HWY 349**Legal Description**

Lot: 3 Block: 1 Subdivision: 349 Retail Addition

Current Zoning: RR**Proposed Zone:** C

(List by tracts if more than one district is requested)

Reason for Zone Change Request: IT IS GOING TO BE A STORAGE FACILITY THAT IS NOT ALLOWED UNDER RR.**Present Use of Property:** VACANT**Proposed Use of Property:** STORAGE FACILITY**How would this zone change affect the public health, safety and welfare?** NO AFFECT**Describe how conditions affecting the property have changed since present zoning designation:** NO CHANGE STILL COMMERCIAL USE.**Submittal and Fees****Items to be submitted with this application form:**

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature): <u>Christopher Butler</u> 8850D3C9528640B	Date: 12/3/2024
Applicant (printed): Christopher Butler	
Property Owner (signature):	Date:
Property Owner (printed): _____	
The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received. All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.	

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Ashlee Danner who, being by me duly sworn, upon oath says: That (s)he is the owner of Fierce property investment or authorized by Chris Butler, 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.

Ashlee Danner
Authorized Agent (signature)

Subscribed and sworn to before me, this 3rd day of December, 2024, to certify which witness my hand and seal of office.



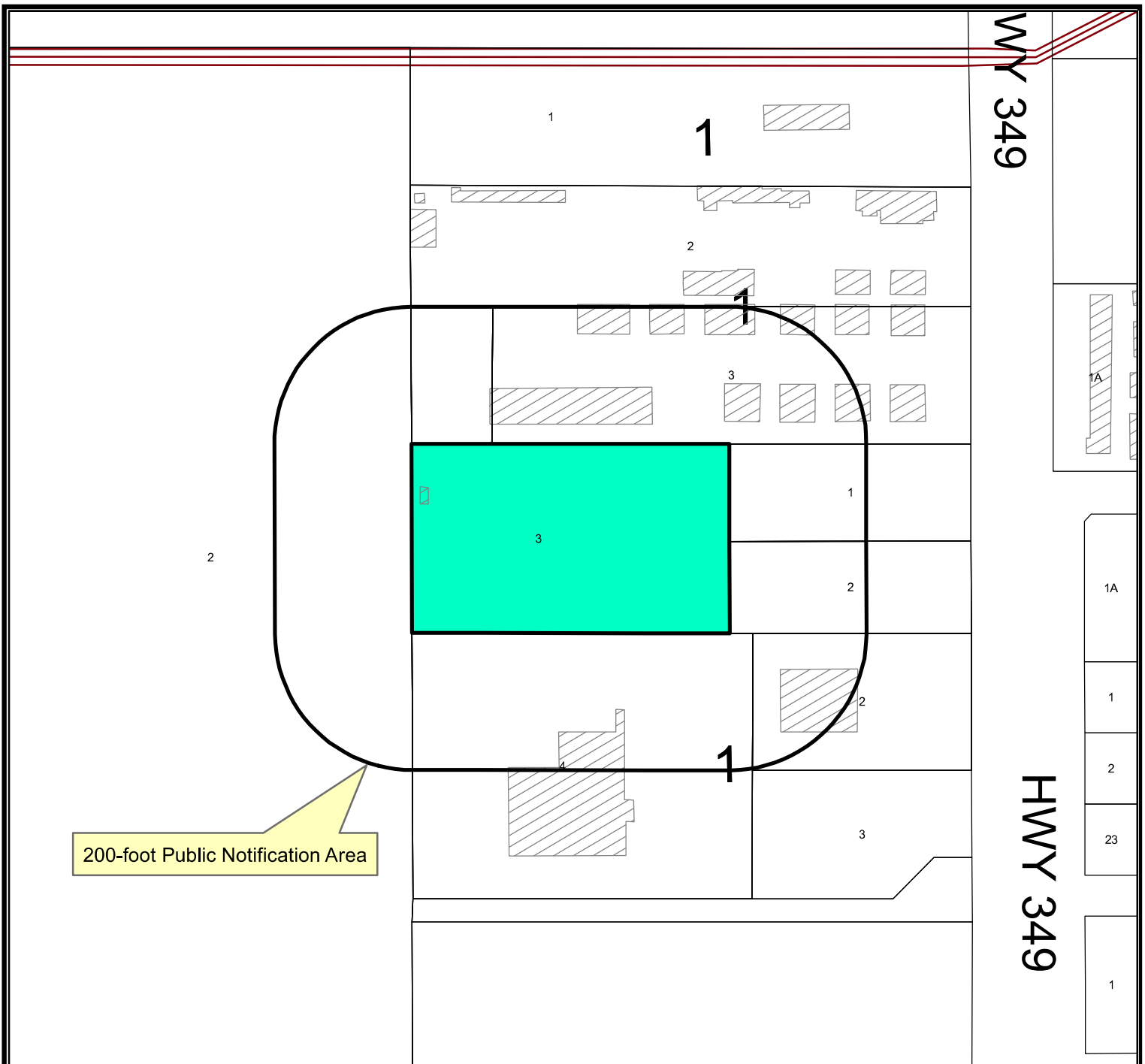
SAVANNAH DAVIS
Notary Public, State of Texas
Comm. Expires 05-20-2028
Notary ID 134907724

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization ☐ Application Fee Check # <u>5069</u>	☐ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By: <u>[Signature]</u>	Date: _____

RECEIVED
 DEC 10 2024

PACKET Application will not be considered for scheduling until reviewed by January 25, 2025



Location Map

Z-24-0404

Scale: 1" = 211'

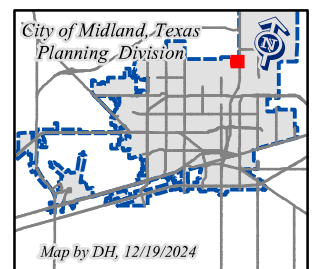
Consider a request by Maverick Engineering, on behalf of Fierce Property Investments LLC, for a zone change from RR, Regional Retail District, to C, Commercial District, on Lot 3, Block 1, 349 Retail Addition, City and County of Midland, Texas.

Generally located on the west side of Business State Highway 349-C (North Big Spring Street), approximately 350 feet north of Tejas.
(Council District 1)

24.9

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

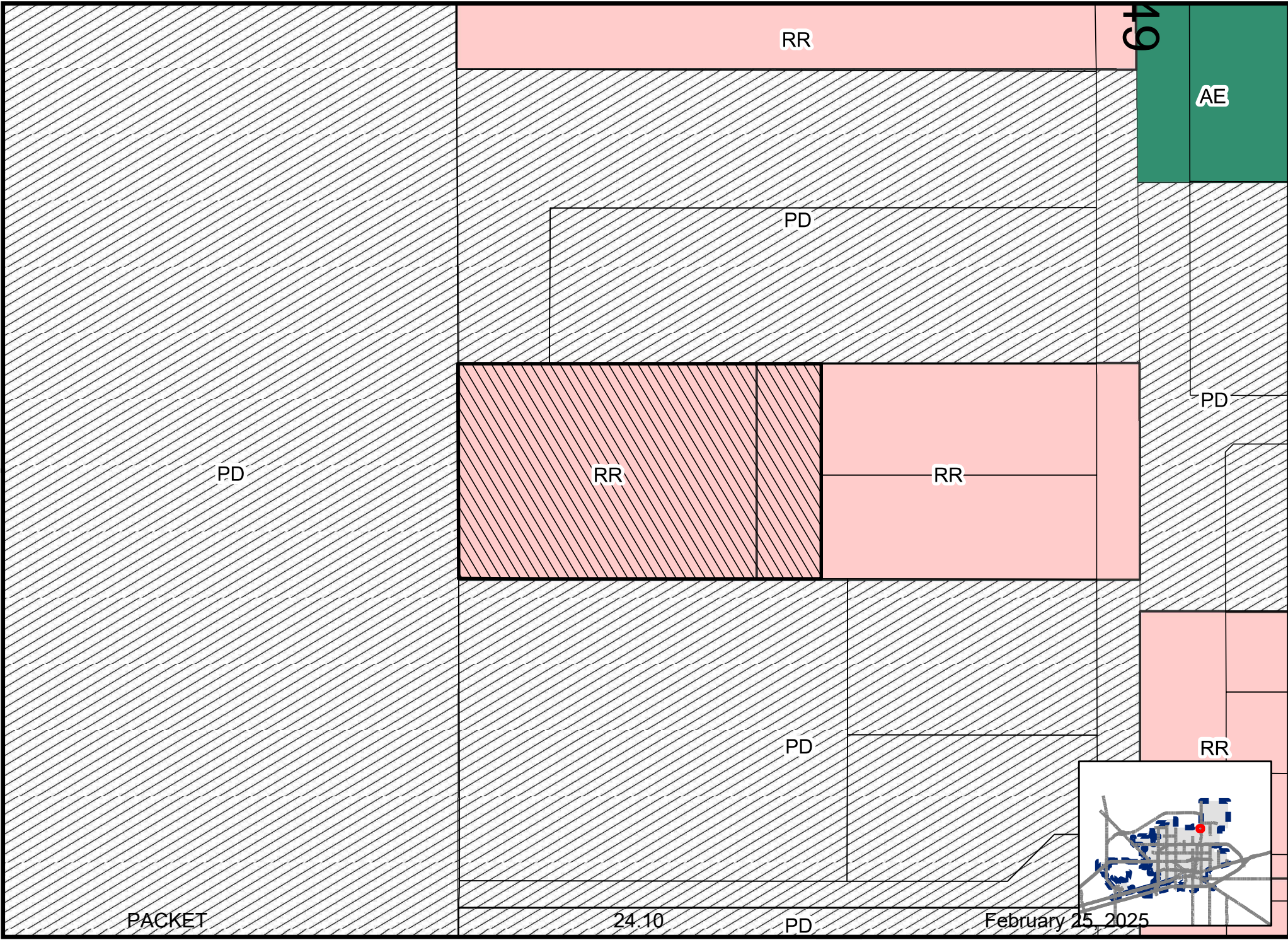


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. NO WARRANTY IS MADE BY THE CITY OF MIDLAND FOR ANY DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 25, 2025





PACKET



24.11



February 25, 2025





349 RETAIL ADDITION

ITEM ZONE CHANGE

February 11, 2025



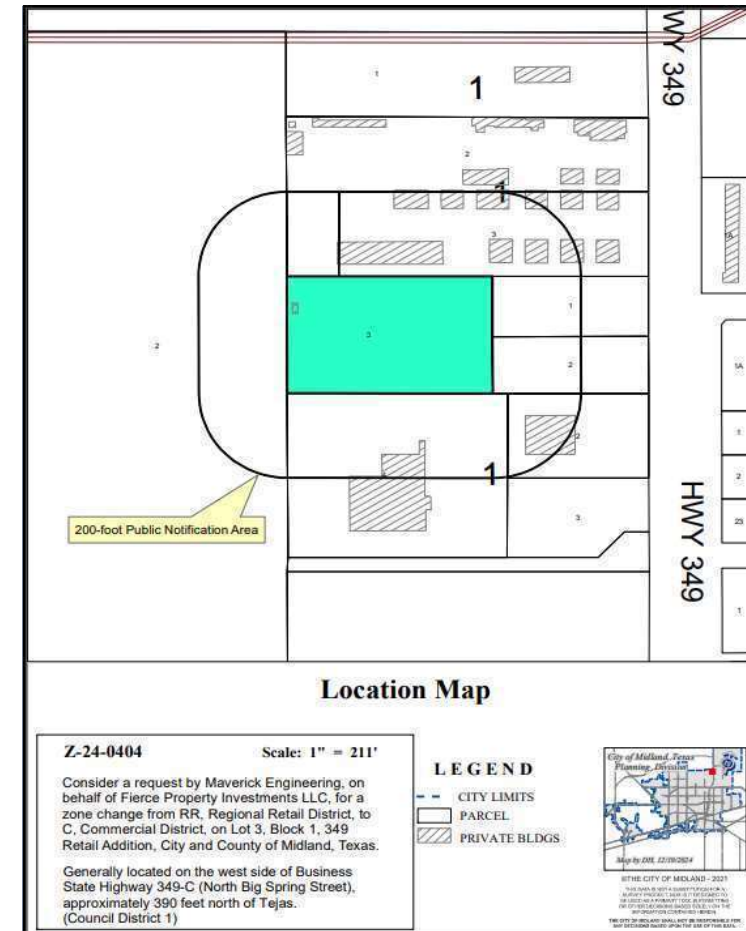
Visit Our Website

MIDLANDTEXAS.GOV

APPLICATION SUMMARY

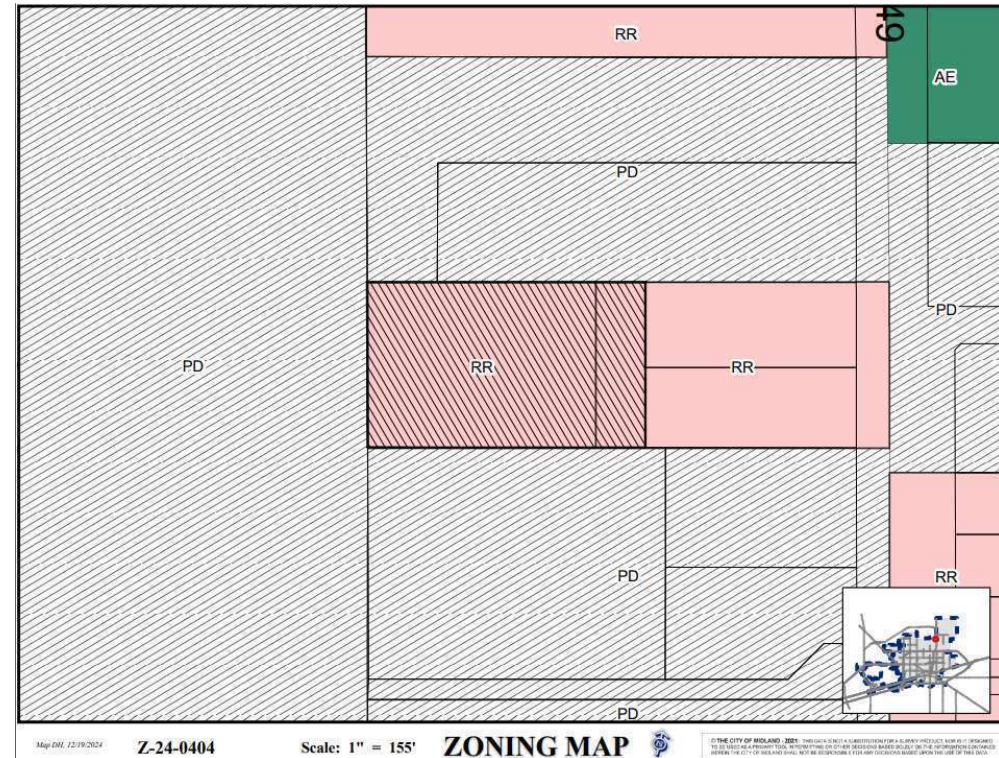
- **Property Owner & Developer:** Fierce Property Investments LLC
- **Representative:** Ashlee Devine, with Maverick Engineering
- **Application Type:** Zone Change
- **Address:** 6405 North Highway 349 (District 1)
- **Reason for Request:** To develop Mini Storage-Units

2



ZONING

- **Current Zoning:** RR, Regional Retail District
- **Surrounding Zoning:**
 - **North:** PD, Planned Development District, for an Industrial District
 - **South:** PD, Planned Development District, for a Shopping Center

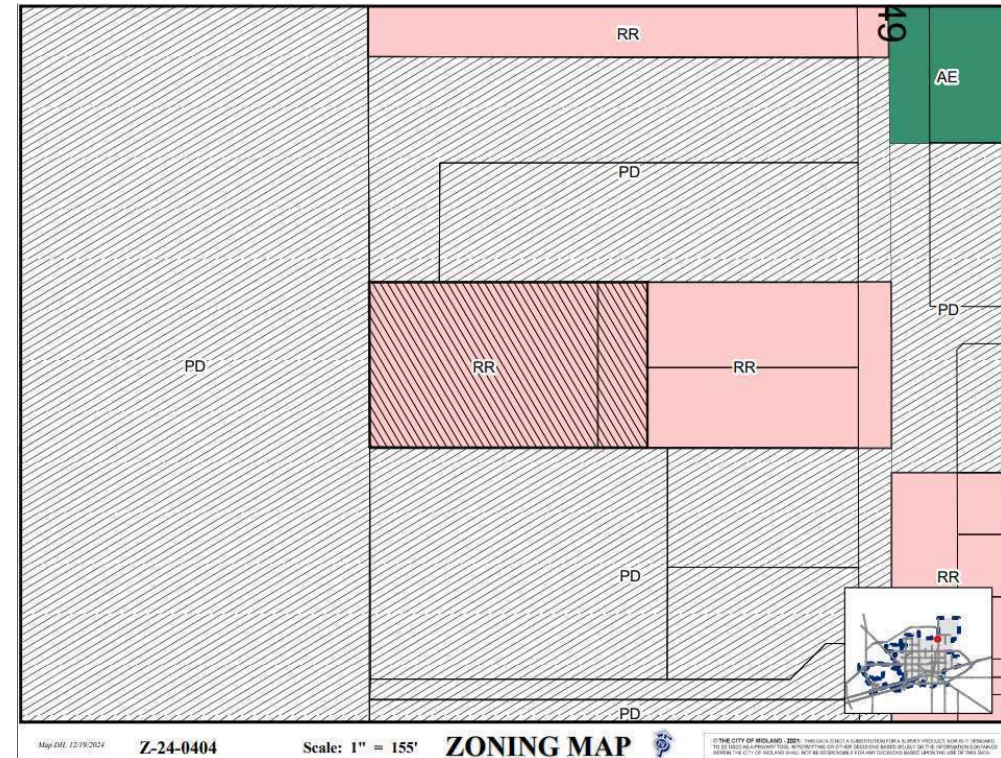


3



ZONING

- **Surrounding Zoning:**
 - **East:** RR, Regional Retail District
 - **West:** PD, Planned Development District, for a Recreation Center
- **Proposed Zoning:** C, Commercial District



4



LAND USE

- **Current Use:** Vacant
- **Proposed Use:** Mini Storage-Units
- **Surrounding Uses:**
 - **North:** Industrial services
 - **West:** Midland Country Club
 - **South:** Tractor Supply
 - **East:** Vacant Lots



7



LAND USE



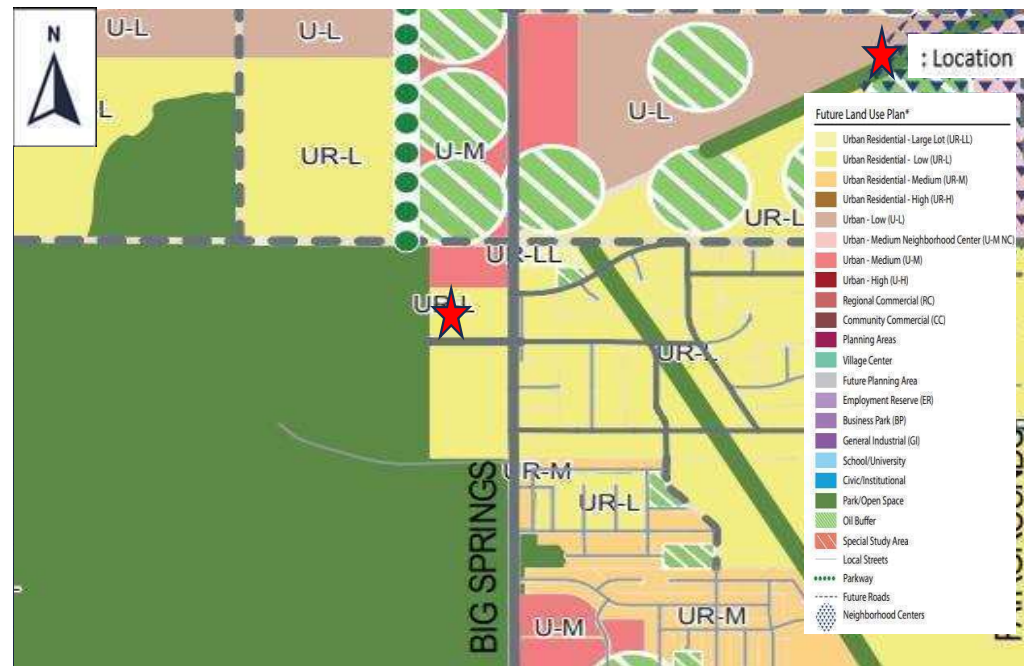
On North Highway 349, Looking West

9



COMPREHENSIVE PLAN ANALYSIS

- **TCT Land Use Designation:**
Urban Residential-low (UR-L)
- **Supported Uses:**
 - Supports single-family detached, attached and small lot homes.
 - Civic uses are generally allowed, with special permission for higher intensity uses.



7



COMPREHENSIVE PLAN ANALYSIS

- Request is compatible with the surrounding area but not the Tall City Tomorrow Plan.



8



RELATED ITEMS

- The final plat associated with this request was approved on May 20, 2024, by the Planning & Zoning Commission.



STAFF RECOMMENDATION

No objection letters have been received.

Staff recommends **APPROVAL** of this Zone Change from RR, Regional Retail District, to C, Commercial District.

10



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 25
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Britton Murry, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 11, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST WASHINGTON AVENUE AND SOUTH WEBSTER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QAULITY OF LIFE AND PLACE)

Purpose:

Magrym Consulting is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District for the construction of a single-family residence on a property located at 411 South Webster Street.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

MF-22, Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north and south are zoned MF-22, Multiple-Family Dwelling District, and are used for single-family housing. The property to the east is zoned C, Commercial District, and is used for single-family housing. The property to the west is zoned SF-3, Single-Family Dwelling District, and is used for single-family housing.

Analysis:

The applicant is seeking this zone change in order to construct a single-family residence, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, which designated this area as Urban Residential-Medium (UR-M). This designation calls for any single-family zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments

Oil and Gas: (Approved)

No Oil & Gas issues

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

Therefore, staff recommends approval of this Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of February 7, 2025, staff has received no letters of objection for this request.

Attachments:

Application
Survey
Maps
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 11, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST WASHINGTON AVENUE AND SOUTH WEBSTER STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 7, Block 11, Greenwood Addition, Third, Fourth, and Fifth Sections, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Eduardo L. Aleman

Phone ()

Email

Address

City

State

Zip

Property Owner

Printed Name: Jorge Chavez

Phone (432) 889-7005

Email

jjorgechavez@gmail.com

Address

704 S LORAIN ST

City

MIDLAND

State

TX

Zip

79701

Representative (if different from Applicant or Property Owner)

Firm: MAGRYM Consulting

Printed Name: Eduardo L. Aleman

Phone (432) 254-0327

Email

ed.aleman@magrym.com

Address

800 N. Marienfeld Suite 100

City

Midland

State

TX

Zip

79701

Street Address: 411 s webster

Legal Description

Lot: 7

Block: 11

Subdivision: Greenwood Addition

Current Zoning:

MF22

Proposed Zone: SF3

(List by tracts if more than one district is requested)

Reason for Zone Change Request: For new home Construction

Present Use of Property: Vacant

Proposed Use of Property: Residential

How would this zone change affect the public health, safety and welfare? NA

Describe how conditions affecting the property have changed since present zoning designation: NA

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)

411 SOUTH WEBSTER
(60 FOOT RIGHT-OF-WAY)

N14°06'22"W 50.00'

R23411
HOWARD SAMUEL

N75°53'38"E 140.00'

LOT 7, BLOCK 11
0.16 ACRES

S75°53'38"W 140.00'

EAST WASHINGTON AVE
(60 FOOT RIGHT-OF-WAY)

S14°06'22"E 50.00'

R23408
CASTRO RACHEL G

R23420
ROMERO RION



SITE PLAN

LOT 7, BLOCK 11

GREENWOOD ADDITION THIRD,
FOURTH, & FIFTH SECTIONS,

AN ADDITION TO THE CITY OF MIDLAND
AS PER PLAT OF RECORD IN
CABINET B, SLIDE 56, PLAT RECORDS,

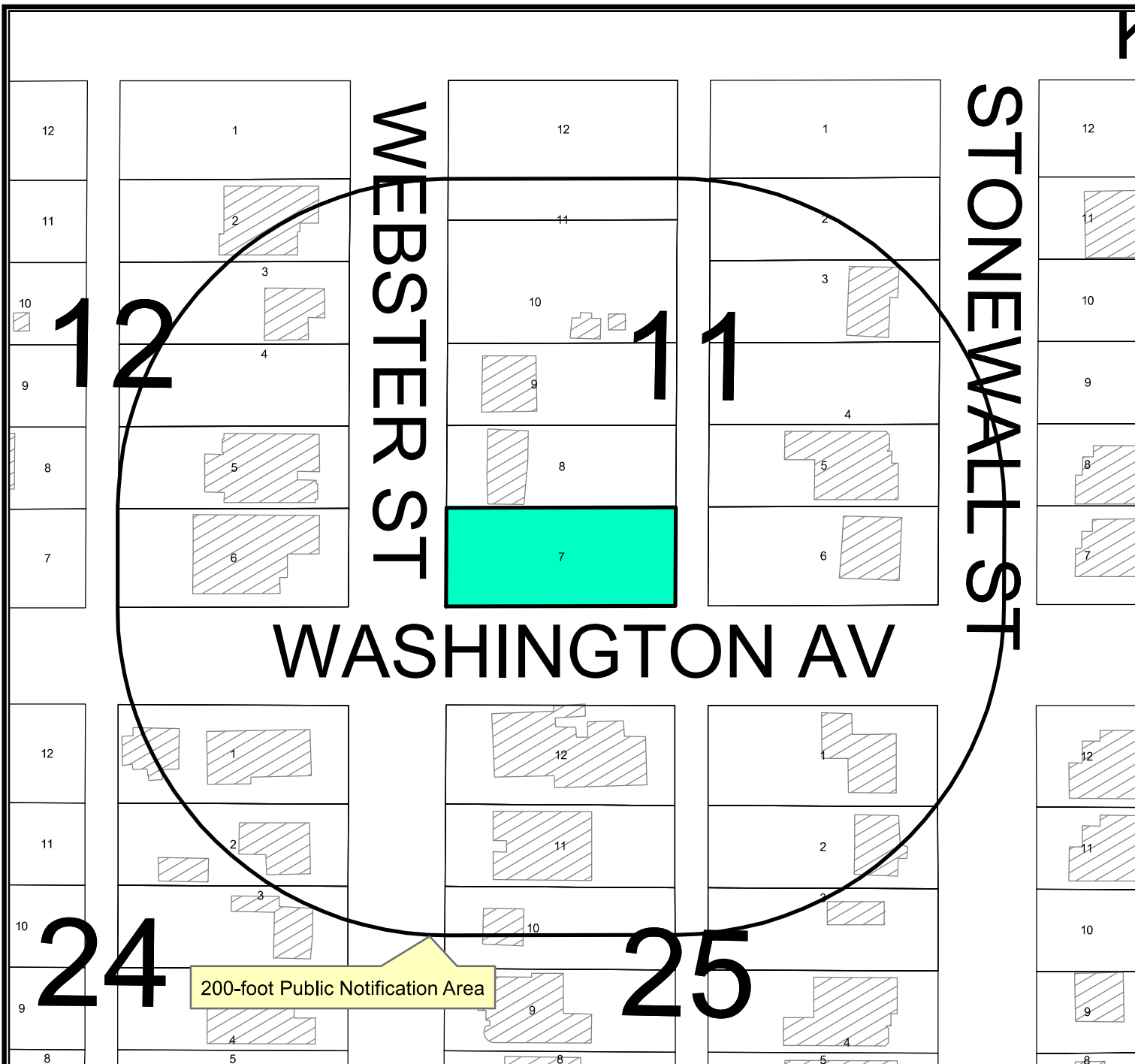
MIDLAND COUNTY, TEXAS.

SCALE: 1"=30'

PROJECT: 24-
JOB NO: 24-

RJ DAUM
TEXAS RPLS 4826





WASHINGTON AV

Location Map

Z-24-0407

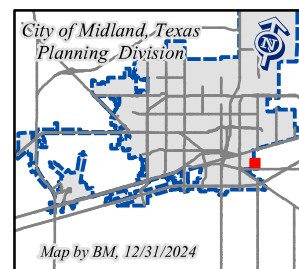
Scale: 1" = 88'

Consider a request by Magrym Consulting for a zone change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District, on Lot 7, Block 11, Greenwood Addition, Third, Fourth, and Fifth Sections, City and County of Midland, Texas.

Generally located at the northeast corner of the intersection of East Washington Avenue and South Webster Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



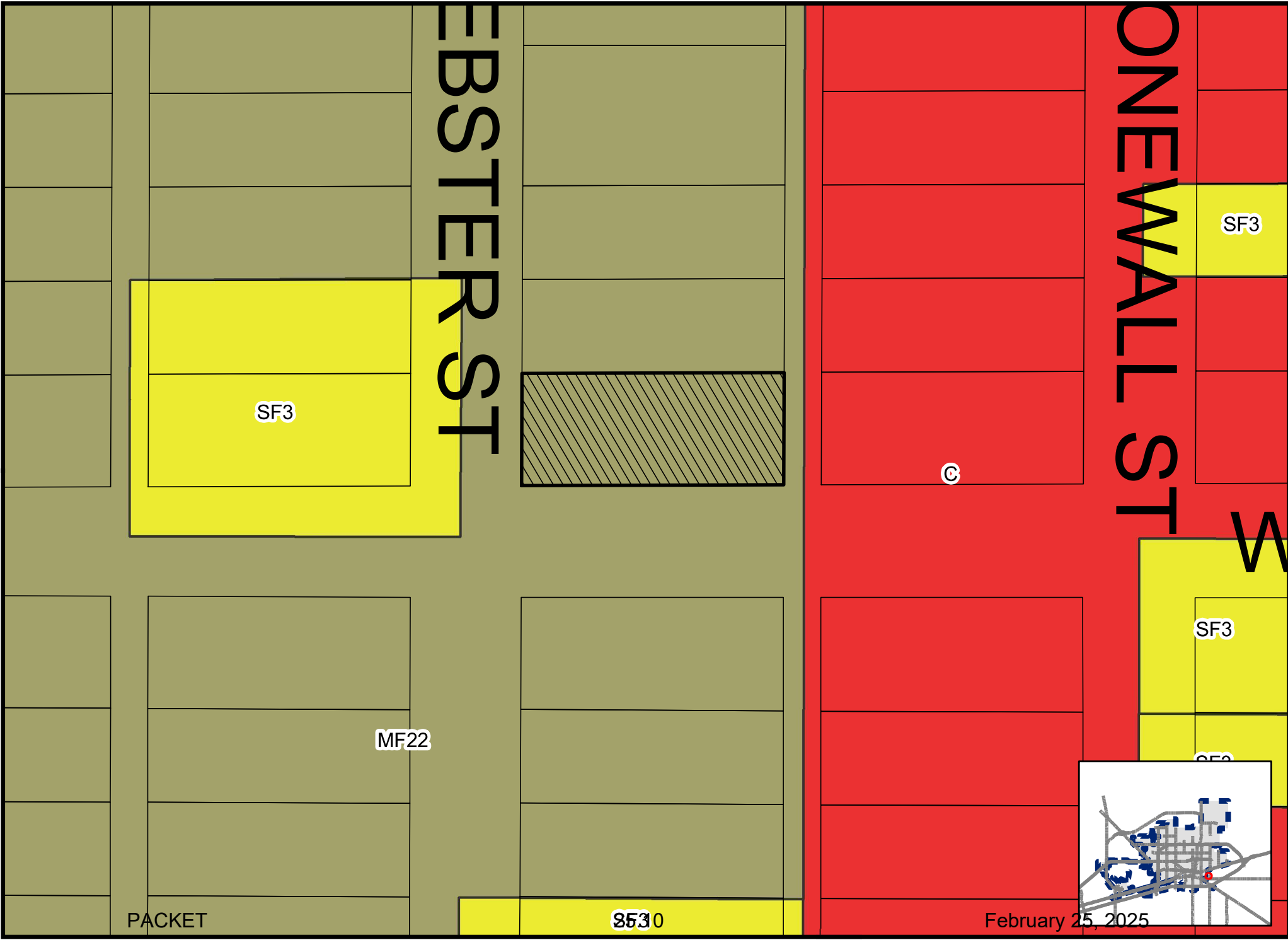
©THE CITY OF MIDLAND - 2021

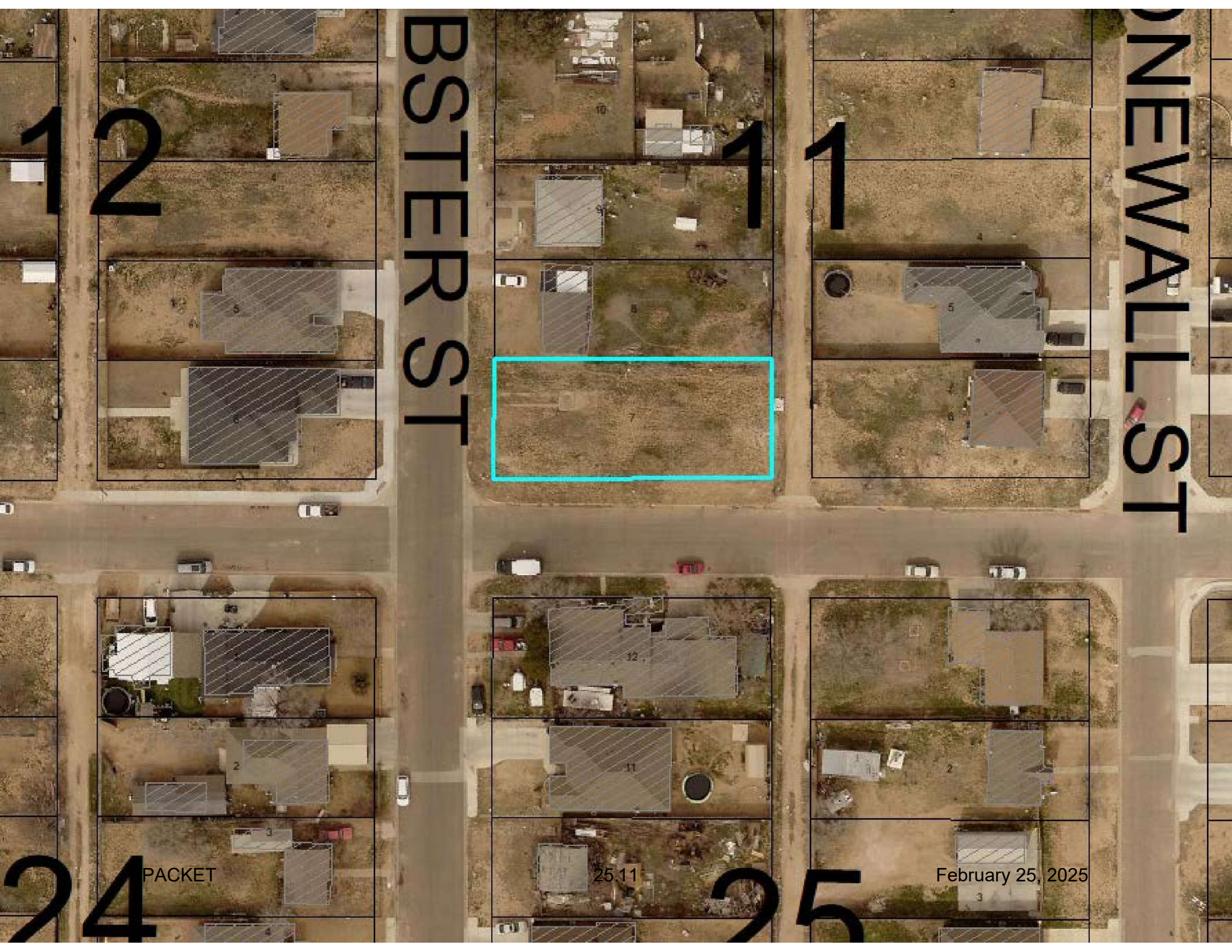
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING. IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 25, 2025

25.9





NEW WALL ST

WEBSTER ST

February 25, 2025

PACKET

25.11





411 SOUTH WEBSTER ST. ZONE CHANGE

February 11, 2025



Visit Our Website

MIDLANDTEXAS.GOV

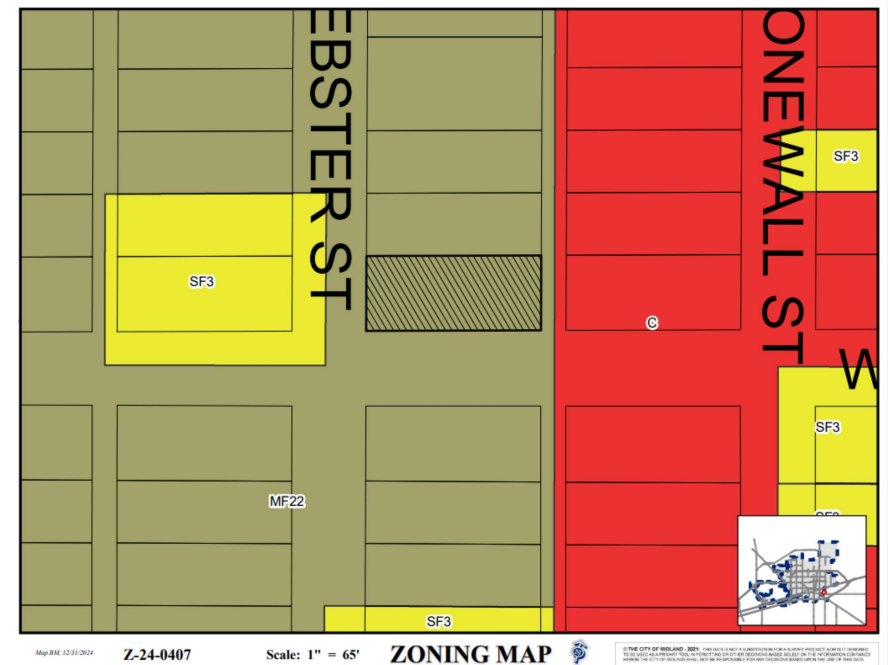
2

-
- Z-24-0407**
- Scale: 1" = 88'**
- Consider a request by BUSINESS/OWNER for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 7, Block 11, Greenwood Addition, Section 3, 4, and 5, City and County of Midland, Texas.
- Generally located at the northeast corner of the intersection of East Washington Avenue and South Webster Street. (Council District 2)
- LEGEND**
- - - CITY LIMITS
 - [] PARCEL
 - [Hatched Box] PRIVATE BLDGS
- CITY OF MIDLAND TEXAS Planning & Development**
- MAY 18, 2017 10:00 AM
- CITY OF MIDLAND - 2017**
- 2017 ANNUAL BUDGET REQUEST FOR PROPOSALS
FOR THE CITY OF MIDLAND TEXAS
FOR THE YEAR ENDING DECEMBER 31, 2017
FOR THE CITY OF MIDLAND TEXAS
FOR THE YEAR ENDING DECEMBER 31, 2017



ZONING

- **Current Zoning:** MF-22, Multiple-Family Dwelling District
- **Surrounding Zoning:**
 - North & South: MF-22, Multiple-Family Dwelling District
 - East: C, Commercial District
 - West: SF-3, Single-Family Dwelling District
- **Proposed Zoning:** SF-3, Single-Family Dwelling District

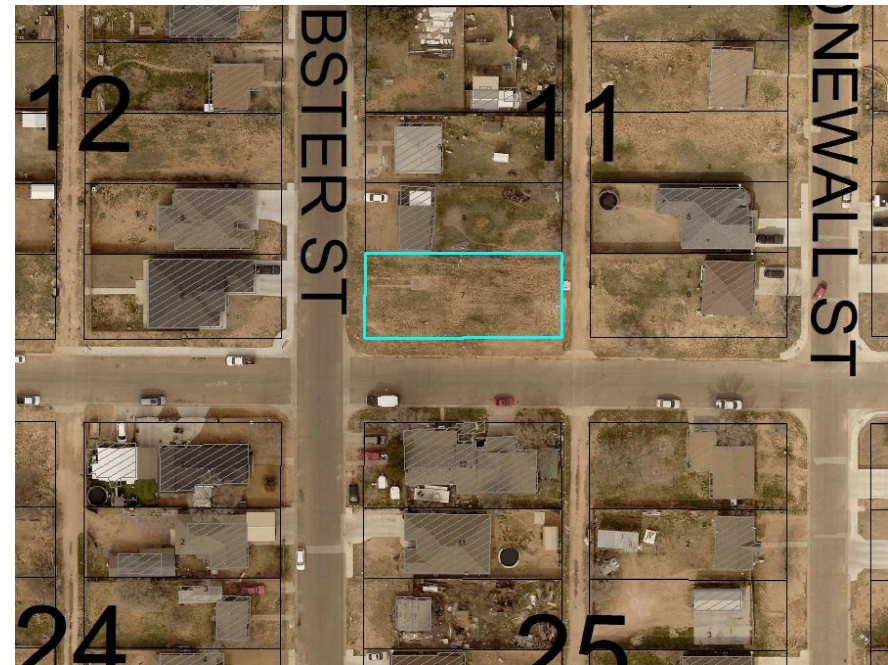


3



LAND USE

- **Current Use of the Property:**
Vacant
- **Proposed Use of the Property:**
Single-family dwelling
- **Surrounding Uses:**
- North, South, East, & West: Single-family dwellings





On South Webster Street, Looking East

5

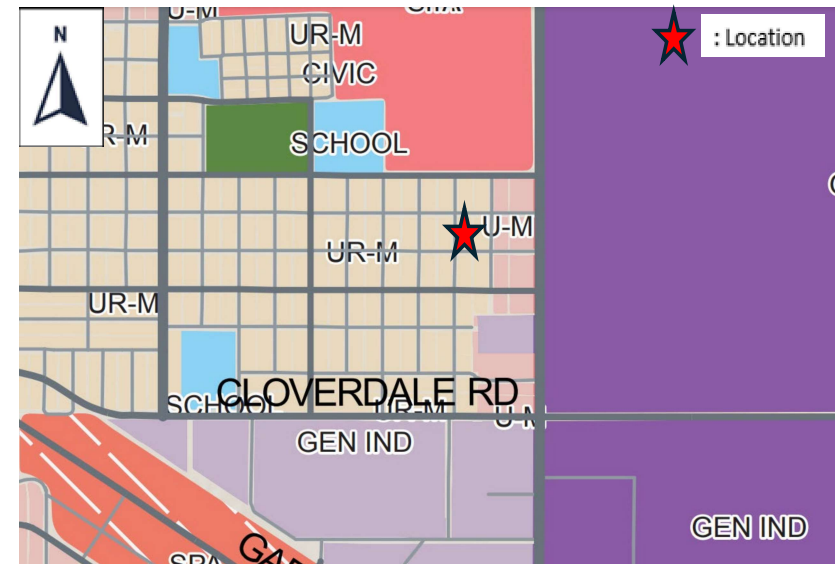


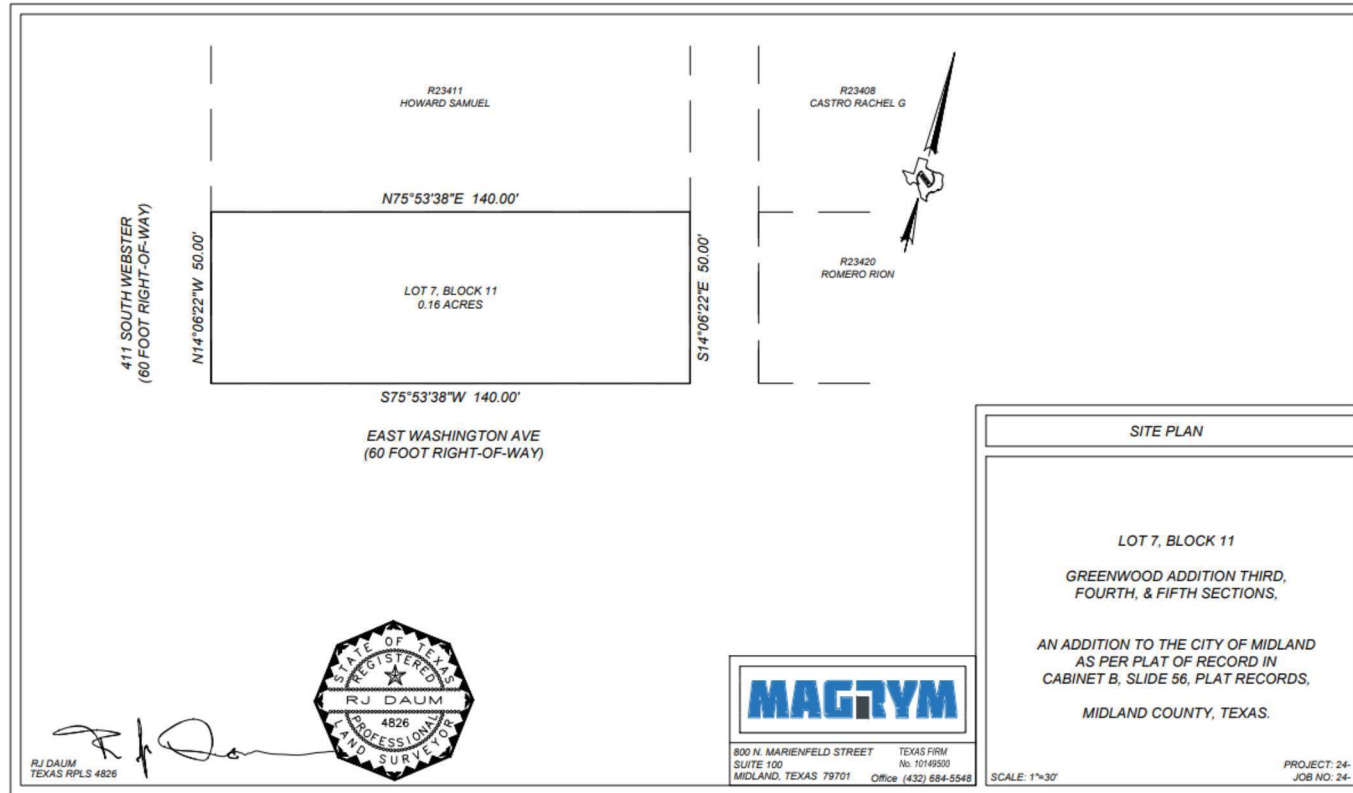
COMPREHENSIVE PLAN

- **TCT Land Use Designation:**
Urban Residential-Medium (UR-M)

Supported Uses:

- Supports Restrictive land use, emphasizing a mix of housing styles including single-family detached, single-family attached, and townhouses.
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.





Survey



STAFF'S RECOMMENDATION

- No objections received.
- The Planning & Zoning Commission recommended approval of this request on January 21, 2025.
- Staff recommends APPROVAL of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single Family Dwelling District.



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 26
Meeting Date: February 11, 2025
To: City Council / City Manager
From: Beatriz Quezada, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 6 AND 7, BLOCK 1, SNIVELY RESUBDIVISION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-1 SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND CLARK STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Alonzo Talamantes, is requesting a Zone Change from C, Commercial District, to SF-1, Single-Family Dwelling District, to develop a single-family dwelling at 2409 West Francis Avenue and correct the zoning designation of 2411 West Francis to accurately reflect its current and intended use

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

(Quality of Life and Place)

Discussion:**Current Zoning:**

C, Commercial District.

Surrounding Zoning and Land Use:

All adjacent properties to the north, south, east, and west are zoned C, Commercial District, with uses that include single-family residential to the south and east and a real estate agency to the north. The adjacent property to the west is part of the ETJ, Extraterritorial Jurisdiction, and is currently a fenced-in vacant lot.

Analysis:

The subject properties are zoned C, Commercial District. Alonzo Talamantes is seeking this zone change to construct a single-family home on the eastern vacant lot. A single-family dwelling is not allowed in the C, Commercial District. The request to rezone both properties is for land use uniformity.

Both lots meet the minimum lot dimension requirements for the SF-1, Single-Family Dwelling District zone. The western subject property at 2411 West Francis has a single-family dwelling developed in 1958. The adjacent lots south, east and west of the lot on which the applicant intends to develop a single-family dwelling are also used for single-family residential purposes, making this request compatible with the surrounding area.

This request is inconsistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3, which designated this area as ER, Employment Reserve. This designation calls for major office, business, and multi-family uses.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Oil and Gas: (Approved)

No Oil & Gas well concern for Zoning.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

Therefore, staff recommends approval of this Zone Change from C, Commercial District, to SF-1, Single-Family Dwelling District.

Letters of Objection:

Therefore, staff has not received any letters of objection as of February 7, 2024.

Attachments:

Application
Site Plan
Maps
Power Point



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 6 AND 7, BLOCK 1, SNIVELY RESUBDIVISION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-1 SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST FRANCIS AVENUE AND CLARK STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 6 and 7, Block 1, Snively Resubdivision, City and County of Midland, Texas (the “Property”) to SF-1 Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from C, Commercial District to SF-1 Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Alonzo Talamantes

Phone (432) 557-7410

Email alonzo.talamantes@gmail.com

Address 1521 S. Marshall

City Midland

State TX

Zip 79701

Property Owner

Printed Name: Alonzo Talamantes

Phone (432) 557-7410

Email

Address 2411 W. Francis Ave

City Midland

State TX

Zip 79701

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email

Address

City

State

Zip

Street Address: 2411 W. Francis Ave

Legal Description

Lot: _____ Block: _____ Subdivision: _____

Current Zoning:

Commercial

Proposed Zone:

(List by tracts if more than one district is requested)

Reason for Zone Change Request: I want to turn the zoning into residential to build

Present Use of Property: Home on one side empty lot on the other

Proposed Use of Property: Build residential home

How would this zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature): <u>Alonzo Talamantes</u>	Date: <u>12-11-24</u>
Applicant (printed): <u>Alonzo Talamantes</u>	
Property Owner (signature): <u>Alonzo Talamantes</u>	Date: <u>12-11-24</u>
Property Owner (printed) : <u>Alonzo Talamantes</u>	
<i>The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

STATE OF TEXAS COUNTY OF MIDLAND Before me, the undersigned authority, on this day personally appear _____ who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact. _____ Authorized Agent (signature) Subscribed and sworn to before me, this _____ day of _____, 20____, to certify which witness my hand and seal of office. _____ NOTARY PUBLIC, MIDLAND COUNTY, TEXAS	
--	--

FOR OFFICE USE ONLY	
☐ Property Owner Authorization ☐ Application Fee Check # _____	☐ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By: _____	Date: _____

****Application will not be considered for scheduling until reviewed by a planner.****



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: ALONZO TALAMANTES

Phone (432) 551-7410
Email

Address 1521 S. Marshall

City Midland

State TX

Zip 79701

Property Owner

Printed Name: ALONZO TALAMANTES

Phone ()
Email

Address 1521 S. Marshall

City Midland

State TX

Zip 79701

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()
Email

Address _____

City _____

State _____

Zip _____

Street Address:

2409 W. Francis Ave. Midland TX 79701

Legal Description

Lot: 006 Block: 001 Subdivision: Snively Resub

Current Zoning: C

Proposed Zone: SF-1

(List by tracts if more than one district is requested)

Reason for Zone Change Request: would like to build a home on this property.

Present Use of Property: Vacant lot

Proposed Use of Property: would like to build a home on this lot.

How would this zone change affect the public health, safety and welfare? It won't.

Describe how conditions affecting the property have changed since present zoning designation: _____

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature): <u>[Signature]</u>	Date: <u>11/06/24</u>
Applicant (printed): <u>ALONZO TALAMANTES</u>	
Property Owner (signature): <u>ALONZO TALAMANTES</u>	Date: <u>11/06/24</u>
Property Owner (printed): _____	
The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received. All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.	

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear _____ who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee - Invoice	☒ Plans in Digital Format (PDF/JPEG)
Check # _____	
Received By: <u>[Signature]</u>	Date: <u>NOV 06 2024</u>

PACKET 2610 Application will not be considered for scheduling until reviewed by a planner. February 25, 2025

87' w

140' w

N

Site plan

Proposed

ME



32'

Front Porch

Front Porch

Family Home

58'

E

140'

46'

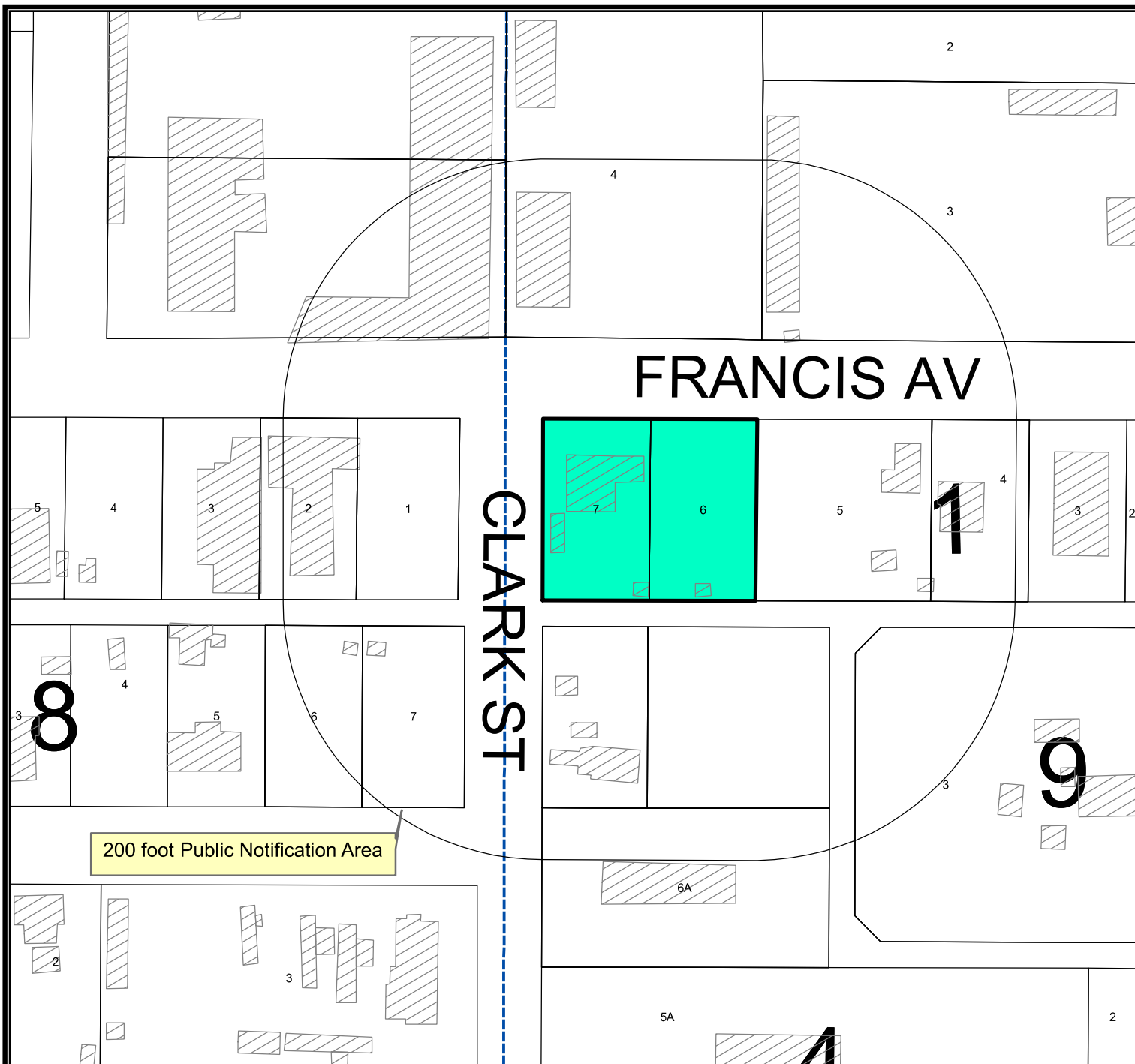
PACKET

26.11

February 25, 2025

6'





Location Map

Z-24-0399

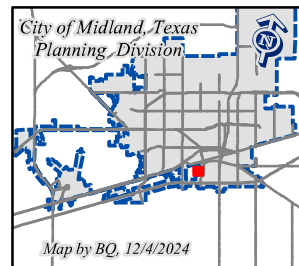
Scale: 1" = 800'

Consider a request by Alonzo Talamantes for a zone change from C, Commercial District, to SF-1, Single-Family Dwelling District, on Lots 6 and 7, Block 1, Snively Resubdivision, City and County of Midland, Texas.

Generally located at the southeast corner of the intersection of West Francis Avenue and Clark Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

26.12

February 25, 2025

CLARK ST

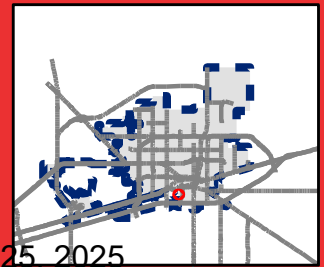
FRANCIS AV

C

PACKET

26.13

February 25, 2025





FRANCIS AV

8

S AV

PACKET

26.14

February 25, 2025

9





2409 & 2411 W Francis

ITEM#

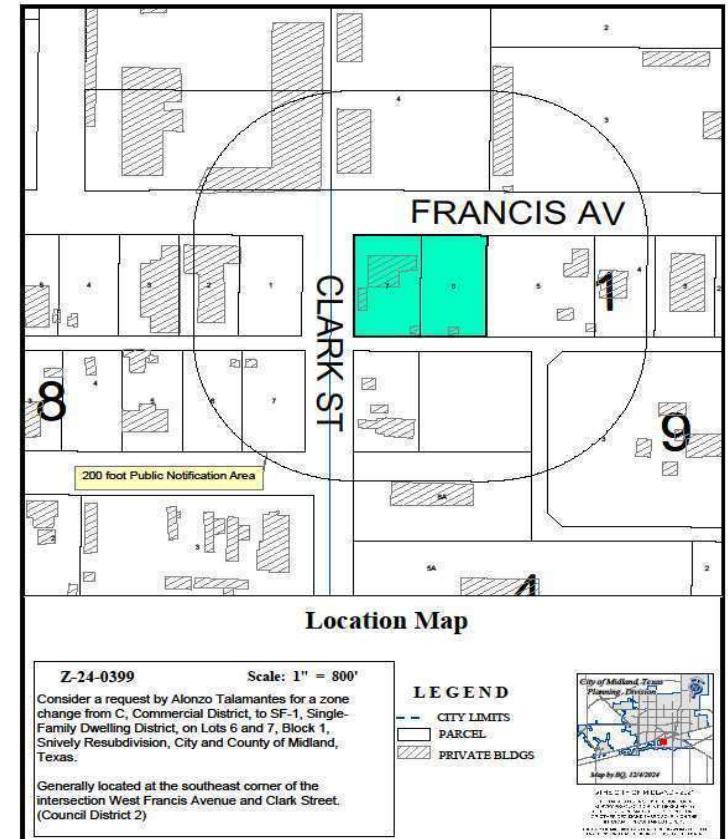


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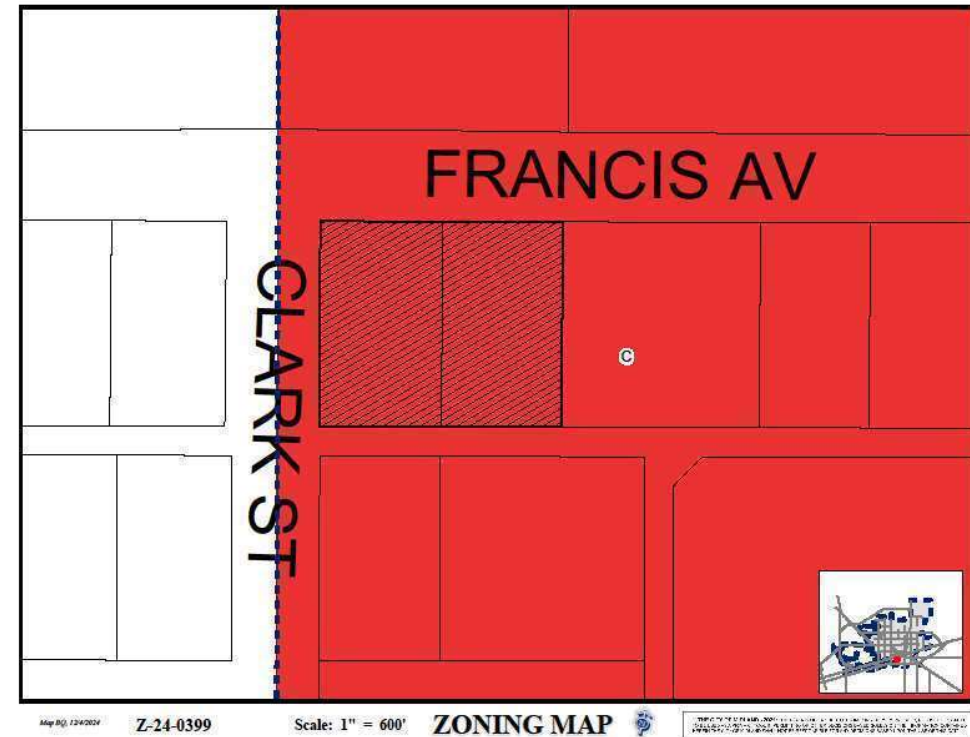
APPLICATION SUMMARY

- **Property Owner:** Yvonne Talamantes
- **Applicant:** Alonzo Talamantes
- **Zone Change**
- **Address:** 2409 & 2411 West Francis
- **Reason for request:** To build a single-family dwelling unit on the vacant lot of 2409 W Francis.



ZONING

- **Current Zoning:** C, Commercial District.
- **Surrounding Zoning:**
 - **North/South/East:** C, Commercial District
 - **West:** Not Designated, ETJ
 - **Proposed Zoning:** SF-1, Single Family Dwelling



LAND USE

- **Current Use of the Property:**
Vacant lot and Residence
- **Proposed Use of the Property:**
Residential
- **Surrounding Uses:**
 - **North/South/East:**
Commercial/Industrial
 - **West:** Residential

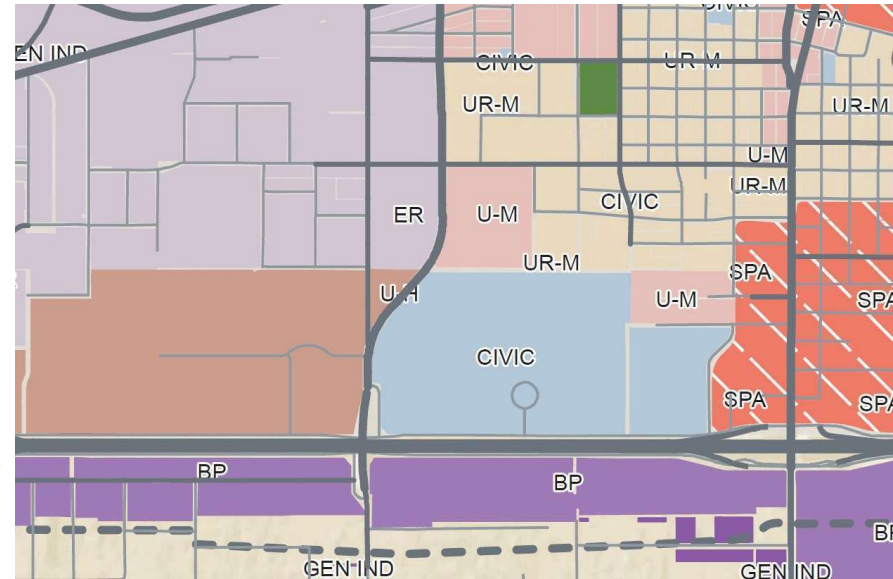




On West Francis, Looking south.

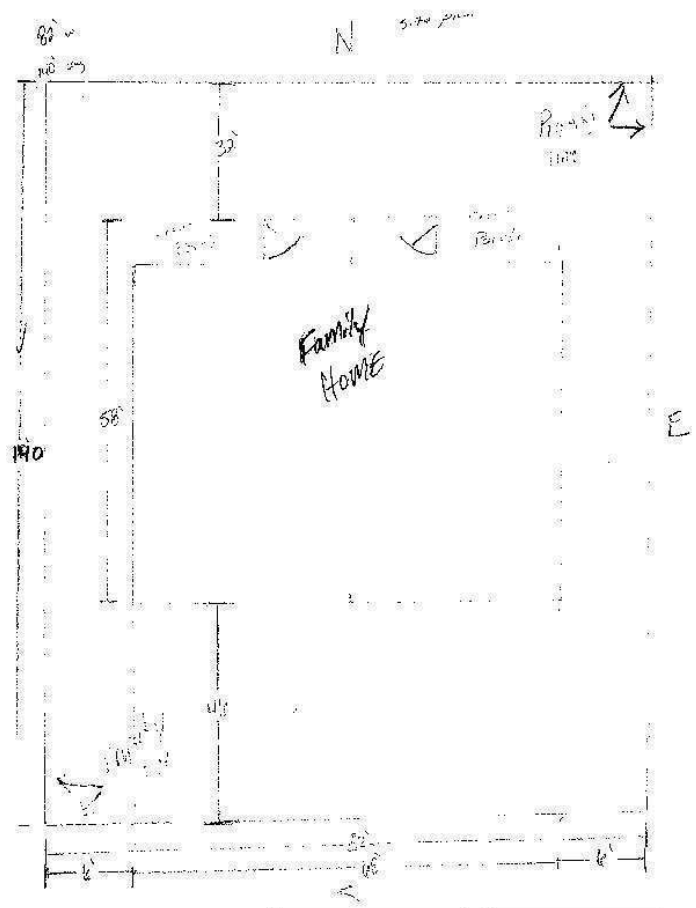
COMPREHENSIVE PLAN

- **TCT Land Use Designation:** ER, Employment Reserve
- **Supported Uses:** Area preserved for larger business this includes centers with major offices, technology and research centers. Multi-family may be appropriate when intergrade as part of a holistic development.
- Request is not compatible with the Tall City Tomorrow Plan, but compatible with the surrounding area.



6





Site Plan (Exhibit A)



STAFF'S RECOMMENDATION

- No objections received.
- The Planning and Zoning Commission approved the request on January 21, 2025.
- Staff recommends **APPROVAL** of this zone change from C, Commercial District to SF-1 Single-Family Dwelling District.

8



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 27

Meeting Date: February 11, 2025

To: City Council / City Manager

From: Madelim Jaquez, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 172, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH DALLAS STREET, APPROXIMATELY 125 FEET NORTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Magrym Consulting is requesting a Zone Change from MH, Manufactured Housing District, and RR, Regional Retail District, to SF-3, Single-Family Dwelling District, for the construction of a house on two properties located on South Dallas Street.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

MH, Manufactured Housing District, and RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north are zoned MH, Manufactured Housing District, and the land is currently used with houses. The properties to the east are zoned RR, Regional Retail District, with O-2, Office District, further east and are currently a meat market, vacant buildings, and a bank. The properties to the west are zoned MH, Manufactured Housing District, and RR, Regional Retail District, and are currently houses, vacant lots, and a boutique. The properties to the south are zoned RR, Regional Retail District, and consist of a liquor store, vacant lots, and a welding equipment center.

Analysis:

The applicant is seeking this zone change from MH, Manufactured Housing District and RR, Regional Retail District, to SF-3, Single-Family Dwelling District, in order to construct a single-family home, which is not allowed in the MH, Manufactured Housing District. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3; which designated this area as Special Study Area.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Oil and Gas: (Approved)

No Oil & Gas issues

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

Therefore, staff recommends approval of this Zone Change from MH, Manufactured Housing District and RR, Regional Retail District to SF3, Single-Family Dwelling District.

Letters of Objection:

Staff has not received any letters of objection as of February 7, 2025.

Attachments:

Application
Site Plan (Exhibit A)
Maps
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 172, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MH, MANUFACTURED HOUSING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH DALLAS STREET, APPROXIMATELY 125 FEET NORTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 9 and 10, Block 172, Southern Addition, City and County of Midland, Texas (the “Property”) to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MH, Manufactured Housing District, in part, and RR, Regional Retail District, in part, to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-24-0406

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Eduardo L. Aleman</u>		Phone (432) 254-0327 Email	
Address	City	State	Zip

Property Owner Printed Name: <u>Javier Soto</u>		Phone (432) 254-0327 Email 432 254-0327	
Address	City	State	Zip

Representative (if different from Applicant or Property Owner) Firm: <u>Magrym Consulting</u> Printed Name: <u>Eduardo L. Aleman</u>		Phone (432) 254-0327 Email	
Address 800 N. Marienfeld, Suite 100	City Midland	State TX	Zip 79701

Street Address: <u>805 S. Dallas Street.</u>	
Legal Description Lot: <u>9 and 10</u> Block: <u>172</u> Subdivision: <u>Southern Addition</u>	

Current Zoning: RR and MH	Proposed Zone: <u>SF3</u> (List by tracts if more than one district is requested)
-------------------------------------	---

Reason for Zone Change Request: To build a house

Present Use of Property: Vacant

Proposed Use of Property: Residential

How would this zone change affect the public health, safety and welfare? NA

Describe how conditions affecting the property have changed since present zoning designation: NA

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	27.7	February 25, 2025
--	------	-------------------

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature):

Date: 12/18/2024

Applicant (printed): **Eduardo L. Aleman**

Property Owner (signature):

Javier Soto

Date: 12/18/2024

Property Owner (printed): **Javier Soto**

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.

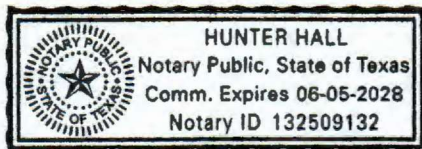
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

**STATE OF TEXAS
COUNTY OF MIDLAND**

Before me, the undersigned authority, on this day personally appear Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Javier Soto, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Eduardo L. Aleman
Authorized Agent (signature)

Subscribed and sworn to before me, this 19th day of December, 2024, to certify which witness my hand and seal of office.



HL

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization

☐ Dimensioned Site Plan

☐ Application Fee

☐ Plans in Digital Format (PDF/JPEG)

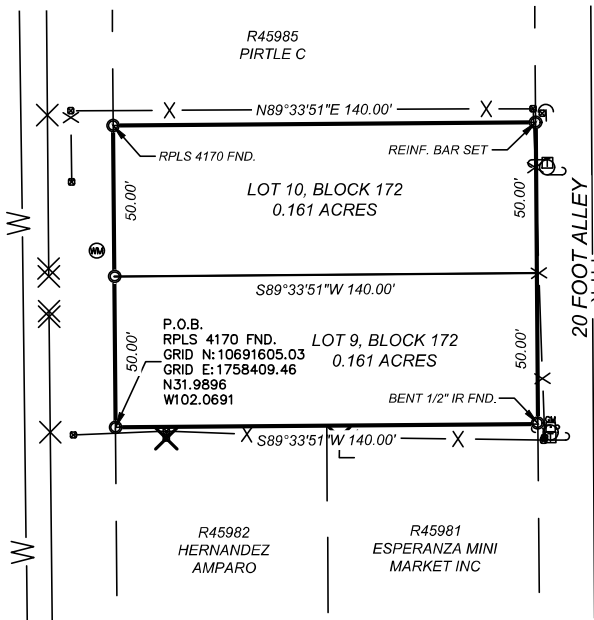
Check # invoice

Received By:

HL

Date:

SOUTH DALLAS STREET
(80 FOOT RIGHT-OF-WAY)



FIELD NOTE DESCRIPTION OF A 0.32 ACRE TRACT OF LAND, BEING SAID LOTS 9 & 10, BLOCK 172, SOUTHERN ADDITION, AN ADDITION TO THE CITY OF MIDLAND AS PER PLAT OF RECORD IN VOLUME 2, PAGE 2, PLAT RECORDS, MIDLAND COUNTY, TEXAS. SAID 0.32 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR FOUND (N: 10691605.03, E: 1758409.46) IN THE EAST RIGHT-OF-WAY LINE FOR SOUTH DALLAS STREET FOR THE SOUTHWEST CORNER OF THIS TRACT, ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 9;

THENCE NORTH 00°26'08" WEST 100 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SOUTH DALLAS STREET TO A REINF BAR FOUND FOR THE NORTHWEST CORNER OF THIS TRACT, ALSO BEING THE NORTHWEST CORNER OF SAID LOT 10;

THENCE NORTH 89°33'51" EAST 140.00 FEET TO A REINF BAR SET FOR THE NORTHEAST CORNER OF THIS TRACT, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 10;

THENCE SOUTH 00°26'08" EAST 100.00 FEET TO A REINF BAR FOUND FOR THE SOUTHEAST CORNER OF THIS TRACT, ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 9;

THENCE SOUTH 89°33'51" WEST 140.00 FEET TO THE PLACE OF BEGINNING.

ACREAGE, BEARINGS, AND DISTANCES SHOWN ARE GRID MEASUREMENTS BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

NOTES:

SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF THE COUNTY ORDINANCE AND STATE LAW AND MAY BE SUBJECT TO FINES AND WITHHOLDINGS OF UTILITIES AND BUILDING PERMITS.

ACREAGE, BEARINGS, AND DISTANCES SHOWN ARE GRID MEASUREMENTS BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

MONUMENTS ARE A REINFORCING BAR SET WITH PLASTIC CAP STAMPED "MAGRYM" UNLESS OTHERWISE NOTED.

THIS SURVEY DOES NOT GUARANTEE OWNERSHIP.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT.

NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

Surveyor Certification

TO THE LIENHOLDERS, _____ NAME _____

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER:
THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND
OF THE PROPERTY LEGALLY DESCRIBED HEREON
AND THAT THERE ARE NO KNOWN DISCREPANCIES,
CONFLICTS, SHORTAGES IN AREA, BOUNDARY
LINE CONFLICTS, ENCROACHMENTS,
OVERLAPPING OF IMPROVEMENTS,
EASEMENTS OR RIGHTS-OF-WAY,
EXCEPT AS SHOWN HEREON.

DATED THIS 18th DAY OF DECEMBER, 2024


RJ DAUM
TEXAS RPLS 4826





800 N. MARIENFELD STREET TEXAS FIRM
SUITE 100 No. 10149500
MIDLAND, TEXAS 79701 Office (432) 684-5548

SURVEY

LOTS 9 & 10, BLOCK 172,

SOUTHERN ADDITION,

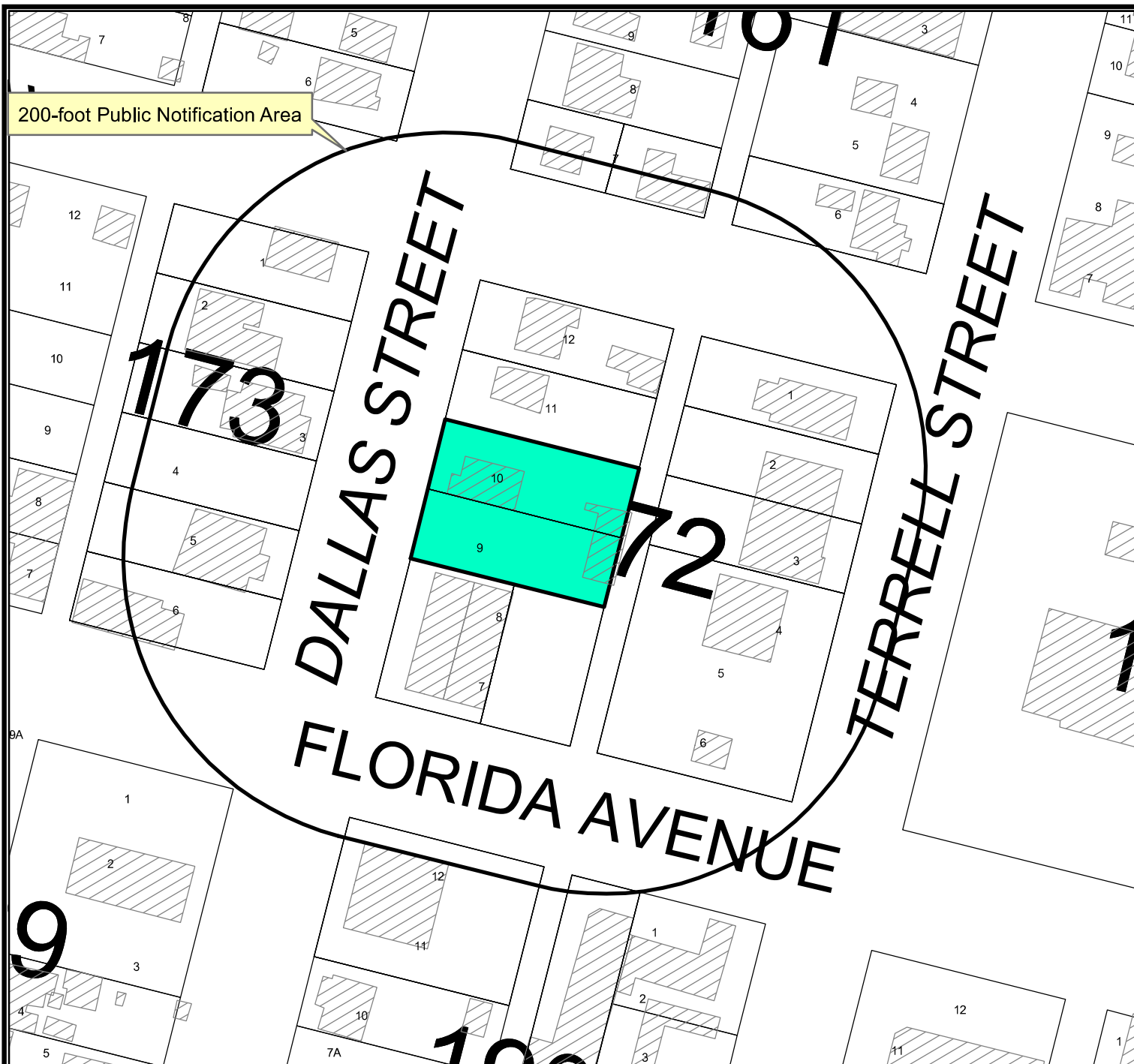
AN ADDITION TO THE CITY OF MIDLAND

AS PER PLAT OF RECORD IN VOLUME 2, PAGE 2,

PLAT RECORDS, MIDLAND COUNTY, TEXAS

SCALE: 1" = 50'

PROJECT: 24-693
JOB NO: 24-693



Location Map

Z-24-0406

Scale: 1" = 100'

Consider a request by Magrym Consulting for a zone change from MH, Manufactured Housing District, in part, and RR, Regional Retail District, in part, to SF3, Single-Family Dwelling District on Lots 9 and 10, Block 172, Southern Addition, City and County of Midland, Texas.

Generally located on the east side of South Dallas Street, approximately 1/4 mile north of East Florida Avenue. (Council District 2)

LEGEND

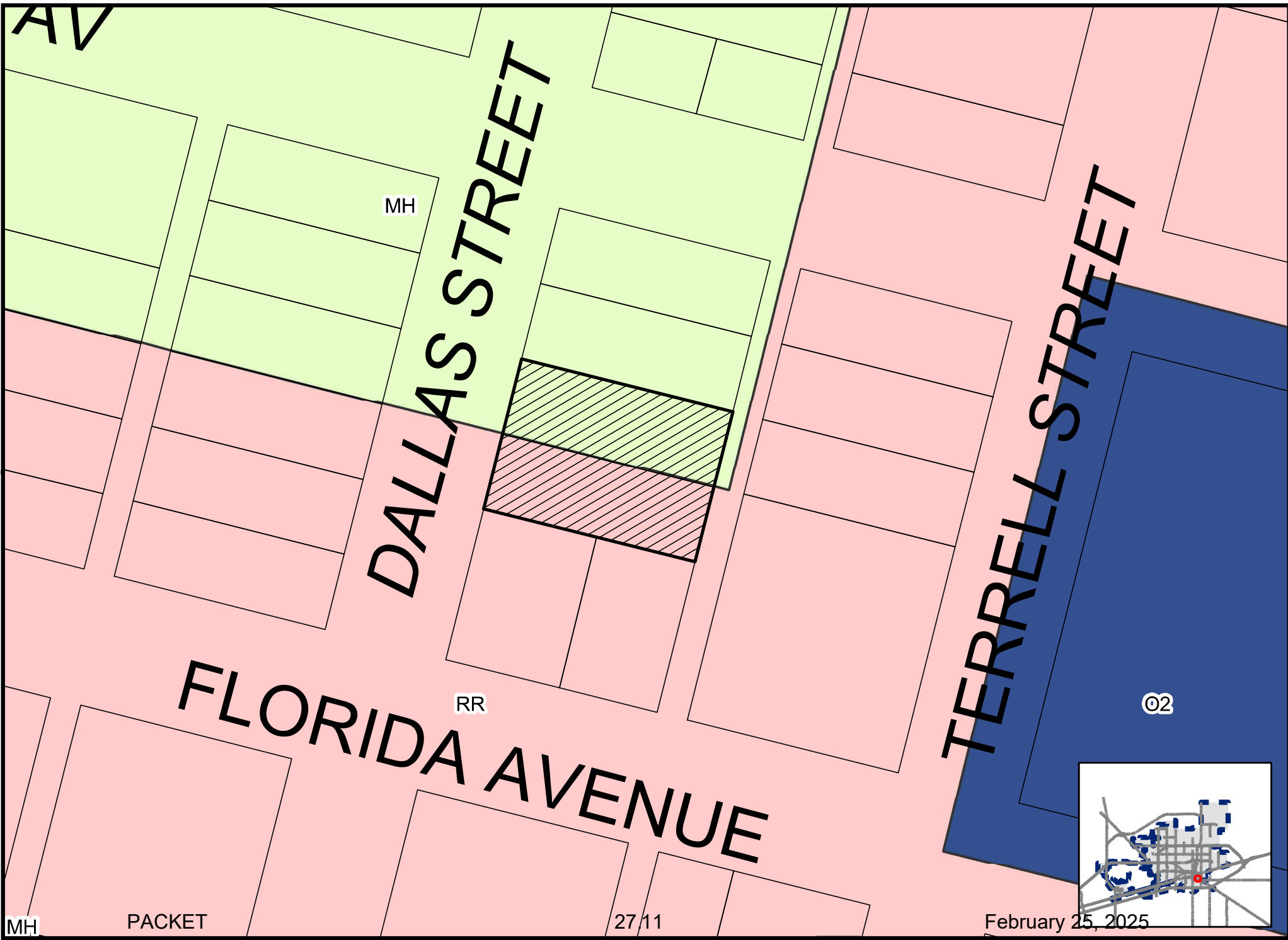
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

February 25, 2025

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.





DALLAS ST

172

TERRELL ST

FLORIDA AV

PACKET

27.12

February 25, 2025



PACKET

27 13

February 25, 2025



805 SOUTH DALLAS



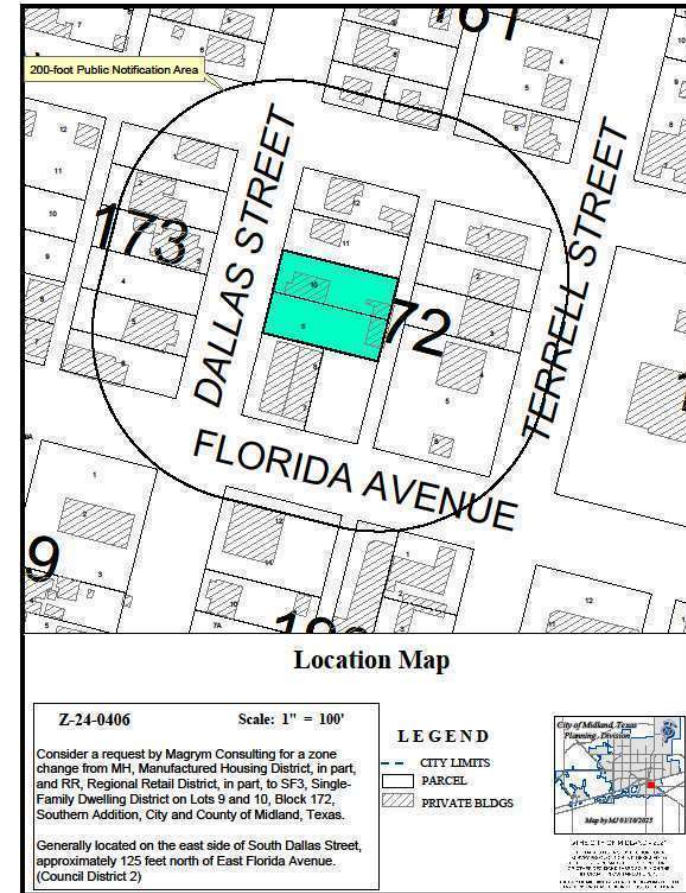
Visit Our Website

MIDLANDTEXAS.GOV

APPLICATION SUMMARY

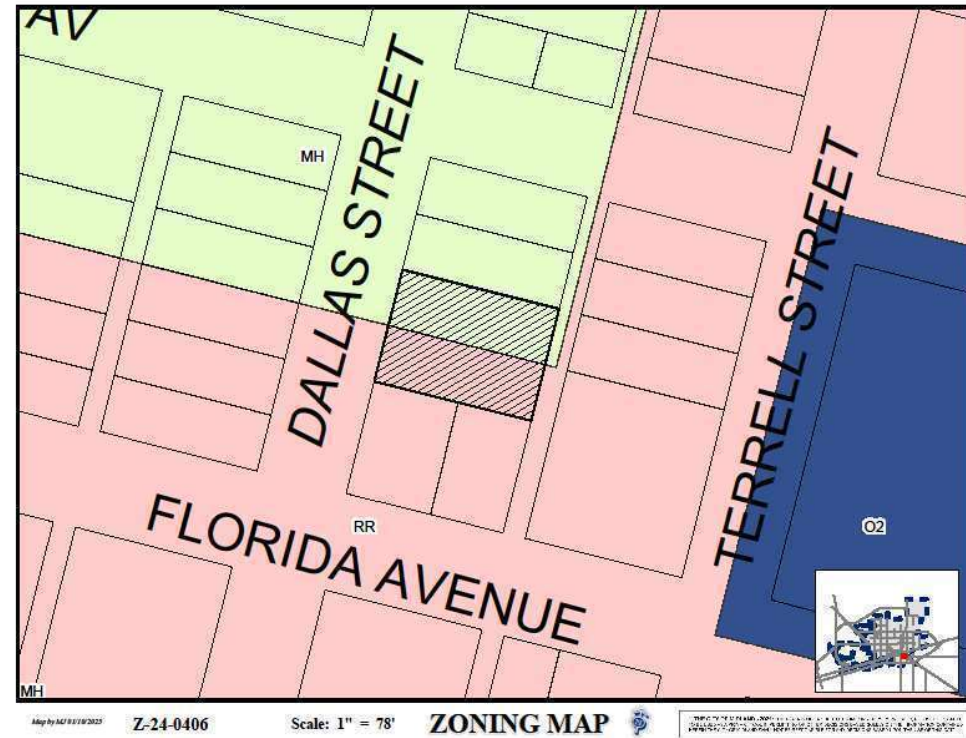
- **Property Owner:** Javier Soto
- **Applicant:** Eduardo L. Aleman
- **Representative:** Magrym Consulting
- **Zone Change**
- **Address:** Generally located on the east side of South Dallas Street, approximately 125 feet north of East Florida Avenue.

2



ZONING

- **Current Zoning:** MH, Manufactured Housing District and RR, Regional Retail District
- **Surrounding Zoning:**
 - **North:** MH, Manufactured Housing District
 - **South:** RR, Regional Retail District
 - **East:** RR, Regional Retail and O2, Office District
 - **West:** MH, Manufactured Housing District and RR, Regional Retail District
- **Proposed Zoning:** SF-3, Single-Family Dwelling District



LAND USE

- **Current Use of the Property:**
Vacant
- **Proposed Use of the Property:**
Single-Family Dwelling
- **Surrounding Uses:**
- **North:** Houses
- **South:** Liquor store, vacant lots, and a welding equipment center
- **East:** Meat market, bank, and vacant buildings
- **West:** Houses, vacant lots, and a boutique





On Dallas Street, Looking East

COMPREHENSIVE PLAN

- **TCT Land Use Designation:**
Special Study Area
- **Supported Uses:**
 - Not designated
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.



6



STAFF'S RECOMMENDATION

- No objections received.
- The Planning & Zoning Commission recommended approval of this request on January 21, 2025.
- Staff recommends **APPROVAL** of this zone change from MH, Manufactured Housing District and RR, Regional Retail District to SF-3, Single-Family Dwelling District .

7



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 31
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Britton Murry, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 15.44-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 220 FEET WEST OF HOLDRIDGE ROAD.); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

Maverick Engineering, on behalf of MM&E Holdings, LLC, is requesting a Zone Change from RR, Regional Retail District, to LI, Light Industrial District, to develop industrial warehouse buildings on two properties located on West County Road 77.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Strong Economy With More Quality Jobs

Discussion:**Current Zoning:**

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north are located in the ETJ, Extraterritorial Jurisdiction, and are being used for industrial warehouses. The properties to the south are also in the ETJ and are currently vacant lots. The property to the west is zoned RR, Regional Retail District, and the current land use is for a refrigeration company. The property to the east is zoned PD, Planned Development District for a Shopping Center, and the current land use is a storage facility.

Analysis:

The applicant is seeking this zone change in order to develop industrial warehouse buildings. These vacant tracts of land are currently zoned RR, Regional Retail District, which does not allow for the use of industrial warehouses. A zone change to LI, Light Industrial District, would allow for the development of industrial warehouse structures per the City of Midland Zoning Ordinance Use Chart. [Midland City Code Section 4.03]

These tracts of land are concurrently going through the platting process in addition to this zone change request. This tract of land will be developed into three lots that would all fall under the proposed LI, Light Industrial District zoning regulations. LI, Light Industrial District zoning does not have an established minimum lot area, lot width, or lot depth per the Nonresidential Zoning District Dimensional Regulations Chart. [Midland City Code Section 5.05.]

While this property does not directly abut any LI zones, the surrounding land use is similar in nature to what would typically be found in LI, Light Industrial zoning. Furthermore, just to the east of this tract of land, there are several lots that are zoned LI, Light Industrial District, and reflect the same characteristics of this proposed use.

The Tall City Tomorrow Comprehensive Plan does not have an established designation for this property.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections. All future structures must adhere to the IFC 2015.

Oil and Gas: (Approved)

No Oil & Gas well concern for Zoning. Informational: Future plats will need to identify any Oil or Gas wells and include 500 ft. radius for a city permitted well or the 135 ft. radius for non-permitted well radius on plat. Please note if oil & gas wells are not identified or left off a plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified with comments- No structure shall be built over an abandoned well.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Transportation: (Approved)

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway. [Reference City Code Section 9-4-5(D).]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

Therefore, staff recommends approval of this Zone Change from RR, Regional Retail District to LI, Light Industrial District.

Letters of Objection:

Staff has not received any letters of objection as of February 21, 2025.

Attachments:

Application

Maps

PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 15.44-ACRE TRACT OF LAND OUT OF SECTION 31, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 220 FEET WEST OF HOLDRIDGE ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 15.44-acre tract of land out of Section 31, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein (the “Property”) to LI, Light Industrial District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to LI, Light Industrial District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

FIELD NOTE DESCRIPTION OF A 15.44 AC RE TRACT OF LAND, SITUATED IN SECTION 31, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING THE AGGREGATE OF A CALLED 11.461 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2007-24354 AND A CALLED 4.0 ACRE TRACT IN DOCUMENT NUMBER 2009-10929, BOTH IN THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(Y): 10688335.53, E.(X): 1705960.38, A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "HOWELL RPLS 280" (HOWELL) FOUND AND ACCEPTED AS BEING THE SOUTHWEST CORNER OF LOT 1, BLOCK 5, WEST 191 INDUSTRIAL PARK ADDITION, SECTION 2 AS SHOWN ON A PLAT RECORDED AS DOCUMENT NUMBER 2009-7917 IN CABINET 1 ON PAGE 44 OF THE PLAT RECORDS OF SAID MIDLAND COUNTY, IN THE NORTH LINE OF STATE HIGHWAY 191 AS DESCRIBED IN VOLUME 711 ON PAGE 328 OF THE DEED RECORDS OF SAID MIDLAND COUNTY FOR THE SOUTHEAST CORNER HEREOF;

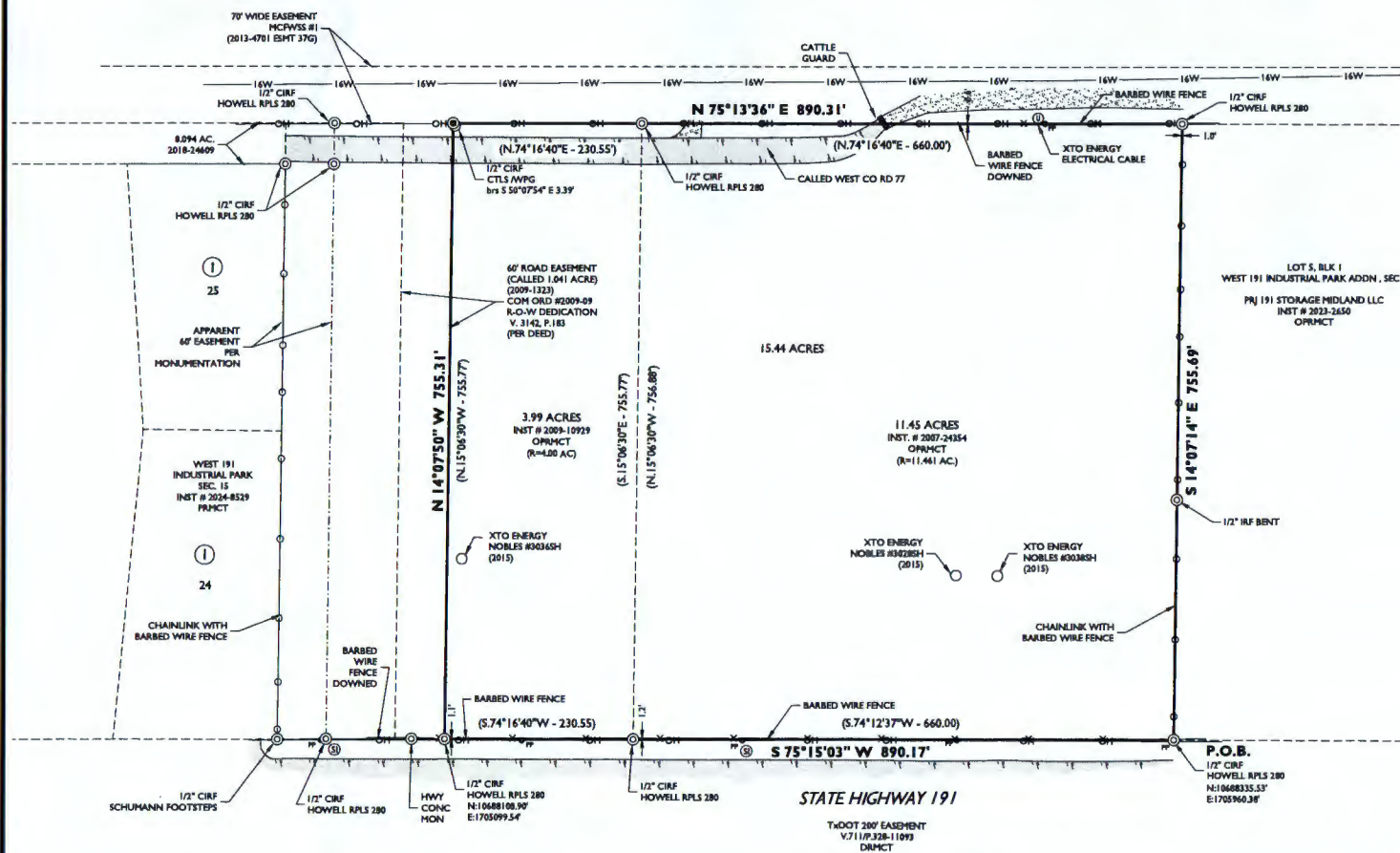
THENCE S.75°15'03"W., ALONG SAID STATE HIGHWAY 191, AT 659.85 FEET PASSING A "HOWELL" AT THE SOUTH COMMON CORNER OF THESE TWO TRACTS, IN ALL 890.17 FEET TO A "HOWELL" FOUND AT THE SOUTHEAST CORNER OF A CALLED 1.041 ACRE TRACT, BEING A 60 FOOT ROAD EASEMENT IN ORDINANCE NUMBER 2009-09 AS DESCRIBED IN DOCUMENT NUMBER 2009-1323 OF SAID "OPR" FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°07'50"W., ALONG SAID CALLED 1.041 ACRE TRACT, 755.31 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#10194514" SET IN THE SOUTH LINE OF A CALLED 70 FOOT WIDE EASEMENT BEING DESCRIBED IN DOCUMENT NUMBER 2013-4701 OF SAID "OPR" FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°13'36"E., ALONG SAID EASEMENT, 890.31 FEET TO A "HOWELL" FOUND AT THE NORTHWEST CORNER OF SAID LOT 5, FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°07'14"E., ALONG SAID LOT 5, 755.69 FEET TO THE **POINT OF BEGINNING**, CONTAINING 15.44 ACRES OF LAND.

EXHIBIT "A" (cont'd)



0' 100' 200'

ORIGINAL SCALE 1" = 100'

LEGEND

- | | |
|---|---|
|  | 1/2" IRON ROD FOUND W/ RED PLASTIC CAP MARKED "HAVERICK FIRM # 1019451" |
|  | MONUMENTS FOUND AS NOTED |
|  | SIGN |
|  | UTILITY MARKER |
|  | POWER POLE |
|  | WELL LOCATION |
|  | BOLLARD |
|  | BOUNDARY LINE |
|  | PROPERTY LINES |
|  | CHAINLINK FENCE |
|  | FENCE AS NOTED |
|  | OVERHEAD ELECTRIC LINE |
|  | 16" WATER MAIN |
|  | CALICHE |
|  | PAVEMENT |

SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCES AND ACRES ARE A Lambert Conformal Projection of the TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT, with a CONVERGENCE ANGLE (theta) of $-0^{\circ}57'44.73''$ and a COMBINED SCALE FACTOR of 0.99998304 at NGS 83 ZONE 12A.
2. 1/2" IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" AT ALL SET CORNERS UNLESS OTHERWISE SPECIFIED.
3. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.
4. LOCATION OF BURNED UTILITIES AND PREMISES, IF ANY, IS APPROXIMATE BASED UPON OBSERVED EXISTING EASEMENT, CITY OF MIDLAND OR CITY OF MIDLAND RECORDS, OR BY ONE-CALL 811 LOCATE MARKERS AT THE TIME OF THIS SURVEY. DUE CARE IS RECOMMENDED: CALL 1-800-GO-DESS FOR UTILITIES PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
5. FENCES ARE ON OR WITHIN 6.5' OF THE PROPERTY LINE UNLESS OTHERWISE NOTED OR SHOWN HEREIN.

FIELD NOTES:

[illegible]

F:\2024\240165-REX OILFIELD SERVICES LP-I-20 INDUSTRIAL\DRAWINGS\BOUNDARY SURVEY\240165 BOUNDARY SURVEY.DWG Last Save by: AKalenak 10/16/24

SURVEYOR: GWS	SCALE: 1" = 100'	APPROVAL DATE:	TO REX OILFIELD SERVICES, LP, THIS SURVEY WAS PERFORMED ON THE GROUND AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND COMPLIES WITH THE TITELS STANDARDS FOR A BOUNDARY SURVEY.  GREGORY W. SHOULES, NPL #8334 FIRM NO. TX #010194514  OCTOBER 16, 2024	MAVERICK CIVIL ENGINEERING / LAND SURVEYING ENGINEER FIRM #: F-15089 / SURVEY FIRM #: 10194514 1909 West Wall Street, Suite "K" - Midland, Texas 79701 Tel: (432) 262-0999 Fax: (432) 262-0989 www.Maverick-Eng.com		REX OILFIELD SERVICES, LP BOUNDARY SURVEY WITH IMPROVEMENTS FOR A 15.44 ACRE TRACT OF LAND, SITUATED IN SECTION 31, BLOCK 46, TOWNSHIP 30 NORTH, RANGE 10 WEST, 23RD MERIDIAN, MIDLAND COUNTY, TEXAS
DRAWN BY: AK	JOB NO.: 240165	REV 1:				
APPROVED:	FIELD DATE: 10.09.24	REV 2:				



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: 2-25-0408

Applicant (if acting as Agent, see affidavit on page 2)

Phone (432) 813-2969

Email
isai@rexoilfield.com

Printed Name: MM&E HOLDINGS LLC

Address PO BOX 60261

City MIDLAND

State TX

Zip 79711

Property Owner

Printed Name:

Phone ()

Email

Address

City

State

Zip

Representative (if different from Applicant or Property Owner)

Firm: MAVERICK ENGINEERING

Printed Name: ASHLEE DEVINE

Phone (432) 262-0999

Email
adevine@maverick-eng.com

Address 1909 W WALL STREET, SUITE K

City MIDLAND

State TX

Zip 79701

Street Address: NOT AVAILABLE

Legal Description

Lot: Block: Subdivision: SEE ATTACHED M&B

Current Zoning: RR

Proposed Zone: LIGHT INDUSTRIAL
(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO DEVELOP LIGHT INDUSTRIAL WAREHOUSE BUILDINGS

Present Use of Property: VACANT

Proposed Use of Property: LIGHT INDUSTRIAL BUSINESS TYPE DEVELOPMENT

How would this zone change affect the public health, safety and welfare?

NO CHANGE

Describe how conditions affecting the property have changed since present zoning designation: NO CHANGE, PROPOSED USE WILL CONFORM TO SURROUNDING BUSINESSES

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature): [Signature] Date: 1/7/2025

Applicant (printed): Isai Bracamontes

Property Owner (signature): Date:

Property Owner (printed):

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Ashlee Devine who, being by me duly sworn, upon oath says: That (s)he is the owner of W. M. Industrial or authorized by MMGE Holdings LLC, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Ashlee Devine
Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of January, 2025, to certify which witness my hand and seal of office.



SAVANNAH DAVIS
Notary Public, State of Texas
Comm. Expires 05-20-2028
Notary ID 134907724

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

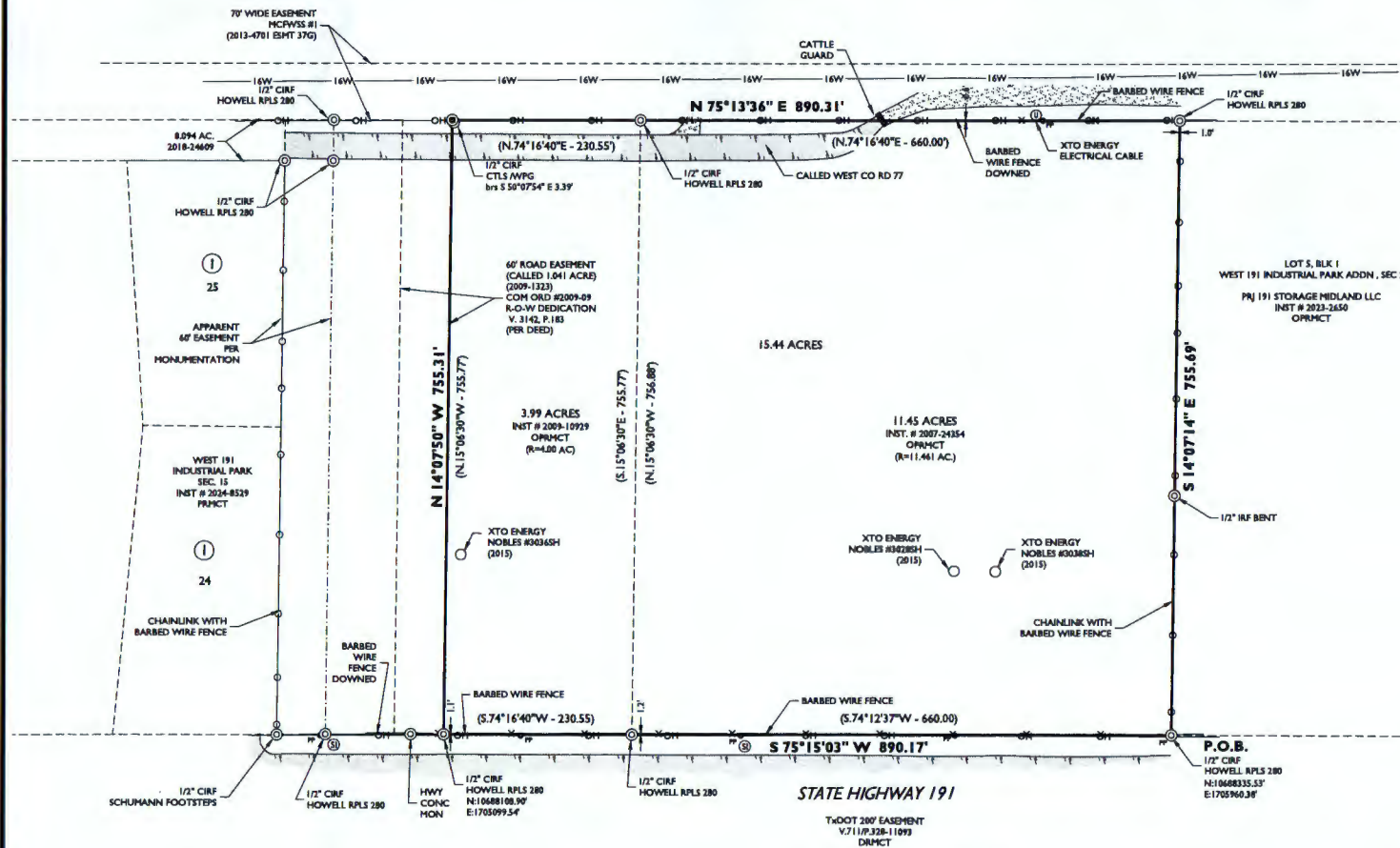
FOR OFFICE USE ONLY

☒ Property Owner Authorization ☒ Dimensioned Site Plan

☒ Application Fee ☒ Plans in Digital Format (PDF/JPEG)

Check # 5087

Received By: [Signature] Date: Jan 8 2025



LEGEND

- ① 1/2\"
- ② MONUMENTS FOUND AS NOTED
- ③ SIGN
- ④ UTILITY MARKER
- ⊕ POWER POLE
- WELL LOCATION
- BOLLARD
- BOUNDARY LINE
- - - PROPERTY LINES
- - - CHAINLINK FENCE
- - - FENCE AS NOTED
- - - OVERHEAD ELECTRIC LINE
- - - 16\"
- CAULICHE
- PAVEMENT

SURVEY NOTES

1. BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°57'44.73\"
2. 1/2\"
3. SEE DOCUMENTS ON ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.
4. LOCATION OF BURNED UTILITIES AND PIPELINES, IF ANY, IS APPROXIMATE BASED UPON OBSERVED EXISTING DIGANCE, CITY OF MIDLAND GAS AND VISUAL EVIDENCE, OR BY ONE-CALL 811 SITE MARKINGS AT THE TIME OF THIS SURVEY. DUE CARE IS RECOMMENDED; CALL 1-800-ONG-TEST FOR LOCATES PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
5. FENCES ARE ON OR WITHIN 0.5' OF THE PROPERTY LINE UNLESS OTHERWISE NOTED OR SHOWN HEREON.

FIELD NOTES

FIELD NOTE DESCRIPTION OF A 15.44 ACRE TRACT OF LAND, SITUATED IN SECTION 31, BLOCK 46, TOWNSHIP 1 SOUTH, RANGE 14 NORTH, PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING THE AGGREGATE OF A CALLED 11.461 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2809-14994 AND A CALLED 4.9 ACRE TRACT IN DOCUMENT NUMBER 2809-14993, BOTH IN THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT N(75) 16°03'33.53\"

THENCE S 75°13'36\"

THENCE N 14°07'50\"

THENCE S 75°15'03\"

THENCE S 14°07'14\"

THENCE S 14°07'14\"

P:\2024\0340165-REX OILFIELD SERVICES LP-1-20 INDUSTRIAL\DRAWINGS\BOUNDARY SURVEY\240165 BOUNDARY SURVEY.DWG Last Save by: AKabank 10/16/24

SURVEYOR: GWS	SCALE: 1"=100'	APPROVAL DATE:
DRAWN BY: AK	JOB NO.: 240165	REV 1:
APPROVED:	FIELD NO. 2: 10.09.24	REV 2:

TO REX OILFIELD SERVICES, LP: THIS SURVEY WAS PERFORMED ON THE GROUND AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND COMPLIES WITH THE TPELS STANDARDS FOR A BOUNDARY SURVEY.

Gregory W. Shultz
GREGORY W. SHULTZ, RLS 83354
FIRM NO. TX 010194514



OCTOBER 16, 2024

MAVERICK

CIVIL ENGINEERING / LAND SURVEYING

ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514

1909 West Wall Street, Suite "K" - Midland, Texas 79701

Tel: (432) 262-0999 Fax: (432) 262-0989

www.Maverick-Eng.com

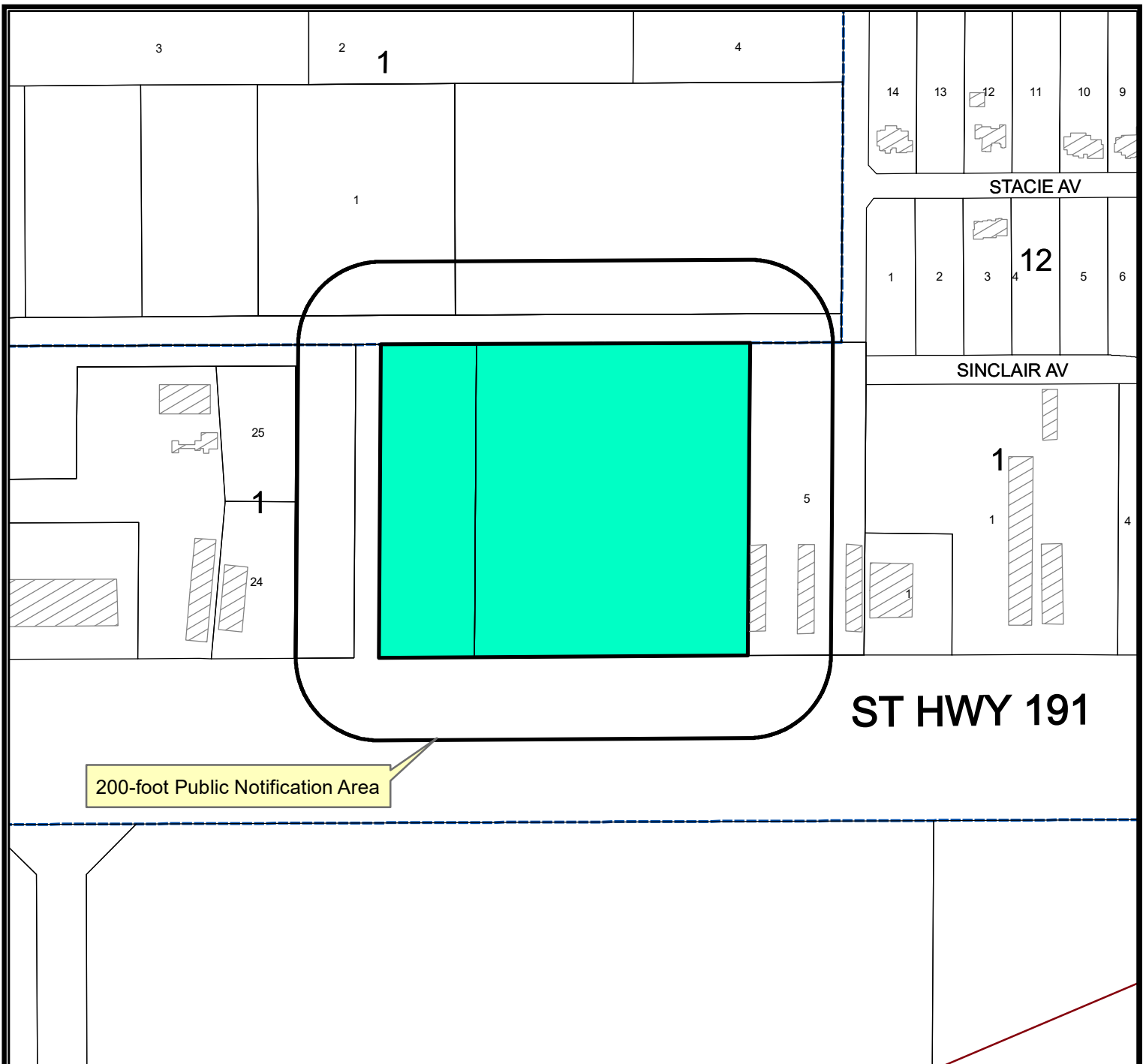
REX OILFIELD SERVICES, LP

BOUNDARY SURVEY WITH IMPROVEMENTS

FOR A 15.44 ACRE TRACT OF LAND, SITUATED IN SECTION 31, BLOCK 46, TOWNSHIP 1 SOUTH, RANGE 14 NORTH, PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

28.12

February 28, 2025



Location Map

Z-25-0408

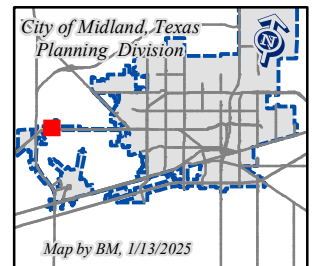
Scale: 1" = 348'

Consider a request by Maverick Engineering, on behalf of MM&E Holdings, LLC, for a Zone Change from RR, Regional Retail District, to LI, Light Industrial District, for a 15.44-acre tract of land located in the southeast quarter of Section 31, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located on the north side of State Highway 191, approximately 420 feet west of Holdridge Road. (Center of Parcel)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

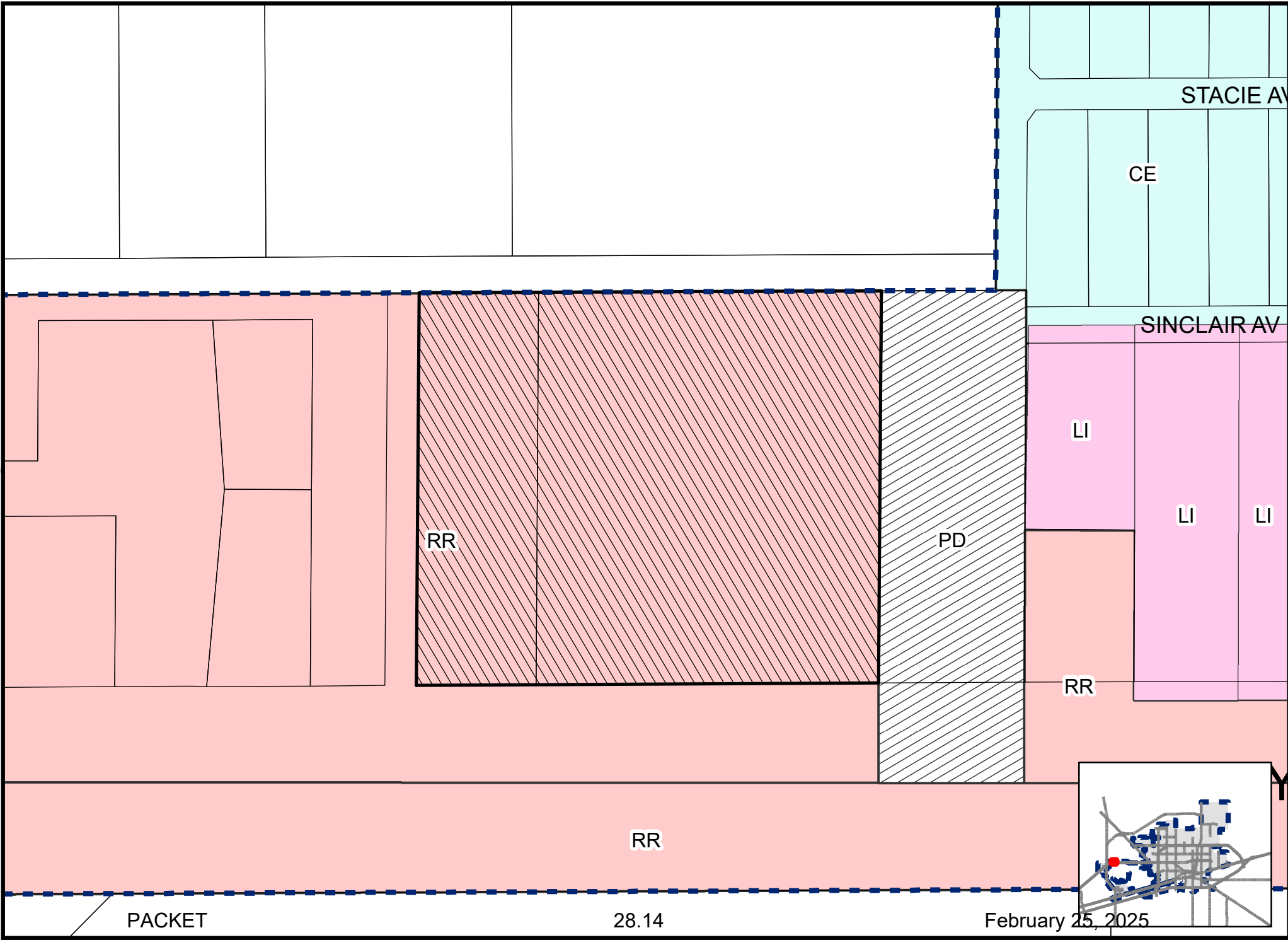


©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING PLAN. IT IS DESIGNED TO BE USED AS A LOCATION 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 25, 2025



PACKET

28.14

February 25, 2025





PACKET

28.15

February 25, 2025



PACKET

28.16

February 25, 2025



WEST 191 INDUSTRIAL PARK, SECTION 16



Visit Our Website

MIDLANDTEXAS.GOV

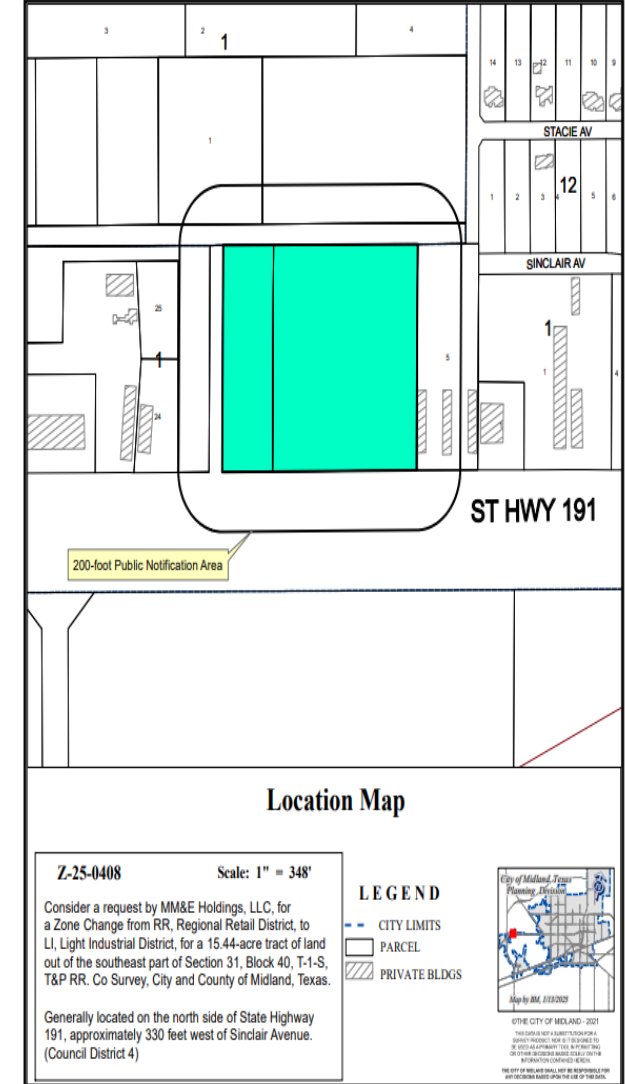
PACKET

28.17

February 25, 2025

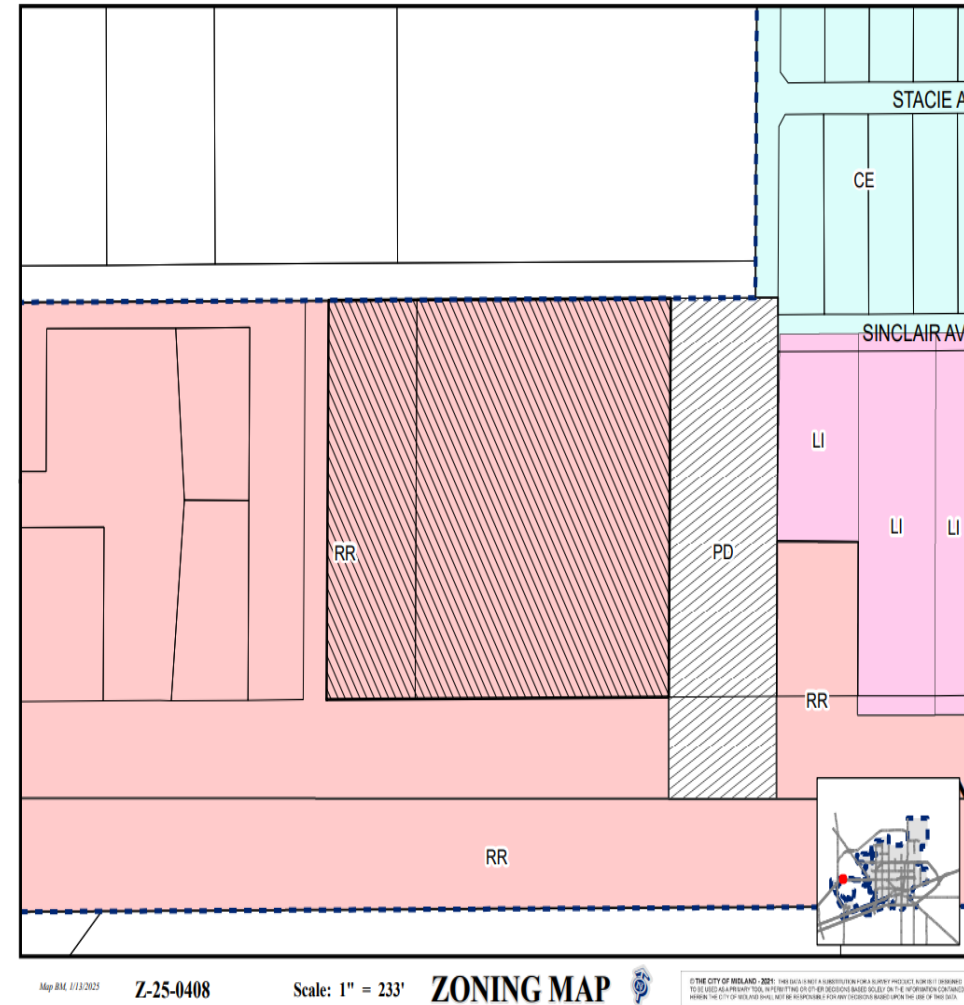
APPLICATION SUMMARY

- **Property Owner/Applicant:** MM&E Holdings, LLC
- **Representative:** Ashlee Devine, with Maverick Engineering
- **Zone Change**
- **Address:** Generally located on the north side of State Highway 191, approximately 220 feet west of Holdridge Road. (Council District 4)



ZONING

- **Current Zoning:** RR, Regional Retail District
- **Surrounding Zoning:**
 - **North:** ETJ, Extraterritorial Jurisdiction
 - **East:** PD, Planned Development District for a Shopping Center, and LI, Light Industrial District
 - **South/West:** RR, Regional Retail District
- **Proposed Zoning:** LI, Light Industrial District



LAND USE

- **Current Use of the Property:**
Vacant
- **Proposed Use of the Property:**
Industrial Warehouse Buildings
- **Surrounding Uses:**
 - North: Industrial Buildings
 - West: Refrigeration Company
 - East: Storage Facility
 - South: Vacant

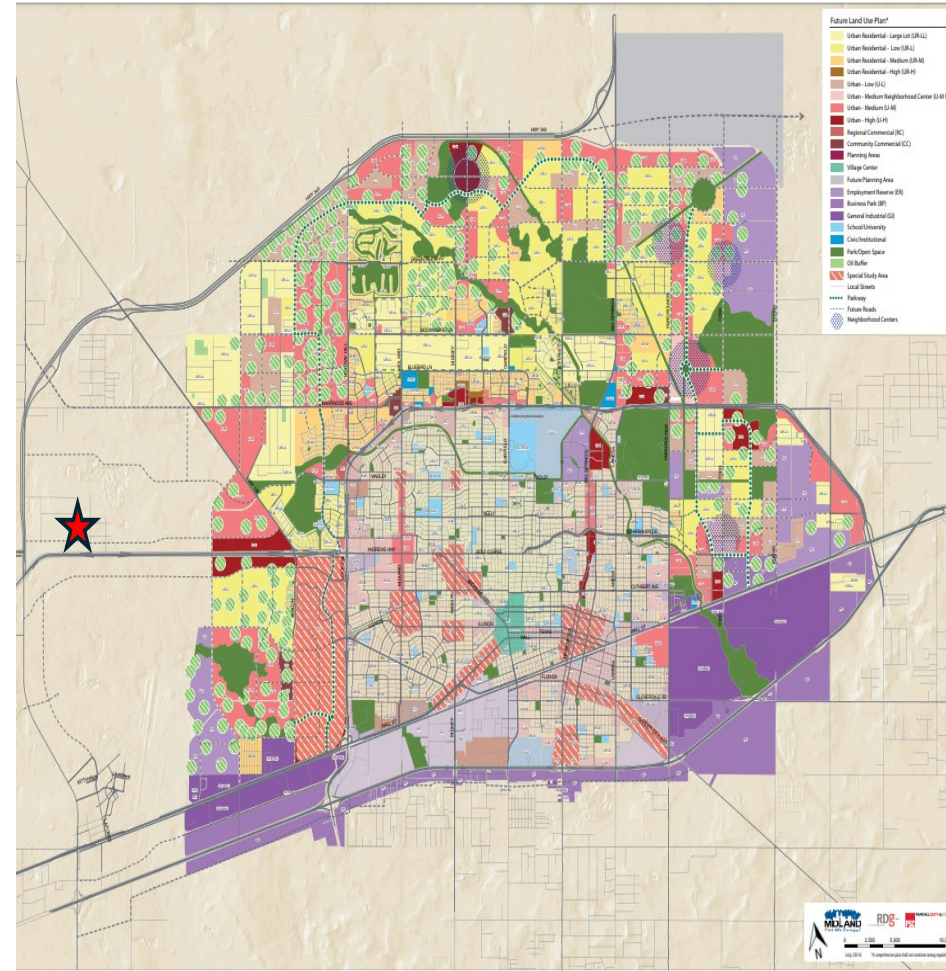


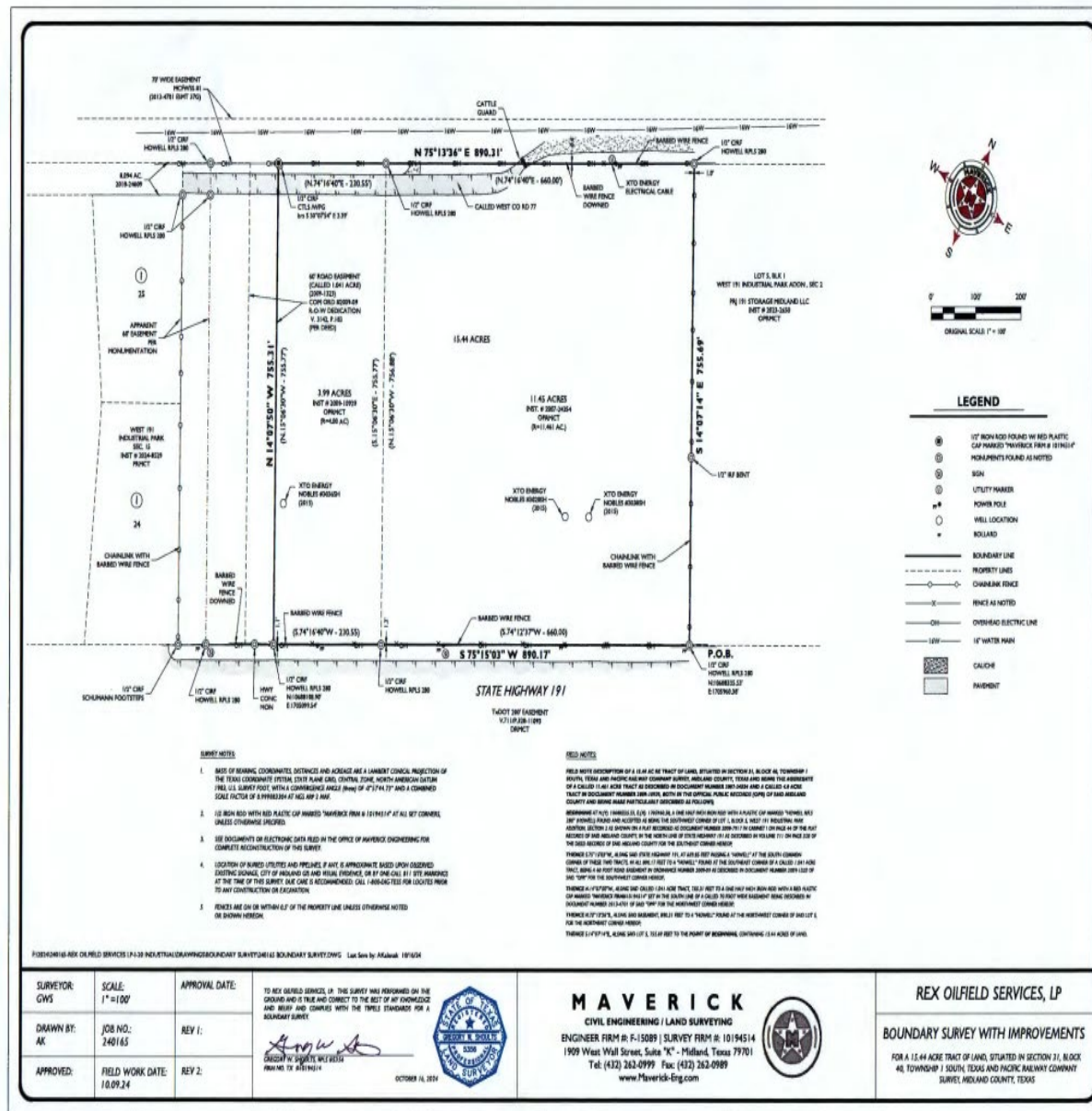


On State Highway 191, Looking North

COMPREHENSIVE PLAN

- TCT Land Use Designation: Not designated





STAFF'S RECOMMENDATION

- No objections received.
- The Planning & Zoning Commission recommended approval of this request on February 3, 2025.
- Staff recommends **APPROVAL** of this zone change from RR, Regional Retail District to LI, Light Industrial District.



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 29
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Daniel Humbert, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, AND THE NORTH 39.7 FEET OF LOT 9, BLOCK 2, HUNTINGTON PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF MABERRY STREET AND SINCLAIR AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE NORTH SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Danny Wesson is requesting a reduced minimum side yard setback for a corner lot to construct an addition to a home on a property located at 1805 Maberry Street.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The subject property is zoned SF-1, Single-Family Dwelling District. Per Section 5.04 – Residential Zoning District Dimensional Regulations Chart, the minimum side yard setback for corner lots is ten (10) feet in the SF-1, Single-Family Dwelling District. The applicant is requesting to reduce this minimum setback to three (3') feet and six (6") inches to allow for the construction of an addition to the existing home, which would not meet the minimum requirements established by the zoning code.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Fire: (Approved)

No objections. All future structures must adhere to the 2015 International Fire Code.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Engineering: (Approved)

No objection. [For the Applicant's information only.]

Transportation: (Approved)

No objection. [For the Applicant's information only.]

Planning (Approved):

Staff recommends approval of this request as it won't affect the safety, comfort, and welfare of the occupants in the area who are enjoying the same privileges of reduced setbacks.

Staff recommends that Council approval of this request, subject to conditions A and B.

Conditions:

- A. That the minimum side yard setback on the north side of the Property shall be three (3') feet and six (6") inches.**
- B. That the reduced minimum side yard setback granted herein shall not apply to any building or portion of a building except the portion of the principal building that is identified as "PROPOSED 1-CAR GARAGE ADDITION" in the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes**

Letters of Objection:

Staff has not received any letters of objection as of February 21, 2025.

Attachments:

Exhibit A
Application
Maps
PowerPoint Presentation



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 8, AND THE NORTH 39.7 FEET OF LOT 9, BLOCK 2, HUNTINGTON PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF MABERRY STREET AND SINCLAIR AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE NORTH SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 (“Section 11-1-7”) of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 8, and the north 39.7 feet of Lot 9, Block 2, Huntington Place Addition, City and County of Midland, Texas (the “Property”). Said special exception shall allow a reduced side yard setback on the north side of the Property.

SECTION TWO. Said special exception is subject to the following special conditions:

- A. That the minimum side yard setback on the north side of the Property shall be three feet six inches (3’ 6”).
- B. That the reduced minimum side yard setback granted herein shall not apply to any structure or portion of a structure except the portion of the principal structure that is identified as “PROPOSED 1-CAR GARAGE ADDITION” in the site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

24.28 - 1805 Maberry
Street - RES Add & Alt
1805 Maberry Street,
Midland TX 79705
Danny & Reagan
Wesson

PROJECT INFORMATION
PROPERTY ADDRESS: 1805 MABERRY STREET
CITY: MIDLAND, TEXAS 79705
COUNTY: MIDLAND COUNTY
OWNER: DANNY & REAGAN WESSON
DATE: 10/10/24
SHEET: 101
SCALE: AS SHOWN
PROJECT NO: 24.28-1805

EXHIBIT
T A

LB
Desi
gns
Project Scope
1805 Maberry Street
Midland, TX 79705
L.B.K. Designs
L.B.K. Designs@Outlook.com

4 Front
Perspective

2 Northeast
Isometric

3 Southwest
Isometric

PROPOSED
LOCATION

PROPOSED
LOCATION

PACKET

29.8

February 25, 2025

3 Vicinity
Map
Not to
Scale

2 Aerial
Map
Not to
Scale

1 Site
Plan
1"=10'-0"

5 Additions
Legend

1"=10'-0"
10' 0' 5' 10' 20' 50'

PROJECT
TRUE

NORTH

No.	Description	Date
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-

Project Date: 10/10/24
Sheet: 101 of 101
Scale: As Shown
Project No: 24.28-1805



Special Exception Application

Project Number: _____

Case Number: E-25-0134

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: Danny Wesson		Phone 432-853-7844 Email dnwesson@gmail.com	
Address 1805 Maberry St	City Midland	State TX	Zip 79705

Property Owner Printed Name: Danny Wesson		Phone 432-853-7844 Email dnwesson@gmail.com	
Address 1805 Maberry St	City Midland	State TX	Zip 79705

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: Danny Wesson		Phone 432-853-7844 Email dnwesson@gmail.com	
Address	City	State	Zip

Street Address: 1805 Maberry St**Legal Description**

Lot: 8

Block: 002

Subdivision: Huntington Place

Current Zoning:**This property qualifies as an exception to the City Code because:**

- ☐ It is an expansion of a nonconforming use.
- ☒ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

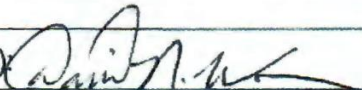
Reason for Request: We are adding onto the house to the North towards an architectural wall. We are planning on an architectural attached structure that will encroach similar to neighboring homes along Sinclair street.

Submittal and Fees**Items to be submitted with this application form:**

- Application Fee – Payable to the 'City of Midland' (\$500.00)
- Dimensioned Site Plan showing:
 - Parking
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures

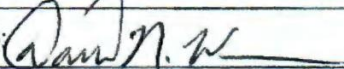
Applicant (signature):



Date: 01/27/2025

Applicant (printed): Danny Wesson

Property Owner (signature):



Date: 01/27/2025

Property Owner (printed): Danny Wesson

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

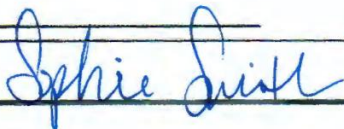
Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☐ Property Owner Authorization☐ Dimensioned Site Plan☐ Application Fee☐ Plans in Digital Format (PDF/JPEG)

Check # _____

Received By:



Date:

1/30/25

24.28 - 1805 Maberry
Street - RES Add & Alt
1805 Maberry Street,
Midland TX 79705
Danny & Reagan
Wesson

PROJECT INFORMATION
PROPERTY ADDRESS: 1805 MABERRY STREET, MIDLAND, TX 79705
OWNER: DANNY & REAGAN WESSON
DESIGNER: LBK DESIGNS
DATE: 10/10/24
SHEET: 29.11
PROJECT NO: 24.28-1805 MABERRY STREET

LBK
DESIGNS
6502 Slide Rd.
Ste. 306
Lubbock, TX 79424
LBKDesigns@Outlook.com

PROPOSED
1-CAR
GARAGE
ADDITION

EXISTING
POOL
TO
REMAIN

PROPOSE
D 2nd
STORY
ADDITION

EXISTING
ACCESSORY
BUILDING
TO REMAIN

PROPOSED 2-
STORY
ADDITION

4 Front
Perspective

2 Northeast
Isometric

3 Southwest
Isometric

PROJECT
LOCATION

PROJECT
LOCATION

PROPOSED 1-CAR
GARAGE ADDITION

PROPOSED 2nd
STORY ADDITION

PROPOSED 2-
STORY ADDITION

5 Additions
Legend

PACKET

29.11

February 25, 2025

3 Vicinity
Map
Not to
Scale

2 Aerial
Map
Not to
Scale

1 Site
Plan
1"=10'-0"

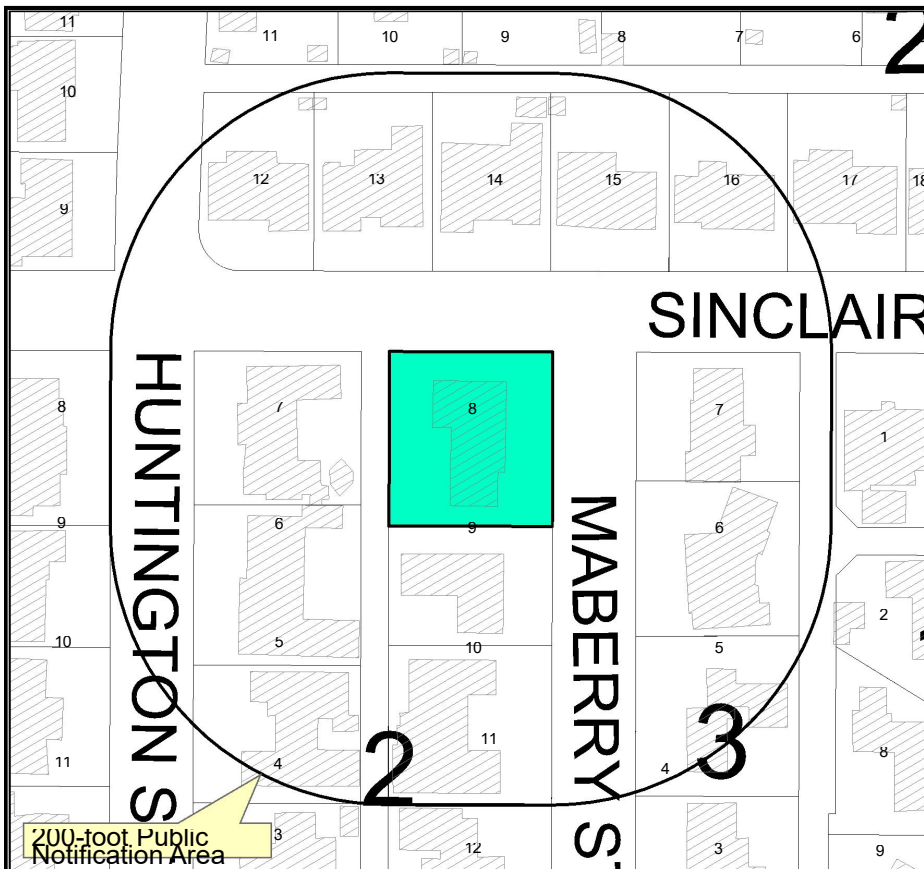
1"=10'-0"
0' 5' 10' 20' 50'

PROJECT
TRUE
NORTH

No.	Description	Date
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-

Project Date: 10/10/24
Sheet: 29.11 of 32
Scale: 1"=10'-0"

101



Location Map

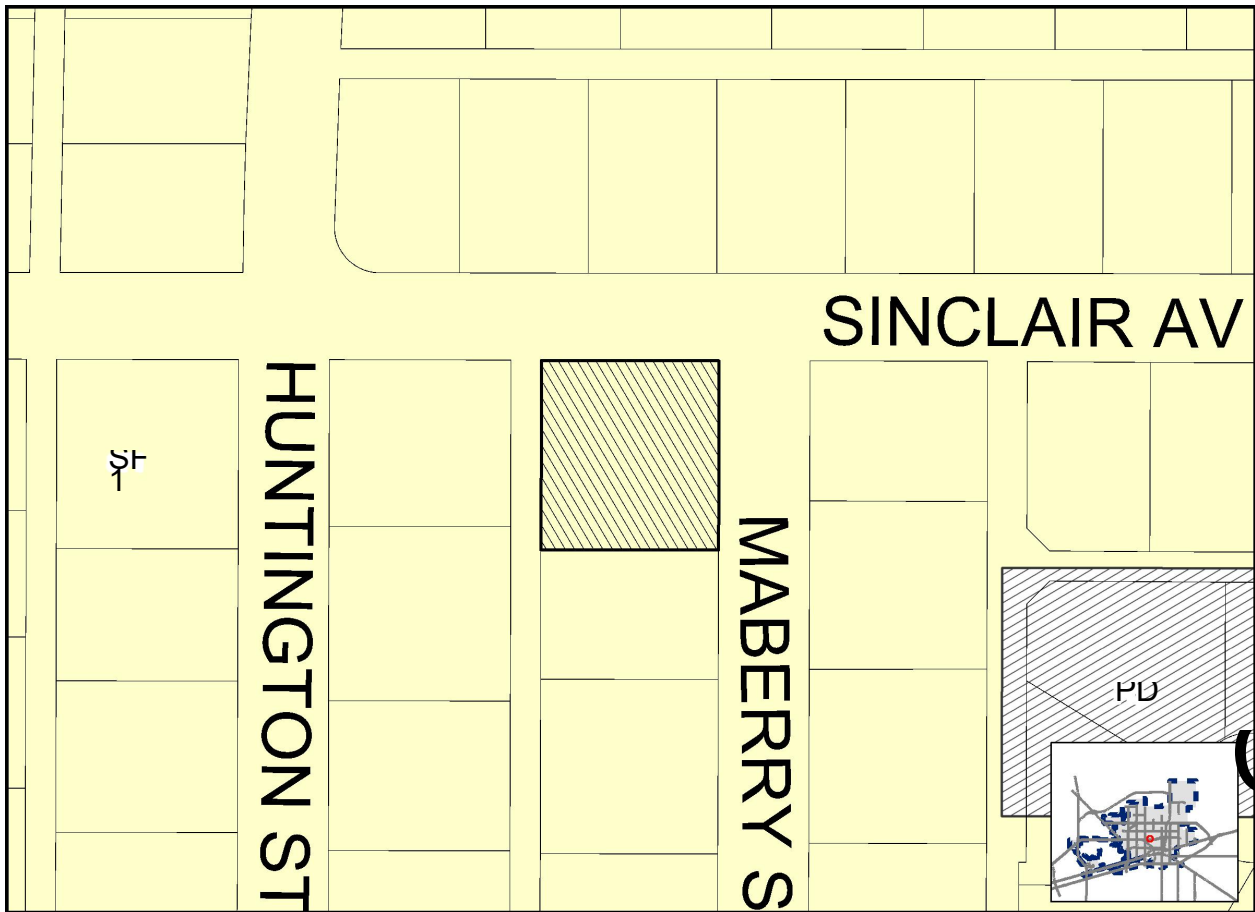
E-25-0134-842
 Consider a request by Danny Wesson for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart to allow a reduced minimum side yard setback on corner of the north intersection of Maberry Street and Sinclair Avenue, City and County District 3, Texas.

Scale: 1" = 842'

LEGEND
 CITY LIMITS
 PARCELS
 PRIVATE BLDGS



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 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map.DH
2/9/2025

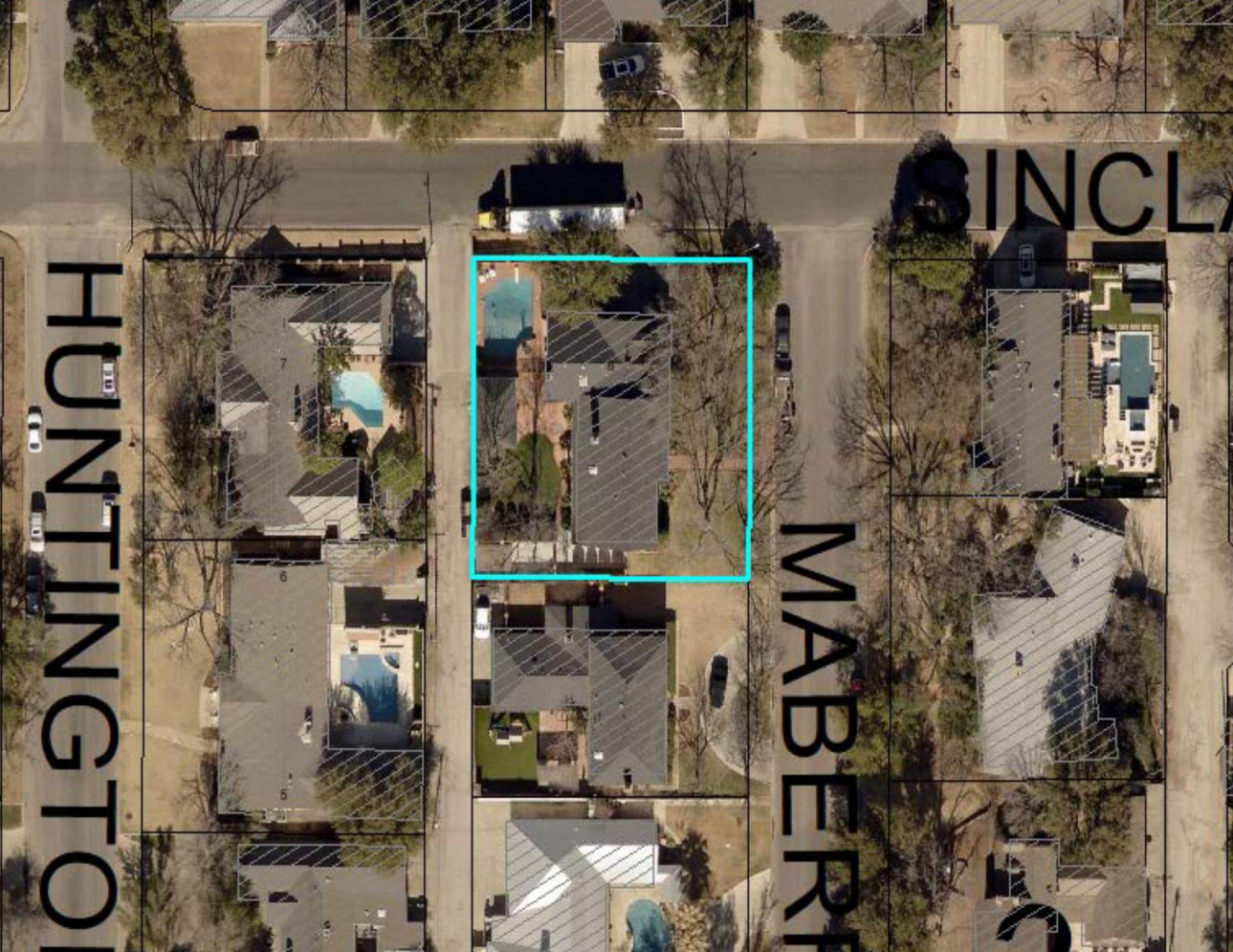
E-25-
0134

Scale: 1" =
77.56'

ZONING
MAP



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PACKET

29.15

February 25, 2025



1805 MABERRY STREET

ITEM — SPECIAL EXCEPTION REQUEST



Visit Our Website

MIDLANDTEXAS.GOV

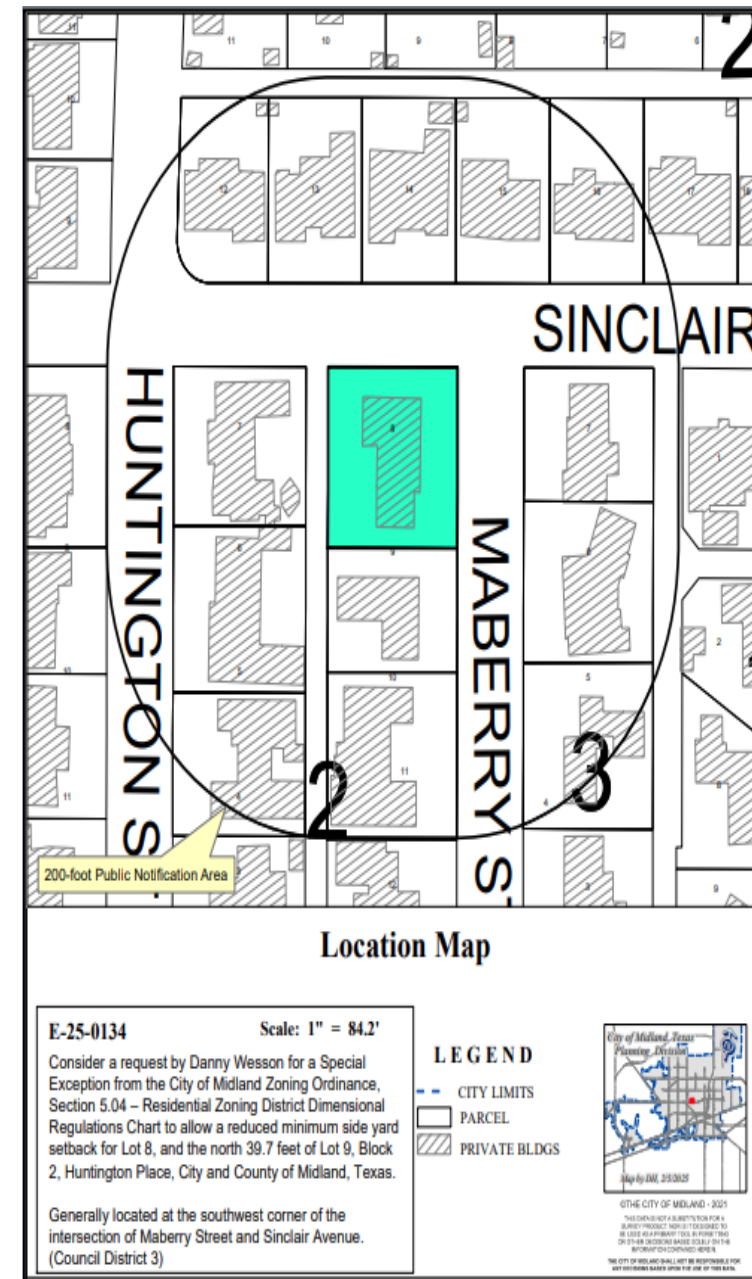
PACKET

29.16

February 25, 2025

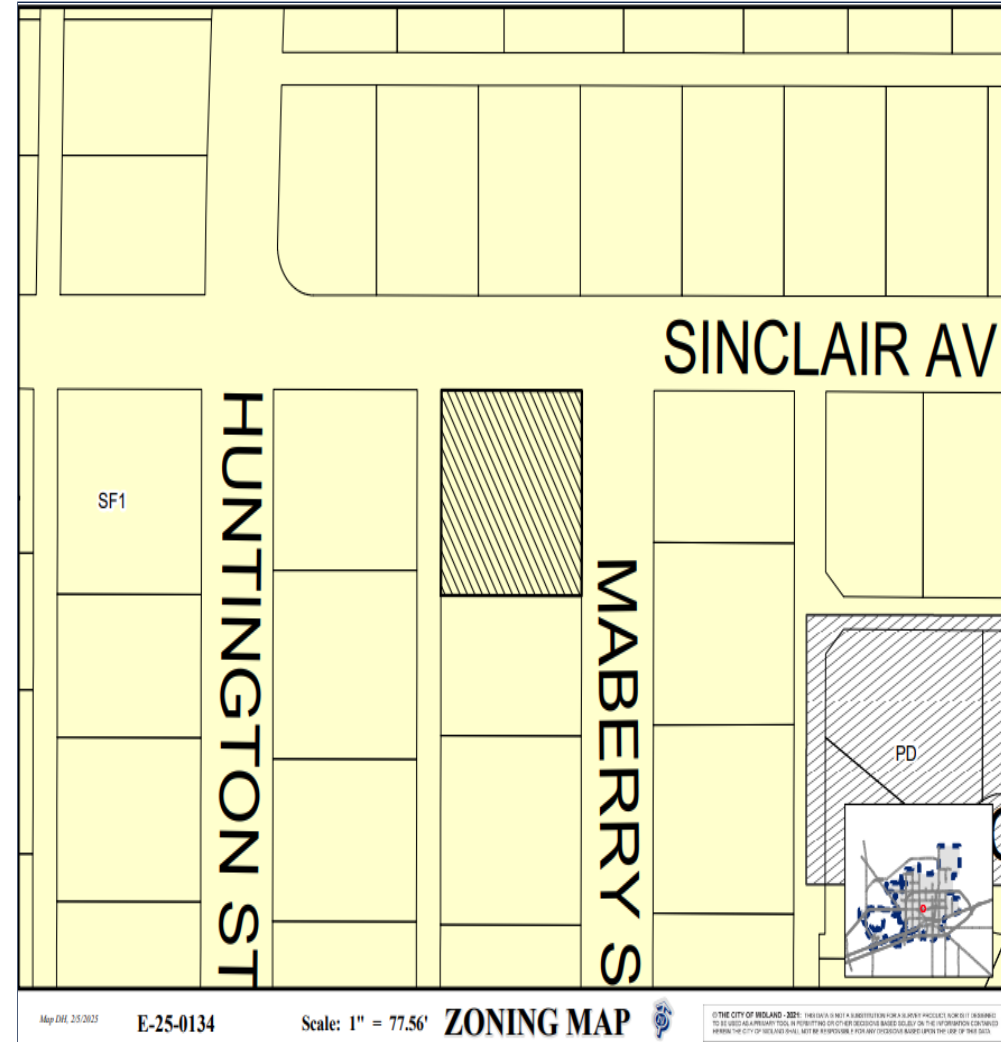
APPLICATION SUMMARY

- **Property Owner:** Danny Wesson
- **Application Type:** Special Exception
- **Address:** 1805 Maberry Street (District 3)
- **Reason for Request:** To permit a reduced minimum side yard setback for a corner lot to construct an addition to a home



ZONING

- **Current Zoning:** SF-1, Single-Family Dwelling District
- **Surrounding Zoning:**
 - **North/South/East/West:** SF-1, Single-Family Dwelling District



LAND USE

- **Current Use:** Single-family residential
- **Proposed Use:** Single-family residential
- **Surrounding Uses:**
 - **North/South/East/West:** Single-family residential



SPECIAL EXCEPTION DETAILS

- **Requirement:** Ten-foot setback.
- **Requested Variance:** Three feet and six inches setback.
- **Hardship:** Although there is no hardship, this request will not affect the safety, comfort, and welfare of the occupants in the area who are enjoying the same privileges of reduced setback.





On Maberry Street, Looking North

STAFF RECOMMENDATION

Staff recommends that Council approval of this request, subject to conditions A and B.

Conditions:

- A. That the minimum side yard setback on the north side of the Property shall be three (3') feet and six (6") inches.



STAFF RECOMMENDATION

- B. That the reduced minimum side yard setback granted herein shall not apply to any building or portion of a building except the portion of the principal building that is identified as “PROPOSED 1-CAR GARAGE ADDITION” in the site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes



MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.



City Council Meeting

Item Number: 30
Meeting Date: February 25, 2025
To: City Council / City Manager
From: Alexis M. Martinez, Associate Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,523-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK, 2ND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD APPROXIMATELY 120 FEET SOUTH OF MAXWELL 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 (DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Shop Co, on behalf of Stephan Hall, is requesting a Specific Use Designation (SUD) with Term for Alcoholic Beverages Sales for On-Premises Consumption in a bar on a property located at 3303 North Midkiff Road.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

(Quality of Life & Place)

Current Zoning:

RR, Regional Retail

Surrounding Zoning and Land Use:

The properties to the north and west are zoned SF-2 Single Family Dwelling District. The properties to the south are zoned PD, Planned Development District for a Shopping Center and RR, Regional Retail District, for a U.S Postal Office, retail store and shopping center. The properties to the east are zoned RR, Regional Retail District, with uses that include a shopping center and gas station.

Analysis:

The property is zoned RR, Regional Retail District. RR zoning allows Alcoholic Beverages Sales for On-Premises Consumption in a bar with the approval of an SUD. The total area of the bar, Rhythm and Booze, is 4,523 square feet and the proposed alcohol serviceable area is 2,581 square feet.

The proposed hours of operation:

Wednesday through Sunday from 2 p.m. to 2 a.m.

The proposed hours of alcohol service:

Wednesday through Sunday from 2 p.m. to 2 a.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to “Encourage the development of places where Midland residents can gather and socialize to build connections.” Rhythm and Booze is a destination

where Midland residents will gather and socialize.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

A fire inspection must be conducted by the fire marshal's office before a certificate of occupancy is issued..

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection.

Building Code: (Approved)

The SUD for Rhythm and Booze is acceptable. The property must adhere to the maximum occupant load of 173 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, subject to Condition A through G.

Conditions:

A. That the serviceable area of the establishment shall be limited to approximately 2,581 square feet as shown in Exhibit "A".

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:

Wednesday through Sunday from 2 p.m. to 2 a.m.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the establishment shall meet all requirements of the Fire Department and Code Administration.

F. That the operator of the establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this Specific Use Designation with Term are satisfied.

G. That in accordance with Section 11-1-9.07. E.3 of the zoning ordinance, the establishment shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of February 7, 2025, staff received three letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan
Maps
PowerPoint



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,523-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK, 2ND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD APPROXIMATELY 120 FEET SOUTH OF MAXWELL DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for A 4,523-square foot portion of Lot 18, Block 1, Providence Park, 2nd Section, City and County of Midland, Texas (the “Property”), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a bar (the “Establishment”) for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

- A. That the serviceable area of the Establishment shall be limited to approximately 2,581 square feet as shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.
- B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Wednesday through Sunday from 2:00 p.m. to 2:00 a.m. of the following day.
- D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.
- F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.
- G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2025; 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., 2025, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2025.

Lori Merritt Blong, Mayor

ATTEST:

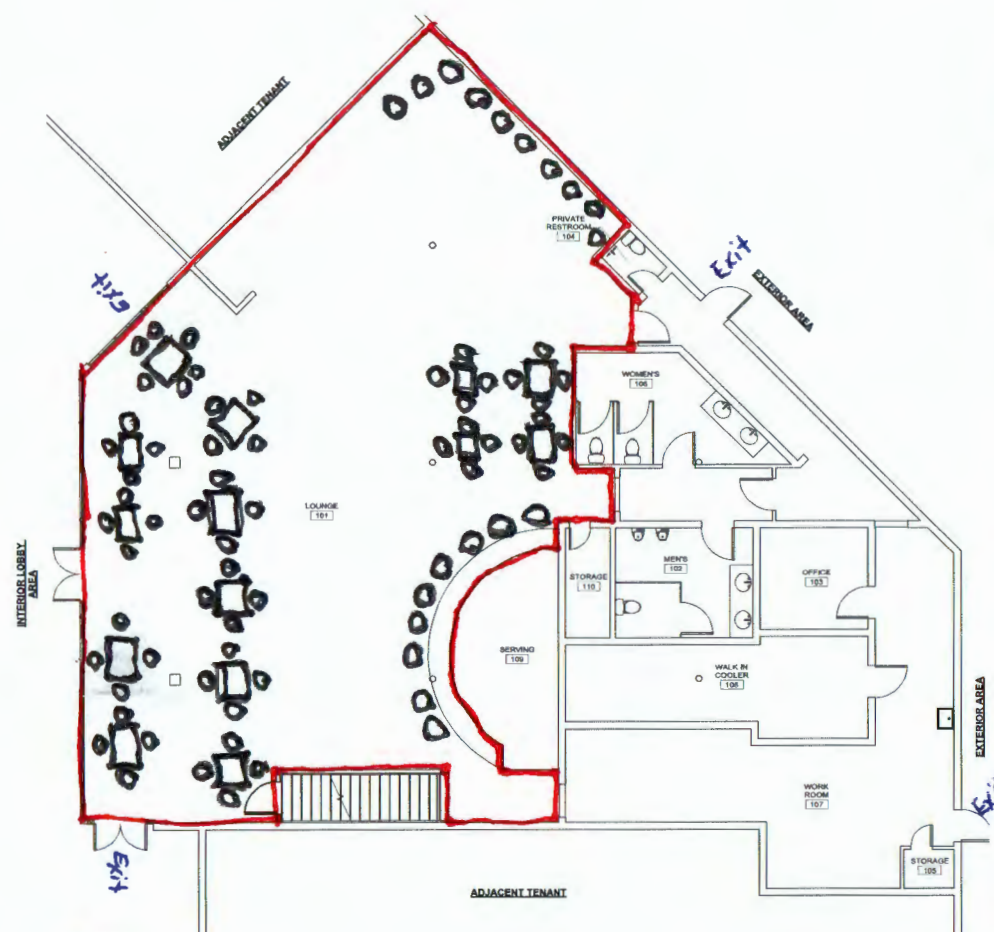
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



FLOOR PLAN
3/16" = 1'-0"

OCCUPANT AND FIXTURE LOAD SCHEDULE																
			Room Code			Plumbing Loads			Plumbing Loads			Plumbing Loads				
Level	Number	Name	Area	SF Per Person	Room Capacity	Male Water Closet Lead	Required WC (Male)	Female Water Closet Lead	Required WC (Female)	Female Lin Lead	Required Female Lin Lead	Male Lin Lead	Required Male Lin Lead	Drinking Fountain Lead	Required Drinking Fountain	
LEVEL 1	181	LOUNGE	2581		15	173	75	1.15	75	1.15	200	0.43	200	0.43	500	0.345
LEVEL 1	182	MEN'S	150													
LEVEL 1	183	OFFICE	97		150	1	25	0.02	25	0.02	50	0.01	50	0.01	100	0.011
LEVEL 1	184	PRIVATE RESTROOM	18													
LEVEL 1	186	STORAGE	17		300	1	100	0.00	100	0.00	100	0.00	100	0.00	1000	0.001
LEVEL 1	186	STORAGE	17													
LEVEL 1	186	WOMEN'S	112		150	4	25	0.08	25	0.08	50	0.04	50	0.04	100	0.045
LEVEL 1	187	WORK ROOM	525		150	2	25	0.04	25	0.04	50	0.02	50	0.02	100	0.025
LEVEL 1	188	WALK IN COOLER	290													
LEVEL 1	128	REPAIRING	168													
LEVEL 1	119	STORAGE	43													
			3992		180		1.32		1.32		0.51		0.51		0.415	

Total Square Footage of Business- 4523'
 Square Footage of Alcohol Serviceable Area- 2581'

30.9

February 25, 2025

EXHIBIT "A"

BUILDING CODE SUMMARY

Name of Project: RHYTHM & BOOZE
 Address: 3306 N. MIDKIFF RD, Suite 180 Midland, Texas
 Proposed Use: BBO
 Owner or Authorized Agent: MIDLAND, TEXAS
 City or County: MIDLAND County MIDLAND TX State
 Code Enforcement Jurisdiction: CITY OF MIDLAND
 Zoning: BBO
 Land Use: BBO
 Lot Area: 1.0000 acres (MIDLAND, TEXAS 43)
 Building Footprint Area: 0.0000
 Lot Coverage: 0.0000
 Floor Area Ratio: 0.00 / 0

SCOPE OF WORK: MIDLAND, TEXAS
 CONSTRUCTION SHALL INCLUDE ALL ARCHITECTURAL, ELECTRICAL, AND MECHANICAL FOR OCCUPANCY.

APPLICABLE CODES / ORDINANCES
 BUILDING CODES
 2018 International Building Code (IBC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Mechanical Code (IMC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Plumbing Code (IPC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Fire Code (IFC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2017 National Electrical Code (NEC) with City of MIDLAND, TEXAS Amendments - Ordinance
 ZONING
 OTHER STANDARDS
 2015 ASHRAE Standards for Accessible Design
 2015 Texas Accessibility Standards (TAS)

OCCUPANCY
 Primary Occupancy: ☒ Assembly A1 ☐ A2 ☐ A3 ☐ A4 ☐ A5
☐ Business
☐ Educational
☐ Factory / Industrial
☐ High Hazard
☐ Institutional
☐ Mercantile
☐ Residential
☐ Storage
☐ Utility
☐ Parking Garage
☐ Open
☐ Engineered
☐ Repair
 Secondary Occupancy: N/A
 Mixed Occupancy: ☐ Yes ☒ No ☐ Separation ☐ Exception

GENERAL BUILDING DATA
 Construction Type: ☐ IA ☐ IB ☐ IIA ☐ IIB ☐ IIC ☐ IIIA ☐ IIIB ☐ IVC ☐ IVA ☐ V
 Mixed Construction: ☐ No ☒ Yes Type: ☐ I ☐ II ☐ III ☐ IV ☐ V
 Sprinklers: ☐ No ☒ Yes NFPA 13 NFPA 13R NFPA 13D
 Standpipes: ☐ No ☒ Yes Class ☐ I ☐ II ☐ III ☐ Wet
 Fire District: ☐ No ☒ Yes
 Building Height: ☐ NA ☐ No ☒ Yes
 Mezzanine: ☐ No ☒ Yes
 High Rise: ☐ No ☒ Yes

LIFE SAFETY REQUIREMENTS
 Emergency Lighting: ☐ No ☒ Yes
 Exit Signs: ☐ No ☒ Yes
 Fire Alarm: ☐ No ☒ Yes
 Smoke Detection System: ☐ No ☒ Yes
 Plastic Handwear: ☐ No ☒ Yes
 Emergency Standby Power System: ☐ No ☒ Yes



H3 DIGITAL DESIGN
 100 WEST 61 STREET
 SUITE 100 MIDLAND
 TEXAS, 79701
 432.699.4899
 h3@h3dd.com

CLIENT
 RHYTHM AND BOOZE
 NEW SPACE
 3306 N. MIDKIFF ROAD
 SUITE 180
 MIDLAND, TEXAS

CODE INFORMATION

Project no. H3C24001
 scale: As Indicated
 date: 3.11.24

Revisions		
NO.	DATE	DESCRIPTION

PERMIT

A-000

PACKET

UL U419

SN-P-1-11



Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption

Project Number:

Case Number: SMU-25-0191

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Stephen Hall

Address 1815 Overshine Lane

City Midland

Phone (432) 260-0029

Email blackhorselegacy@gmail.com

State TX Zip 79705

Property Owner

Printed Name: San Miguel Midland Partners LLC

Address 4809 Cole Ave Suite 330

City Dallas

Phone (972) 559-915

Email

State TX Zip 75205

Representative (if different from Applicant or Property Owner)

Firm: Shop Co

Printed Name: Daniel Fuller

Address 4809 Cole Ave Suite 330

City Dallas

Phone (214) 794-5742

Email daniel@shopcompanies.com

State TX Zip 75205

Street Address: 3303 N Midkiff Rd Suite 160

Business Name: Rhythm & Booze

Legal Description

Lot: 18 Block: 1 Subdivision: Providence Park

Current Zoning:

Reason for Request: Reopening old Rockstar Bar

Type of Business (restaurant, bar, lounge, nightclub, etc.): Bar/Lounge

Proposed/Current Days and Hours of Operation: 2:00pm to 2:00am

Proposed Days and Hours of Alcohol Service: 2:00pm to 2:00am Wednesday to Sunday

Total Square Footage of Business: 4523 sq/Ft

Square Footage of Alcohol Serviceable Area: 2584 sq/Ft

Restroom Fixtures:

Men

Toilets/Urinals: 1/2

Bathroom Sinks: 2

Women

Toilets: 2

Bathroom Sinks: 2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
 - Seating
 - Exits
 - Restrooms
 - Kitchen (if applicable)
 - Total Square Footage
 - Serviceable Square Footage
- Dimensioned Site Plan showing:
 - Parking
 - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature): Stephen Hall Date: 1-7-25

Applicant (printed): Stephen Hall

Property Owner (signature): D. A. Cullen, Jr. Date: 1-7-25

Property Owner (printed): Daniel A. Cullen, Jr.

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

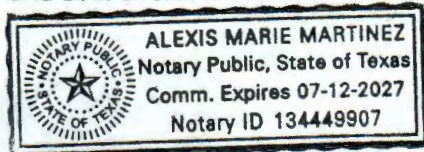
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Stephen Hall who, being by me duly sworn, upon oath says: That (s)he is authorized by San Miguel Midland Super 7-25 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.

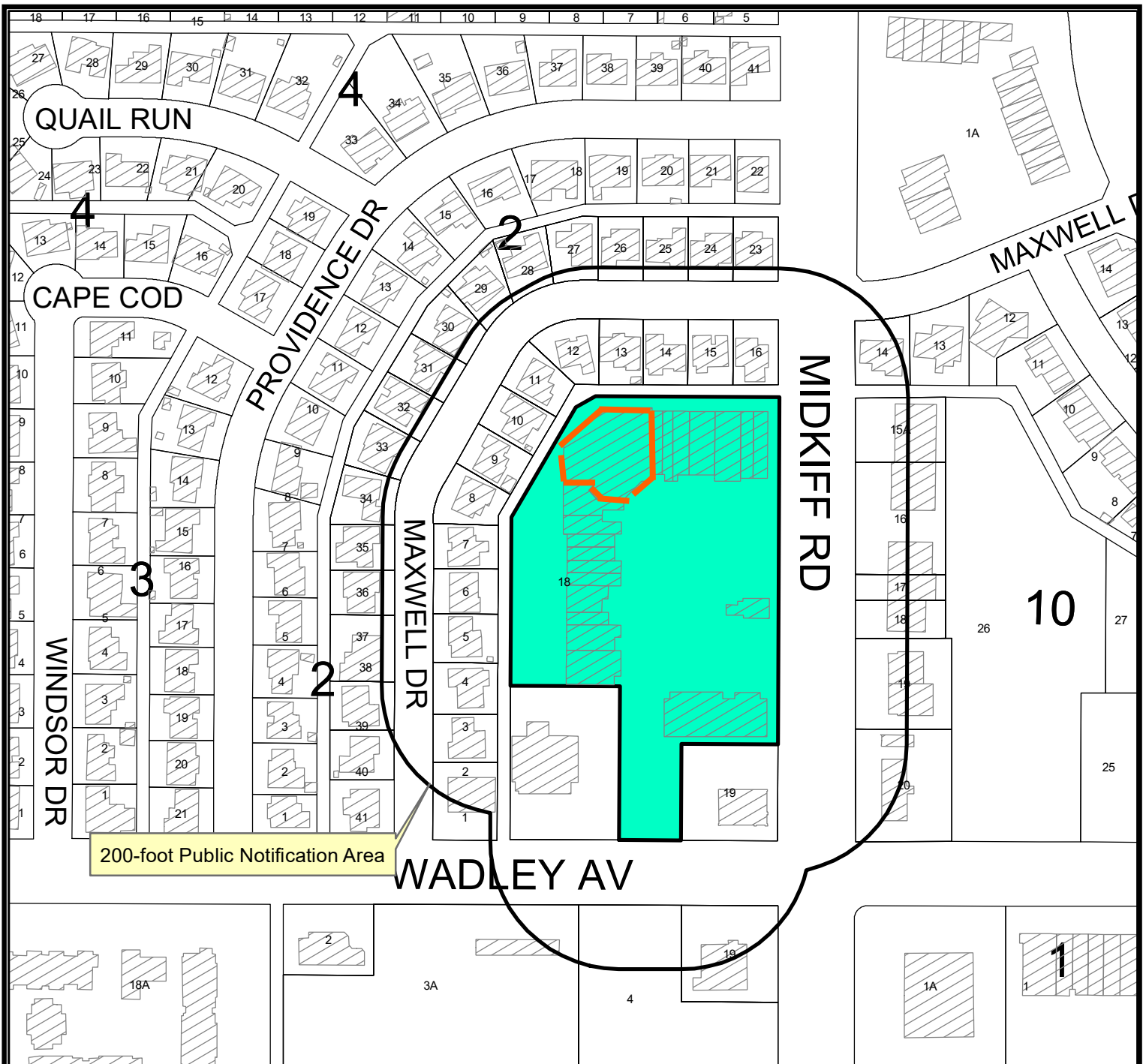
Stephen Hall
Authorized Agent (signature)

Subscribed and sworn to before me, this 16th day of January, 2025, to certify which witness my hand and seal of office.



[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****



Location Map

SUD-25-0191

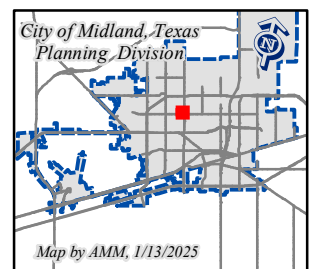
Scale: 1" = 684'

Consider a request by Shop Co, on behalf of Stephen Hall, for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages for on premises consumption in a Bar, on a 4,523 square-foot portion of Lot 18, Block 1, Providence Park, 2nd Section, City and County of Midland, Texas.

Generally located on the west side of North Midkiff Road, approximately 120 feet south of Maxwell Drive.
(Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

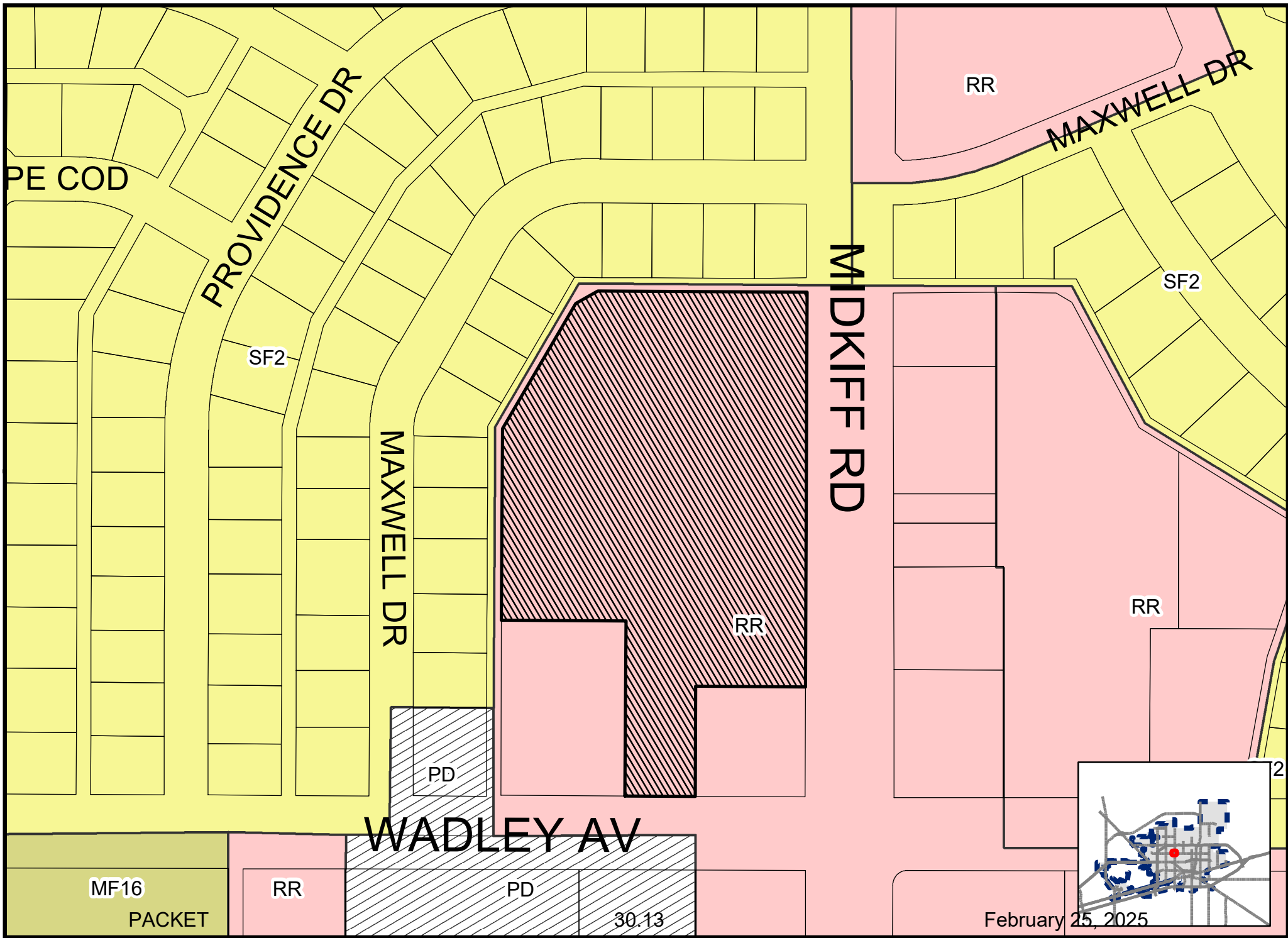


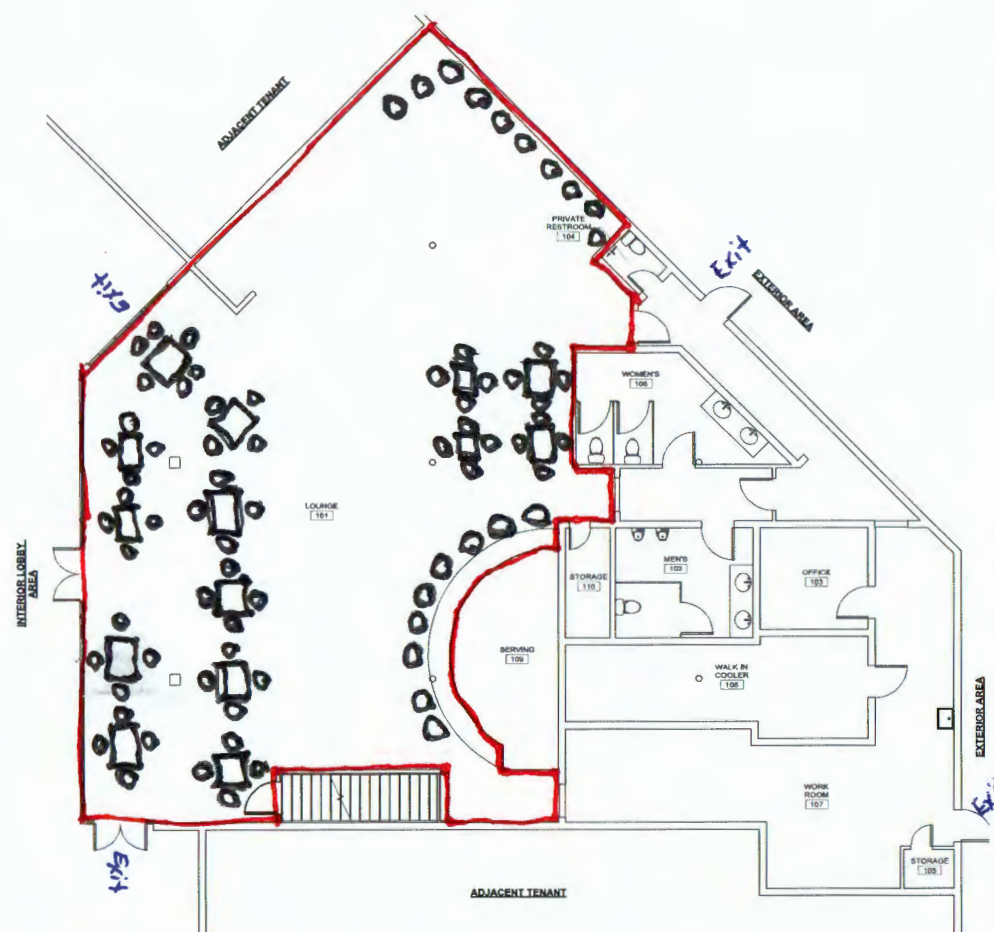
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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 25, 2025





FLOOR PLAN
3/16" = 1'-0"

OCCUPANT AND FIXTURE LOAD SCHEDULE													
Level	Number	Name	Room Code			Plumbing Loads		Plumbing Loads		Plumbing Loads		Plumbing Loads	
			Area	SF Per Person	Room Capacity	Male Water Closet Load	Required WC (Male)	Female Water Closet Load	Required WC (Female)	Male Lin Load	Required Male Lin Load	Female Lin Load	Required Female Lin Load
LEVEL 1	101	LOUNGE	2581	15	172	75	1.15	75	1.15	200	0.43	500	0.345
LEVEL 1	102	MEN'S	150										
LEVEL 1	103	OFFICE	97		150	25	0.02	25	0.02	50	0.01	50	0.01
LEVEL 1	104	PRIVATE RESTROOM	18										
LEVEL 1	105	STORAGE	17		300	1	0.00	100	0.00	100	0.00	100	0.00
LEVEL 1	106	WORK ROOM	525		150	4	0.08	25	0.08	50	0.04	50	0.04
LEVEL 1	108	WALK IN COOLER	290		150	2	0.04	25	0.04	50	0.02	50	0.02
LEVEL 1	109	SERVING	168										
LEVEL 1	110	STORAGE	43										
LEVEL 1			3992		180		1.32		1.30		0.57		0.51

Total Square Footage of Business- 4523'
 Square Footage of Alcohol Serviceable Area- 2581'

BUILDING CODE SUMMARY

Name of Project: RHYTHM & BOOZE
 Address: 3306 N. MIDKIFF RD, Suite 100 Midland, Texas
 Proposed Use: BARS
 Owner or Authorized Agent: MIDLAND, TEXAS
 City or County: MIDLAND County MIDLAND TX State
 Code Enforcement Jurisdiction: CITY OF MIDLAND
 Zoning: A-1
 Land Use: BARS (MIDLAND, TEXAS v)
 Lot Area: 0.00%
 Building Footprint Area: 0.00%
 Floor Area Ratio: 0.00 / 0

SCOPE OF WORK: MIDLAND, TEXAS
 CONSTRUCTION SHALL INCLUDE ALL ARCHITECTURAL, ELECTRICAL, AND MECHANICAL FOR OCCUPANCY.

APPLICABLE CODES / ORDINANCES:
 BUILDING CODES:
 2018 International Building Code (IBC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Mechanical Code (IMC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Plumbing Code (IPC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2018 International Fire Code (IFC) with City of MIDLAND, TEXAS Amendments - Ordinance
 2017 National Electrical Code (NEC) with City of MIDLAND, TEXAS Amendments - Ordinance

ZONING:
 OTHER STANDARDS:
 2015 ASHRAE Standards for Accessible Design
 2015 Texas Accessibility Standards (TAS)

OCCUPANCY:
 Primary Occupancy: Assembly A-1 A-2 A-3 A-4 A-5
 Secondary Occupancy: N/A
 Mixed Occupancy: Yes No Separation Exception

GENERAL BUILDING DATA:
 Construction Type: IA IB IC ID IE IF IG IH II IV VA VB
 Mixed Construction: No Yes Type:
 Sprinklers: No Yes NFPA 12 NFPA 13 NFPA 13R NFPA 13D
 Standpipes: No Yes Class I II III
 Fire District: No Yes
 Building Height: NA
 Mezzanine: No Yes
 High Rise: No Yes

LIFE SAFETY REQUIREMENTS:
 Emergency Lighting: No Yes
 Exit Signs: No Yes
 Fire Alarm: No Yes
 Smoke Detection System: No Yes
 Plastic Hardwear: No Yes
 Emergency Standby Power System: No Yes



H3 DIGITAL DESIGN
 100 WEST 81 STREET
 SUITE 100 MIDLAND
 TEXAS, 79701
 432.699.4899
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CLIENT
 RHYTHM AND BOOZE
 NEW SPACE
 3306 N. MIDKIFF ROAD
 SUITE 100
 MIDLAND, TEXAS

CODE INFORMATION

Project no. H3C24001
 scale: As Indicated
 date: 3.11.24

Revisions		
NO.	DATE	DESCRIPTION

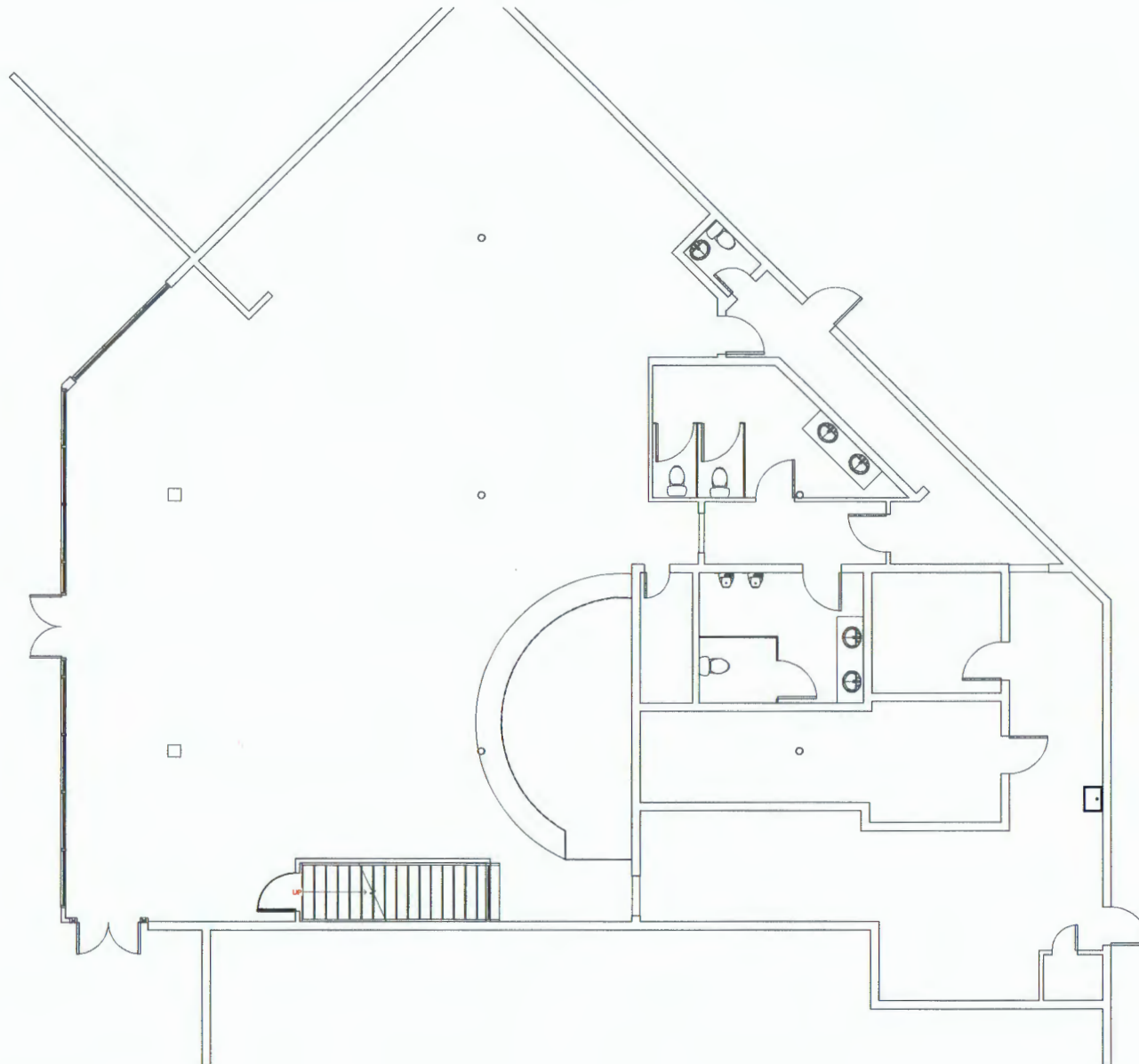
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A-000

PACKET

30.14

February 25, 2025



LEVEL 1 OVERALL FLOOR PLAN
1/4" = 1'-0"

PACKET

30.15

GENERAL FLOOR PLAN NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DELIVERING A COMPLETE AND USABLE FACILITY WHICH WILL FUNCTION PER THE DESIGN WITHIN THE CONSTRUCTION DOCUMENTS. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND COORDINATE SCOPE OF WORK WITH EXISTING SITE CONDITIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF EXISTING CONDITIONS. NOTIFY THE OWNER OF ANY CONFLICTS WITH THE EXISTING CONDITIONS AND DRAWINGS BEFORE PROCEEDING WITH WORK. ALLOW SUFFICIENT TIME FOR RESOLUTION WITH DURING THE WORK.
2. IN CASE OF CONFLICT BETWEEN OR WITHIN THE VARIOUS CONTRACT DOCUMENTS, THE MORE EXTENSIVE REQUIREMENTS AS DETERMINED BY THE DESIGNER SHALL PREVAIL, AND THE GREATER QUANTITY AND THE HIGHER QUALITY AS DETERMINED BY THE DESIGNER SHALL BE FURNISHED.
3. ALL WORK PERFORMED BY THE CONTRACTOR SHALL BE DONE IN ACCORDANCE WITH APPLICABLE CODES, ORDINANCES, AND REGULATIONS. THE CONTRACTOR SHALL OBTAIN AND BE RESPONSIBLE FOR ALL PERMITS AND FEES REQUIRED AND ASSOCIATED WITH ALL PHASES OF WORK AND WITHIN SCOPE OF THE CONTRACT DOCUMENTS.
4. THE WORK AREA IS TO BE KEPT CLEAN AND PROTECTED AT ALL TIMES. DEBRIS AND DIRT SHALL BE LAIDLY REMOVED ON A REGULAR BASIS.
5. INSTALL ALL MANUFACTURED EQUAL MATERIALS AND EQUIPMENT IN STRICT ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS.
6. ALL DIMENSIONS ARE FROM FINISH SURFACES UNLESS OTHERWISE NOTED BY "CLASH" OR "HOLD". NOTIFY DESIGNER OF ANY DISCREPANCY IN DIMENSIONS PRIOR TO BEGINNING NEW CONSTRUCTION.
7. ALL WOOD FLOORS TO BE FIRE RESISTANT.
8. THE CONTRACTOR SHALL COORDINATE THE WORK OF ALL SUBCONTRACTORS.
9. COORDINATE SPACE REQUIREMENTS AND INSTALLATION OF ELECTRICAL, TELECOMMUNICATION, PLUMBING, MECHANICAL, DATA AND SECURITY WORK. ESTABLISH ROUTING FOR PERMANENT, DUCTWORK AND CONDUIT PARALLEL WITH THE LINE OF THE BUILDING, UTILIZE SPACES EFFICIENTLY TO MAXIMIZE ACCESSIBILITY FOR OTHER NOTIFICATIONS FOR MAINTENANCE, AND FOR REPAIR. IF FINISHED AREA CONFLICTS, DUCTWORK, WIRING AND CONDUITS.
10. PROVIDE PROTECTION FOR ALL EXISTING FINISHES TO REMAIN, AND REPAIR ANY DAMAGE THAT OCCURS. PATCH AND FINISH DETACHED AREAS TO MATCH ADJACENT MATERIALS AND FINISHES. EXTEND PATCH TO THE NEAREST NATURAL BREAK POINT. REPAIR PROTECTING ON STRUCTURAL ELEMENTS AND FIRE RATED ASSEMBLIES.
11. INSTALLATION OF NEW WORK OR REPAIR AND REINFORCEMENT OF EXISTING ITEMS TO REMAIN SHALL BE RESPONSIBLE AS NECESSARY TO PROVIDE A SMOOTH, CLEAN, COMPLETE, PROPERLY DETAILED AND FINISHED INSTALLATION WITH APPROPRIATE JOINTS AND MEETING QUALITIES EQUAL TO NEW WORK. THE CONTRACTOR SHALL PROVIDE AND MAINTAIN THE INTEGRITY OF ALL EXISTING STRUCTURAL MEMBERS, BRACKETS, BRACING, HANGING AND STRUCTURAL SYSTEMS REQUIRED FOR INSTALLATION OF NEW WORK.
12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DESIGN, COORDINATION AND EXECUTION OF CONSTRUCTION METHODS AND PROCEDURES AND PROVIDE PROTECTION AS REQUIRED FOR SAFETY OF TOWN'S PROCEEDINGS AND PUBLIC PROTECTION.
13. CONSTRUCTION OPERATIONAL PROCEDURES AND METHODS ARE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE IN ACCORDANCE WITH THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE IN ACCORDANCE WITH THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE IN ACCORDANCE WITH THE RESPONSIBILITY OF THE CONTRACTOR.
14. MAINTAIN ALL BUILDING LIFE SAFETY, FIRE PROTECTION AND SECURITY SYSTEMS AT ALL TIMES. DO NOT BLOCK EXITS.
15. REPORT AN HAZARDOUS MATERIAL ENCOUNTERED TO THE OWNER.
16. DO NOT ALLOW ADHESIVE GROUT AND OTHER FINES FROM CONSTRUCTION ACTIVITY TO ENTER HAZARDOUS.
17. ALL WORK SHALL BE PLUMB, SQUARE, LEVEL, IN PROPER ALIGNMENT, AND SECURELY FASTENED.
18. WHERE PRODUCTS ARE SPECIFIED BY MANUFACTURER AND MODEL, IT IS TO ESTABLISH A QUALITY FINISHING. USE MATERIAL SPECIFIED OR APPROVED SUBSTITUTION. PRODUCTS SHALL BE FABRICATED AND INSTALLED IN ACCORDANCE WITH MANUFACTURER'S STANDARD INSPECTIONS, UNLESS OTHERWISE NOTED.
19. TRANSPORT, DELIVER, HANDLE AND STORE MATERIALS AND EQUIPMENT AT THE ADJUTANT IN SUCH A MANNER AS TO PREVENT DAMAGE. INCLUDE DAMAGE WHICH MIGHT RESULT FROM INTRUSIONS OF FOREIGN MATTER OR MOISTURE FROM ANY SOURCE. COMPLY WITH MATERIAL AND EQUIPMENT MANUFACTURER'S INSTRUCTIONS REGARDING TOWING, LIFTING, LIMITATIONS AND OTHER ENVIRONMENTAL CONDITIONS WHICH ARE REQUIRED TO MAINTAIN THE ORIGINAL QUALITY OF MATERIALS AND EQUIPMENT.
20. OBTAIN A COMPLETE REPRESENTATIVE SATISFACTORY TO THE OWNER TO BE PRESENT AT THE JOB SITE DURING CONSTRUCTION ACTIVITY ON THE PROJECT. THE REPRESENTATIVE SHALL BE CHARGED WITH THE WORK AND ALL INSTRUCTIONS GIVEN TO THE REPRESENTATIVE SHALL BE BINDING.
21. CONTRACTOR SHALL COMPLETE THE CLOSURE AND PROTECTION OF PENETRATIONS IN SHIFTS, ROOMS, WALLS, CEILING AND FLOORS BY SEALING ALL GASKETS AROUND DOORS, LOUVERS, CONDUIT PIPES, DUCTS AND THE LIKE, WITH FIRE SEALANT. FIRE RATING: FIRESTOP FOAM OR OTHER FIRE RESISTIVE MATERIALS ACCEPTABLE TO THE FIRE MARSHAL OR BUILDING OFFICIALS, TO CONFIRM ROOM ENVIRONMENT'S COMPLETE FIRE RATED ASSEMBLIES AND PROVIDE NEARBY EXITS ENCLOSURES.
22. ALL MECHANICAL, PLUMBING, ELECTRICAL, FIREPROOFING & FIRE ALARM DEVICES TO BE DESIGNED BY THE GENERAL CONTRACTOR.

Wall Types

TYPE MARK	Description	Width (ft)	FIRE RATING	R-VALUE
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DOOR TYPE SCHEDULE

DOOR	WIDTH	HEIGHT	Count
TYPE	3'-0"	7'-0"	1

FLOOR PLAN NOTES

Notes Number	Note Text
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LANDSCAPE NOTE:

IF REPLACING FINISHES, PROVIDE WATERPROOFING MEMBRANE AT ALL WET LOCATIONS IMMEDIATELY ALONG LEASE (UNDERLAPPING WALLS), 8" A.F.F. AND 8" AWAY FROM WALL, BEHIND UNDER FINISHES (SAMPLE RED CARD OR SMALL) INCLUDING BEHIND WATER RESISTANT FINISHES. SEE RED LINES TO RIGHT. PROVIDE PHOTOGRAPHIC EVIDENCE OF INSTALLATION.



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CLIENT

RHYTHM AND
BOOZE

NEW SPACE

3306 N. MIDCOTT ROAD
SUITE 160
MIDLAND, TEXAS

FLOOR PLANS

Project no. H3C24001
Scale: 1/4" = 1'-0"
Date: 3.11.24

NO.	DATE	DESCRIPTION

PERMIT

A-101

February 25, 2025

EXHIBIT A







COD

PROVIDENCE

MAXWELL DR

MIDKIFF RD

WADLEY AV

3

2

10

PACKET

30.18

February 25, 2025

1



Rhythm and Booze

February 25, 2025



Visit Our Website

MIDLANDTEXAS.GOV

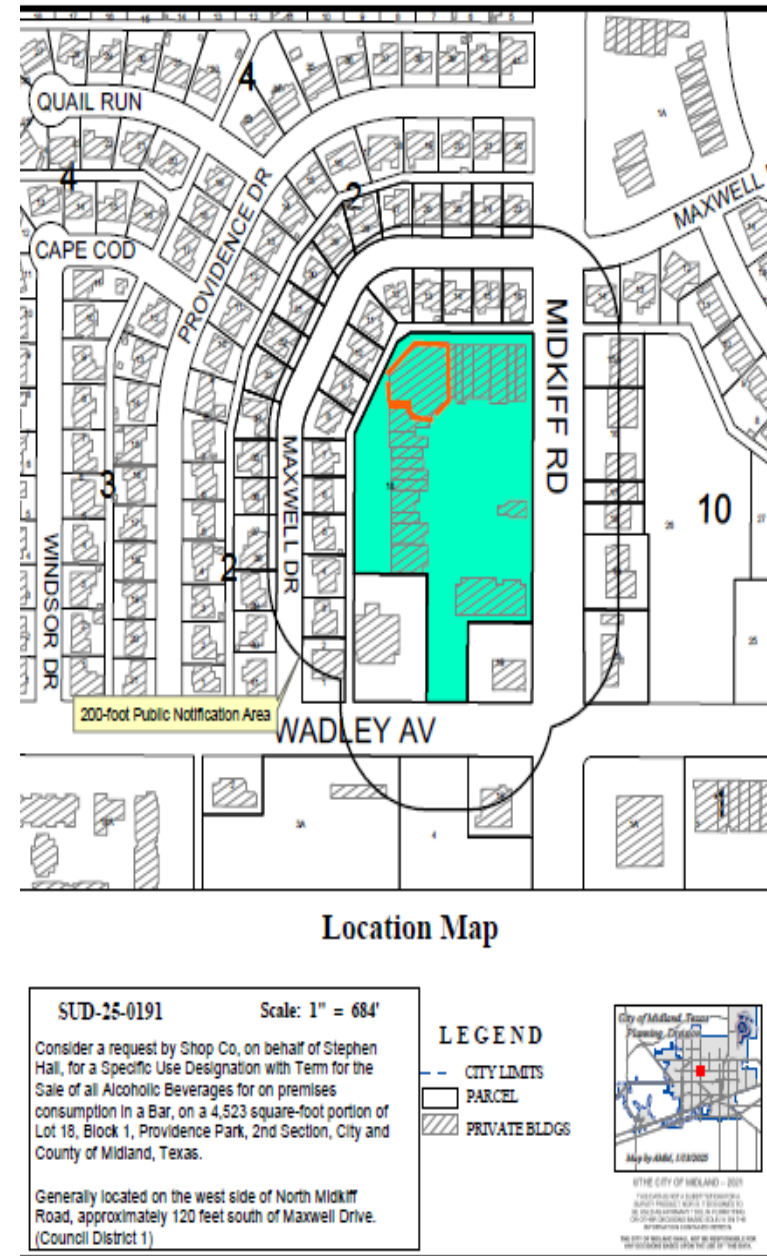
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February 25, 2025

Application Summary

- **Property owner:** San Miguel Midland Partners LLC
- **Applicant:** Shop Co.
- **Specific Use Designation With Term**
- **Address:** 3303 N Midkiff RD.
(District 1)

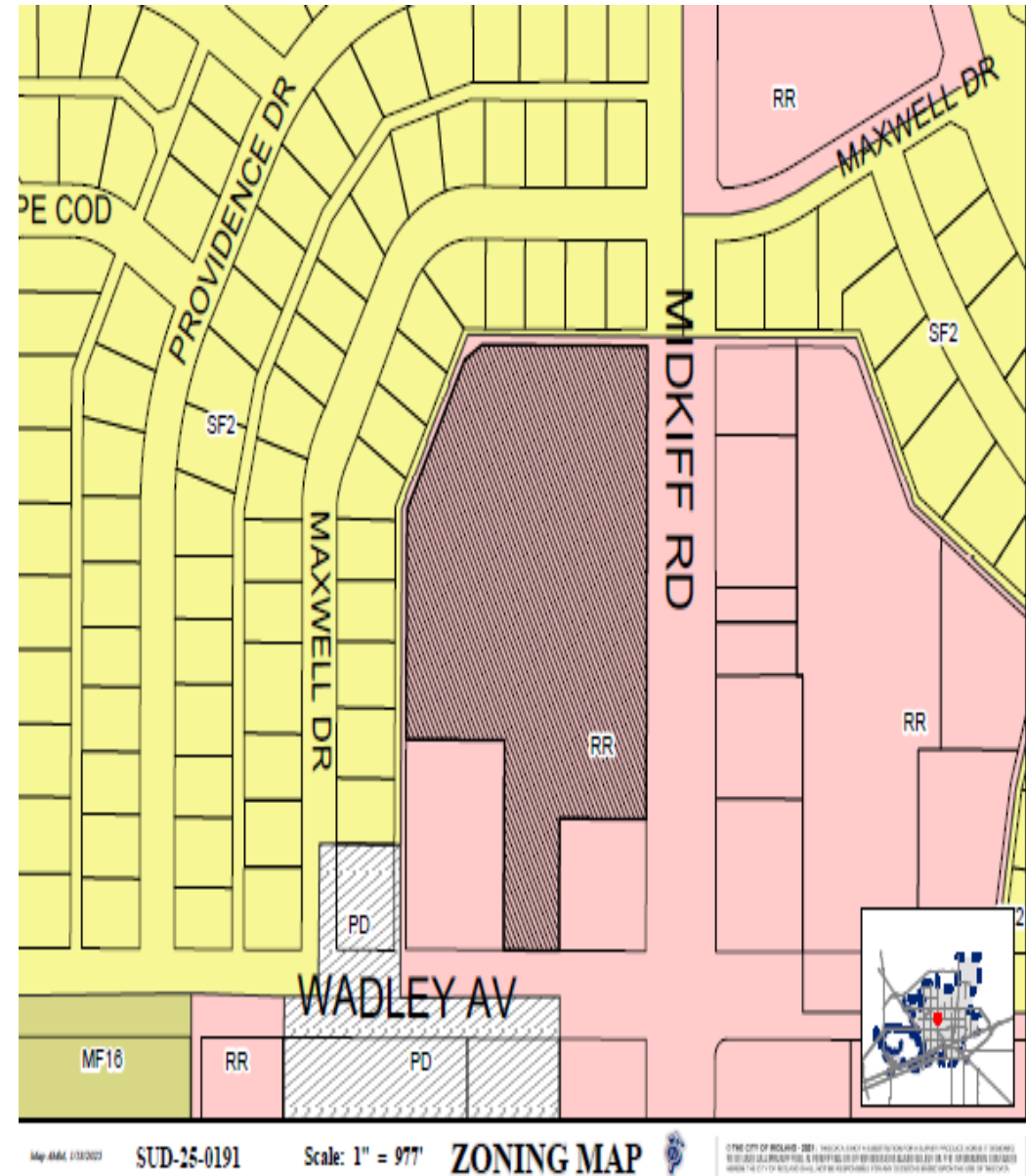


Zoning

- **Current Zoning:** RR- Regional Retail
- **Surrounding Zoning:**

North and West: SF-2 Single Family Dwelling District.

South and East: RR- Regional Retail



Land Use

- **Current Use of the Property:**
Existing Bar: The use of Alcohol is allowed with a Specific Use Designation per the Use Chart in Section 11-1-4.03
- **Surrounding Uses:**
 - North: Single Family Homes
 - South: Commercial use, AT&T, USPS.
 - East: Single Family Homes
 - West: Commercial Uses



SUD Details

- **Square Footage of SUD:** 4,523 sq ft
- **Proposed Days and Hours of Operation:**
 - Wednesday – Sunday, 2 p.m. to 2 a.m.
- **Proposed Days and Hours of SUD:**
 - Wednesday – Sunday, 2 p.m. to 2 a.m.





Looking Northwest in the Parking Lot



Comprehensive Plan

TCT Land Use Designation: UR-L,
Urban Residential- Low

Supported Uses

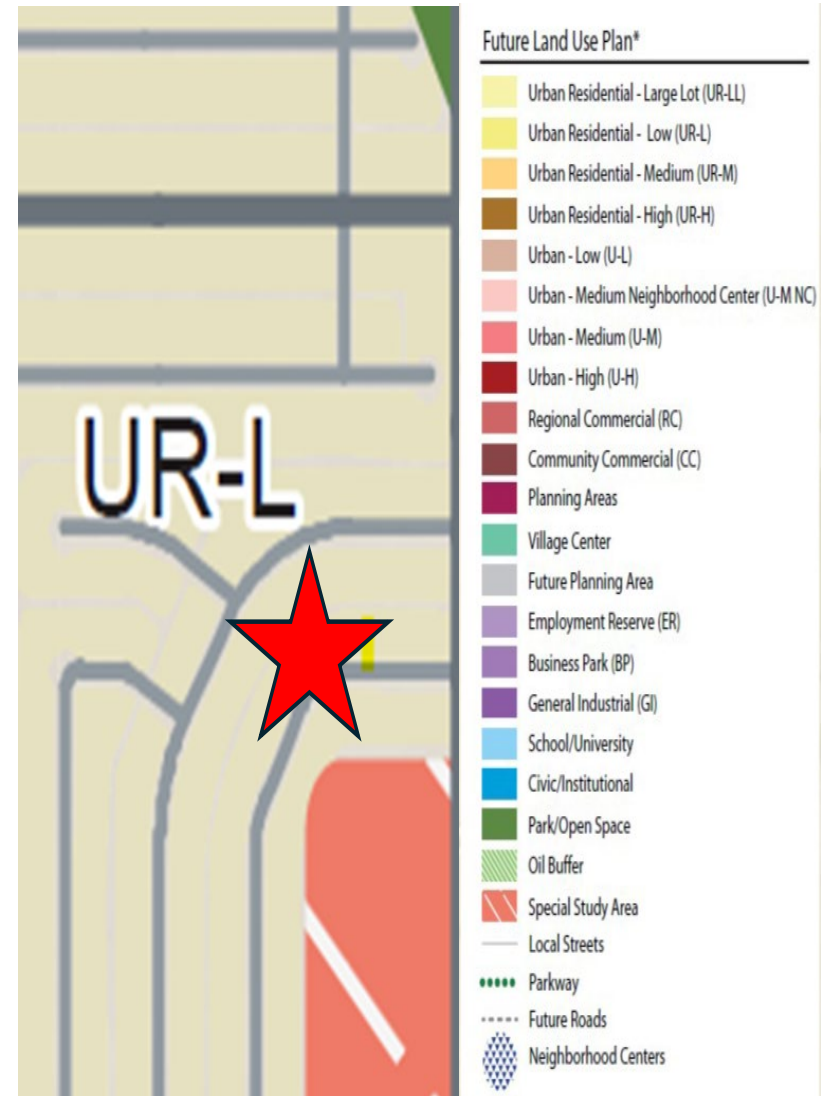
Restrictive land use, emphasizing single-family detached development, although innovative single-family forms may be permitted with special review.

Civic uses are generally allowed, with special permission for higher intensity uses. Developments will be provided with full city services.



Comprehensive Plan

- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.



Staff's Recommendation

No objections have been received. Staff recommends **APPROVAL** of this Specific Use Designation With Term for a restaurant subject to the following conditions.

A. That the serviceable area of the establishment shall be limited to approximately 2,581 square feet as shown in Exhibit "A".



Staff's Recommendation

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited **to:**

Wednesday through Sunday from 2 p.m. to 2 a.m.

Staff's Recommendation

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the establishment shall meet all requirements of the Fire Department and Code Administration.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

Staff's Recommendation

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.