

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
February 27, 2024 - 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 Robb Foreman, Home Line Baptist Church
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR SESSION OF FEBRUARY 13, 2024
4. 2024-041 – RESOLUTION APPROVING A CONTRACT WITH DIGITAL MARKETS INC. D/B/A VISTA COM, THROUGH THE HOUSTON-GALVESTON AREA COUNCIL, TO UPGRADE THE MIDLAND PUBLIC SAFETY COMMUNICATIONS EVENTIDE RECORDER FOR A TOTAL COST OF \$317,354.00 **(DISTRICT: ALL) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
5. 2024-042 – RESOLUTION AUTHORIZING THE EXECUTION OF A THREE (3) YEAR SOLE-SOURCE CONTRACT FOR THE USE OF GEOGRAPHIC INFORMATION SYSTEM SOFTWARE, MAINTENANCE SUPPORT, AND ASSOCIATED UPGRADES WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INCORPORATED FOR A TOTAL COST OF \$405,840.00 **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
6. 2024-043 – RESOLUTION APPROVING A CONTRACT WITH BERRY DUNN MCNEIL & PARKER, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR A HUMAN RESOURCES ASSESSMENT AND STRATEGIC PLAN CONSULTING SERVICES FOR A TOTAL COST OF \$109,400.00 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
7. 2024-044 – RESOLUTION AUTHORIZING THE EXECUTION OF THE EIGHTH PACKET

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 \$740,709.64 AND PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS; AND AUTHORIZING PAYMENT **(DISTRICT: NONE) (ADMINISTRATIVE SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

8. 025-2024 – MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 11 TO THE PROFESSIONAL SERVICES AGREEMENT DATED MARCH 23, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING THE FOLLOWING: (I) THE ADDITIONAL APPROPRIATION OF \$62,020.00 TO THE RECONSTRUCT ASPHALT APRON BY TERMINAL BUILDING (#900393) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (II) THE ADDITIONAL APPROPRIATION OF \$161,650.00 TO THE MAF AIRFIELD WILDLIFE FENCE IMPROVEMENTS (#900345) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (III) THE ADDITIONAL APPROPRIATION OF \$646,065.00 TO THE AIRPARK ENTRANCE WAY ENHANCEMENT (#900212) PROJECT AT MIDLAND AIRPARK; (IV) THE ADDITIONAL APPROPRIATION OF \$80,350.00 TO THE RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PADS (#900413) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (V) THE ADDITIONAL APPROPRIATION OF \$26,750.00 TO THE MAF AIRFIELD WILDLIFE MANAGEMENT IMPROVEMENTS – SOUTH DRAINAGE CHANNEL (#900347) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (VI) THE ADDITIONAL APPROPRIATION OF \$105,000.00 TO THE MAF MULTIFACILITY REHABILITATION PROJECT (#900308) AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (VII) THE ADDITIONAL APPROPRIATION OF \$485,200.00 TO THE NEW HANGAR DEVELOPMENT PROJECT (#900212) AT MIDLAND AIRPARK; AND (VIII) THE APPROPRIATION OF \$77,100.00 TO THE TITLE VI PLAN AND COMMUNITY PARTICIPATION PLAN PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT **(DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**
9. 026-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION CONSISTING OF FOUR (4) BASEBALL SCOREBOARDS VALUED AT \$77,423.00 FROM THE MIDLAND JUNIOR BASEBALL ASSOCIATION AND NORTHERN LITTLE LEAGUE; SAID SCOREBOARDS TO BE INSTALLED AT THE BUTLER PARK BASEBALL FIELDS **(DISTRICT: 1) (COMMUNITY SERVICES) (QUALITY OF LIFE AND PLACE)**
10. 027-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION CONSISTING OF A DECORATIVE SANTA CLAUS FIGURE FROM MISS CAYCE'S CHRISTMAS STORE **(DISTRICT: ALL) (COMMUNITY SERVICES) (QUALITY OF LIFE AND PLACE)**
11. 028-2024 – MOTION AUTHORIZING THE EXECUTION OF SPORTS AGREEMENTS WITH THE FOLLOWING ORGANIZATIONS: BOYS AND GIRLS CLUB OF THE PERMIAN PACKET

BASIN; GREATER MIDLAND FOOTBALL LEAGUE; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INC.; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED SERVICES THROUGH THE USE OF CITY-OWNED PROPERTY AND FACILITIES. **(DISTRICT: ALL) (COMMUNITY SERVICES) (QUALITY OF LIFE AND PLACE)**

12. 029-2024 – MOTION APPROVING A CONSULTANT SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND INTERFLIGHT GLOBAL CORPORATION FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK **(DISTRICT 4) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**
13. 030-2024 – MOTION APPROPRIATING AND TRANSFERRING THE SUM OF \$418,729.55 FROM THE TIRZ FUND TO THE DOWNTOWN REVITALIZATION PROJECT **(DISTRICT 2) (ENGINEERING SERVICES) (QUALITY OF LIFE AND PLACE)**
14. 031-2024 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (24-329-002) WITH CROWNQUEST OPERATING, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS **(DISTRICT: NONE) (UTILITIES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

SECOND READINGS

15. 10490 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, TSC DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH STATE HIGHWAY 349, APPROXIMATELY 380 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 13, 2024) **(DISTRICT 1) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**
16. 10491 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 5.53-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 300 FEET NORTHEAST OF HOMELAND

DRIVE, AND APPROXIMATELY 520 FEET SOUTH OF WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 13, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

17. 10493 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALLING ORDINANCE NO. 10434; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION (FIRST READING HELD FEBRUARY 13, 2024) **(DISTRICT 4) (ENGINEERING SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

PUBLIC HEARINGS

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

18. 10494 – AN ORDINANCE VACATING AND ABANDONING A 0.027-ACRE PORTION OF FIREWHEEL ROAD RIGHT-OF-WAY AND NORTH FAIRGROUNDS ROAD RIGHT-OF-WAY LOCATED ADJACENT TO LOT 83, BLOCK 1, MOCKINGBIRD RIDGE, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF FIREWHEEL ROAD AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$11.92; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
19. 10495 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.61-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WALL STREET, APPROXIMATELY 580 FEET WEST OF MANN 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)**
20. 10496 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 14, 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 NORTHWEST CORNER OF THE INTERSECTION OF EAST WASHINGTON AND SOUTH CLAY 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)**

21. 10497 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.15-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST FRONT STREET AND NORTH ADAMS 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)**

MISCELLANEOUS

22. 2024-045 – RESOLUTION APPOINTING A BOARD MEMBER TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY **(DISTRICT: 2) (COMMUNITY SERVICES) (QUALITY OF LIFE AND PLACE)**
23. 10498 – AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 8, “DANGEROUS AND DILAPIDATED BUILDINGS”, OF THE CITY CODE OF MIDLAND, TEXAS, BY CHANGING THE HEADING OF SAID CHAPTER 8 TO “SUBSTANDARD BUILDINGS”, RECODIFYING SECTION 7, “ABATEMENT OF SUBSTANDARD BUILDINGS”, AS SECTION 1, ESTABLISHING MINIMUM STANDARDS, ADDING SECTION 2, “ADDITIONAL AUTHORITY TO SECURE SUBSTANDARD BUILDINGS”, SO AS TO ESTABLISH AN ALTERNATE PROCEDURE FOR SECURING A SUBSTANDARD BUILDING, ADDING SECTION 3, “PROHIBITING ENTRY INTO SUBSTANDARD BUILDINGS”, SO AS TO AUTHORIZE THE BUILDING OFFICIAL TO PROHIBIT ENTRY INTO AND OCCUPANCY OF A SUBSTANDARD BUILDING, AND REMOVING CONFLICTING SECTIONS FROM SAID CHAPTER; PROVIDING FOR NOTICE AND A HEARING; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2024; AND ORDERING PUBLICATION **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

PUBLIC COMMENT

24. 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

25. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:
 - a. Section 551.074, Personnel Matters
 - a.1. Deliberate the employment, evaluation, and duties of the City Manager, City Attorney, City Secretary, Municipal Court Presiding Judge and the 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 13, 2024**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., February 13, 2024.

Council Members present: Amy Stretcher Burkes, Robin Poole, Lori Blong, Scott Dufford, 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 Tina Jauz, Assistant City Manager Jose Ortiz

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

OPENING ITEMS

1. Invocation – Pastor Darin Wood, First Baptist Church of Midland
2. Pledge of Allegiance

PRESENTATIONS

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

- 3a. Presentation from Director of Finance Christy Weakland regarding Funding Council Priorities.

Finance Director Christy Weakland gave a presentation on Making Our Priorities a Priority. Ms. Weakland provided information on Vision Blocks, Taking Action with regard to the Strategic Plan, Funding Our Priorities with Goals 1- 6, Sound Governance and information regarding the Fire Pension and Infrastructure just to name a few.

- 3b. Presentation from Director of Engineering Gabe McClelland regarding Community Engagement.

Engineering Services Director Gabriel McClelland gave a brief overview of a Presentation regarding Community Engagement; Love Midland by Building Effective

Community Partnerships. The presentation outlined Strategic Goal number three, Quality of Life and Place. Mr. McClelland touched on enhancing community engagement, fostering relationships with foundations, and establish beautification programs. Mr. McClelland reviewed the next steps such as identifying stakeholders, logistics of the project and identifying projects to be completed.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

4a. REGULAR SESSION OF JANUARY 23, 2024

- 7. 2024-026 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR TEXAS COMMISSION ON ENVIRONMENTAL COMPLIANCE LANDFILL TESTING FOR A TOTAL COST OF \$277,200.00 (DISTRICT: ALL) (GENERAL SERVICES) PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT**
- 8. 2024-027 – RESOLUTION APPROVING A CONTRACT WITH TOMMY KLEIN CONSTRUCTION, INC., FOR THE REPAIR AND REPLACEMENT OF CERTAIN CABINETRY AND DOORS AT VARIOUS FIRE STATIONS FOR A TOTAL COST OF \$129,664.68 (DISTRICT: ALL) (GENERAL SERVICES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**
- 9. 2024-028 – RESOLUTION APPROVING A CONTRACT WITH NOUVEAU TECHNOLOGY SERVICES, LP, THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR THE PURCHASE AND INSTALLATION OF A SOUND SYSTEM AT ASTOUND BROADBAND STADIUM FOR A TOTAL COST OF \$720,205.50; APPROVING \$72,000.00 FOR PROJECT RELATED COSTS; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**
- 10. 2024-029 – RESOLUTION APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF SHADE STRUCTURES AT REYES MASHBURN NELMS PARK FOR A TOTAL COST OF \$463,450.57; APPROVING \$176,109.43 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**
- 11. 2024-030 – RESOLUTION APPROVING A CONTRACT WITH RESTROOM FACILITIES LIMITED, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF A RESTROOM AND CONCESSION FACILITY AT THE REYES MASHBURN NELMS BASEBALL FIELDS FOR A TOTAL COST OF \$573,761.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**

12. 2024-031 – RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO VERIFY AND ATTEST TO THE SUFFICIENCY OF CERTAIN FUND BALANCES HELD BY THE CITY OF MIDLAND DEPARTMENT OF AIRPORTS; SAID VERIFICATION AND ATTESTATION SHALL BE MADE FOR THE PURPOSE OF EFFECTUATING THE CITY OF MIDLAND'S PARTICIPATION IN THE AIRFIELD IMPROVEMENTS PROJECT AT MIDLAND AIRPARK; AND AUTHORIZING THE DIRECTOR OF AIRPORTS TO EXECUTE, ON BEHALF OF THE CITY OF MIDLAND, ALL CONTRACTS AND AGREEMENTS WITH THE STATE OF TEXAS, REPRESENTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, AND SUCH OTHER PARTIES AS SHALL BE NECESSARY AND APPROPRIATE FOR THE IMPLEMENTATION OF THE AIRFIELD IMPROVEMENTS PROJECT AT MIDLAND AIRPARK **(DISTRICT 4) (AIRPORTS) TRANSPARENT & CONSISTENT COMMUNICATION**
13. 015-2024 – MOTION AUTHORIZING THE EXECUTION OF A THIRD AMENDMENT TO THAT CERTAIN NONEXCLUSIVE COMMERCIAL FIXED BASE OPERATOR LEASE AGREEMENT DATED MARCH 29, 2023, BETWEEN THE CITY OF MIDLAND, TEXAS, AND FRANKLIN MOUNTAIN AVIATION MAF, LLC; SAID AMENDMENT PROVIDING FOR AN EXTENSION OF THE DUE DILIGENCE EXPIRATION DATE FROM FEBRUARY 22, 2024, TO APRIL 30, 2024 **(DISTRICT 4) (AIRPORTS) TRANSPARENT & CONSISTENT COMMUNICATION**
14. 016-2024 – MOTION REJECTING THE SOLE BID RECEIVED FOR THE MIDLAND AIRPARK ENTRY ROAD ENHANCEMENTS PROJECT **(DISTRICT 4) (AIRPORTS) TRANSPARENT & CONSISTENT COMMUNICATION**
15. 017-2024 – MOTION REJECTING THE SOLE PROPOSAL RECEIVED FOR THE SALE OF CERTAIN REAL PROPERTY DESCRIBED AS LOTS 3A, 4A, AND 5A, BLOCK 3, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS **(DISTRICT 4) (AIRPORTS) TRANSPARENT & CONSISTENT COMMUNICATION**
16. 2024-032 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH GARVER LLC FOR THE DEVELOPMENT OF A SAFETY MANAGEMENT SYSTEM PROGRAM FOR MIDLAND INTERNATIONAL AIR & SPACE PORT FOR A TOTAL COST OF \$194,344.00; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 4) (AIRPORTS) TRANSPARENT & CONSISTENT COMMUNICATION**
18. 018-2024 – MOTION ACCEPTING GRANT FUNDS IN THE AMOUNT OF \$180,140.00 AWARDED BY THE US DEPARTMENT OF ENERGY'S ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM; SAID GRANT FUNDS TO BE USED FOR THE MINOR ENERGY EFFICIENT RETROFITS PROGRAM (MEERP); AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO ACCEPT SAID GRANT FUNDS; AND APPROPRIATING THE SUM AMOUNT OF \$180,140.00 TO A GRANT PROJECT **(DISTRICT: ALL) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

21. 019-2024 – MOTION APPROVING, WITH STAFF’S RECOMMENDED CONDITIONS, A PROPOSED PRELIMINARY PLAT OF MIDCO LEB, BEING A REPLAT OF A 53.71-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 1, PARSLEY ADDITION, MIDLAND COUNTY, TEXAS. (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF FARM TO MARKET ROAD 715 AND EAST COUNTY ROAD 120) **(DISTRICT: NONE) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**
22. 2024-036 – RESOLUTION AUTHORIZING THE TRANSFER OF LOT 2, SAVE AND EXCEPT A 0.044-ACRE TRACT OF LAND OUT OF SAID LOT, BLOCK 137, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, TO GARY KAHLER MEMORIAL SCHOLARSHIP FUND INC. (“GRANTEE”), AS AUTHORIZED BY CHAPTER 253 OF THE TEXAS LOCAL GOVERNMENT CODE; AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED AFFORDABLE HOUSING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND GRANTEE CONCERNING THE AFOREMENTIONED PORTION OF LOT 2 AND ALL OF LOT 4, BLOCK 137, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY FOR SAID TRANSFER; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE **(DISTRICT: ALL) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**
23. 2024-037 – RESOLUTION AUTHORIZING THE EXECUTION OF AN ADVANCE FUNDING AGREEMENT WITH THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE TEXAS AVENUE INTERSECTION IMPROVEMENTS PROJECT (THE “PROJECT”); SAID PROJECT TO PROVIDE FOR THE CONSTRUCTION OF IMPROVEMENTS TO THE INTERSECTIONS ON TEXAS AVENUE, FROM NORTH A STREET TO NORTH C STREET, WITH CURB EXTENSIONS TO EXTEND THE SIDEWALK TO PROVIDE ADDITIONAL SPACE FOR PEDESTRIAN CROSSINGS; AUTHORIZING PAYMENT TO TXDOT IN AN ESTIMATED AMOUNT OF \$147,347.30 PLUS 100% OF OVERRUNS; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CERTIFY A COPY OF THIS RESOLUTION TO TXDOT **(DISTRICT 3) (ENGINEERING SERVICES) QUALITY OF LIFE AND PLACE**
25. 021-2024 – MOTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH AGRI-EMPRESA TRANSLOAD AND STORAGE, LLC **(DISTRICT: ALL) (UTILITIES) QUALITY OF LIFE AND PLACE**
26. 022-2024 – MOTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH AFFORDABLE DEWATERING SERVICES, LLC **(DISTRICT: ALL) (UTILITIES) QUALITY OF LIFE AND PLACE**
27. 023-2024 – MOTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH WARREN EQUIPMENT

COMPANY (DISTRICT: ALL) (UTILITIES) QUALITY OF LIFE AND PLACE

28. 2024-038 – RESOLUTION AUTHORIZING THE CITY MANAGER, DEPUTY CITY MANAGER, OR AN ASSISTANT CITY MANAGER TO EXECUTE ALL AGREEMENTS AND DOCUMENTS AND TAKE ALL ACTIONS NECESSARY TO CONVEY TO THE STATE OF TEXAS AN APPROXIMATE 2.87-ACRE TRACT OF CITY-OWNED LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID CONVEYANCE BEING AUTHORIZED BY SECTION 203.055 OF THE TEXAS TRANSPORTATION CODE **(DISTRICT 4) (UTILITIES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**

Scott Dufford moved to approve Consent Agenda items 4 – 28, excluding items 5, 6, 17, 19, 20 and 24.; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

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

5. 2024-024 – RESOLUTION ESTABLISHING THE MIDLAND YOUTH ADVISORY COMMISSION; ADOPTING THE MIDLAND YOUTH ADVISORY COMMISSION BYLAWS; AND AUTHORIZING THE MIDLAND YOUTH ADVISORY COMMISSION TO ENTER INTO A PARTNERSHIP WITH THE BUSH FAMILY HOME STATE HISTORICAL SITE IN FURTHERANCE OF THE PURPOSE SET FORTH IN THE BYLAWS AND FOR PROVIDING THE YOUTH OF THE CITY OF MIDLAND WITH OPPORTUNITIES TO LEARN AND GAIN EXPERIENCE IN LOCAL GOVERNANCE **(DISTRICT:NONE) (LEGAL)**

Council Member Poole introduced, recognized and thanked individuals from the Midland Youth Advisory Commission. In partnership with Troy Gray, Executive Director of the Bush Home, they now have 22 young adults in the program. These young men and women learn all about government and are involved within the local community.

Mr. Gray thanked Council Member Poole for her assistance with the program.

Board Chair, Kayla Barnes, spoke about what they are learning during this process and thanked Council for having them at the meeting.

Robin Poole moved to approve Resolution No. 2024-024; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

PACKET

4a.5

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6. 2024-025 – RESOLUTION AUTHORIZING THE PURCHASE OF 8,000 GALLONS OF LIQUID COPPER SULFATE PENTAHYDRATE 19.8% MOLLUSCICIDE NEEDED FOR THE CONTROL OF QUAGGA AND ZEBRA MUSSELS IN THE RAW DRINKING WATER SYSTEMS FROM CHAMELEON INDUSTRIES, INC., FOR A TOTAL COST OF \$136,000.00

Utilities and Managing Director Carl Craigo gave a brief overview of the item noting Zebra Mussels have infected one of the lakes that most of our water comes from. The only way to treat them is using Copper Sulfate. Zebra Mussels lower the capacity of the pipeline which will lower the pumping capacity.

Amy Stretcher Burkes moved to approve Resolution No. 2024-025; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

17. 2024-033 – RESOLUTION CALLING A SPECIAL ELECTION FOR THE OFFICE OF CITY COUNCIL MEMBER AT-LARGE; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING VOTE CENTERS FOR SAID ELECTION **(CITY SECRETARY)**

Council Member Norman pulled this item to encourage people to get involved in City Government.

Mayor Blong provided information regarding the legality and importance of calling a special election.

John Norman moved to approve Resolution No. 2024-033; seconded by Scott Dufford.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

19. 2024-034 – RESOLUTION GRANTING A VARIANCE FOR AN OIL AND GAS WELL TO BE LOCATED CLOSER THAN 500 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELL LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,538 FEET EAST OF SOUTH GARFIELD STREET AND 319 FEET NORTH OF WEST COUNTY ROAD 111); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting this is
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for five variances in different locations.

Jack Ladd moved to approve Resolution No. 2024-034; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Blong, Dufford, Ladd

NAY: Norman

ABSTAIN: Poole

ABSENT: None

20. 2024-035 – RESOLUTION GRANTING VARIANCES FOR TWO 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 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,101 FEET AND 1,131 FEET WEST OF RANKIN HIGHWAY AND 560 FEET SOUTH OF WEST INTERSTATE 20); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Discussion from item 19 by Oil & Gas Compliance Officer Ron Jenkins may be applied to this item.

Robin Poole moved to approve Resolution No. 2024-035; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Stretcher Burkes, Poole, Blong, Dufford, Ladd

NAY: Norman

ABSTAIN: None

ABSENT: None

24. 020-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION CONSISTING OF ARTWORKS CREATED BY JEANNE MORALES; SAID ARTWORKS TO BE KEPT AND DISPLAYED AT THE MIDLAND MUNICIPAL COURT

Council Member Norman would like to see some of the artwork.

John Norman moved to approve Motion No. 020-2024; seconded by Jack Ladd.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

SECOND READINGS

29. 10488 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 8, LESS THE NORTH 30 FEET, AND LOT 9, BLOCK 4, STOCKARD ACRES ADDITION, PACKET 4a.7 February 27, 2024

CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOODE STREET, APPROXIMATELY 315 FEET NORTH OF CARTER STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; 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 **(QUALITY OF LIFE AND PLACE) (DISTRICT 2) (DEVELOPMENT SERVICES) STRONG ECONOMY WITH MORE QUALITY JOBS**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10488.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10488; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

30. 10489 – AN ORDINANCE VACATING AND ABANDONING A 0.25-ACRE PORTION OF SINCLAIR AVENUE RIGHT-OF-WAY AND A 0.08-ACRE PORTION OF ALLEY RIGHT-OF-WAY, BOTH LOCATED ADJACENT TO THE NORTH 380 FEET OF THE EAST HALF OF THE SOUTH HALF OF TRACT 2, SUNSET ACRES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR AVENUE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$7,623.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY **(QUALITY OF LIFE AND PLACE) (DISTRICT 3) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10489.

Robin Poole moved to approve the second and final reading of Ordinance No. 10489; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARINGS

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

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31. 10490 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, TSC DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH STATE HIGHWAY 349, APPROXIMATELY 380 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. 10490.

Development Services Planning Manager Xavier Bagues gave a brief overview of the item noting the applicant is requesting a zone change from PD for a shopping center to RR for future retail development. There are no letters of objection and staff recommends approval.

Mayor Blong opened the public hearing at 10:46 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10490; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

32. 024-2024 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: KNIGHT 140 MIPA UNIT H140LX; KNIGHT 140 MIPA UNIT H140MX; AND KNIGHT 140 MIPA UNIT H140WX; SAID WELLS BEING GENERALLY LOCATED BETWEEN 931 FEET AND 959 FEET EAST OF NORTH A STREET EXTENSION AND BETWEEN 1,882 FEET AND 1,910 FEET SOUTH OF WEST LOOP 250 NORTH **(PUBLIC HEARING ONLY) (DISTRICT 3) (DEVELOPMENT SERVICES) SET THE STANDARD FOR A SAFE AND SECURE CITY**

Mayor Blong opened the public hearing at 10:47 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

PUBLIC HEARING ONLY; NO ACTION TAKEN.

33. 10491 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 5.53-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE,

AGRICULTURAL ESTATE DISTRICT, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 300 FEET NORTHEAST OF HOMELAND DRIVE, AND APPROXIMATELY 520 FEET SOUTH OF WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10491.

Mayor Blong opened the public hearing at 10:48 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10491; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

34. 10492 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; ESTABLISHING AN EFFECTIVE DATE OF MARCH 1, 2024; AND ORDERING PUBLICATION **(DISTRICT: NONE) (FINANCE) PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10492.

ITEM PULLED BY STAFF; NO ACTION TAKEN.

35. 2024-039 – RESOLUTION AWARDING A CONTRACT FOR THE CITY OF MIDLAND PAVING, ALLEYS, STREETS AND SIDEWALKS 2023 PROJECT TO BOLER EQUIPMENT SERVICE, INC. OF MIDLAND, TEXAS, AT A COST OF \$2,682,941.08; APPROVING \$536,588.22 FOR CONTINGENCIES; APPROVING \$50,000.00 FOR PROJECT-RELATED EXPENSES; TRANSFERRING AND ALLOCATING FUNDS; AND AUTHORIZING PAYMENT **(DISTRICT: ALL) (GENERAL SERVICES) STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE**

Assistant City Manager Jose Ortiz gave a brief overview of the item noting this is one of the \$1.5 million dollar items that was discussed in a budget presentation by Finance Director Christy Weakland.

Mr. Ortiz also reported on the alleyway repair process and what the City needs in order to make more repairs. Mr. Ortiz answered several questions from Council.

John Norman moved to approve Resolution No. 2024-039; seconded by Scott Dufford.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

36. 10493 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALLING ORDINANCE NO. 10434; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION **(DISTRICT 4) (ENGINEERING SERVICES) SET THE STANDARD FOR A SAFE AND SECURE CITY**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10493.

Engineering Services Director Gabriel McClelland gave a brief overview of the item noting feedback has been received from the Grasslands West HOA and the area has been studied. It is being recommended to lower the speed limit in all of the residential roadways in Grasslands to 25 mph.

Mr. McClelland reported on the use of speed bumps by some cities and how they can create drainage issues, they are noisy and the response time for emergency vehicles is something that would have to be monitored. Speed bumps do not seem to serve their intended purpose.

Council Member Amy Stretcher Burkes made comments about the late Council Member Corrales and his strength. Ms. Burkes reported she wished to make the comments during item number 17.

Amy Stretcher Burkes moved to approve the first of two readings of Ordinance No. 10493; seconded by Robin Poole.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

37. 2024-040 – RESOLUTION AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO SETTLE LITIGATION STYLED CITY OF MIDLAND, TEXAS V. TIMBER FLOYD, ET AL. (142ND JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV56771) **(LEGAL)**

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Item 37 was taken up after Executive Session at 1:00 p.m.

Robin Poole moved to approve Resolution No. 2024-040; seconded by Jack Ladd.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC COMMENT

38. 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.)

Shirley Howard, 405 Magnolia, thanked Mayor Blong and Council for attending the MLK Luncheon and cautioned everyone to be careful of your actions and the things you say to others. Ms. Howard also encouraged young people not to be afraid of getting involved in local government.

EXECUTIVE SESSION

39. 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 11:05 a.m. and reconvened the City Council Meeting at 1:00 p.m. to take up item number 37.

a. Section 551.071, Consultation with Attorney

a.1. Discuss pending or contemplated litigation.

b. Section 551.072, Deliberation Regarding Real Property

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

c. Section 551.087, Deliberate Economic Development Negotiations

c.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.

All the business at hand having been completed, the meeting adjourned at 1:01 p.m.

PASSED AND APPROVED February 27, 2024.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary

DRAFT



City Council Meeting

Item Number: 4
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING A CONTRACT WITH DIGITAL MARKETS INC. D/B/A VISTA COM, THROUGH THE HOUSTON-GALVESTON AREA COUNCIL, TO UPGRADE THE MIDLAND PUBLIC SAFETY COMMUNICATIONS EVENTIDE RECORDER FOR A TOTAL COST OF \$317,354.00 (DISTRICT: ALL) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution awarding the execution of a contract for the Midland Public Safety Communications Eventide Recorder Upgrade through HGAC RP07-20 with Digital Markets Inc. dba Vista COM for a total cost of \$317,354.00.

Recommended City Council Action:

Approve

Fiscal Impact:

\$317,354 is available in the Motorola Radio System project (900431-005). The annual maintenance cost of \$44,598 will be available and paid out of the Tech Fund.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff recommends the awarding the execution of a contract for the Midland Public Safety Communications Eventide Recorder Upgrade with Digital Markets Inc. dba Vista COM through HGAC RP07-20. We are members of this cooperative and Subchapter F, Section 271.102 of the

Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. The purpose of the Eventide Recorder system is to record all 9-1-1 calls, radio traffic and non-emergency calls that come through the Communications Dispatch Center. Please refer to the memo from Jennifer Frescaz, Chief Information Officer, for further information.

Therefore, please consider a resolution awarding the execution of a contract for the Midland Public Safety Communications Eventide Recorder Upgrade through HGAC RP07-20 with Digital Markets Inc. dba Vista COM for a total cost of \$317,354.00.



City Manager's Office



City Council Agenda Item

DATE: February 13, 2024

TO: Erika Martinez, Purchasing Manager

FROM: Jennifer Frescaz, Managing Director / Chief Information Officer

SUBJECT: Consider a resolution awarding a contract of Eventide DX Recorder Equipment and Licenses for \$317,354.00 from Vista Com via HGAC RP07-20.

Purpose:

Consider a resolution awarding a contract of Eventide DX Recorder Equipment and Licenses for \$317,354.00 from Vista Com via HGAC RP07-20.

Discussion:

The City's current 911 and public safety radio communications recorder is approaching end of life. Due to the criticality of audio recordings and the age of the existing equipment, staff recommend upgrading the recorder. The proposed Eventide DX Recorder offers the necessary technical redundancy and compatibility with the new Motorola P25 radio system, ensuring uninterrupted and efficient public safety operations.

The total cost of the new equipment, licenses, and implementation services is \$317,354.00 and will be paid from the radio project. An annual maintenance cost of \$44,598.00 will be budgeted in the ITSD Tech Fund.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
DIGITAL MARKETS INC. D/B/A VISTA COM,
THROUGH THE HOUSTON-GALVESTON AREA
COUNCIL, TO UPGRADE THE MIDLAND PUBLIC
SAFETY COMMUNICATIONS EVENTIDE RECORDER
FOR A TOTAL COST OF \$317,354.00**

WHEREAS, The Houston-Galveston Area Council (“*H-GAC*”) is a cooperative purchasing agency with which the City of Midland (the “*City*”) participates with on purchases through a cooperative purchasing program in accordance with Tex. Loc. Gov’t Code § 271.102; and

WHEREAS, Digital Markets Inc. d/b/a Vista Com, has submitted a total proposed cost to the City of \$317,354.00 to upgrade the Midland Public Safety Communications Eventide Recorder through H-GAC; and

WHEREAS, the City Council finds the price proposed by Digital Markets Inc. d/b/a Vista Com to upgrade the Midland Public Safety Communications Eventide Recorder through H-GAC to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Digital Markets Inc. d/b/a Vista Com to upgrade the Midland Public Safety Communications Eventide Recorder through H-GAC ;

**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 to upgrade the Midland Public Safety Communications Eventide Recorder through H-GAC, for a total cost of \$317,354.00. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That \$317,354.00 in funding shall be available in the Motorola Radio System project (900431-005). The annual maintenance cost of \$44,598.00 shall be

available and paid out of the Tech Fund.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Digital Markets Inc. d/b/a Vista Com in accordance with the provisions of the above-referenced 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., 2024, 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

**CITY OF MIDLAND
SERVICE CONTRACT
#24003144**

THIS CONTRACT, effective this 28 day of February 2024, by and between the City of Midland, hereinafter referred to as the "CITY" and Digital Markets Inc. dba Vista COM, hereinafter referred to as the "COMPANY".

Projected Cost: \$317,354.00

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 Exhibit A, which is 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 Exhibit A, attached hereto, 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 Exhibit A, 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 two (2) years commencing on February 28, 2024, and terminating on February 27, 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 year. 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 Exhibit A.

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 Exhibit A.

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:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY.

Digital Markets Inc. dba Vista COM
9824 Whithorn Drive

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

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

29. **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 and 2274.002 of the Texas Government Code (collectively, the “Anti-Boycott Statutes”) apply to this Contract, Company hereby verifies:

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

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

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 _____, 2024 personally appeared, _____, an officer of Digital Markets Inc. dba Vista COM, 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 _____, 2024.

Notary Public, State of _____



Exhibit A

Houston, TX

9824 Whithorn Drive

Houston, Texas 77095

P: (800) 708-6423

www.vistacomtx.com

Remit, Sales and Support

Oklahoma City, OK

4200 Perimeter Center Drive, Suite 140

Oklahoma City, OK 73112

P: (800) 708-6423

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We have prepared a quote for you

**Midland Public Safety Communications - Eventide
Recorder Upgrade Proposal**

Quote # HOU004895

Version 1

Wednesday, February 07, 2024

Midland Public Safety Communications
Angela Wolf
601 N. Loraine
Midland, TX 79702
awolf@midlandtexas.gov

Dear Angela,

Thank you for allowing Vista Com to prepare a quotation for you recording solution. Vista Com has over a 25 year history of providing public safety recording solutions throughout the region. We partner with the best OEM's in the industry to delivery the latest technology to you and we back the solution with local support and factory engineering.

Within this quotation you will find three key areas that describe the solution.

- Hardware - this is the physical components to be installed at your site.
- Software - each solution requires software that is licensed to you for your recorder.
- Services - items that are one time charges and represent labor and support for your solution.

The link details all areas of your quotation that we have designed for you. This quotation is based upon given facts and knowledge of your requirements passed to us by you and your organization. As such if we determine that the environment is different than what we have designed we will promptly edit the proposal for your presentation.

Important Note - the point at which the recorder equipment connects to the customer equipment is referred to as the demarcation point. The customer and/or its vendors are responsible for any required connections to this demarcation point such as cabling, equipment programming, or equipment relocation.

If you approve of this quotation please indicate so within the link. By accepting this quotation you represent your authorization of your entity and legally bind your agency to the terms of this sales contract.

Kind Regards,



Robin Clevenger
Regional Sales Manager
Vista Com



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Disclosures

All order cancellations are subject to a 35% restocking charge once order has been placed. Your solution is custom built for your environment. Vista Com will make every attempt to modify changes once purchase has been placed however the customer is ultimately responsible for any financial implications for order changes after the order is placed.

Solution Design - we make every attempt to ensure the attached quote is exact and matches your requirements. Please pay special attention to our description of goods and services to ensure it matches your requests. If Vista Com inspects your site location and determines that our solution does not match your communicated requirement, we will promptly revise this quote.

Customer Demarcations - The point at which the recording equipment is connected to the customer equipment is termed "demarcation point". The demarcation point can be a physical cable connection to a demarcation block or it can be a network cable connected to a customer network switch. Due to vendor and customer liabilities it is accepted that Vista Com is responsible for cabling and recorder connection from the demarcation point and the customer is responsible for all cabling, configuration, and coordination for recorded devices to the demarcation block.

Install Guide - Vista Com requires information about your network and user environment before installation of the recording solution. This information includes necessary information proprietary to the customer such as network addresses, user names/passwords, channel assignments and user rights. It is understood that the customer will answer this proprietary information to Vista Com prior to installation in order for the services to be conducted quickly and efficiently.

By acceptance of this offer you accept the disclosures above as part of this agreement.



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Midland Public Safety Communications - Eventide Recorder Upgrade Proposal



Robin Clevenger

Prepared by:

Vista Com
Robin Clevenger
281-516-9800 ext 201
Fax (281) 518-7056
robin@vistacomtx.com

Prepared for:

Midland Public Safety Communications
601 N. Loraine
Midland, TX 79702
Angela Wolf
awolf@midlandtexas.gov
4326857469

Quote Information:

Quote #: HOU004895
Version: 1
Delivery Date: 02/07/2024
Expiration Date: 05/31/2024

Part Number	Main Site Analog Recorder	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Vista Com is proposing to replace the existing 4 yr Eventide recorder due to age and that model is no longer manufactured. Vista Com is proposing 2 new Eventide 740DX recorders at the main site for Midland Public Safety Communications. Below is the configuration to record (27) analog Non-Emergency phones, (13) 9-1-1 analog trunks. Screen Recording for (13) 9-1-1 Positions, This recorder will be used for retention of 2 years of audio. The pricing in this proposal is from Vista Com HGAC RP07-20 contract.						
2022NexLog740DX Hardw Bundle	NexLog 740DX Hardware Bundle NexLog 740DX Base Hardware Configuration	1	\$18,440.00	\$18,440.00	\$15,442.00	\$15,442.00
	NexLog 740 DX-Series Base System NexLog 740 DX-Series base system: 3U rack-mountable, Core i5 CPU, 16GB DDR4 RAM, 2 x2TB fixed-Mount HDDs (RAID 1), 1 Blu-ray Multi-Drive, 2 Network Ports (100/1000), Embedded Linux, NexLog DX-Series software, web- based configuration manager, audio controls & amplified speaker on front panel, dual hot- swap 120-240VAC 50/60Hz power supplies. Requires ongoing Eventide DX Software Update Subscription (DXSUS) for access to critical DX-Series Software & Security Updates.	1				



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	Multi-Channel KVM for rack mounted recording solut Multi-Channel KVM for rack mounted recording solution, UPS for Recorder, Modem for remote diagno...	1				
	Upgrade NexLog 740 DX-Series to 4x2TB HotSwap MegaRAID5=6TB Upgrade NexLog 740 DX-Series (at time of order) to 4x2TB HotSwap MegaRAID5=6TB storage	1				
NexLog 740DX Channel Bundle	NexLog 740DX Channel Bundle Eventide User Channel Activation Bundle Provides TDM, VoIP, RoIP Licensing for Playback	1	\$12,050.00	\$12,050.00	\$10,091.00	\$10,091.00
	16-Channel Analog PCIe (PCI Express) Card, 16 Ch. Licenses 16-Channel Analog PCIe (PCI Express) Card, 16 Ch. Licenses	1				
	24-Channel Analog PCIe (PCI Express) Card, 24 Ch. Licenses 24-Channel Analog PCIe (PCI Express) Card, 24 Ch. Licenses	1				
NexLog 740 Software Bundle	NexLog 740 Software Bundle Eventide User Software Bundle and Licensing	1	\$13,950.00	\$13,950.00	\$11,683.00	\$11,683.00
	Screen Recording System License w/ 5 PC Licenses Screen Recording System License w/ 5 PC Licenses (Note: Due to the potential for increase storage demand we highly recommend upgrading base hard drive sizes to min 2TB)	1				
	Screen Recording Expansion License For 5 PC's Screen Recording Expansion License For 5 PC's	2				



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	MediaWorks Plus Licenses MediaWorks Plus (Web) Concurrent Access for 8 Users (6) packs on each recorder (27) users will be on record on demand	6				
	Geographic Search/View (Requires Lat/Lon, MW Plus, Geographic Search/View (Requires Lat/Lon, MW Plus, Google Maps)	1				
	NENA ANI/ALI CAD Spill Integration of SMDR NENA ANI/ALI CAD Spill Integration of SMDR	1				
Nexlog Storage & Power Bundle	Nexlog Storage & Power Bundle Eventide User Storage & Power Bundle	1	\$1,555.00	\$1,555.00	\$1,555.00	\$1,555.00
	Network Attached Storage For Small Footprint Network Attached Storage For Small Footprint, Non-Rackmountable with 2 2Tb Hard Drives	1				
	TRIPP LITE UPS 1500VA Rackmount TRIPP LITE UPS Smart 1500VA 900W Rackmount Tower LCD AVR	1				

Part Number	Main Site IP Recorder	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Vista Com is proposing to record all the IP connections on their own recorder to record the following: (20) Motorola P25 IP talk paths, (72) ShoreTel IP 655/485 phones out of the (38) there are (23) ISB and (4) ASB phones to record on demand and (13) 9-1-1 IP positions. The Motorola licenses were already quoted to Midland. Midland would like to add the CAD integration to the quote once they decide on the vendor. A quote revision will need to occur at that time.						
2022NexLog740DX Hardw Bundle	NexLog 740DX Hardware Bundle NexLog 740DX Base Hardware Configuration	1	\$16,680.00	\$16,680.00	\$13,968.00	\$13,968.00



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	NexLog 740 DX-Series Base System NexLog 740 DX-Series base system: 3U rack-mountable, Core i5 CPU, 16GB DDR4 RAM, 2 x2TB fixed-Mount HDDs (RAID 1), 1 Blu-ray Multi-Drive, 2 Network Ports (100/1000), Embedded Linux, NexLog DX-Series software, web- based configuration manager, audio controls & amplified speaker on front panel, dual hot- swap 120-240VAC 50/60Hz power supplies. Requires ongoing Eventide DX Software Update Subscription (DXSUS) for access to critical DX-Series Software & Security Updates.	1				
	Upgrade NexLog 740 DX-Series to 2x4TB HotSwap MegaRAID1=4TB Upgrade NexLog 740 DX-Series (at time of order) to 2x4TB HotSwap MegaRAID1=4TB storage	1				
NexLog 740DX Channel Bundle	NexLog 740DX Channel Bundle Eventide User Channel Activation Bundle Provides TDM, VoIP, RoIP Licensing for Playback	1	\$36,315.00	\$36,315.00	\$30,415.00	\$30,415.00
	Internal IP Recorder w/ 8 G.711 Channel Licenses Internal IP Recorder w/ 8 G.711 Channel Licenses	1				
	Add-on license pack (internal IP recording engine) Add-on license pack (internal IP recording engine) with 8 Channel Licenses for G.711 RTP/RoIP/NG911	13				
	Add-on License Pack (Internal IP Recorder) G.729 Add-on License Pack (Internal IP Recorder) to upgrade 8 Licenses of G.711 to G.729	9				



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NexLog 740 Software Bundle	NexLog 740 Software Bundle Eventide User Software Bundle and Licensing	1	\$37,040.00	\$37,040.00	\$31,019.00	\$31,019.00
	RapidSOS Integration for wireless 9-1-1 caller location display RapidSOS Integration for wireless 9-1-1 caller location display (1 license required for each NexLog Recorder that will connect to RapidSOS); Also requires ANI/ALI CAD Spill Integration (p/n 209029) and Geo Search/View option (p/n 271098).	1				
	Eventide Interface license for VESTA 911 IP/SPAN Eventide Interface license for VESTA 911 IP/SPAN Recording	1				
	Quality Assurance DX Software: FIRST 20 Agents (Requires Med Quality Assurance DX Software (Quality Factor): FIRST 20 Agents (Requires MediaWorks Plus/DX)	1				
	DVSI 2-Port USB Decoder Unit DVSI 2-Port USB Decoder for NexLogDX (for P25)	4				
	NexLog Access Bridge License NexLog Access Bridge License (Customer is able to log into multiple base recorders with a single recorder software appearance)	1				
	MediaWorks Plus Licenses MediaWorks Plus (Web) Concurrent Access for 8 Users (6) packs on each recorder (27) users will be on record on demand	6				



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	Geographic Search/View (Requires Lat/Lon, MW Plus, Geographic Search/View (Requires Lat/Lon, MW Plus, Google Maps)	1				
	NENA ANI/ALI CAD Spill Integration of SMDR NENA ANI/ALI CAD Spill Integration of SMDR	1				
Nexlog Storage & Power Bundle	Nexlog Storage & Power Bundle Eventide User Storage & Power Bundle	1	\$605.00	\$605.00	\$605.00	\$605.00
	TRIPP LITE UPS 1500VA Rackmount TRIPP LITE UPS Smart 1500VA 900W Rackmount Tower LCD AVR	1				

Part Number	Main Site Services	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Prof Serv Install Bundle	Prof Service Installations Bundle Recorder Solutions Installation Services Includes Site Installation Guides, Project Management, Pre- Configuration, Onsite Installation, System Integrations, and De-trash	1	\$26,840.00	\$26,840.00	\$26,840.00	\$26,840.00
Prof Service Training Bundle	Prof Service Training Bundle Professional Services, Training Programs Designed To Your Solution. Includes Materials, Training Class, and Follow Up Support	1	\$7,150.00	\$7,150.00	\$7,150.00	\$7,150.00
					\$33,990.00	\$33,990.00

Part Number	Back-Up Site	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Vista Com is proposing an Eventide Nexlog 740DX recorder for the backup site located at the airport. Below is the configuration to record (6) 9-1-1 IP Positions, (20) Motorola P25 radio talk paths, (27) Non-Emergency analog phones and (5) 9-1-1 analog trunks. The Motorola licenses were already quoted to Midland.						



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Sales and Support

Remit, Sales and Support

2022NexLog740DX Hardw Bundle	NexLog 740DX Hardware Bundle NexLog 740DX Base Hardware Configuration	1	\$16,790.00	\$16,790.00	\$14,059.00	\$14,059.00
	NexLog 740 DX-Series Base System NexLog 740 DX-Series base system: 3U rack-mountable, Core i5 CPU, 16GB DDR4 RAM, 2 x2TB fixed-Mount HDDs (RAID 1), 1 Blu-ray Multi-Drive, 2 Network Ports (100/1000), Embedded Linux, NexLog DX-Series software, web- based configuration manager, audio controls & amplified speaker on front panel, dual hot- swap 120-240VAC 50/60Hz power supplies. Requires ongoing Eventide DX Software Update Subscription (DXSUS) for access to critical DX-Series Software & Security Updates.	1				
	Integrated 7" Color LCD Touch Screen Display for NexLog 740 Integrated 7" Color LCD Touch Screen Display for NexLog 740 DX-Series	1				
	Upgrade Nexlog 740 DX to 2x2TB HotSwap HD Upgrade NexLog 740 DX-Series (at time of order) 2x2TB HotSwap MegaRAID1=2TB storage	1				
NexLog 740 Channel Bundle	NexLog 740 Channel Bundle Eventide User Channel Activation Bundle Provides TDM, VoIP, RoIP Licensing for Playback	1	\$20,410.00	\$20,410.00	\$17,092.00	\$17,092.00
	8-Channel Analog PCIe (PCI Express) Card, 8 Ch. Licenses 8-Channel Analog PCIe (PCI Express) Card, 8 Ch. Licenses	1				
	24-Channel Analog PCIe (PCI Express) Card, 24 Ch. Licenses 24-Channel Analog PCIe (PCI Express) Card, 24 Ch. Licenses	1				



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www.vistacomtx.com

Houston, TX
9824 Whithorn Drive
Houston, Texas 77095
P: (800) 708-6423
www.vistacomtx.com

Sales and Support

Remit, Sales and Support

	Internal IP Recorder w/ 8 G.711 Channel Licenses Internal IP Recorder w/ 8 G.711 Channel Licenses for 9-1-1 positions	1				
	Add-on license pack (internal IP recording engine) Add-on license pack (internal IP recording engine) with 8 Channel Licenses for G.711 RTP/RoIP/NG911	3				
NexLog 740 Software Bundle	NexLog 740 Software Bundle Eventide User Software Bundle and Licensing	1	\$20,320.00	\$20,320.00	\$17,016.00	\$17,016.00
	Eventide Interface license for VESTA 911 IP/SPAN Eventide Interface license for VESTA 911 IP/SPAN Recording	1				
	DVSI 2-Port USB Decoder Unit (for P25) DVSI 2-Port USB Decoder Unit (for P25) Harris radios	4				
	MediaWorks Plus Licenses MediaWorks Plus (Web) Concurrent Access for 8 Users	2				
	Geographic Search/View (Requires Lat/Lon, MW Plus, Geographic Search/View (Requires Lat/Lon, MW Plus, Google Maps)	1				
	NENA ANI/ALI CAD Spill Integration of SMDR NENA ANI/ALI CAD Spill Integration SMDR	1				
Nexlog Storage & Power Bundle	Nexlog Storage & Power Bundle Eventide User Storage & Power Bundle	1	\$2,405.00	\$2,405.00	\$2,405.00	\$2,405.00
	NAS Rackmountable Appliance Based 1U NAS Rackmount Network Attached Storage Appliance (Linux Technology) With 2 2Tb Hard Drives	1				



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Sales and Support

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	TRIPP LITE UPS 1500VA Rackmount TRIPP LITE UPS Smart 1500VA 900W Rackmount Tower LCD AVR	1				

Part Number	Back-Up Site Services	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Prof Serv Install Bundle	Prof Service Installations Bundle Recorder Solutions Installation Services Includes Site Installation Guides, Project Management, Pre- Configuration, Onsite Installation, System Integrations, and De-trash	1	\$12,194.00	\$12,194.00	\$12,194.00	\$12,194.00
					\$12,194.00	\$12,194.00

Quote Summary					Amount
Main Site Analog Recorder					\$38,771.00
Main Site IP Recorder					\$76,007.00
Main Site Services					\$33,990.00
Back-Up Site					\$50,572.00
Back-Up Site Services					\$12,194.00
Total					\$211,534.00

Payment Terms	No. of Payments		Amount
Net 30	1	None	\$211,534.00

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Signature

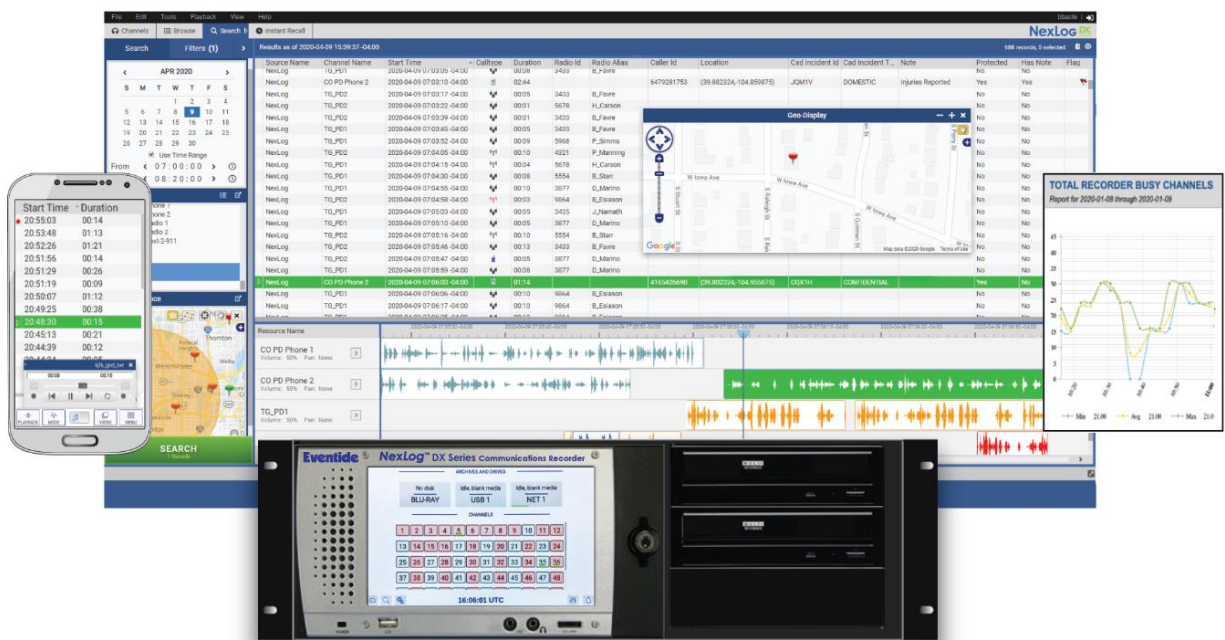
Date

Eventide®

NexLOG™

DX
SERIES™

Advanced Recording Solutions for Mission-Critical Communications



Recording Systems • Software Solutions • Edge Capture Devices

NG9-1-1 • P25 Radio • DMR • IP Dispatch • ATC/ATM
Incident Reconstruction • Instant Recall • Mobile
Quality Assessment • Screen Recording • Reporting
VoIP • SIP • Digital • Analog • T1/E1 • ISDN • ED-137B/C

*Eventide's mission-critical recording solutions are trusted
by organizations worldwide to capture, secure
and reconstruct their most important interactions.*

PACKET 431 February 27, 2024

► NexLog DX-Series Communications Recording Software and Solutions

NexLog DX-Series™ recording solutions are the culmination of over 30 years of mission-critical recording experience. The DX-Series continues the NexLog tradition of reliability and ease-of-use while focusing on Digital Transformation (DX) to meet tomorrow's needs. With expanded solution architectures, as well as enhanced security, scalability and integrations, the NexLog DX-Series is truly the next generation recorder.

The NexLog DX-Series software includes multi-tier security and a web-based configuration management tool, as well as support for password policies, Active Directory, SNMP, TLS and AES-256 encryption.

The innovative *NexLog Access Bridge* option enables a scalable approach to enterprise deployments. Multiple recorders can be linked together for unified searching, replay, incident management and configuration.

NexLog 740 DX-Series™ Recording Solution



Channel Capacity*: 96 Analog, 96 Digital PBX, 192 T1, 240 E1, 560 VoIP, 240+ P25, 240+ DMR 3U Rack-Mountable

NexLog 840 DX-Series™ Recording Solution



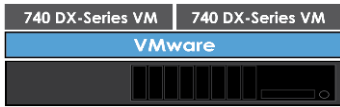
Channel Capacity*: 240 Analog, 240 Digital PBX, 240 T1, 240 E1, 560 VoIP, 240+ P25, 240+ DMR 4U Rack-Mountable

Smart Edge Capture Device™



Captures, Buffers and Transfers to DX-Series Recording Solutions
Up to 24 Analog, 24 Digital, 48 T1, 60 E1 or 120 VoIP Channels. 1U

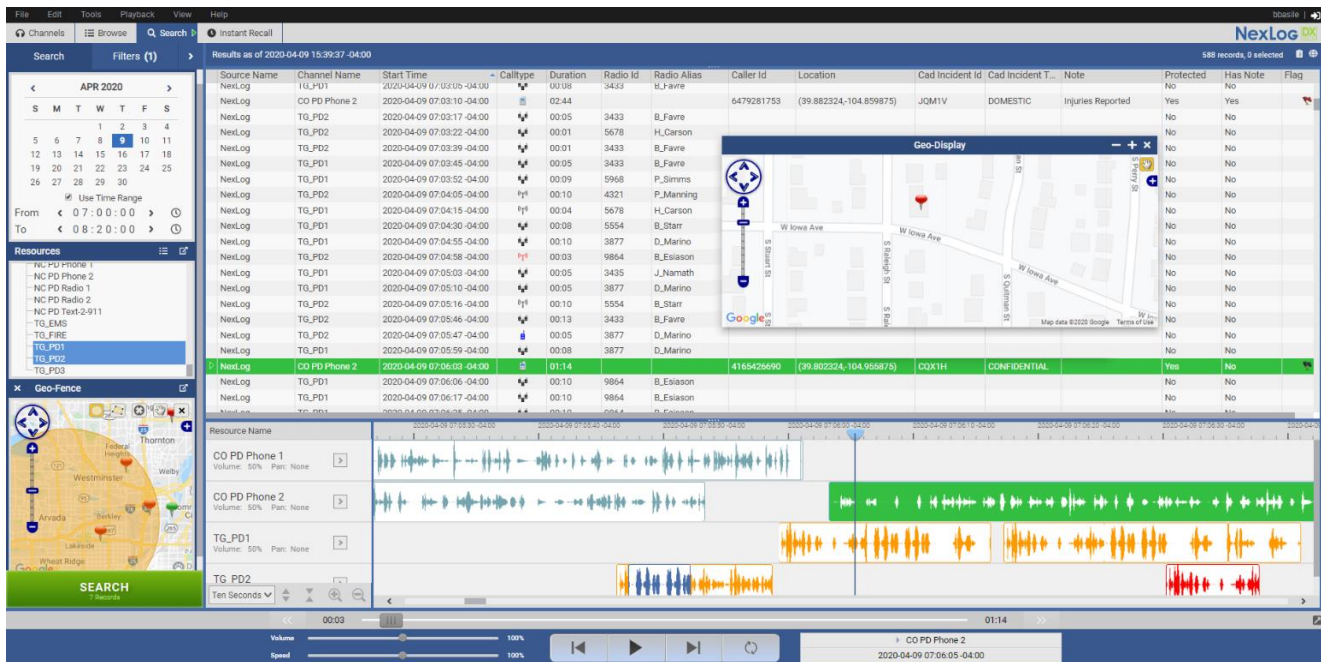
NexLog DX-Series™ Virtual Recording Software Solution



Channel Capacity*: 560 VoIP, 240+ P25. Add **DX-Series Smart Gateways** for Analog, Digital or Remote VoIP. Works with ESXi

► MediaWorks DX Software: Incident Reconstruction, Instant Recall and More!

The **MediaWorks DX**™ software option provides secure access, replay and management of audio, screen, multimedia, text and TDD recordings. It is available via web browser on PCs, tablets and phones (using secure HTML5 technology) or as a native application on a PC. MediaWorks DX provides a complete set of tools to Browse, Search, Replay, Instant Recall, Live Monitor, Reconstruct Incidents, Protect, Export and much more.



Capabilities include: Graphical Time-Line • Waveform Display • Talking Time and Date • Zoom In/Out • Loop Playback Skip Forward/Back • Playback AGC • Pitch-Corrected Variable Speed • Redact Audio • Obfuscate Audio • Audio Annotation • Text Annotation • Screen Replay • Text/SMS Replay • Multimedia Replay • Call Notes • Lock Recordings Protect Calls • Quarantine Recordings • Pop-Out Search Tools • Geo-Fence Search • Speech Search • Location Display** Location Tracking** • Multi-Parameter Search • Create Incident • Modify Incident • Attach Other Media • Split/Join Audio Clips • Restrict Access • Share Incident Folder • Pre-Set Exports • Menu Driven Export • Incident Export • Single and Multi-Recording Export • Export with Secure Standalone Player • Phone and Tablet Support • Multiple Monitor Support Configurable Layout • Dark Mode • Touch Screen Support • Accessibility Modes • Two Factor Authentication • Auditing

PACKET • Upload videos and images to incident for storage and replay*** February 27, 2024

► **Quality Factor DX Software: Integrated Quality Assessment and Reporting**

The *Quality Factor DX*™ software option facilitates a quality assurance program to fit your agency's needs. With its built-in APCO/NENA QA/QI evaluation forms, you can quickly start measuring agent performance and help to protect your center from unwarranted conformance questions.

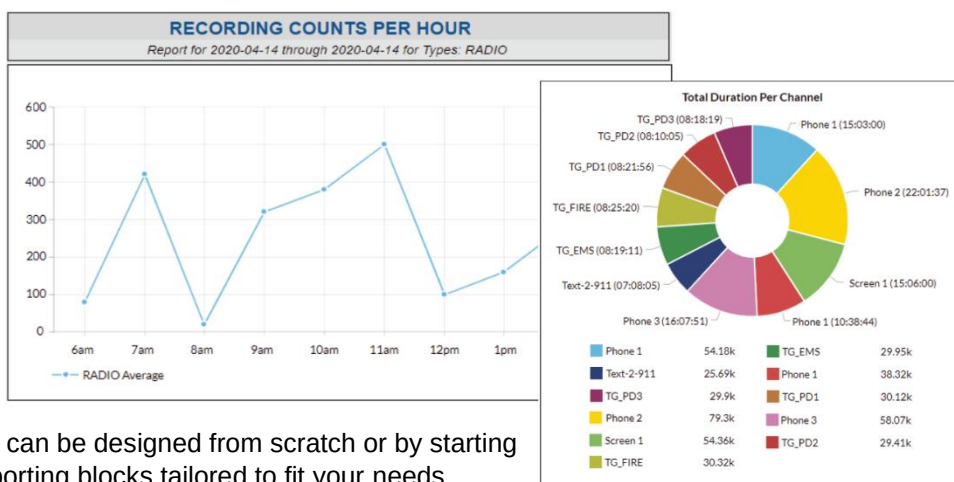
Quality Factor DX software includes a wide range of options for scoring, comments, notifications, scheduling, and reporting that can be selected to fit any agency. Add the optional *Screen Recording DX* software to get the complete picture via synchronized voice and screen replay.

File Edit Tools Playback View Help
Channels Instant Recall Search Instant Recall Search Evaluation
Toggle Evaluation View Toggle Timeline
Evaluation Title: 9-1-1 Call: Media Start Time: 2020-01-09 21:21:29
Using Form "9-1-1 Eval." to evaluate group: shift 2 agent: 2272 [John Smith]
1 Did the agent properly greet the caller? Initial Contact Yes No
2 Did the agent determine the caller's name and location? Information Gathering Yes No
3 Did the agent quickly determine the severity of the caller's situation? Information Gathering 1 2 3 4 5
Must comment if question is flagged...
4 Did the agent control the call from the start? Call Control Yes No
5 Was the agent able to maintain the caller's attention? Call Control 1 2 3 4 5
Must comment if question is flagged...
6 Did the agent show empathy for the caller's situation? Empathy 1 2 3 4 5
Resource Name
Position 276
Volume: 50% Pan: None
Five Seconds
00:36 01:38
Volume 100%
Speed 100%
Evaluating: 1 call
00:36 01:38

► **Reporting Engine DX**

The flexible *Reporting Engine DX*™ option provides directors and managers with business intelligence to help determine necessary staffing levels and workflows, and to help justify budgets. Radio traffic, 9-1-1 and administrative phone activity can all be joined into actionable reports.

Reports can be generated on a schedule and delivered via email, PDF, or viewed in a browser. Custom reports can be designed from scratch or by starting from a wide range of pre-configured reporting blocks tailored to fit your needs.



► **Screen Recording DX**

The *Screen Recording DX*™ option allows you to capture high-quality videos of workstation activity that can be seamlessly synchronized with recorder audio. Supervisors can benefit by obtaining a better understanding of each agent's compliance with required practices and protocols. *Screen Recording DX* can capture the important imagery appearing on a user's PC screen, such as surveillance camera video, maps, or overlay application video. Screen recording replay can also aid during incident investigations and can help to document issues with other software.

The *Screen Recording DX* software can efficiently capture up to 20 frames per second, offers flexible bandwidth-limiting options, supports multiple displays and is compatible with modern Windows and Linux workstations.

► **NexLog DX-Series Software Update Subscription (DXSUS)**

The NexLog DX-Series software continues to evolve in order to meet tomorrow's technical and security challenges, and new software versions and updates are produced on a regular basis. The *DX-Series Software Update Subscription (DXSUS*™) provides access to these important software versions and updates, which can incorporate Linux security updates, application-level security updates, and improvements to existing functionality. Each NexLog DX-Series software version is conveniently designated by its year of release, as well as its update level (example: "Version 2020.1").

The first 12 Months of **DXSUS** coverage is included at no charge with the purchase of each DX-Series recorder, DX-Series virtual recording solution or Smart Edge Capture Device. **Yearly renewals of coverage will help assure that your NexLog DX-Series products maintain the highest levels of security, performance, functionality and supportability.**

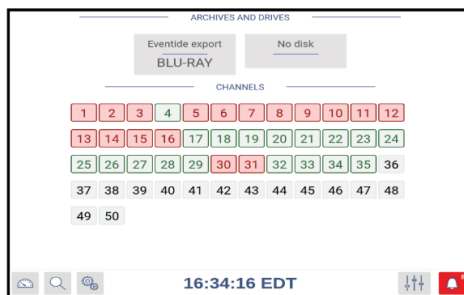
PACKET

433

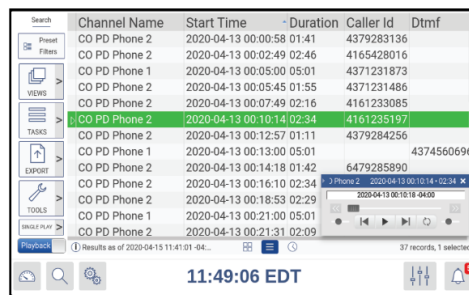
February 27, 2024

► LCD Touch Screen

The optional 7" multi-touch LCD screen (on the front panel) lets you conveniently search and replay calls, protect calls, create incidents, export, burn to CD/DVD, live monitor, view alerts, view archive status, configure the NexLog DX recording system and more.



Info mode: Channels, Archives, Alerts, Live Monitor



Replay mode: Search, Replay, Build Incidents, Export

► NexLog DX-Series Interoperability:

RADIO TECHNOLOGIES:

Motorola Astro 25
Motorola Dimetra IP
Motorola MotoTrbo Cap Max
Motorola MotoTrbo Cap Plus
Motorola MotoTrbo LCP
Motorola MotoTrbo IPSC
Motorola SmartNet/Zone
Motorola MDC1200
L3Harris VIDA P25
L3Harris EDACS via MGW
ISSI & OTAR for P25 Trunked
EF Johnson ATLAS P25
Tait P25 Trunked via ISSI
Tait/L3Harris DMR Tier III
Tait/L3Harris DMR Tier II
Tait MPT-IP
Sepura/Fylde DMR III
Sepura/Fylde MPT1327
ICOM iDAS Conventional
Kenwood NexEdge Trunked
ESChat PTT

9-1-1 TECHNOLOGIES:

NENA i3 SIPREC
NENA i3 SMS/MMS/Logging
Zetron MAX Call Taking
Zetron Series 3200
Intrado VIPER
Motorola VESTA
Motorola CallWorks
Emergitech IP9-1-1
TCS Solacom Guardian
RapidSOS
Carbyne 911
Priority Dispatch AQUA

CAD TECHNOLOGIES:

Southern Software
Hexagon Edge Frontier
New World Tyler
MobileTec InMotion
Motorola Spillman
Geoconex
RapidDeploy
Central Square: Inform,
Zuercher & Sungard

DISPATCH TECHNOLOGIES:

Zetron MAX Dispatch
Zetron ACOM Novus
Zetron DCS-5020
AVTEC Scout
Motorola MCC7500
Omnitronics Omnicore
L3Harris SwitchPlus IP
L3Harris Symphony
Telex Radio Dispatch
Telex IP-223 & IP-224
Catalyst IP|Console
PENTA cPCx
Cisco IPICS
CSS Mindshare
CTI RadioPro Dispatch
InterTalk Vantage DCS
iNEMSOFT Console/Gateway
SmartPTT Dispatch
JPS Interoperability Solutions

PHONE TECHNOLOGIES:

VoIP and SIP Telephones
Digital PBX Telephones
Analog Telephones
2-wire Analog lines
4-wire Analog circuits
CAMA Trunks
T1, E1, and ISDN Trunks
SIP Trunks
Cisco Built-in Bridge (BiB)
Mitel SRC

ADDITIONAL TECHNOLOGIES:

VMware
AWS Cloud Storage
Calabrio (NexLog as Gateway)
Harding Instruments DXL Intercom
GAI-Tronics Intercom
Industronic PA/GA
Thales TopSky
ThruPut ATG
Asterix IP Surveillance Data
Park Air T6 GRS
Jotron 7000 Series GRS
Rohde & Schwarz 4400 GRS

► Air Traffic Management and ED-137

NexLog DX-Series recording solutions can record all types of ATC/ATM audio sources, including controller working positions, VCCS, GRS, ambient audio, and telephones. NexLog systems fully support the ED-137B/C-Part 4 (VoIP) recording interface. Eventide actively participates in EUROCAE's Working Group 67 and the EUROCONTROL VOTE group.

► Synchronized Replay for ATC/ATM

NexLog DX-Series systems can directly record CWP screens and provide synchronized replay of both screen and audio. NexLog DX-Series recorders can also interface with Thales airspace navigation systems for synchronized replay of audio with CWP scenario replay. A DX-Series replay control API is also available.

► Redundancy

NexLog 740 DX-Series and NexLog 840 DX-Series recorders each include redundant power supplies and redundant disk drives. Redundant archiving options include NAS, Blu-ray/DVD-RAM, RDX, and removable HDD.

NexLog 740 DX-Series and NexLog 840 DX-Series recorders are available in sets of multiple units for fully redundant "Active + Active" recording, storage and archiving.



© 2020 Eventide Inc. Specifications and features are subject to change without notice. Some listed features are extra-cost options. Capacities are for DX-Series units. *Check with Eventide for mixed-type channel capacities, and for pre-sales review of digital phone, LMR, VoIP phone, and VoIP codec compatibility. **Location view & tracking functions require coordinates to be delivered to the recorder and require both Chrome browser and Google Maps.



For more information please contact Us:

Vista Com

PACKET

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4 34

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Email: Sales@vistacomtx.com

142339-14



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Remit, Sales and Support

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Oklahoma City, OK 73112

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www.vistacomtx.com

Sales and Support

We have prepared a quote for you

**Midland Public Safety - Main-Backup Sites - Eventide
Motorola Licenses**

Quote # HOU004883

Version 1

Wednesday, February 07, 2024

Midland Public Safety Communications
Angela Wolf
601 N. Loraine
Midland, TX 79702
awolf@midlandtexas.gov

Dear Angela,

Thank you for allowing Vista Com to prepare a quotation for your recording solution. Vista Com has over a 25 year history of providing public safety recording solutions throughout the region. We partner with the best OEM's in the industry to deliver the latest technology to you and we back the solution with local support and factory engineering.

Within this quotation you will find two key areas that describe the solution.

- Software - each solution requires software that is licensed to you for your recorder.
- Services - items that are one time charges and represent labor and support for your solution.

The link details all areas of your quotation that we have designed for you. This quotation is based upon given facts and knowledge of your requirements passed to us by you and your organization. As such if we determine that the environment is different than what we have designed we will promptly edit the proposal for your presentation.

Important Note - the point at which the recorder equipment connects to the customer equipment is referred to as the demarcation point. The customer and/or its vendors are responsible for any required connections to this demarcation point such as cabling, equipment programming, or equipment relocation.

If you approve of this quotation please indicate so within the link. By accepting this quotation you represent your authorization of your entity and legally bind your agency to the terms of this sales contract.

Kind Regards,



Robin Clevenger
Regional Sales Manager
Vista Com



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www.vistacomtx.com

Sales and Support

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Remit, Sales and Support

Disclosures

All order cancellations are subject to a 35% restocking charge once order has been placed. Your solution is custom built for your environment. Vista Com will make every attempt to modify changes once purchase has been placed however the customer is ultimately responsible for any financial implications for order changes after the order is placed.

Solution Design - we make every attempt to ensure the attached quote is exact and matches your requirements. Please pay special attention to our description of goods and services to ensure it matches your requests. If Vista Com inspects your site location and determines that our solution does not match your communicated requirement, we will promptly revise this quote.

Customer Demarcations - The point at which the recording equipment is connected to the customer equipment is termed "demarcation point". The demarcation point can be a physical cable connection to a demarcation block or it can be a network cable connected to a customer network switch. Due to vendor and customer liabilities it is accepted that Vista Com is responsible for cabling and recorder connection from the demarcation point and the customer is responsible for all cabling, configuration, and coordination for recorded devices to the demarcation block.

Install Guide - Vista Com requires information about your network and user environment before installation of the recording solution. This information includes necessary information proprietary to the customer such as network addresses, user names/passwords, channel assignments and user rights. It is understood that the customer will answer this proprietary information to Vista Com prior to installation in order for the services to be conducted quickly and efficiently.

By acceptance of this offer you accept the disclosures above as part of this agreement.



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Remit, Sales and Support

Midland Public Safety - Main-Backup Sites - Eventide Motorola Licenses



Robin Clevenger

Prepared by:

Vista Com
Robin Clevenger
281-516-9800 ext 201
Fax (281) 518-7056
robin@vistacomtx.com

Prepared for:

Midland Public Safety Communications
601 N. Loraine
Midland, TX 79702
Angela Wolf
awolf@midlandtexas.gov
(432) 685-7469

Quote Information:

Quote #: HOU004883
Version: 1
Delivery Date: 02/07/2024
Expiration Date: 05/31/2024

Part Number	Main Site Software	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Below is part 1 of the main site license for recording the (20) Motorola talkpaths on the existing Eventide recorder. Part 2 license will be on a separate quote for the AIS-API license fee.						
NexLog 740DX Software Bundle	NexLog 740DX Software Bundle Eventide User Software Bundle and Licensing	1	\$14,995.00	\$14,995.00	\$14,995.00	\$14,995.00
	Integration to Motorola ASTRO 25 system - Initial ASTRO vers Integration to Motorola ASTRO 25 system - Initial ASTRO version - SINGLE AIS	1				

Part Number	Backup Site Software	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
The license amount of \$15,495 is to be pre-paid upon time of PO issuance.						
NexLog 740DX Software Bundle	NexLog 740DX Software Bundle Eventide User Software Bundle and Licensing	1	\$22,490.00	\$22,490.00	\$22,490.00	\$22,490.00
	Mandatory license fee for Initial System Release - for same Mandatory license fee for Initial System Release - for same end-customer, PER EACH AIS BEYOND FIRST AIS (Non-Discountable; must be pre-paid)	1				



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	Integration to Motorola ASTRO 25 system - Initial ASTRO vers Integration to Motorola ASTRO 25 system - Initial ASTRO version - per ADD'L AIS	1				

Part Number	Services	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Prof Serv Install Bundle	Prof Service Installations Bundle Recorder Solutions Installation Services Includes Site Installation Guides, Project Management, Pre- Configuration, Onsite Installation, System Integrations, and De-trash	1	\$13,340.00	\$13,340.00	\$13,340.00	\$13,340.00
					\$13,340.00	\$13,340.00

Quote Summary					Amount
Main Site Software					\$14,995.00
Backup Site Software					\$22,490.00
Services					\$13,340.00
Total					\$50,825.00

Payment Terms	No. of Payments		Amount
Net 30	1	None	\$50,825.00

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Signature

Date



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Houston, Texas 77095
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Remit, Sales and Support

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Sales and Support

We have prepared a quote for you

**Midland Public Safety - Part 2 Main Site - Eventide
Motorola AIS API Fee**

Quote # HOU004884

Version 1

Wednesday, February 07, 2024

Midland Public Safety Communications
Angela Wolf
601 N. Loraine
Midland, TX 79702
awolf@midlandtexas.gov

Dear Angela,

Thank you for allowing Vista Com to prepare a quotation for your recording solution. Vista Com has over a 25 year history of providing public safety recording solutions throughout the region. We partner with the best OEM's in the industry to deliver the latest technology to you and we back the solution with local support and factory engineering.

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- Software - each solution requires software that is licensed to you for your recorder.
- Services - items that are one time charges and represent labor and support for your solution.

The link details all areas of your quotation that we have designed for you. This quotation is based upon given facts and knowledge of your requirements passed to us by you and your organization. As such if we determine that the environment is different than what we have designed we will promptly edit the proposal for your presentation.

Important Note - the point at which the recorder equipment connects to the customer equipment is referred to as the demarcation point. The customer and/or its vendors are responsible for any required connections to this demarcation point such as cabling, equipment programming, or equipment relocation.

If you approve of this quotation please indicate so within the link. By accepting this quotation you represent your authorization of your entity and legally bind your agency to the terms of this sales contract.

Kind Regards,



Robin Clevenger
Regional Sales Manager
Vista Com



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Remit, Sales and Support

Midland Public Safety - Part 2 Main Site - Eventide Motorola AIS API Fee



Robin Clevenger

Prepared by:

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Robin Clevenger
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Prepared for:

Midland Public Safety Communications
601 N. Loraine
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Angela Wolf
awolf@midlandtexas.gov
(432) 685-7469

Quote Information:

Quote #: HOU004884
Version: 1
Delivery Date: 02/07/2024
Expiration Date: 05/31/2024

Part Number	Main Site Software	Qty	List Price (Each)	List Price (Extended)	Discounted Price (Each)	Discounted Price (Extended)
Below is Part 2 license for the AIS-API license fee to be pre-paid at time of PO issuance.						
NexLog 740DX Software Bundle	NexLog 740DX Software Bundle Eventide User Software Bundle and Licensing	1	\$54,995.00	\$54,995.00	\$54,995.00	\$54,995.00
	Mandatory license fee for Initial System Release - for end-c Mandatory license fee for Initial System Release - for end-customer with ONE AIS (or FIRST AIS) (Non-Discountable; must be pre-paid)	1				

Quote Summary		Amount
Main Site Software		\$54,995.00
Total		\$54,995.00

Payment Terms	No. of Payments		Amount
Net 30	1	None	\$54,995.00

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Signature

Date



City Council Meeting

Item Number: 5
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A THREE (3) YEAR SOLE-SOURCE CONTRACT FOR THE USE OF GEOGRAPHIC INFORMATION SYSTEM SOFTWARE, MAINTENANCE SUPPORT, AND ASSOCIATED UPGRADES WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INCORPORATED FOR A TOTAL COST OF \$405,840.00 (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution authorizing the execution of a three (3) year sole source agreement for the use and maintenance of Geographic Information System (GIS) software with Environmental Systems Research Institute, Incorporated (ESRI), for a total cost of \$405,840.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Tech Fund budget.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

ESRI software provides digital data and mapping products for use by City staff and the public. The Communication and Information Systems Department is using ESRI software to obtain geographic information for the GIS Division. The Cityworks software and NewEdge software that

the City utilizes only function in conjunction with the ESRI software. Environmental Systems Research Institute, Incorporated (ESRI) is a sole source provider of this software. According to Texas Local Government Code 252.022 (a)(7)(A), competitive bidding requirements do not apply to items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for additional information.

Therefore, please consider a resolution authorizing the execution of a three (3) year sole source agreement for the use and maintenance of Geographic Information System (GIS) software with Environmental Systems Research Institute, Incorporated (ESRI), for a total cost of \$405,840.00.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
THREE (3) YEAR SOLE-SOURCE CONTRACT FOR
THE USE OF GEOGRAPHIC INFORMATION SYSTEM
SOFTWARE, MAINTENANCE SUPPORT, AND
ASSOCIATED UPGRADES WITH ENVIRONMENTAL
SYSTEMS RESEARCH INSTITUTE, INCORPORATED
FOR A TOTAL COST OF \$405,840.00**

WHEREAS, the City of Midland's Engineering Services Department requires the use of certain geographic information system ("*GIS*") software, maintenance support, and associated upgrades; and

WHEREAS, Environmental Systems Research Institute, Inc. ("*ESRI*"), is the sole provider of said GIS software, maintenance support, and associated upgrades; and

WHEREAS, ESRI has agreed to provide the City with said GIS software, maintenance support, and associated upgrades at a total cost of \$405,840.00; and

WHEREAS, the City Council finds the price proposed for said software, maintenance support, and associated upgrades to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a three-year sole-source contract to ESRI for unlimited use of GIS software, maintenance support, and associated upgrades at a total cost of \$405,840.00;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, three-year contract to ESRI for unlimited use of GIS software, maintenance support, and associated upgrades for a total cost of \$405,840.00, said contract being attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION TWO. That funding shall be available in the Tech Fund budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay ESRI in accordance with the provisions of the above-referenced 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., 2024, 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 CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2024\Contracts\ESRI Extended License Agreement .wpd



City Council Agenda Item

DATE: February 13, 2024

TO: Erika Munoz, Purchasing Manager

FROM: Jennifer Frescaz, Managing Director / Chief Information Officer

SUBJECT: Consider a resolution approving the sole-source purchase of a three-year renewal of the Geographical Information System Software (GIS) for a total cost of \$405,840.00 from ESRI, Inc.

Purpose:

The current multi-year agreement expires in March 2024. As a result, staff request a resolution approving the sole-source purchase of a three-year renewal of the Geographical Information System Software (GIS) for a total cost of \$405,840.00 from ESRI, Inc.

Discussion:

Esri provides a standard software solution that helps cities, including the City of Midland, manage and share mapping data easily. For over a decade, Midland has used Esri's tools under an Enterprise License Agreement (ELA) to support various city functions. This includes public safety, utility billing, permits, inspections, and managing city assets and land. Essentially, Esri's technology is central to keeping Midland's operations efficient and effective.

The annual recurring cost is \$132,240.00. A one-time fee of \$9,120.00 will be added to year-one for user training. The total cost of the agreement over the contract term is \$405,840.00 and is budgeted in the ITSD Tech Fund.



January 11, 2024

Ms. Jennifer Frescaz
City of Midland
601 N Loraine St
Midland, TX 79701-4759

Dear Jennifer,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Eric Lomeli



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-512904

Date: January 12, 2024

Customer # 4886 Contract # ENTERPRISE AGREEMENT

City of Midland
Information Technology
601 N Loraine St
Midland, TX 79701-4759

ATTENTION: Jennifer Frescaz
PHONE: (432) 685-7510
EMAIL: jfrescaz@midlandtexas.gov

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 1/11/2024 To: 4/10/2024

Small Government Enterprise Agreement

Material	Qty	Term	Unit Price	Total
168181	1	Year 1	\$116,700.00	\$116,700.00
Populations of 125,001-150,000 Small Government Enterprise Agreement Annual Subscription				
168181	1	Year 2	\$116,700.00	\$116,700.00
Populations of 125,001-150,000 Small Government Enterprise Agreement Annual Subscription				
168181	1	Year 3	\$116,700.00	\$116,700.00
Populations of 125,001-150,000 Small Government Enterprise Agreement Annual Subscription				

Year 1 Add-On Products

Material	Qty	Term	Unit Price	Total
166942	10		\$357.50	\$3,575.00
ArcGIS Data Interoperability for ArcGIS Pro (Add-on App) for ArcGIS Enterprise Creator or GIS Professional User Type Annual Subscription				
166996	10		\$325.00	\$3,250.00
ArcGIS LocateXT for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:
Eric Lomeli

Email:
elomeli@esri.com

Phone:
(210) 499-1044 x8845

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

LOMELIE

This offer is limited to the terms and conditions incorporated and attached herein.



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-512904

Date: January 12, 2024

Customer # 4886 Contract # ENTERPRISE AGREEMENT

City of Midland
Information Technology
601 N Loraine St
Midland, TX 79701-4759

ATTENTION: Jennifer Frescaz
PHONE: (432) 685-7510
EMAIL: jfrescaz@midlandtexas.gov

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 1/11/2024 To: 4/10/2024

Material	Qty	Term	Unit Price	Total
159070	10		\$325.00	\$3,250.00
ArcGIS Image Analyst for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription				
165666	1		\$385.00	\$385.00
ArcGIS Image User Type Extension for ArcGIS Online Annual Subscription				
178625	1		\$80.00	\$80.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription				

Year 2 Add-On Products

Material	Qty	Term	Unit Price	Total
166942	10		\$357.50	\$3,575.00
ArcGIS Data Interoperability for ArcGIS Pro (Add-on App) for ArcGIS Enterprise Creator or GIS Professional User Type Annual Subscription				
166996	10		\$325.00	\$3,250.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:
Eric Lomeli

Email:
elomeli@esri.com

Phone:
(210) 499-1044 x8845

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Quotation # Q-512904

Date: January 12, 2024

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

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EMAIL: jfrescaz@midlandtexas.gov

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Material	Qty	Term	Unit Price	Total
ArcGIS LocateXT for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				
159070	10		\$325.00	\$3,250.00
ArcGIS Image Analyst for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription				
165666	1		\$385.00	\$385.00
ArcGIS Image User Type Extension for ArcGIS Online Annual Subscription				
178625	1		\$80.00	\$80.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription				

Year 3 Add-On Products

Material	Qty	Term	Unit Price	Total
166942	10		\$357.50	\$3,575.00
ArcGIS Data Interoperability for ArcGIS Pro (Add-on App) for ArcGIS Enterprise Creator or GIS Professional User Type Annual Subscription				

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For questions contact: Eric Lomeli	Email: elomeli@esri.com	Phone: (210) 499-1044 x8845
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Quotation # Q-512904

Date: January 12, 2024

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DUNS Number: 06-313-4175 CAGE Code: 0AMS3

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Quote is valid from: 1/11/2024 To: 4/10/2024

Material	Qty	Term	Unit Price	Total
166996	10		\$325.00	\$3,250.00
ArcGIS LocateXT for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				
159070	10		\$325.00	\$3,250.00
ArcGIS Image Analyst for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription				
165666	1		\$385.00	\$385.00
ArcGIS Image User Type Extension for ArcGIS Online Annual Subscription				
178625	1		\$80.00	\$80.00
ArcGIS Business Analyst Web App Standard Online Annual Subscription				

Training

Material	Qty	Term	Unit Price	Total
174382	10		\$912.00	\$9,120.00
Esri Training Pass per Day				

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Quotation # Q-512904

Date: January 12, 2024

Customer # 4886 Contract # ENTERPRISE
AGREEMENT

City of Midland
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ATTENTION: Jennifer Frescaz
PHONE: (432) 685-7510
EMAIL: jfrescaz@midlandtexas.gov

*To expedite your order, please attach a copy of
this quotation to your purchase order.
Quote is valid from: 1/11/2024 To: 4/10/2024*

Subtotal:	\$405,840.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$405,840.00

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For questions contact: Eric Lomeli	Email: elomeli@esri.com	Phone: (210) 499-1044 x8845
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LOMELIE

This offer is limited to the terms and conditions incorporated and attached herein.

Esri Use Only:

Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



**SMALL ENTERPRISE AGREEMENT
 COUNTY AND MUNICIPALITY GOVERNMENT
 (E214-5)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager, ArcGIS Data
 Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise (Advanced and Standard)
 ArcGIS Monitor
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS
 Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Runtime Standard
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 1,000 ArcGIS Online Viewers
 1,000 ArcGIS Online Creators
 110,000 ArcGIS Online Service Credits
 1,000 ArcGIS Enterprise Creators
 10 ArcGIS Insights in ArcGIS Enterprise
 10 ArcGIS Insights in ArcGIS Online
 100 ArcGIS Location Sharing User Type Extension (Enterprise)
 100 ArcGIS Location Sharing User Type Extension (Online)
 18 ArcGIS Advanced Editing User Type Extension (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

SOLE SOURCE LETTER

Environmental Systems Research Institute, Inc. (Esri)
380 New York Street
Redlands, CA 92373



DATE: February 13, 2024

TO: City of Midland, TX

FROM: Jackie Ricks, Contracts Specialist I, Contracts and Legal Services Dept.

RE: Esri Sole Source Justification for Small Municipal and County Government Enterprise Agreement

This letter confirms Esri, as owner and manufacturer, is the sole source provider of all U.S. domestic Small Municipal and County Government Enterprise Agreements (EA). The Small Municipal and County Government EA is a bundled package of term limited software licenses and maintenance that includes the right to copy.

Subject to the disclosures set forth below, Esri is the only source that can grant a right to copy and deploy Enterprise Software within your organization (Enterprise). Also, domestically Esri is the only source of maintenance (updates and technical support) for all Esri® software.

Esri has authorized certain resellers to resell Small Local Government Cloud-Based Enterprise Agreements for populations of less than 15,000.

If you have further questions, please feel free to call our Contracts and Legal Services Department at 909-793-2853, extension 1990.



Jackie Ricks



City Council Meeting

Item Number: 6
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING A CONTRACT WITH BERRY DUNN MCNEIL & PARKER, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR A HUMAN RESOURCES ASSESSMENT AND STRATEGIC PLAN CONSULTING SERVICES FOR A TOTAL COST OF \$109,400.00 (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution approving an agreement for Human Resources (HR) Assessment and Strategic Plan consulting services through TIPS-23061 with Berry Dunn McNeil & Parker, LLC for a total cost of \$109,400.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Employee Benefit Fund operating budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff recommends approving an agreement for Human Resources (HR) Assessment and Strategic Plan consulting services through TIPS-23061. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or

services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for more information.

Therefore, please consider a resolution approving an agreement for Human Resources (HR) Assessment and Strategic Plan consulting services through TIPS-23061 with Berry Dunn McNeil & Parker, LLC for a total cost of \$109,400.00.



City Manager's Office



City Council Agenda Item

DATE: February 13, 2024

TO: Erika Martinez, Purchasing Manager

FROM: Jennifer Frescaz, Managing Director / Chief Information Officer

SUBJECT: Consider a resolution approving an agreement for HR Assessment and Strategic Plan consulting services for a total cost of \$109,400.00 from Berry Dunn McNeil & Parker, LLC via TIPS-23061.

Purpose:

Consider a resolution approving an agreement for HR Assessment and Strategic Plan consulting services for a total cost of \$109,400.00 from Berry Dunn McNeil & Parker, LLC via TIPS-23061.

Discussion:

One of the key priorities identified in the City's Strategic Plan is to build and maintain a high-performing city team that is equipped to deliver exceptional services and promote a high quality of life for all our citizens.

To support this priority, staff propose that we engage BerryDunn to conduct an HR Assessment and Strategic Planning, enabling a comprehensive analysis of our current HR practices, identifying improvement areas, and developing a strategic plan aligned with our city's goals. This initiative will enhance our ability to attract, develop, and retain a skilled and diverse workforce, improving our community service capabilities.

The total cost of the consulting services is \$109,400.00 and is budgeted in the HR Benefits – Consulting Fund.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
BERRY DUNN MCNEIL & PARKER, INC., THROUGH
THE INTERLOCAL PURCHASING SYSTEM, FOR A
HUMAN RESOURCES ASSESSMENT AND STRATEGIC
PLAN CONSULTING SERVICES FOR A TOTAL COST
OF \$109,400.00**

WHEREAS, The Interlocal Purchasing System (“*TIPS*”) is a cooperative purchasing agency with which the City of Midland (the “*City*”) participates with on purchases through a cooperative purchasing program in accordance with Tex. Loc. Gov’t Code § 271.102; and

WHEREAS, Berry Dunn McNeil & Parker, Inc., has submitted a total proposed cost to the City of \$109,400.00 for a Human Resources assessment and strategic plan consulting services through TIPS; and

WHEREAS, the City Council finds the price proposed by Berry Dunn McNeil & Parker, Inc., for a Human Resources assessment and strategic plan consulting services through TIPS to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Berry Dunn McNeil & Parker, Inc., for a Human Resources assessment and strategic plan consulting services through TIPS;

**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 for a Human Resources assessment and strategic plan consulting services through TIPS, for a total cost of \$109,400.00. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That funding shall be available in the Employee Benefit Fund operating budget.

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

pay Berry Dunn McNeil & Parker, Inc., in accordance with the provisions of the above-referenced 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

ATTEST:

Lori Merritt Blong, Mayor

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

AGREEMENT
#24003238

THIS AGREEMENT is made and effective the 28 day of February 2024, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Berry Dunn McNeil & Parker, LLC (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

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

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$109,400.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from February 28, 2024, until February 27, 2025, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers’ Compensation: Statutory limits

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

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

The Business Automobile Liability policy shall cover any vehicle for bodily injury and

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, EACH PARTY TO THIS AGREEMENT HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE OTHER PARTY, THE OTHER PARTY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT EITHER PARTY 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 XIV. GENERAL PROVISIONS

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

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

claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

If to COMPANY: Berry Dunn McNeil & Parker, LLC
 P.O. Box 1100
 Portland, ME 04101-1100

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this

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

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

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

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

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

- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;

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

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

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

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

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

acceptance hereof.

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

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

ARTICLE XV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S COUNCIL MEMBERS, 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 BERRY DUNN, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, THE PERFORMANCE OF COMPANY'S OBLIGATIONS UNDER THIS AGREEMENT, AND BERRY DUNN SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS COUNCIL MEMBERS, OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES; EXCEPT TO THE EXTENT SUCH CLAIMS, DAMAGES, COSTS AND LIABILITIES RESULT FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS EMPLOYEES, REPRESENTATIVES, OR AGENTS. IN NO EVENT SHALL COMPANY BE LIABLE FOR LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES SUFFERED BY CITY. THE PARTIES AGREE THAT IN NO EVENT SHALL BERRY DUNN'S LIABILITY EXCEED THE AMOUNT OF COMPENSATION PAID TO COMPANY BY CITY, OR COMPANY'S INSURANCE COVERAGE, WHICHEVER IS LESS.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

February 15, 2024

Jennifer Frescaz, Chief Information Officer
601 N Loraine | Midland, TX 79701

Dear Jennifer:

On behalf of Berry Dunn McNeil & Parker, LLC (BerryDunn), we are pleased to submit this letter to the City of Midland (the City) as it plans for a potential human resources (HR) assessment and strategic planning project. We consider it a privilege to serve the City and would welcome the opportunity to expand our relationship by way of this initiative.

Below and on the following pages, we provide a brief overview of our firm, the Local Government Practice Group, and its highly specialized Enterprise Organizational Development Practice; describe our proven yet flexible approach to providing the City's requested services; introduce our anticipated project team members; and outline the fees associated with a project of this nature. We would be happy to discuss the contents of this proposal or provide additional information to the City upon request.

BerryDunn Overview

BerryDunn is a nationally recognized independent management and organizational development and IT consulting firm, headquartered in Portland, Maine with eight office locations nationally. Focused on inspiring organizations to transform and innovate, we are a stable and well-established firm that has preserved our core values and reputation for excellence throughout our 50-year history. We have enjoyed steady growth by providing consistent, high-quality services to our clients in all 50 states—including the State of Texas (the State) and the City itself—Puerto Rico, and Canada.

Our firm's culture is centered on a deep understanding of our clients' commitment to serving the public. The human aspect of projects can often be forgotten in the maze of regulatory changes and legal requirements with which counties, cities, and departments must comply. BerryDunn proudly tailors each of its projects to recognize the work our clients do every day. *We care about what we do, and we care about the people impacted by our work—including those at the City and those who benefit from its HR Department.*

We employ more than 875 staff members—including more than 325 in our Consulting Services Team. From extensive *project experience for more than 650 state, local, and quasi-governmental agencies*, our team brings valuable perspectives to every engagement. Additionally, our team has prior experience serving state and local government agencies, providing them with an in-depth understanding of government operations, staffing needs, budgetary constraints, and the business processes required to provide necessary services to the internal divisions and the constituents the City serves.

Our firm provides a full range of professional services—including organizational development, technology planning, business process improvement, cost of service and financial analysis, community services planning, and more—supporting our ability to complete tasks outlined by the City. With organizational development as a core tenant of our work, we are pleased to offer the following services to benefit the City and its HR Department:

- Strategic planning
- Organizational and operational assessments
- Community/stakeholder engagement
- Business process improvement
- Organizational change management
- Performance measurement
- Leadership development
- Executive coaching

Below, we illustrate the overall organization of BerryDunn's Local Government Practice Group. We provide unparalleled expertise and unique insights across these practices, supporting our clients in solving some of their biggest challenges and addressing opportunities to improve and plan.



Our Dedicated Enterprise Organizational Development Practice

Driven by highly specialized organizational development leaders, and supported by more than 325 additional firm resources, BerryDunn's *Enterprise Organizational Development Practice* offers both an intimate project experience and a national perspective to support our clients' desire to transform and innovate. We recognize how important it is that the City partners with a firm that understands that work of this level of impact requires a guided hand and a tailored approach to meet clients where they are and lead them to where they want to go.

Work of this nature touches numerous aspects of an organization. As such, this HR assessment and strategic planning initiative requires a layered approach that offers the attention, guidance, and follow-through that will support positive, sustainable, and long-term change and progress.

Approach and Proposed Work Plan

Guiding Methodologies

Our project team will engage the City and HR Department's stakeholders in ways that will maximize creativity and innovation and inspire collaboration and consensus for achieving its vision. We will help the City conduct an HR assessment and develop a strategic plan that reflects where the City and its HR Department is and wants to go, as well as implement recommendations and strategic objectives with support and commitment from its stakeholders.

Achieving Consensus and Quickly Moving Groups to Action

We will design and conduct a well-facilitated HR assessment and strategic planning process that uses data and personal knowledge to assess the City and the HR Department's environment. Our project team will use the Institute of Cultural Affairs' (ICA) Technology of Participation® (ToP®) facilitation methodology to help ensure the assessment and planning efforts are highly collaborative and inclusive of all appropriate stakeholders. The ToP® methodology emphasizes structured participation that pulls information into the group's thinking process and creates a clear intention, helping members of the group align with one another and reach consensus.

Inclusive Participation

Invites and sustains engagement of all members of a group

Teamwork and Collaboration

Gets tasks done in the most effective, efficient, and economical way possible

Individual/Group Creativity

Brings out the best of each person's rationale and intuitive capabilities

Action and Ownership

Positions the group to act on decisions owned and supported by the group

Reflection and Learning

Confirms individual/group resolve and helps ensure appreciation of the value and importance of collective action

Structured participation encourages the values shown left.

Encouraging Crossing Boundaries and Strengthening Interdependencies

Strategies are themes for action, and successful strategies will often cross organizational and community boundaries and appeal to several environmental factors. We will help stakeholders recognize these interrelationships and critical interdependencies, identifying how they align with overall strategic goals.

Applying Effective Tools

Another key to success is aligning financial resources of the organization with strategic priorities. When groups have difficulty agreeing on priorities or selecting just a few to focus on, we use a cost-benefit scoring sheet that helps the group score the impacts, risks, level of difficulty, and effort for each strategy or objective to determine the ones to prioritize. We can customize this tool for use with the City and its HR Department if there is difficulty achieving consensus.

Developing Clear and Compelling Plans That Articulate a Business Case

We will write strategic goals, initiatives, and actions in a common language to evoke a clear picture of success to serve as a useful tool for the City and its HR Department's decision-making. Our project team has facilitated enterprise and departmental assessments and strategic

planning processes for dozens of public-sector entities and system-level plans involving multiple levels of government, jurisdictions, and agencies. Our clients use these plans to drive budget decisions, execute strategies, and publish the results to communicate with stakeholders.

Developing an Organization

Critical to the buy-in, engagement, and ultimate success of the HR assessment and strategic planning process is implementation planning. Our approach puts a special emphasis on this phase by way of developing plan evaluation and progress reporting milestones in collaboration with the City and its HR Department and educating stakeholders in taking action. For the City and its HR Department specifically, this entails conducting thoughtfully implementation planning activities to guide progress toward their desired future. We embed organizational development tools and techniques to create the skills necessary to successfully implement assessment recommendations and the strategic plan even once our services are complete.

Proposed Work Plan

BerryDunn strives to be flexible when it comes to development and execution of an effective work plan. We understand that no two projects are exactly alike and believe that *one of the primary reasons we have been successful with similar projects is our willingness to be flexible in adapting to our clients' unique needs.*

The overarching benefits the City and its HR Department can consistently expect of our approach include:

- A methodology based on our extensive experience conducting similar projects
- Quality assurance processes that incorporate review and approval of all deliverables
- Built-in project management and change management best practices—focused on keeping the project on time and on budget, and progressing at a healthy pace

- A focus on comprehensive engagement and information-gathering strategies, helping to ensure the City, its HR Department, and other stakeholders are actively involved and strong contributors in the HR assessment and strategic planning process

Below and on the following pages, we provide details of our work plan intended to achieve the City and its HR Department's goals and objectives for this important initiative.



Phase 1: Project Planning and Initiation

1.1 Conduct internal project planning and an initial project planning meeting with City and HR

Department leadership. We will conduct internal project planning and facilitate an initial project planning meeting with the City and its HR Department's project team. In this meeting, we will introduce key team members, clarify project goals and objectives, identify known project constraints, and refine dates and/or tasks, as appropriate. We will discuss our approach for managing communications between BerryDunn, the City, and the HR Department, as well as our approach to scope, risk, and resource management. As part of this session, we will identify internal and external stakeholder individuals and groups to include in the current state assessment and strategic planning process.

1.2 Develop the Project Work Plan and Schedule. Based on the information gathered from our initial project planning meeting, as well as from those details enclosed in this proposal, we will develop the Project Work Plan and Schedule, which will outline the tasks and timelines for the HR assessment and strategic planning process. The Project Work Plan and Schedule will address which stakeholders to include and agreed-upon procedures between BerryDunn, the City, and its HR Department related to project control, including quality management and deliverable submission/acceptance management. After providing draft versions of these materials in advance, we will review them with the City's project team and solicit feedback. This will introduce the City's project team to our document review process and provide an opportunity for the City's project team to share input on a critical step in the process. We will incorporate feedback and finalize the documentation before distributing it to the City's project team in final form.

➔ D1. Project Work Plan and Schedule

1.3 Facilitate Biweekly Status Meetings. We will facilitate Biweekly Status Meetings with the City's project team throughout the duration of the HR assessment and strategic planning process. We will use these meetings to describe the activities and accomplishments for the reporting period; plans for the upcoming month; risks or issues encountered during the reporting period; and anticipated problems that might impact project deliverables. We will also use these meetings to highlight any work products and approaches that will contribute to deliverable development.

➔ D2. Biweekly Status Meetings



Phase 2: Current State Assessment

2.1 Develop and administer survey(s). We will develop and administer survey(s) to gather input from a larger group of City stakeholders and staff.

2.2 Develop and administer an information request and review the results. We will provide the City's project team with an information request sheet for available documentation that will be helpful to us during the project.

Examples include:

- Employee handbook and other employee publications and policies
- Standard operational procedures
- Organizational charts
- City and department operational and human capital strategies

- Any and all checklists, cheat sheets, and job aids used by the HR Department or any individual department related to job posting, interviewing, hiring, onboarding, performance improvement, discipline, and termination procedures
- Strategic planning documents for the organization and/or departments
- Operating and capital budgets and relevant budget request documents
- Current state or needs assessments

These documents should not be created to fulfill this request; only existing documents would be needed.

2.3 Review provided survey results and documents and data received. We will review, analyze, and synthesize information gathered to date. Outcomes and key themes from this activity will be used to inform our initial understanding of the current state and guide further assessment and planning activities.

2.4 Conduct a kickoff presentation. We will conduct a kickoff presentation with all appropriate project stakeholders. We will introduce our project team, review the Project Work Plan and Schedule at a high level, engage and seek input on the current state, and provide a space for stakeholders to ask questions. We will aim to generate excitement in the HR assessment and strategic planning process to help promote buy-in and support for the work effort.

2.5 Conduct an interview with the City Manager. We will conduct an interview with the City Manager to get a foundational understanding of their expectations and perspective surrounding the HR function. We will explore what their desired future state of the HR Department is, as well as what the HR Department's role and function is in the greater scope of the City. We will document outcomes to inform upcoming fact-finding activities, as well as the development of the Current State Assessment Report.

2.6 Conduct interviews with HR Department staff. We will conduct individual and functional group interviews with HR Department staff to inventory service delivery, programs, and needs of each functional area. We anticipate gathering information in the following functional areas:

- | | | |
|---|---|---|
| • Talent acquisition and retention | • DEI, including equity priorities and strategies, accessible materials, decision-making processes, community engagement activities, and budget | • Workforce management |
| • Employee engagement and communication | • Organizational effectiveness and development | • Employee relations |
| • Learning and development | | • Risk management |
| • Total rewards | | • Social responsibility |
| | | • U.S. and state employment law and regulation compliance |

We will document outcomes from these interviews to inform additional fact-finding activities and develop the Current State Assessment Report.

2.7 Conduct interviews with other key stakeholders or stakeholder groups. We will conduct one-on-one and group interviews with key stakeholders or stakeholder groups to further evaluate the City's HR function. We will seek to gain information in the areas of service delivery expectations, issues, highlights, and perceptions, as well as any other areas deemed relevant in these interviews. We will document outcomes from these interviews as well to inform deliverable development and deepen our understanding of the current state.

2.8 Conduct fieldwork review activities. We will conduct on-site review and observation activities to assess the current state in real-time. We will randomly select personnel files to examine the HR Department's records management; review policies, procedures, and processes associated with the HR Department; tour the office space; and more. Recognizing the level of impact that this HR assessment and strategic planning process has, we would like to make certain that our understanding of the current state is accurate and clear, and the

recommendations and strategic plan we develop are reflective of current needs and potential improvement opportunities.

2.9 Develop a Current State Assessment Report. Using information gathered to date through surveying, document and data review, interviews, and on-site activities, we will develop a Current State Assessment Report to capture our findings and key outcomes from the current state assessment process. We will describe and document the as-is environment at the City by primary HR function. We will also present primary challenges and areas of improvement identified through this process. Upon completion, we will review the Current State Assessment Report with the City and its HR Department's project team to solicit feedback before updating it to final and entering into strategic plan development activities.

➔ D3. Current State Assessment Report



Phase 3: Strategic Plan Development

3.1 Conduct an analysis of HR Department service delivery. We will compare HR Department service delivery with department self-service by functional area. We will identify gaps in service delivery where neither the HR Department nor an individual department provides in that area. Outcomes from this process will inform our review of the HR Department's organizational and operational structure and the development of recommendations.

3.2 Review the HR Department's organizational and operational structure. We will conduct a review of the HR Department's organizational structure and functionality. We will evaluate the alignment and capacity to deliver appropriate levels of HR service. We anticipate reviewing personnel/HR Department organizational structure, HR to employee ratio, relative strategic impact, and structure type, among other areas. Like our analysis in Task 3.1, outcomes from this process will inform our review of the HR Department's organizational and operational structure and the development of recommendations.

3.3 Evaluate alternative delivery methods. Recognizing the potential for the City and its HR Department to utilize alternative delivery methods to provide HR services, we will evaluate potential options and opportunities. We will explore relative cost and value for alternatives, such as outsourcing and leveraging technology. We will focus our efforts on ways in which the City and its HR Department can improve service levels, consistently make data available, comply with legal and regulatory requirements, reduce time wasted, and improve the time-to-productivity ratio. Outcomes from this evaluation will inform our development of a Preliminary Recommendations Memo.

3.4 Develop a Preliminary Recommendations Memo. With our understanding of the City and its HR Department's current state in HR service delivery and outcomes from potential opportunities and improvements activities, we will develop a Preliminary Recommendations Memo. This memo will contain a listing of incremental recommendations with succinct descriptions to review with the City and its HR Department's project team. It will be important to achieve the right pace in rolling out these recommendations, as projects of this level of impact are often met with some level of change resistance. As skilled facilitators and change practitioners, the BerryDunn team will seek to promote buy-in and consensus for the change to come and excitement for a more streamlined future for the City's HR function. We will collect input from the City and its HR Department's project team to update the memo to final.

➔ D4. Preliminary Recommendations Memo

3.5 Develop an HR Strategic Plan. We will develop an HR Strategic Plan in an agreed-upon format. This plan will be developed based on the outcomes of information-gathering and fact-finding activities, as well as preliminary recommendations developed as a result of these efforts. In the HR Strategic Plan, we will detail the current state, as well as evidence of that supports our findings, resource information, timeline factors, and additional considerations. Upon completion, we will review the HR Strategic Plan with the City's project team, as well as all HR Department staff, to solicit feedback before updating the document to final.

➔ D5. HR Strategic Plan

Anticipated Project Team Members

At BerryDunn, we believe in the synergy that accompanies a team approach. To that end, we present our anticipated, dynamic project team on the following page. These project team members have the necessary expertise and availability to best accommodate the goals and objectives for this HR assessment and strategic planning initiative and provide exceptional services to the City.



Seth Hedstrom, PMP®, LSSGB

Seth is a principal and the leader our Local Government Practice Group. He brings extensive experience in project management and has managed more than 75 large scale technology and organizational development projects over the course of 15 years with BerryDunn. Seth has led our clients through many of the complex decision points and issue-resolution processes typical of organizational and operation assessments, strategic planning initiatives, and system replacement projects. Through this work, he has provided organizational and business process improvement services for many clients, either as a stand-alone engagement or as part of a larger engagement. His experience includes documenting as-is business processes, benchmarking processes with similar organizations, introducing industry best practices, developing to-be business process recommendations, overseeing strategic planning, and conducting organizational assessments. Also notable is that Seth has served in a leadership role on nearly all our Local Government Practice Group's organizational development initiatives.



Michelle Graham, MBTI®, CPM, LSSGB

Michelle is a senior consultant in the Local Government Practice Group. She has experience managing and executing various types of projects and initiatives while maintaining a constant focus on organizational development and human capital management. Prior to joining BerryDunn, Michelle held various leadership roles for the City of Pearland, Texas for more than 20 years. Her experience includes six years of as director of human resources and more than 15 years of parks and recreation leadership. She initiated and created multiple engagement opportunities for staff at various levels, including a women's affinity group; a Lean process improvement team; and an employee recognition team. Over the course of two years in her HR director role, she increased the retention rate of seasonal employees from 8.7% to 30.4%.



Maddison Powers Spencer, MPA, Prosci® CCP, CAPM®

Maddison is a consultant in our Local Government Practice Group. She has firsthand experience serving in the public sector and is familiar with the unique aspects of government operations. Notably, she has been involved in various governmental initiatives, including those related to DEI, sustainability, and process and project analysis and management. Maddison focuses on assisting public-sector clients with organizational and operational improvement and strategic planning by supporting research, current environment assessments, data collection, and facilitating community engagement and outreach.



Karen Whichard, MPA, Prosci® CCP

Karen is a senior consultant in BerryDunn's Local Government Practice Group. She is a seasoned public sector leader with 19 years of experience in both small and large local governments. Her time with local government organizations ranges from working with a town of 15,000 residents to playing a key role for the City of Charlotte, North Carolina, which is home to nearly 900,000 residents. She boasts a significant track record of successfully building consensus, solving complex problems, and navigating diverse political environments to implement the policy vision of elected bodies. She is also deeply familiar with organizational development and strategic planning projects, having provided related consulting services and conducted these efforts in the public-sector.



Michele Riazzi, MS, MBA, PMP®

Michele is a senior consultant within BerryDunn's Local Government Practice Group and has more than seven years of consulting experience. Her extensive and dynamic education gives her a unique perspective with specialized skills that have helped many communities improve their effectiveness and efficiency. Michele has nearly a decade of experience with transforming businesses and organizations. An expert in leading both large and small consulting teams, she understands the intricacies and unique needs of different organizations and caters training and development to these unique situations. Her experience also includes updating systems to accommodate State and Federal reporting needs and compliance. Michele brings strong human capital management experience, which started during her four-year stint as a project manager with Tyler Technologies. Michele has also been involved in scheduling resources, assigning roles and responsibilities, monitoring project progress, and tracking the project plan and schedule to help ensure each project is conducted on-time and on-budget.

Proposed Fees

BerryDunn's fixed-price for completing the City's requested scope of work is presented in the table below. Our proposed fixed fee reflects the level of effort we believe is required to complete the requested scope. Other factors that contributed to this fee include our staffing plan and resource allocation, which provides the appropriate number of resources and the level of expertise needed to complete the tasks defined by the City, and our experience conducting projects of similar scope and size.

Table 1: BerryDunn's Proposed Fees

	Phase	Cost
1	Project Planning and Initiation	\$11,800
2	Current State Assessment	\$49,700
3	Strategic Plan Development	\$43,400
	Travel Expense Estimate	\$4,500
	Total	\$109,400

We will leverage our competitively sourced cooperative contract with The Interlocal Purchasing System, administered by the Region 8 Education Service Center in Pittsburg Texas, contract #23061.

In Closing

We value the City and its HR Department's openness and flexibility to discussing our proposed services. No matter how many clients we assist, we always take care to help ensure the experience is tailored to the nuanced needs and resources of our clients. We would welcome the opportunity to continue our relationship with the City by providing the services requested. Should you have any questions, or if you would like to discuss this letter, please feel free to contact me directly.

Sincerely,

Seth Hedstrom, PMP®, LSSGB, Principal

Local Government Practice Group

207-541-2212 | shedstrom@berrydunn.com



City Council Meeting

Item Number: 7
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Mark Widmann, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF THE EIGHTH 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 \$740,709.64 AND PROVIDING FOR THE HOSTING OF INFLUENZA CLINICS; 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:

The annual fee for the Health & Wellness Center (Clinic) will increase by 3% to \$740,709.64. Payment from funds available in the Group Health Fund.

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. The services provided include:

- * Walk-in services or Appointment basis.
- * Episodic Care: Assessment and treatment of medical conditions that are episodic in nature and short duration.
- * Management of chronic conditions.
- * Routine annual exams and screenings.
- * Lab Draws.
- * Biometric screenings.
- * Flu shot clinics.
- * COVID Testing.
- * Health Maintenance and Disease Prevention Chronic Condition Coaching.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
THE EIGHTH 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
\$740,709.64 AND PROVIDING FOR THE HOSTING OF
INFLUENZA CLINICS; AND AUTHORIZING PAYMENT**

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

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

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

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

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

WHEREAS, the City Council, by Resolution No. 2021-023, authorized the execution of the fifth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2022-020, authorized the execution of the sixth amendment to the Agreement; and

WHEREAS, the City Council, by Resolution No. 2023-016, authorized the execution of the seventh amendment to the Agreement; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an eighth amendment (the “Amendment”) to the Agreement to adjust the annual

fee to \$740,709.64 and to provide for the hosting of influenza clinics;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, the Amendment to the Agreement with Midland County Hospital District, doing business as Midland Memorial Hospital. Said Amendment shall be in a form substantially similar to that attached hereto and incorporated herein as Exhibit "A".

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, 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"

EIGHTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS EIGHTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT ("Amendment") is made and entered into as of April 1, 2024 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 ("Agreement") wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City's qualified health plan; and

WHEREAS, the City and Hospital have amended the Agreement: 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; and the Seventh Amendment with an Effective Date of April 1, 2023; and

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

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

Amendments:

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

"2.01 Monthly Fee. An annual fee of \$740,709.64 will be billed in twelve (12) equal monthly installments of \$61,725.80. 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 April 1, 2024 to March 31, 2025 for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital's employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

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

- Influenza Clinics
- COM Employee Covid Tests

◦ 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.”

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

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

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

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

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

SIGNATURE PAGE OF

EIGHTH 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

EIGHTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT

THIS EIGHTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT (“Amendment”) is made and entered into as of April 1, 2024 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 (“Agreement”) wherein Hospital agreed, pursuant to the Agreement, to arrange for the provision of physician and medical personnel support of Medical & Well-Being Services (as defined in the Agreement), through its various nonprofit health organizations, to eligible employees of the City and/or their eligible dependents participating in the City’s qualified health plan; and

WHEREAS, the City and Hospital have amended the Agreement: 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; and the Seventh Amendment with an Effective Date of April 1, 2023; and

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

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

Amendments:

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

“2.01 Monthly Fee. An annual fee of \$740,709.64 will be billed in twelve (12) equal monthly installments of \$61,725.80. 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 April 1, 2024 to March 31, 2025 for the difference in cost between a Medical Doctor and an Advanced Practitioner.

The City shall not be responsible for the compensation of Hospital's employees and agents for the provision of Medical & Well-Being Services, and other costs and expenses incurred by Hospital under this Agreement, except those items, or similar items that are the City's responsibility as otherwise provided for herein or that are mutually agreed to that are beyond the scope of services or items provided under this Agreement.

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

- Influenza Clinics
- COM Employee Covid Tests

◦ 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.”

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

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

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

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

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

SIGNATURE PAGE OF

EIGHTH Amendment to Management Services Agreement

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

City of Midland

By: _____
Name: _____
Title: _____

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

By:  _____
Name: Stephen Bowerman
Title: President & CEO

605: City of Midland

Final Audit Report

2024-02-08

Created:	2024-02-08
By:	Kim Kincaid (kim.kincaid@midlandhealth.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZPP2W9aYsJgoVDFzAeD4f4jRAvPXvCer

"605: City of Midland" History

-  Document created by Kim Kincaid (kim.kincaid@midlandhealth.org)
2024-02-08 - 7:56:46 PM GMT
-  Document emailed to stephen.bowerman@midlandhealth.org for signature
2024-02-08 - 7:57:25 PM GMT
-  Email viewed by stephen.bowerman@midlandhealth.org
2024-02-08 - 7:58:01 PM GMT
-  Signer stephen.bowerman@midlandhealth.org entered name at signing as Stephen Bowerman
2024-02-08 - 8:30:04 PM GMT
-  Document e-signed by Stephen Bowerman (stephen.bowerman@midlandhealth.org)
Signature Date: 2024-02-08 - 8:30:06 PM GMT - Time Source: server
-  Agreement completed.
2024-02-08 - 8:30:06 PM GMT



City Council Meeting

Item Number: 8

Meeting Date: February 27, 2024

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 11 TO THE PROFESSIONAL SERVICES AGREEMENT DATED MARCH 23, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING THE FOLLOWING: (I) THE ADDITIONAL APPROPRIATION OF \$62,020.00 TO THE RECONSTRUCT ASPHALT APRON BY TERMINAL BUILDING (#900393) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (II) THE ADDITIONAL APPROPRIATION OF \$161,650.00 TO THE MAF AIRFIELD WILDLIFE FENCE IMPROVEMENTS (#900345) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (III) THE ADDITIONAL APPROPRIATION OF \$646,065.00 TO THE AIRPARK ENTRANCE WAY ENHANCEMENT (#900212) PROJECT AT MIDLAND AIRPARK; (IV) THE ADDITIONAL APPROPRIATION OF \$80,350.00 TO THE RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PADS (#900413) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (V) THE ADDITIONAL APPROPRIATION OF \$26,750.00 TO THE MAF AIRFIELD WILDLIFE MANAGEMENT IMPROVEMENTS – SOUTH DRAINAGE CHANNEL (#900347) PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (VI) THE ADDITIONAL APPROPRIATION OF \$105,000.00 TO THE MAF MULTIFACILITY REHABILITATION PROJECT (#900308) AT MIDLAND INTERNATIONAL AIR & SPACE PORT; (VII) THE ADDITIONAL APPROPRIATION OF \$485,200.00 TO THE NEW HANGAR DEVELOPMENT PROJECT (#900212) AT MIDLAND AIRPARK; AND (VIII) THE APPROPRIATION OF \$77,100.00 TO THE TITLE VI PLAN AND COMMUNITY PARTICIPATION PLAN PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

Motion authorizing the execution of Amendment No. 11 to the Professional Services Agreement dated March 23, 2021, between the City of Midland, Texas and Parkhill, Smith & Cooper, Inc., DBA Parkhill.

Recommended City Council Action:

Approve

Strategic Priority:

(Transparent & Consistent Communication)

Fiscal Impact:

Airport/City Share 100% (90% to be reimbursed from FAA)	<u>\$ 62,020.00</u>
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Total Recommended additional Lump Sum Appropriation	\$ 62,020.00
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Appropriation Language:

\$62,020 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to the Reconstruct Asphalt Apron Project.

AIRFIELD WILDLIFE FENCE IMPROVEMENTS (#900345)**Fiscal Impact:**

Passenger Facility Charge funded at 100%	<u>\$ 161,650.00</u>
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Total Recommended additional Lump Sum Appropriation	\$ 161,650.00
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Appropriation Language:

\$161,650 will be appropriated from the Airport Passenger Facility Charge Fund and transferred to the Airfield Wildlife Fence Improvements Project.

AIRPARK ENTRANCE WAY ENHANCEMENT PROJECT (#900212)**Fiscal Impact:**

City/Airport Share 100%	<u>\$ 646,065.00</u>
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Total Recommended additional Lump Sum Appropriation	\$ 646,065.00
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Appropriation Language:

\$646,065 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to the Airpark Entrance Way Enhancement Project.
RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PADS (#900413)

Fiscal Impact:

Airport/City Share 100% (90% to be reimbursed from FAA)	<u>\$ 80,350.00</u>
Total Recommended additional Lump Sum Appropriation	\$ 80,350.00

Appropriation Language:

\$80,350 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to the Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad Project.

MAF AIRFIELD WILDLIFE MANAGEMENT IMPROVEMENTS – SOUTH DRAINAGE CHANNEL (#900347)

Fiscal Impact:

Passenger Facility Charge funded at 100%	<u>\$ 26,750.00</u>
Total Recommended additional Lump Sum Appropriation	\$ 26, 750.00

Appropriation Language:

\$26,750 will be appropriated from the Airport Passenger Facility Charge Fund and transferred to the Airfield Wildlife Management Improvements Project.

MAF MULTI-FACILITY REHABILITATION PROJECT (#900308)

Fiscal Impact:

Airport/City Share 100% - Not to Exceed (NTE)	<u>\$ 105,000.00</u>
Total Recommended additional NTE Lump Sum Appropriation	\$ 105,000.00

Appropriation Language:

\$105,000 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to the Multi-Facility Rehabilitation Project.

NEW HANGAR DEVELOPMENT AT MIDLAND AIRPARK (#900212)

Fiscal Impact:

Airport/City Share 100% - Not to Exceed (NTE)	<u>\$ 485,200.00</u>
Total Recommended additional NTE Lump Sum Appropriation	\$ 485,200.00

Appropriation Language:

\$485,200.00 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to the New Hangar Development Project.

MAF TITLE VI PLAN AND COMMUNITY PARTICIPATION PLAN**Fiscal Impact:**

Airport/City Share 100% - Not to Exceed (NTE) \$ 77,100.00

Total Recommended additional NTE Lump Sum Appropriation \$ 77,100.00

Appropriation Language:

\$77,100 will be appropriated from the Airport Operating Fund unappropriated fund balance and transferred to a project for stated purpose.

Discussion:

The City of Midland, Texas and Parkhill entered into an Agreement for Professional Services dated March 23, 2021, for improvements contained in the Airport's 5-year Airport Capital Improvement Program (ACIP). This is the 11th amendment to that agreement and adds additional appropriation to several existing projects and also to the MAF Title VI Plan and Community Participation Plan.

RECONSTRUCT ASPHALT APRON BY TERMINAL BUILDING (#900393)

The section of the main apron located immediately north of the Terminal Building was constructed in 1999 with an asphalt surface pavement section as part of the construction of the concrete apron to serve the newly constructed Terminal Building. At the time of the opening of the new Terminal Building, this area of the apron was anticipated to only serve the smaller turbo prop commuter air carrier aircraft via ground loading and was thus constructed of asphalt surface course pavement section. Over the past few years, the larger jet air carrier aircraft are now using this portion of the apron to board passengers regularly. The typical life expectancy of asphalt pavement is approximately 20 years, the pavement has begun to deteriorate due to age and use by heavier aircraft. This project will reconstruct this section of the apron with a concrete pavement section to support the current and forecasted large air carrier aircraft. The additional appropriation will design modification to underground communication cables and associated equipment, prepare FAA requested supplemental documentation required for FAA AIG Funding and update phasing and barricading to meet new FAA criteria. This additional appropriation will be 100% Airport funds, but 90% will be reimbursed by the FAA in the construction phase of the Grant.

MAF AIRFIELD WILDLIFE FENCE IMPROVEMENTS (#900345)

The existing airfield security chain link fence was installed in 1982. At that time, six-foot high

was the standard, primarily for security of the airfield. However, wildlife has become an increasing aircraft hazard on the airfield from animals that have both jumped over the six-foot fence or burrowed under the fence. The standard fence type for airports with low-deer activity is eight-foot high chain link, and a concrete barrier strip that extends down into the ground approximately 24" to control burrowing under the fence. This additional appropriation will include additional design phase services, including the design of the relocation of communication cabling located on the existing fence, a new communication network for relocated communication cable, relocation of electrical service with new electrical panels, new gate operators and controls and new sliding gates at various vehicle security access-controlled gates and the coordination with FAA staff on the location of FAA-owned cables. This project is funded with 100% PFC Funds, so the Airport Funds allocated will be reimbursed from PFC.

AIRPARK ENTRANCE WAY ENHANCEMENT PROJECT (#900212)

The entrance road into Midland Airpark is constructed as a semi-low water crossing of the Jal drainage draw. Recently, the City bid out the project to replace the low-water crossing with a bridge. The single bid received was considerably higher than estimated and this additional appropriation will include the redesign of the entrance way for an alternate Box Culvert; Design of a second entrance way for a bridge, including roadway plans, and an alternate Box Culvert.; Design of the reconstruction of asphalt parking between hangars; Design of new electrical panel and convenience outlets adjacent to existing apron/parking (for Fly Into Fall); Design of new overhead lighting for pedestrian gate access; and Design of the modification of the North vehicle entrance gate with electrical modification, gate operator and control system.

RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PADS (#900413)

The FAA has determined that their ILS power cable runs under the blast pad for Runway 10. This additional appropriation will design the cable relocation to FAA specifications and coordinate/review final design with FAA staff. Initially the funding will be 100% City, but in the Construction Phase of the project, the FAA will reimburse 90%.

MAF AIRFIELD WILDLIFE MANAGEMENT IMPROVEMENTS – SOUTH DRAINAGE CHANNEL (#900347)

This project is a continuation of prior AIP projects, phasing the concrete lining of the existing storm water drainage channel located along the south side of the Airport. This project and the prior AIP projects reduce the wildlife attractant of vegetation and standing water on the Airport property. This additional appropriation will relocate FAA-owned cabling and coordinate with FAA staff. This project is funded with 100% PFC Funds, so the Airport Funds allocated will be reimbursed from PFC.

MAF MULTI-FACILITY REHABILITATION PROJECT (#900308)

This appropriation will add additional funding to the Construction Phase Administration Services. This project's budget was based on a project construction time of 240 days. The additional funding will be based on standard hourly rates not to exceed (NTE) \$105,000 which is based on the contractor completing their remaining scope of work within the next seven months. This additional NTE funding will be 100% City/Airport Funds.

NEW HANGAR DEVELOPMENT AT MIDLAND AIRPARK (#900212)

This additional appropriation will continue the New Hangar Development design at Midland Airpark. Additional alternate Hangar Development Layouts for a mixture of 3-4 different sized hangars and their location within the development site, including a design charette with City staff and stakeholders. This is based on a new hangar development site proposed between the existing WWII storm sewer pipes.

MAF TITLE VI PLAN AND COMMUNITY PARTICIPATION PLAN

This project will assist MAF with the development of a Title VI Plan and a Community Participation Plan in compliance with the United States Department of Transportation (DOT) Title VI Program, Order 1000.12C. The purpose of these Title VI and Community Participation Plans is to ensure that no person shall on the grounds of race, color, national origin (including limited English proficiency (LEP)), sex (including sexual orientation and gender identity, creed, or age, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 (PL 100.259), Section 530 of the Airport and Airway Improvement Act of 1982, and related authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives U.S. DOT Funding. Title VI also prohibits retaliation for asserting or otherwise participating in claims of discrimination. (DOT Order 1000.12C). Funding from this project will be 100% City/Airport Funds.



City Manager's Office

AMENDMENT NO. 11
TO
AGREEMENT

BETWEEN THE CITY OF MIDLAND, TEXAS
AND
PARKHILL
FOR
PROFESSIONAL SERVICES

WHEREAS, the City of Midland, Texas and Parkhill have entered into an Agreement for professional services dated March 23, 2021, for improvements contained in the Airport Capital Improvement Program; as amended April 13, 2021 (Amendment 1), February 8, 2022 (Amendment 2), April 12, 2022 (Amendment 3), June 28, 2022 (Amendment 4), October 11, 2022 (Amendment 5), April 11, 2023 (Amendment 6), June 13, 2023 (Amendment 7), September 23, 2023 (Amendment 8), November 14, 2023 (Amendment 9), and December 12, 2023 (Amendment 10);

AND WHEREAS, the City of Midland, Texas desires Parkhill to continue to perform services as amended below on the existing projects listed in the Recitals of the Agreement as Item 2 Reconstruct Asphalt Apron by Terminal Building, Item 11 MAF Airfield Wildlife Fence Improvements, Item 14 Airpark Entrance Way Enhancement Project, Item 15 Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pads, Item 17 MAF Airport Wildlife Management Improvements – South Drainage Channel, Item 22 MAF Multi-Facility Rehab, Item 23 New Hangar Development at Midland Airpark and to perform the services for the new project listed in the Recitals of the Agreement as Item 24 MAF Title VI Plan and Community Participation Plan:

THIS AGREEMENT WITNESSETH:

- A. The Recitals of the Agreement shall be amended to include the following items:
 - 22. MAF Multi-Facility Rehab
 - 23. New Hangar Development at Midland Airpark.
 - 24. MAF Title VI Plan and Community Participation Plan.
- B. Exhibit B, Article 4 – PAYMENTS TO THE ENGINEER, the following shall be added to paragraph B 4.01:

“Item 2 Reconstruct Asphalt Apron by Terminal Building

Additional scope of services to the existing project.

A Lump Sum amount of \$62,020 for the following:

- a. Design modifications of underground communication cable and equipment
- b. Prepare FAA requested supplemental documentation required for FAA AIG funding

- c. Update phasing and barricading to meet new FAA criteria
- d. Bidding Phase”

“Item 11 MAF Airfield Wildlife Fence Improvements

Additional scope of services to the existing project.

A Lump Sum amount of \$161,650 for the following:

- a. Design relocation of communication cable located on existing fence, new communication network for relocated communication cable, relocation of electrical service with new electrical panels, new gate operators and controls and new sliding gates at various vehicle security access controlled gates
- b. FAA owned cable locates and coordination with FAA staff
- c. Bidding Phase”

“Item 14 Airpark Entrance Way Enhancement Project

Additional scope of services to the existing project.

A Lump Sum amount of \$646,065 for the following Design and Bidding Phase Services:

- | | |
|--|-----------|
| a. Original Design Phase Fee for Additional Scope of Improvements added to Original Project | \$126,065 |
| b. Redesign for Main Entrance Way for Alternate Box Culvert | \$100,000 |
| c. Design for Second Entrance Way for Bridge, including Roadway Plans | \$370,000 |
| d. Design for Second Entrance Way for Alternate Box Culvert | \$ 50,000 |
| e. Above includes Bidding Phase Services to re-bid Main Entrance Way and Second Entrance Way as a single Construction Project” | |

“Item 15 Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pads

Additional scope of services to the existing project.

A Lump Sum amount of \$80,350 for the following:

- a. Design FAA owned ILS power cable relocation to FAA specifications and coordinate/review final design with FAA staff
- b. Revise material specifications to updated current FAA Advisory Circular requirements
- c. Bidding Phase”

“Item 17 MAF Airport Wildlife Management Improvements – South Drainage Channel

Additional scope of services to the existing project.

A Lump Sum amount of \$26,750 for the following:

- a. FAA Cable Locates and Coordination with FAA staff
- b. Revise material specifications to updated current FAA Advisory Circular requirements
- b. Bidding Phase”

“Item 23 New Hangar Development at Midland Airpark

Additional scope of services to the existing project.

A Lump Sum amount of \$485,200 for the following:

- a. Prepare additional alternate Hangar Development Layouts for mixture of 3-4 size hangars and their location within development site, including a design charette with City staff and stakeholders. This is based on the proposed new hangar development being located between the existing WWII storm sewer pipes
- b. Preliminary Design Phase based on selected Hangar Development Layout
- c. Final Design Phase
- d. Prepare Bid Documents
- e. Bidding Phase”

- C. Exhibit B, Article 4 – PAYMENTS TO THE ENGINEER, the following shall be added to paragraph B 4.02:

“Item 22 MAF Multi-Facility Rehab

Additional scope of services to the existing project.

The total compensation for Professional Services under Item 22 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment plus Direct Expenses and Engineer’s Consultant’s charges on the basis of cost times a factor of 1.15.

Total additional compensation for Item 22 under this Amendment shall not exceed \$105,000 without written authorization from the Owner.

- a. Extend Construction Phase Administration Phase Services Time”

“Item 24 MAF Title VI Plan and Community Participation Plan

The total compensation for Professional Services under Item 24 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment plus Direct Expenses and Engineer’s Consultant’s charges on the basis of cost times a factor of 1.15.

Total compensation for Item 24 under this Amendment shall not exceed \$77,100 without written authorization from the Owner.

* Scope of Services Attached”

IN WITNESS WHEREOF, the City of Midland, Texas and Parkhill have hereto set their hands this 27th day of February, 2024.

OWNER:

CITY OF MIDLAND, TEXAS

By: _____

Lori Blong

Title: Mayor

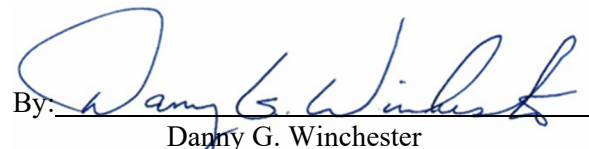
Date Signed: _____

Address for giving notices:

P.O. Box 1152
Midland, Texas 79702
Phone: (432) 685-7357

ENGINEER:

PARKHILL

By:  _____

Danny G. Winchester

Title: Principal

Date Signed: February 27, 2024

Address for giving notices:

1700 W. Wall
Midland, Texas 79701
Phone: (432) 697-1447

IN DUPLICATE

Item 24 MAF Title VI Plan and Community Participation Plan

Midland International Air & Space Port

Title VI Plan & Community Participation Plan

Consultant Scope of Services

January 31, 2024

PROJECT OVERVIEW

This scope of services details the consulting services to be provided for the Midland International Air & Space Port (MAF) to assist with development of a Title VI Plan and a Community Participation Plan in compliance with the United States Department of Transportation (DOT) Title VI Program, Order 1000.12C.

The purpose of these Title VI and Community Participation Plans is to *ensure that no person shall on the grounds of race, color, national origin (including limited English proficiency (LEP)), sex (including sexual orientation and gender identity, creed, or age, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 (PL 100.259), Section 520 of the Airport and Airway Improvement Act of 1982, and related authorities (hereafter, "Title VI and related requirements"), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives U.S. Department of Transportation (DOT) funding. Title VI also prohibits retaliation for asserting or otherwise participating in claims of discrimination.* (DOT Order 1000.12C)

Consultant understands that MAF has been notified and advised by the Federal Aviation Administration (FAA) Office of Civil Rights that MAF must complete a Title VI Program and Community Participation Program by April 2024.

SCOPE OF WORK

The scope of services to be provided for this Project is divided into the following tasks:

- Task 1. Background and Research
- Task 2. Project Administration, Coordination, Communication, and Meetings
- Task 3. Title VI Plan Development
- Task 4. Community Participation Plan (CPP) Development

The following further details the work to be provided under each task:

TASK 1.0 BACKGROUND AND RESEARCH

Consultant will assist MAF with the development of a Title VI Plan and a Community Participation Plan, which requires researching available information and documents to gain the necessary background to complete the tasks. Consultant will request that MAF and where applicable, the City of Midland, provide the following documents for review:

- The City of Midland's adopted Title VI Plan
- Information related to historic and current MAF community participation
- Information regarding federal grant awards
- List of anticipated capital improvement projects at MAF

Upon receipt of above-mentioned documents, Consultant will:

- Review the City of Midland's adopted Title VI plan
- Assess information regarding community participation for MAF
- Review federal grant award information to be listed in the program.
- Research community demographics to determine underrepresented groups, populations, poverty rates, and frequently encountered languages
- Review upcoming projects and information regarding impacts to affected communities
- Review of any Civil Rights complaints on file with the FAA for MAF, as well as any complaints on file with MAF

TASK 2.0 PROJECT ADMINISTRATION, COORDINATION, COMMUNICATION, AND MEETINGS

Task 2 contains two sub-tasks focused on the administration of the project as well as meetings to facilitate coordination and communication with MAF.

Task 2.1 Administration and Coordination

Consultant's efforts under this task include the following:

- Manage designated services and administer the Project
- Provide coordination and communication throughout the course of this Project as to the status of the Project and address any questions or issues that arise
- Coordination between MAF and the regional FAA Office of Civil Rights, and other relevant agencies as necessary
- Project scoping is also included in this task
- Communication is to be performed via telephone conferencing and electronic mail

Task 2.2 Meetings

This task includes consultation meetings with MAF during the course of Project. All meetings will be held virtual, via MS Teams calls and are expected to include one staff member from the Consultant. Meeting minutes will be available upon request. The anticipated meetings for this effort include:

- Kickoff meeting to discuss process, schedule, and establish key points of contact
- Title VI & CPP draft document review meeting
- Title VI & CPP final draft review meeting

TASK 3.0 TITLE VI PLAN DEVELOPMENT

The Title VI Plan, developed shall include the following Sections:

1. **Administration:** The Consultant will work with MAF to identify key staff members that will be responsible for submittal and annual reporting based on Title VI and maintaining the records that coincide with the Title VI plan.

2. **Goals and Objectives:** The Consultant will work with MAF to gather information on the current Title VI plan adopted by the City of Midland, identify current and upcoming federally funded airport improvement projects and aid in the creation of public notification posters. This information will serve as the baseline to set goals and objectives for MAF operations and community participation.
3. **Identification of and Focused Outreach to Affected Communities:** The Consultant will review any existing City of Midland Title VI Plan, including the completed LEP assessment, as well as census data collected to identify affected communities surrounding MAF. Consultant will conduct outreach efforts to identify key community representatives and identify proposed focused outreach plans.
4. **Minority Businesses:** Consultant will review any current minority owned business solicitation plans and/or aid in the development of a list of upcoming airport business opportunities and outreach methods to minority and disadvantaged businesses.
5. **Reporting Outcomes:** Consultant will generate a template form to be utilized by MAF, based on the specific projects, affected communities, and outreach steps as identified previously. MAF will use this template form to report outcomes to the FAA within 30 days of the end of each fiscal year.

TASK 4.0 COMMUNITY PARTICIPATION PLAN (CPP) DEVELOPMENT

The purpose of this CPP is to ensure that stakeholders or communities affected by MAF projects or operations will be informed and able to participate, and have their input thoughtfully considered in the key stages of airport planning efforts.

The CPP shall include the following Sections:

1. **Administration:** Consultant will work with MAF to identify key staff members that will be responsible for submittal and annual reporting based on CPP and identify those positions in the plan.
2. **Goals and Objectives:** Consultant will work with MAF to gather information on current and immediate upcoming projects, and identify the methodology used to gather public input related to the identified projects and outline them in this section of the plan.
3. **Effective Communication:** Consultant will review the city of Midland Title VI Plan, completed LEP assessment, and census data collected to evaluate communication efforts and develop recommendations for the CPP, per the LEP requirements.
4. **Communication Platforms:** Consultant will work with MAF to identify which platforms will be utilized to effectively reach the broadest audience and document them in the plan.
5. **Records:** Consultant will work with MAF to identify who will be responsible for maintaining these records, and where they will be located. Record keeping will include steps taken to provide outreach, community input, and demographics of the participants. These details will be outlined in this section of the CPP.
6. **Reporting Outcomes:** Consultant will generate a template form to be utilized by MAF based on the specific projects, affected communities, and outreach steps as identified previously. MAF will use this template form to report outcomes to the FAA within 30 days of the end of each fiscal year.

DELIVERABLES

As a result of the four tasks noted previously, Consultant shall develop a draft Title VI Plan and Community Participation Plan for review by MAF. One iteration of edits is anticipated on the draft documents, which Consultant shall address. After review and approval by MAF, Consultant will deliver via electronic transmittal, the following to FAA Civil Rights Connect, on behalf of MAF:

- Title VI Plan
- Community Participation Plan (CPP)
- Public Notice Posters and Reporting Forms

Consultant will be responsible for addressing all edits as requested as a result of the FAA's review of the above-mentioned plans and forms.

End of Scope of Services



City Council Meeting

Item Number: 9
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Laurie M. Williams, Interim Community Services Director
Subject: MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION CONSISTING OF FOUR (4) BASEBALL SCOREBOARDS VALUED AT \$77,423.00 FROM THE MIDLAND JUNIOR BASEBALL ASSOCIATION AND NORTHERN LITTLE LEAGUE; SAID SCOREBOARDS TO BE INSTALLED AT THE BUTLER PARK BASEBALL FIELDS (DISTRICT: 1) (COMMUNITY SERVICES) QUALITY OF LIFE AND PLACE)

Purpose:

Motion authorizing the acceptance of a donation consisting of four (4) baseball scoreboards valued at \$77,423.00 from the Midland Junior Baseball Association (MJBA) and Northern Little League; said donation to be installed at Butler Park baseball Fields.

Recommended City Council Action:

Approve

Fiscal Impact:

This donation does not have any fiscal impact on the City of Midland

Strategic Priority:

(Quality of Life)

Discussion:

MIDLAND JUNIOR BASEBALL ASSOCIATION AND NORTHERN LITTLE LEAGUE TAKES PRIDE IN THE BUTLER BASEBALL FIELDS, WHICH IS HOME TO NORTHERN LITTLE LEAGUE. THEY WOULD LIKE TO UPGRADE THE SCOREBOARDS AT THE BUTLER FIELDS, AND PLAN TO DONATE THE FOUR SCOREBOARDS TO THE CITY OF MIDLAND.

THE EXISTING SCOREBOARDS WILL BE REMOVED AND RELOCATED TO C.J. KELLY BASEBALL FIELDS BY THE CITY OF MIDLAND PARKS STAFF. THEN THE PARKS STAFF WILL INSTALL THE DONATED SCOREBOARDS AT BUTLER BASEBALL FIELDS. THESE PARTNERSHIPS ARE VALUED BY THE CITY OF MIDLAND AS WE WORK TOGETHER TO IMPROVE PARK FACILITIES.



City Manager's Office

February 12, 2024

Laurie Williams
City of Midland
300 North Loraine
Midland, Texas 79701

Dear Ms. Williams,

On behalf of Midland Junior Baseball Association and Northern Little League, I am writing to inform of our planned donation to the City of Midland for the purchase of four new Daktronics scoreboards to be installed at the baseball fields at Butler Park, currently under the control of Northern Little League. This donation is a combination of Northern Little League capital and third-party sponsorships. Upon approval and acceptance by City Council, Northern Little League will enter into a purchase agreement with Daktronics for the acquisition of the scoreboards. Once the scoreboards are received, we would request assistance from the City of Midland for installation to ensure we adhere to engineering and electrical compliance. Our desire would be to relocate the current scoreboards at Butler Park to CJ Kelly Park.

The total donation value is \$77,423 which covers the purchase cost of the scoreboards with Daktronics. A copy of the purchase quote is included as an attachment.

If there are any additional questions or support documentation needed, please let me know. It remains the goal of Northern Little League to offer a playing atmosphere that is safe, up-to-date, and one that allows Butler Park to be a showcase for all of the baseball community that play in our area.

Best Regards,

A handwritten signature in black ink, appearing to read 'JS' or 'Stockstill', written in a cursive style.

Jason Stockstill
Northern Little League Board

** Please note the scoreboard pictures do not accurately depict the color of the final product being purchased. The boards will be royal blue and will include a seven-inning layout, pitch count tracking, places for sponsorship signage, and will all feature the app-controlled functionality.*

DAKTRONICS QUOTE # 829064-1-4

Northern Little League
 Holli Stockstill
 8312 Dunblane Dr
 Midland, TX USA 79707
 Phone:
 Fax:
 Email: hollistockstill@yahoo.com

6/Feb/2024
 Quote Valid for: 60 days
 Terms: Payment With Order
 Subject to Credit Review
 FCA: DESTINATION
 Delivery: Call for Production Time

Reference: Equipment only

Item No.	Model	Description	Qty	Price
1	BA-2022-R-PV-F	PanaView® Baseball Scoreboard; Scoreboard Color: Blue (57406); Caption Color: White (7725-10) Cabinet Dimensions: 6' 6" H X 16' 0" W X 0' 8" D (Approx. Dimensions) Digit Type: PANAVIEW Digit Color: RED Max Power: 600 watts/display Weight: Unpackaged 525 lbs per display; Packaged 800 lbs per display	4	\$46,387.00
	Stripe; 0A-1091-0184	Border Stripe for BA-2022 Scoreboards; Color: White (7725-10)	4	
	Radio Receiver	Frequency of 2.4 GHz	4	
	DAK Score App with All Sport® MX-1 Mobile Scoring Kit with Outdoor Enclosure	DAK Score App with All Sport® MX-1 Mobile Scoring Kit and Gen VI Radio Transmitter. Includes Outdoor Enclosure	4	
	I-Beam Mounting Method (A)	For 2 I-Beams	4	
2	Outdoor Non-Backlit 3' 0" x 16' 0" Horizontal	Ad Panel, Above or Below Display Cabinet Dimensions: 3' 0" H X 16' 0" W X 0' 8" D Weight: Packaged 154 lbs per display	4	\$8,063.00
3	ADPC-2023-R-2.5x16-PV-F	PanaView® AdPanel Pitch Count 2'-6" Tall x 16' Long Non-Backlit Cabinet Dimensions: 2' 6" H X 16' 0" W X 0' 8" D (Approx. Dimensions) Digit Type: PANAVIEW Digit Color: RED Max Power: 40 watts/display Weight: Unpackaged 160 lbs per display; Packaged 225 lbs per display	4	\$19,278.00
	NOTE This scoreboard is also available in Amber and White.		4	
	Radio Receiver	Frequency of 2.4 GHz	4	
	I-Beam Mounting Method (A)	For 2 I-Beams	4	

Daktronics, Inc.
 201 Daktronics Drive
 Brookings, SD 57006 USA
 www.daktronics.com

Quote # 829064-1 Rev 4

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DAKTRONICS QUOTE # 829064-1-4

4	FREIGHT	Shipping to site via Independent Carrier (flatbed trailer). Crane or telehandler required for unloading. Customer is responsible for receiving & unloading truck upon delivery.	1	\$3,695.00
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Services

5	G5C5-W	Five Year Warranty - Parts Coverage - G5G5	1
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Total Price Excluding Applicable Tax:	\$77,423.00
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Please reference listed sales literature: DD1628383 for G5C5-W, DD2118191 for BA-2022-R-PV-F, DD3730253 for ADPC-2023-R-2.5x16-PV-F, DD3888368 for DAK Score App with All Sport® MX-1 Mobile Scoring Kit with Outdoor Enclosure, SL-04370 for Radio Receiver

Please reference listed shop drawings: DWG-03899921 for DAK Score App with All Sport® MX-1 Mobile Scoring Kit with Outdoor Enclosure

Daktronics, Inc.
201 Daktronics Drive
Brookings, SD 57006 USA
www.daktronics.com

Quote # 829064-1 Rev 4

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DAKTRONICS QUOTE # 829064-1-4

Leasing Program

If your purchase exceeds \$25,000, you may qualify for our leasing program allowing you more flexibility to spread out the cost of your Daktronics display over a period up to five (5) years. Benefits of our leasing program include fixed rate financing, non-appropriation clause, no prepayment penalty, and customizable payment schedules. Plus, at the end of the lease, the equipment is yours to keep with no additional balloon payments.

Sample payment options as follows:

\$50,000 in total equipment cost = \$11,285 per year

\$100,000 in total equipment cost = \$22,568 per year

\$250,000 in total equipment cost = \$56,420 per year

Payments based on 5 year/annual payment in advance structure. **Leasing is subject to credit approval and agreed upon documentation with Daktronics lending partner. Contact your Daktronics representative for additional options and details.

Exclusions:

- | | |
|--|------------------------------------|
| - Electrical Installation | - Physical/Mechanical Installation |
| - Structure | - Foundation |
| - Power | - Hoist |
| - Technical Support/Installation Support | - Engineering Certification |
| - Signal Conduit | - Labor to Pull Signal Cable |
| - Applicable Permits | - Taxes |
| - Electrical Switch Gear or Distribution Equipment | - Front End Equipment |

Unless expressly stated otherwise in this Quote # 829064-1 Rev 4 or the attachments, if Daktronics performs installation of the Equipment, the price quoted does not include the following services pertaining to physical installations: digging of footings (including dirt removal), any materials fabrication, installation of steel cages, rebar, or bolt attachments, or pouring and finishing of concrete footings. Those service may be provided for an additional cost beyond the quoted price. Purchaser shall be fully responsible for any and all additional costs plus overhead in the event anything unexpected of any nature whatsoever is found while digging the footings including but are not limited to rock, water, utility lines, pipes or any other unforeseen circumstance. The Purchaser acknowledges and agrees that it is fully responsible for all site conditions.

Prices and charges are subject to change by Daktronics at any time before the final agreement between the parties is effective. Ship Date will be determined after customer purchase order is received or agreement is signed or otherwise effective, shop drawings are approved (if required) and down payment is received (if required).

Installation Responsibilities:

If applicable please reference Attachment A for Installation Responsibilities.

Ad/ID Copy Approval Process

Customer shall provide digital artwork for advertising and identification panels, conforming to [Daktronics' graphic file standards](#), at the time of order.

Daktronics will create a proof of provided artwork and require approval of that proof three weeks prior to the initial anticipated ship date. Advertising and identification panels not approved in time, will be shipped without copy in Daktronics' standard finish.

Kevin Fahy
PHONE: 605-275-1040
FAX:
EMAIL: Kevin.Fahy@daktronics.com

Chase Beyer
PHONE: 605-651-4468
FAX:
EMAIL: Chase.Beyer@daktronics.com

Terms And Conditions:

The Terms and Conditions which apply to this order available on request.

SL-02374 Standard Warranty and Limitation of Seller's Liability (www.daktronics.com/terms_conditions/SL-02374.pdf)

SL-02375 Standard Terms and Conditions of Sale (www.daktronics.com/terms_conditions/SL-02375.pdf)

SL-07862 Software License Agreement (www.daktronics.com/terms_conditions/SL-07862.pdf)

Additional Links:

Gold Scope of Services (www.daktronics.com/TermsConditions/SL-05659)

NOTE:

The pricing may be adjusted for freight and taxes depending on the options selected.
Please request order documents to submit your order.

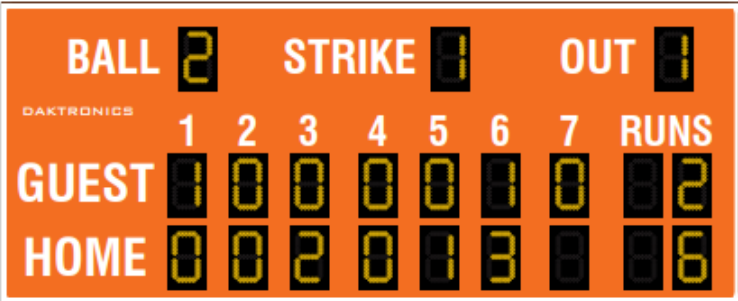
Daktronics, Inc.
201 Daktronics Drive
Brookings, SD 57006 USA
www.daktronics.com

Quote # 829064-1 Rev 4

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DAKTRONICS BA-2022 PRODUCT SPECIFICATIONS



This outdoor LED baseball/softball scoreboard displays HOME and GUEST team scores for up to seven innings, total RUNS to 99, BALL to three, STRIKE to two and OUT to two. Scoreboard shown with optional striping and amber PanaView® digits.

DIMENSIONS	UNCRATED WEIGHT	POWER (120 VAC)*	
6'6" H x 16'0" W x 8" D (1.98 m, 4.88 m, 203 mm)	525 lb (238 kg)	Red/Amber Digits	190 Watts, 1.6 Amps
		White Digits	400 Watts, 3.4 Amps

*Scoreboard requires a dedicated circuit. Models with 240 VAC power at half the indicated amperage are also offered (International Use Only).

DIGITS

- All digits are 15" (381 mm) high.
- Select red, amber, or white LED digits. Scoreboard may instead have mixed LED digit colors (see [DD1965467](#)).
- Scoreboard features robust weather-sealed digits (see [DD2495646](#)).
- Digits may be dimmed for night viewing.

CAPTIONS

- HOME and GUEST captions are 10" (254 mm) high.
- BALL, STRIKE and OUT captions are 9" (229 mm) high.
- All other captions are 8" (203 mm) high.
- Standard captions are vinyl, applied to the display face.

DISPLAY COLOR

Choose from 150+ colors (from Martin Senour® paint book) at no additional cost.

CONSTRUCTION

Alcoa aluminum alloy 5052 for excellent corrosion resistance

PRODUCT SAFETY APPROVAL

ETL-listed to UL 48, tested to CSA standards, and CE-labeled

OPERATING TEMPERATURES

- Display: -22° to 122° Fahrenheit (-30° to 50° Celsius)
- Console: 32° to 130° Fahrenheit (0° to 54° Celsius)

WWW.DAKTRONICS.COM E-MAIL: SALES@DAKTRONICS.COM

201 Daktronics Drive, PO Box 5128, Brookings, SD 57006
Phone: 1-800-325-8766 or 605-692-0200 Fax: 605-697-4746
DD2118191 091420 Page 1 of 7



DAKTRONICS BA-2022 PRODUCT SPECIFICATIONS

CONTROL CONSOLE	CONTROL OPTIONS
All Sport® 5000 (see SI-03991)	Wired (standard): Two-pair shielded cable of 22 AWG minimum is required. A cover plate with mounted connector and standard 2" x 4" x 2" (51 mm x 102 mm x 51 mm) outlet box is provided. Connector mates with signal cable from control console. Wireless (optional): 2.4 GHz spread spectrum radios feature 64 non-interfering channels and 8 broadcast groups (see SI-04370).
DAK Score & MX-1 (see DD3888368)	CUSTOMER-SUPPLIED mobile device or tablet with DAK Score app installed communicates via Bluetooth® wireless technology to an MX-1 Interface Box that controls the scoreboard through 2.4 GHz radio or wired connection.

MOUNTING

Scoreboard is typically mounted on two vertical beams or poles. Hardware to mount scoreboard on two beams is included; hardware for more beams is at additional cost. Standard mounting uses I-beam clamps. Optional mounting method using angle brackets is also offered; maximum beam width is 12" (305 mm) and maximum beam depth is 22" (559 mm). Refer to attached drawings for more information on mounting methods.

SERVICE ACCESS

Digit panels and electronics are serviced from the front of the scoreboard.

GENERAL INFORMATION

Scoreboard provides scoring capabilities for two teams. 100% solid state electronics are housed in an all aluminum cabinet. Scoreboard is shipped in one section. Scoreboard power is to be provided on a dedicated circuit to prevent loss of game information due to failure of another component on the circuit. Specifications and pricing are subject to change without notice.

OPTIONS & ACCESSORIES

- Scoreboard border striping
- Multiple caption and striping colors (see [DD2101644](#))
- Team name caption in place of HOME
- Team names on changeable panels
- Individual digit protective screens (see [SI-04939](#))
- Protective netting (see [DD2690927](#))
- Optional angle bracket mounting method
- Advertising/identification panels
- Decorative accents
- Electronic message centers and video displays in multiple sizes

ADVERTISING/IDENTIFICATION PANELS

Backlit & Non-Backlit:

- 1'-6" H x 16'-0" W (457 mm, 4.87 m)
- 2'-0" H x 16'-0" W (610 mm, 4.87 m)
- 2'-6" H x 16'-0" W (762 mm, 4.87 m)
- 3'-0" H x 16'-0" W (914 mm, 4.87 m)

For additional non-backlit panel sizes, see [SI-03761](#).

FOR ADDITIONAL INFORMATION

- Installation Specifications: DWG-1157188 (attached)
- Standard I-beam Mounting: DWG-1052565 (attached)
- LVX I-beam Mounting: DWG-3918361 (attached)
- Optional Pole Mounting: DWG-1048184 (attached)
- Component Locations: DWG-1066358 (attached)
- Architectural Specifications: See [SI-08405](#)

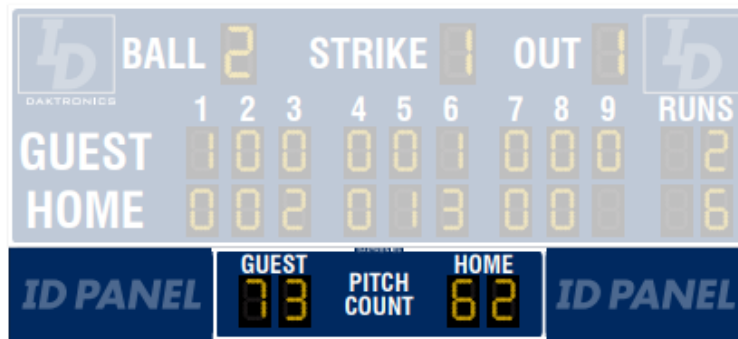
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Martin Senour® is a registered trademark of its owner.
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DAKTRONICS ADPC-2023 PRODUCT SPECIFICATIONS



ADPC-2023 (20") shown with BA-2030 (sold separately)

These drop-in outdoor LED displays show PITCH COUNT for HOME and GUEST up to 99. The display cabinets come in 5 standard widths to add on to new or existing baseball scoreboards. Cabinets may mount above or below the scoreboard and the display may be centered, left-aligned, or right-aligned. GUEST and HOME digit/caption positions may be swapped. A hand-held switch with HOME/GUEST select, PITCH +1 button, and PITCH -1 button is included with purchase. Display is shown mounted below a baseball scoreboard with optional striping and amber PanaView® digits. All displays are 2'-6" (762 mm) tall and 8" (203 mm) deep.

WIDTH	AD COPY SPACE*	WEIGHT	POWER (120 VAC)**
14'-0" (4.27 m)	2'-6" (762 mm) H x 5'-0" (1.52 m) W	108 lb (49 kg)	Red/Amber Digits: 40 Watts, 0.4 Amp White Digits: 80 Watts, 0.7 Amp
16'-0" (4.88 m)	2'-6" (762 mm) H x 7'-0" (2.13 m) W	114 lb (52 kg)	
20'-0" (6.10 m)	2'-6" (762 mm) H x 11'-0" (3.35 m) W	136 lb (62 kg)	
25'-0" (7.62 m)	2'-6" (762 mm) H x 16'-0" (4.88 m) W	151 lb (68 kg)	
36'-0" (10.97 m)	2'-6" (762 mm) H x 27'-0" (8.23 m) W	193 lb (88 kg)	

*When display is centered on the cabinet, there are two separate ad copy spaces, each at half the indicated width.

**Display requires a dedicated circuit. Models with 240 VAC power at half the indicated amperage are also offered (International Use Only).

DIGITS

- All digits are 1.5" (381 mm) high.
- Select red, amber, or white LED digits.
- Display features robust weather-sealed digits (see [DD2495646](#)).
- Digits may be dimmed for night viewing.

CAPTIONS

- All captions are 6" (152 mm) high.
- Standard captions are vinyl, applied to the display face.

DISPLAY COLOR

Choose from 150+ colors (from Martin Senour® paint book) at no additional cost.

CONSTRUCTION

Alcoa aluminum alloy 5052 for excellent corrosion resistance

PRODUCT SAFETY APPROVAL

ETL-listed to UL 48, tested to CSA standards, and CE-labeled

OPERATING TEMPERATURES

- Display: -22° to 122° Fahrenheit (-30° to 50° Celsius)
- Console: 32° to 130° Fahrenheit (0° to 54° Celsius)

WWW.DAKTRONICS.COM E-MAIL: SALES@DAKTRONICS.COM

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City Council Meeting

Item Number: 10
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Laurie M. Williams, Interim Community Services Director
Subject: MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION CONSISTING OF A DECORATIVE SANTA CLAUS FIGURE FROM MISS CAYCE'S CHRISTMAS STORE (DISTRICT: ALL) (COMMUNITY SERVICES) QUALITY OF LIFE AND PLACE)

Purpose:

Motion authorizing the acceptance of a donation consisting of a decorative Santa Claus figure from Miss Cayce's Christmas store.

Recommended City Council Action:

Approve

Fiscal Impact:

This donation does not have any fiscal impact on the City of Midland

Strategic Priority:

(Quality of Life)

Discussion:

Miss Cayce's would like to donate a life size decorative Santa Claus to the City of Midland.

Pre t. Out

City Manager's Office



City Council Meeting

Item Number: 11 **Meeting Date:**
February 27, 2024

To: City Council / City Manager

From: Laurie M. Williams, Interim Community Services 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; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INC.; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED SERVICES THROUGH THE USE OF CITY-OWNED PROPERTY AND FACILITIES (DISTRICT: ALL) (COMMUNITY SERVICES) (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; MIDLAND JUNIOR BASEBALL ASSOCIATION, INC.; MIDLAND SOCCER ASSOCIATION, INC.; MIDLAND SOFTBALL ASSOCIATION, INC.; MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INC.; TEXAS CRICKET CLUB; UNDER THE LIGHTS FLAG FOOTBALL LEAGUE; WEST TEXAS BMX; AND THE YMCA OF MIDLAND; SAID AGREEMENTS PROVIDING FOR THE ORGANIZATIONS' ADMINISTRATION OF RECREATIONAL PROGRAMS, SPECIAL EVENTS, AND OTHER RELATED SERVICES THROUGH THE USE OF CITY-OWNED PROPERTY AND FACILITIES.

Recommended City Council Action:

Approve

Fiscal Impact:

Maintenance of the City's athletic facilities are 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

MIDLAND JUNIOR BASEBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Junior Baseball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to baseball activities for young men ages Nineteen (19) and younger at Beal Park, Butler Park, CJ Kelly Park, Hogan Park, Reyes/Mashburn/Nelms Park, and Windlands Park. Association shall have the right to collect fees and income generated by Association’s baseball activities for young men ages Nineteen (19) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - nine (9) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association’s championship games or

tournaments, comprised of Little League Fields #1 and #2 at Beal Park, Little League Fields #1 and #2 at Butler Park, Little League Field #1 at C.J. Kelly Park, Little League Fields #1 and #2 at Reyes/Mashburn/Nelms Park, and Little League Fields #1 and #2 at Windlands Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the nine (9) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;

2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and

8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
2. Fertilizing in April and September with a third application if feasible as determined by City;
3. Filling significant holes in fields;
4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
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 will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for

Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital

improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director, who shall be responsible for all communications with the Parks and Recreation Division about facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).

- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.

V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of the City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

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 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must

also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall

reimburse City the full amount of any insurance premiums paid by City pursuant to this Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, 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 Community Services and
 Recreation Manager
 at the same address

If to Association: Midland Junior Baseball Association, Inc.
 P.O. Box 52101
 Midland, Texas 79710

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property pursuant to the terms of this Agreement during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such

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

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be

effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

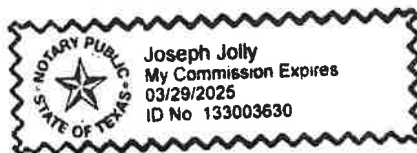
Laurie Williams, Interim Community Services Director

MIDLAND JUNIOR BASEBALL ASSOCIATION,
INC.

By: *Lee Martin*
Name: Lee Martin
Title: President - MJBA

THE STATE OF TEXAS

COUNTY OF MIDLAND



BEFORE ME, the undersigned authority, on this day personally appeared Lee Martin 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 14 day of February, 2024.

Joseph Jolly
Notary Public, State of Texas

MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, 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 and youth at Butler Park, Hogan Park, and Windlands Park. Association shall have the right to collect fees and income generated by Association's soccer activities for adults and youth. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland, Texas, and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Provide general field maintenance which will include:
 - 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields; 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 will be determined by City.
- L. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for

Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking 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 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole

and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to the City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS

to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare fields "unplayable" for games and practice due to wet or adverse weather.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. 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 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other

person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. The Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE

REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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 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 Association: Midland Soccer Association, Inc.
3500 N. A Street
Suite 1600
Midland, TX 79705

February 27, 2024

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated after the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or

to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months

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

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

MIDLAND SOCCER ASSOCIATION, INC.

By: Matthew A Voss

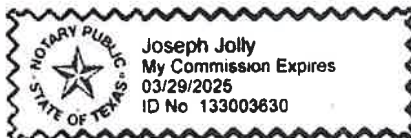
Name: MATTHEW A VOSS

Title: PRESIDENT

THE STATE OF TEXAS

COUNTY OF MIDLAND

§
§
§



BEFORE ME, the undersigned authority, on this 14 day February personally appeared Matthew Voss 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 14 day of February, 2024.

Joseph Jolly
Notary Public, State of Texas

MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland United Girls Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball for young women ages eighteen (18) and younger at MUGS Softball Complex at Ulmer Park. Association shall have the right to collect fees and income generated by Association’s activities for young women ages eighteen (18) and younger. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - eleven (11) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association’s championship games or

tournaments, comprised of the nine (9) 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 Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the eleven (11) Championship Fields for the sole purpose of conducting 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 Community Services 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 will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
2. Fertilizing in April and September with a third application if feasible as determined by City;
3. Filling significant holes in fields;
4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
5. 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 will be determined by City.
 - M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;

3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.

- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields “unplayable” for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall

constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary

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

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and

keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office.

Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this Article. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, Apremises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.

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

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS,

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

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual

orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue of whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion,

allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.
- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of

this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to Midland United Girls Softball Association, Inc.
Association: P.O. Box 10574
 Midland, Texas 79702

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement

conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

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

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES

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

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

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

[Signature Page Follows]

MIDLAND UNITED GIRLS SOFTBALL
ASSOCIATION, INC.

By: *J. Maddox*

Name: *Rick Maddox*

Title: *President*

THE STATE OF TEXAS

COUNTY OF MIDLAND



BEFORE ME, the undersigned authority, on this 14 day of February personally appeared *Rickay Maddox* 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 14 day of February, 2024.

Joseph Jolly
Notary Public, State of Texas

MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and Midland Softball Association, Inc., (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association’s programs, special events, organized sanctioned teams and other services related to softball activities for persons ages fifteen (15) and older at the Bill Williams Softball Complex at Hogan Park. Association shall have the right to collect fees and income generated by Association’s softball activities for persons ages fifteen (15) and older. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by City and designated or deemed by City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - six (6) playing fields, as agreed by Association, the City Manager and the Recreation Manager, reserved for Association’s championship games or

tournaments, comprised of the six (6) adult softball fields within the Bill Williams Softball Complex at Hogan Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the six (6) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;

3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

- E. Provide general field maintenance which will include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable;
 5. Dragging infields prior to tournaments;
 6. Making major repairs to City-owned equipment and fixtures;
 7. Picking up fencing after tournaments; and
 8. 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 Associations scheduled games and practice sessions. Appropriateness will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two (2) working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for

Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, game officials, and custodial staff needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields and set pitching mounds, foul lines or batter boxes if applicable;
 - 4. Setting pitching mounds for all games if applicable; and
 - 5. Erecting temporary fencing as needed.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost.

Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).

- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events. 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 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 Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 23, 2024, through February 22, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

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

liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association shall provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

- A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either (i) uses Park Property for the performance of the sport activity pursuant to this Agreement, (ii) maintains equipment on any Playing Field, or (iii) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents,

contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Article shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association,

take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX. INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY,

CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to

people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The decision regarding whether or not to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII. TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the

term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and

all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to
Association: Midland Softball Association, Inc.
 4487 Hackberry Ct.
 Midland, Texas 79707

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and

this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property.

Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT

(TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII. GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. NOTICE OF ALLEGED BREACH;
STATUTORY PREREQUISITES**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one

(1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

[Signature Page Follows]

MIDLAND SOFTBALL ASSOCIATION, INC.

By: Tommy E. Hawkins

Name: Tommy E. Hawkins

Title: President

THE STATE OF TEXAS

COUNTY OF MIDLAND

Tommy E. Hawkins
BEFORE ME, the undersigned authority, on this day personally appeared Tommy E. Hawkins 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 15 day of February, 2024.

Miranda K. Loustaunau
Notary Public, State of Texas



UNDER THE LIGHTS FLAG FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and Under the Lights Flag Football League ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to flag football activities for youth and adult participants at CJ Kelly Park and the Scharbauer Sports Complex. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I- DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of flag football events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary markers; and
 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 4. Preparing playing field for all flag football events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or

apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 28, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its

employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's

obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT

ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association

shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this

Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to Under the Lights Flag Football
Association: 6007 Oak Creek Drive
 Midland, TX 79707

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

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, Interim Community Services Director

UNDER THE LIGHTS
FLAG FOOTBALL LEAGUE

By: S Faught
Name: Sterling Faught
Title: Co-Commissioner

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this 15 day of February personally appeared S Faught known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Under the Lights Flag Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15 day of February, 2024.

Miranda K Loustaunau
Notary Public, State of Texas



WEST TEXAS BMX
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and West Texas BMX ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to BMX riding and racing at Reyes/Mashburn/Nelms Park. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national BMX events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Racetrack** - any single area of Park Property, located at Reyes/Mashburn/Nelms Park, which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one racetrack, as agreed by Association and the City Manager, reserved for Association's championship BMX events or tournaments.
- D. **City Manager** - the City Manager of the City of Midland, Texas.

- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting BMX events and practice sessions. In addition, at the discretion of the City Manager and with advice from the Recreation Manager, Association may be allowed to designate one (1) racetrack as a Championship Field. Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
 - 3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;

4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
 5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
 6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager at his sole discretion;
 7. Association shall abide by all conditions and requirements as set out in this Agreement; and
 8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
1. Mowing of Racetrack area once a week during the growing season, adjustments may be made for BMX events;

2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in track areas;
 4. 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 will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of BMX events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all BMX events and practices to occur during the season, including all races and special BMX events. Such schedule shall be

supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the BMX events.
- E. Prepare racetracks prior to BMX events, including:
 - 1. Marking or cutting any and all necessary lines on racetracks;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare BMX facility; and
 - 4. Preparing racing surface for all BMX events.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a

written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.

- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the

scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

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 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or

condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR,

ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official

depository under the care and custody of the United States Postal Service addressed as follows:

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to West Texas BMX
Association: PO Box 9602
 Midland, TX 79708

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled BMX events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the

Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

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, Interim Community Services Director

WEST TEXAS BMX

By: Elizabeth Taylor
Name: Elizabeth Taylor
Title: Vice President

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this 15 day February personally appeared Elizabeth Taylor known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the West Texas BMX.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15 day of February, 2024.

Miranda K Loustaunau
Notary Public, State of Texas



TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and the Texas Cricket Club ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, organized sanctioned teams and other services related to cricket at Beal Park. Association shall have the right to collect fees and income generated by Association's cricket activities. This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one playing field, as agreed by Association and the City Manager, reserved for Association's championship games or tournaments, comprised of one (1) cricket field at Beal Park.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions. In addition, at the discretion of the City Manager and with advice from the Recreation Manager, Association may be allowed to designate one (1) Playing Field as a AChampionship Field.' Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
 - 2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;

3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;
4. Association understands and agrees that City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. 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.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.

Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;

2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.
- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director,' who shall be responsible for all communications with the Parks and Recreation Division regarding facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the ACity Liaison.'
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, line cutters, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.

- A. Abide by all requirements and obligations as set out in this Agreement.
- B. City reserves the right to declare the fields “unplayable” for games and practice due to wet and adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City’s Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association’s use of an outside food vendor is in the sole and absolute discretion of City’s Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association’s administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City’s termination of this

Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a 'Community of Pecuniary Interest' or 'An Equal Right of Control' which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent

contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also

cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association

shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, Premises' shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY

INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official

depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Recreation Manager at the same address
If to Association:	Texas Cricket Club 5200 Sunshine Parkway Midland, TX 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the

Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. ASSOCIATION ACKNOWLEDGES THAT IT

UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. ASSOCIATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND ASSOCIATION. THIS ARTICLE SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH

ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein

shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

[Signature Page Follows]

TEXAS CRICKET CLUB

By: Shashi Patel
Name: Shashi Patel
Title: Treasurer

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this 12 day of February personally appeared Shashi Patel known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Texas Cricket Club.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12 day of February 2024.

Miranda Jastane
Notary Public, State of Texas



GREATER MIDLAND FOOTBALL LEAGUE
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Greater Midland Football League (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to football activities for youth ages eight (8) to twelve (12) at the Scharbauer Sports Complex. Association shall have the right to collect fees and income generated by Association’s football activities for youth ages eight (8) to twelve (12). This Agreement does not preclude City or Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE 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 Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which shall include making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.
- M. Provide Association with exclusive access and use of certain designated concession facilities during Association's scheduled events; provided, however, that City may rent or otherwise provide access and use of said designated concession facilities to other persons or entities when Association is not using the concession facilities during a scheduled event. The decision regarding which concession facilities are to be designated for Association's exclusive access and use shall be in the sole and absolute discretion of the Director of Community Services or her designee.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of Association play, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for

Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.

- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, 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 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital

improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with City's Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the AFacilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the ACity Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, line cutters, etc.).

- M. Agree to pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to City no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval

of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.

- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

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

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association shall provide City with an annual report by December 1st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly

authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per project aggregate and on an occurrence basis. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per project aggregate and on an occurrence basis and shall name the City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association

shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY

DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE,

IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with

the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue of whether to grant consent to an assignment is in the sole discretion of City.

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for

the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the

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

If to
Association: Greater Midland Football League
2510 Regency Oaks
Midland, Texas 79705

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect,

this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of

the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. ASSOCIATION SPECIFICALLY AGREES THAT IF ASSOCIATION BRINGS OR COMMENCES ANY

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

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

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

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

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES

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

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

the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether City has actual or constructive notice or knowledge of said claim or alleged damages.

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

GREATER MIDLAND FOOTBALL LEAGUE

By: [Signature]

Name: Kyle Huckaba

Title: PRESIDENT

THE STATE OF TEXAS

COUNTY OF MIDLAND



BEFORE ME, the undersigned authority, on this 14 day of February personally appeared Kyle Huckaba known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Greater Midland Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of February, 2024.

[Signature]
Notary Public, State of Texas

BOYS AND GIRLS CLUB OF THE PERMIAN BASIN
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation (City), and Boys and Girls Club of the Permian Basin (Association).

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to flag football and soccer activities for youth and adult participants at Taylor Park. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football/soccer events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
Director of Community Services - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled flag games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of the activities contemplated by this Agreement, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare flag football facility; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the A 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 A City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (i.e., all-terrain vehicles, golf carts, mowers, etc.).
- M. Agree to pay electrical costs for field light use at a rate of \$25.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by The Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use

of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association.

No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which

names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. If Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not

deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police

departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon a non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the

Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.
- C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail

shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Recreation Manager
 at the same address

If to Boys and Girls Club of the Permian Basin
Association: Taylor Park Facility
 1321 S. Goode St.
 Midland, Texas 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- E. Use of Language. Words in the singular shall be held to include the plural unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the

Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. ASSOCIATION ACKNOWLEDGES THAT IT

UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE ASSOCIATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND ASSOCIATION. THIS ARTICLE SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

ASSOCIATION IS RELYING ON ITS OWN JUDGMENT REGARDING THE EXECUTION OF THIS AGREEMENT. ASSOCIATION HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waiving its governmental immunity and retains all immunity from suit. City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

ARTICLE XVIII - NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER

THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX - CONSIDERATION

City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

As a prerequisite for Association filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to

request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

[Signature Pages Follow]

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Marcia Bentley-German, City Secretary

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Laurie Williams, Interim Community Services Director

[Signature Page Follows]

BOYS AND GIRLS CLUB
OF THE PERMIAN BASIN

By: [Signature]

Name: Stan VanHoozen

Title: Director of Operations

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this 13 day of February personally appeared Stan VanHoozen 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 13 day of February 2024.

[Signature]
Notary Public, State of Texas



YMCA OF MIDLAND
SPORTS AGREEMENT

This Agreement entered into and effective this 27th day of February, 2024, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and YMCA of Midland ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering Association's programs, special events, and other services related to flag football, kickball, and soccer activities for youth and adult participants at Hogan Park. Association shall have the right to collect fees and income generated by Association's activities. This Agreement does not preclude City or Association from soliciting and hosting national flag football events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by City to be Park Property.
- B. **Playing Field** - any single area of Park Property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **City Manager** - the City Manager of the City of Midland, Texas.
- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions.
- E. Provide general field maintenance which will include:
 - 1. Mowing of playing fields area once a week during the growing season, adjustments may be made for tournaments;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in fields;
 - 4. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing field as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two (2) weeks prior to the start of youth sporting events, Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s). Notwithstanding any contrary provision contained herein, nothing in this Agreement shall be interpreted as an authorization for Association to utilize City property/facilities at a specific time, on a specific date, or in accordance with the schedule referenced in this Section. Association hereby acknowledges and agrees that City's execution of this Agreement shall not be considered or interpreted as an authorization for Association to utilize City property/facilities at any specific time, on any particular date, or in accordance with the schedule referenced in this Section.
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.

- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary markers; and
 - 3. Providing personnel, equipment and materials necessary to prepare for youth sporting activities; and
 - 4. Preparing playing field for all games.
- F. If Association wishes to request that City make a capital improvement that exceeds a total cost of Five Thousand and No/100 Dollars (\$5,000.00), Association shall submit (i) a written request on or before the 31st day of March during the term of this Agreement, and (ii) funding in an amount equal to fifty percent (50%) of the capital improvement cost. Upon City's receipt of said request, City may consider and evaluate the proposed capital improvement for potential funding based on the approved budget of City. Association acknowledges and agrees that City is under no obligation to consider or approve a capital improvement request submitted pursuant to this Section. Association further acknowledges and agrees that a decision to approve or fund a capital improvement request is in the sole and absolute discretion of City. Capital improvement requests submitted after the March 31 deadline shall not be considered by City.

- G. Submit any other request to City in writing and no less than fifteen (15) days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one (1) officer of Association, known as the Facilities Director, who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on Association's Board of Directors as a non-voting member known as the City Liaison.
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property (e.g., all-terrain vehicles, golf carts, mowers, etc.).
- M. Pay electrical costs for field light use at a rate of twenty-five dollars (\$25.00) per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by The Texas Department of Agriculture. Further, Association will supply labels and MSDS to City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Ensure that all vending operations are properly permitted by City.
- S. Abide by all requirements and obligations as set out in this Agreement.
- T. City reserves the right to declare the fields "unplayable" for games or practice due to wet or adverse weather conditions.
- U. Pay to City a tournament fee in the amount of twenty-five dollars (\$25.00) for each team that participates in a tournament, excluding any league playoffs and championships. Said fee shall be due and payable to the City of Midland no later than seven (7) days following the completion of the tournament.
- V. If Association chooses to use outside food vendors in connection with any activity contemplated under this Agreement, Association shall obtain the permission and approval of City's Parks and Recreation Division no later than seventy-two (72) hours prior to the scheduled time of said activity. The decision whether to approve Association's use of an outside food vendor is in the sole and absolute discretion of City's Parks and Recreation Division.
- W. Notwithstanding any contrary provision contained herein, Association acknowledges and agrees that it is expressly prohibited from administering or scheduling third-party use/access to Park Property and/or the Playing Field(s), or otherwise apportioning the use

of Park Property or the Playing Field(s) by third parties. Association shall have no right to administer, schedule, or apportion the use of Park Property and/or the Playing Field(s) by third parties under this Agreement. Association's administration, scheduling, or apportionment of the use of Park Property and/or the Playing Field(s) by third parties shall constitute a material breach of this Agreement, and City shall be entitled to immediately terminate this Agreement upon receiving notice of the same. City's termination of this Agreement pursuant to this Section shall become effective upon Association's receipt of City's written termination notice.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 27, 2024, through February 26, 2025. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association.

No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. City does not have the right to control the means, methods, or details of Association's work. City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 1st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

- A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which

names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined-single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name City as an additional insured.

- B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not

deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

The City of Midland is included as an additional insured on all policies of insurance.

- C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days' prior written notice before any change or cancellation of the policy.
- D. Premises. For purposes of this Agreement, premises shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all Park Property, and personal property owned by Association which is located on City property.
- E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Association shall not use an unapproved certificate of insurance or insert

inappropriate language on a certificate. Compliance with state law is the sole responsibility of Association.

ARTICLE IX - INDEMNITY

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM ASSOCIATION'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

ASSOCIATION SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR

PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and (ii) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to

people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII – ASSIGNMENT

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

ARTICLE XIII - TERMINATION

- A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.
- B. No Cause. City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days' written notice to Association. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Association has no expectation and has

received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

- C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

- A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject

matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Recreation Manager at the same address
If to Association:	YMCA of Midland 800 N. Big Spring Street Midland, Texas 79701

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

- D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

- E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.
- F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.
- G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.
- H. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.
- I. Ownership. Association understands and agrees that ownership of said Park Property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from Park Property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other Park Property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said Park Property shall be deemed to mean that

Association shall have the right to control said Park Property during scheduled flag football events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

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

[Signature Page Follows]

YMCA OF MIDLAND

By: [Signature]

Name: Madeline Nygaard

Title: Sports Director

THE STATE OF TEXAS

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this 12 day of February personally appeared Madeline Nygaard known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the YMCA of Midland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9 day of February, 2024.



[Signature]
Notary Public, State of Texas



City Council Meeting

Item Number: 12
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Midland Development Corporation
Subject: MOTION APPROVING A CONSULTANT SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND INTERFLIGHT GLOBAL CORPORATION FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK (DISTRICT 4) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on February 12, 2024 a resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$175,425.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park.

Recommended City Council Action:

Approve

Fiscal Impact:

\$175,425.00

Discussion:

In 2023, InterFlight Global supported familiarization tours with 20 different aerospace companies, and High-Speed Aerospace Transportation Workshop with over 75 aerospace industry participants. Contract for 2024 continues work of aerospace prospect development, hosting the 2024 High Speed Aerospace Transportation Workshop, and industry advocacy.

Pre t. Out

City Manager's Office

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 27th day of February, 2024, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A economic development 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 perform certain consulting services and complete certain deliverables in connection with procuring new tenants for City of Midland-owned properties located at Midland International Air & Space Port Business Park (collectively, the “*Services*”).

ARTICLE II. SERVICES TO BE PERFORMED

1. *COMPANY* shall perform/complete the *Services* that are more particularly set forth and described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
2. *COMPANY* shall perform the *Services* 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 the *Services* under this Agreement shall be fully qualified and competent to perform the *Services*.

ARTICLE III. FINANCIAL CONSIDERATIONS

1. *MDC* agrees to pay *COMPANY* the amount of \$175,425.00 for the *Services* according to the schedule set forth in **Exhibit A**. The *MDC* Executive Director, or her designee, must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which *COMPANY*’s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice; provided, however, that if *MDC* objects to any portion of an invoice, *MDC* shall notify *COMPANY* of *MDC*’s objection and the grounds thereof within fifteen (15) days of the date of receipt of the invoice, and the parties shall immediately make every effort to settle the disputed portion of the invoice. *MDC* in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

2. Expenses will be invoiced separately. Additional travel, lodging, and other direct or incidental expense guidelines include the following:

- a. Privately-owned vehicle mileage will be reimbursed at the current GSA mileage rate;
- b. When mileage is charged, a mileage usage log or approved alternate method must be maintained to support the charge. If mileage usage log is submitted, it must include at a minimum travel dates, times, locations and mileage traveled;
- c. Car rental reimbursement will be limited to cost of full-sized vehicle, or SUV if multiple passengers, and necessary fuel;
- d. Airfare reimbursement will be limited to cost of economy class fares;
- e. Lodging reimbursement will be limited to the cost of standard rooms, upgrade expenses for studios and suites are not an allowable reimbursement expense;
- g. Tips for service, i.e. meals, and parking greater than 20% are not an allowable reimbursement expense; and
- h. Profit mark-ups are not allowable expense on other direct or incidental expenses.

ARTICLE IV. TERM

The term of this Agreement shall be from **February 29, 2024, until February 28, 2025**, unless the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement

or any interest, right or privilege herein, without the prior written consent of MDC. The issue on whether or not to grant consent to an assignment is in the sole discretion of MDC.

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

All reports, information and other data (“*Instruments of Service*”), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform the Services 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 Services 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 SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

MDC's approval of this Agreement does not create a third-party beneficiary. There is no

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. INDEMNITY

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

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS,

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

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

**THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION
OF THIS AGREEMENT.**

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.

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 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:

Jill Pennington, Secretary

[Signature Page Follows]

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

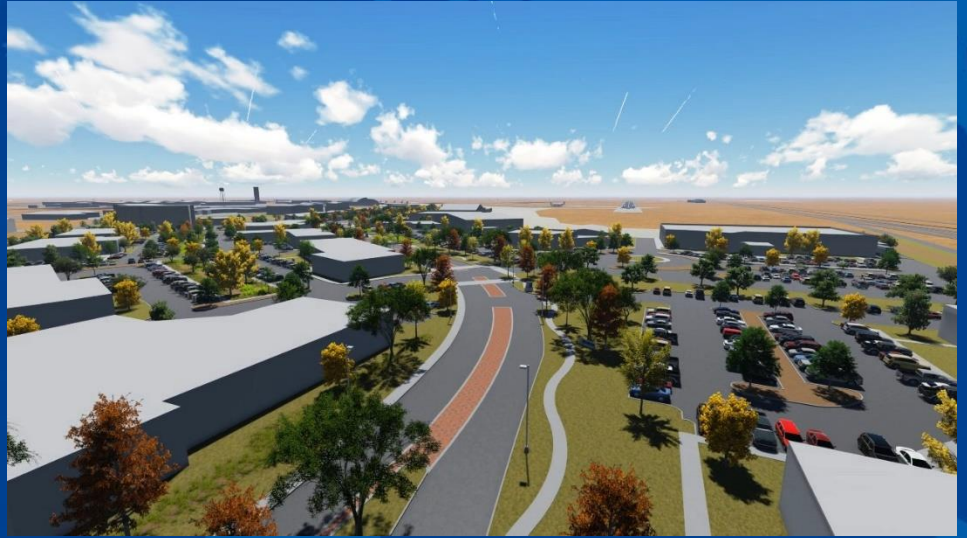
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COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, _____ of INTERFLIGHT GLOBAL CORPORATION, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2024.

Notary Public, State of _____



MIDLAND AIR & SPACEPORT BUSINESS PARK

ECONOMIC AND BUSINESS DEVELOPMENT

MASTER, BUSINESS AND STRATEGIC BUSINESS AND MARKETING PLANS

HIGH SPEED AEROSPACE TRANSPORTATION WORKSHOPS & FAM TRIPS

~ CONTRACT RENEWAL 2024 ~



Thursday, January 18th, 2024

Presented to: Mrs. Sara Harris, Executive Director, Midland Development Corporation



PACKET

InterFlight Global

Intelligent Aviation & Aerospace Solutions

12.18
Exhibit A

February 27, 2024

Logo Map of Onsite and IFG Generated Current and Near-Term (in blue) Tenants:

- AST SpaceMobile
- Astroport
- Firehawk
- Kepler Aerospace
- LeoLabs
- MITRE
- Nano Avionics
- New Frontier Aerospace
- Space Force Association
- Space Nation
- Starfighters Space
- Wex Foundation



Logo Map of FAM Trips and HSAT Visiting Workshop Companies:



Thursday, January 18th, 2024

Mrs. Sara Harris, Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, TX 79701

Dear Mrs. Sara Harris:

InterFlight Global Corporation (IFG) is pleased to present you with this contract renewal proposal for the year 2024. We are ready, willing, and able to continue augmenting the MDC's Aerospace and Defense economic industries development efforts including all actions and activities required to effectively identify, select, attract, retain, and grow the existing pool of high-quality aerospace and defense industries tenants as lessees, buyers, developers and investors of the available space(s), land and properties at the Midland Air and Spaceport and its environs. It is a pleasure, honor and privilege working for the MDC with your leadership, support, and guidance.

This renewal proposal will be complemented by IFG's year end 2023 and year ahead 2024 updates. The briefings highlight some of our most important accomplishments for 2023, and the strategic forecasts of the follow-on activities envisioned to succeed in the tasks proposed for the Midland Air and Spaceport Business Park and environs in 2024. This year, we will keep growing the tenants' base in the three industrial pillars: 1) satellites, 2) high-speed-flight and launch, 3) Aerospace and Defense deep technologies, and add a fourth (4th): the Space Resources and Energy industry vertical. The Resources and Energy (R&E) vertical will be included in the spaceport's cluster of companies guiding strategic plan. This R&E segment of the industry in our nation alone represents over \$60B a year in direct financial activity, with economic impacts many multiples of that amount. In 2023 we retained Astroport as the first tenant in this new segment. Added to the other pillars, the addressable industrial segments we are targeting are in excess of \$.5 trillion dollars of economic activity.

It is very positive news, that we already have at least one anchor tenant onsite Midland for each of the four industrial pillars:



SATELLITES & RELATED TECHNOLOGIES	HIGH-SPEED FLIGHT AND LAUNCH	AEROSPACE & DEFENSE TECHNOLOGIES	SPACE RESOURCES AND ENERGY
AST SPACEMOBILE 	FIREHAWK / NEW FRONTIER AEROSPACE  	LEOLABS / KEPLER AEROSPACE  	ASTROPORT 

Our highly specialized knowledge, experience, participation and leadership in the Aerospace and Defense industries and complexes, is the key to our successful promotion, marketing, and economic impact of incoming companies to the Midland Air and Spaceport.

Our day-to-day leadership, relationships and activities in the National and International Aerospace and Defense industrial ecosystems allow us to identify, interact with, attract, retain and grow quality companies. In addition, we thrive on assisting the MDC to design, negotiate and close deals with the top selected tenants to ensure that they come to and grow in Midland insourcing jobs, CAPEX and producing important direct, indirect, and induced economic impacts the short, mid and long term.

As we have done for the previous 5 years, we will continuously improve and enhance our very unique “consultative brokerage” methodology for economic and business development, which involves cost effective “inbound” prospects visits (Familiarization (FAM) Trips), strategic structuring of their relocation plans and all insights and arguments to induce leases.

The existing prospect tenant pipeline is robust and growing from month to month. Importantly, existing tenants, and potential new ones, are growing and bringing their relationships with them, e.g., strategic partners, vendors, suppliers and clients to the Familiarization trips, workshops, and meetings, as well as at trade shows and industry events.

For example, together with the MDC, we enabled Firehawk Aerospace to add a vertical launch site to their presence at the Midland Spaceport environs. Firehawk was being lured by several other spaceports to set up

their facilities, and we worked hard to win it and bring it to Midland. Firehawk has already lined up three other launch vehicles and high-speed weapons technologies operators to launch from the new facility.

In addition, the vertical launch site has re-ignited interest and is taking us closer to bringing in another licensed launch and hypersonic operator, with intent to set up manufacturing, R&D and assembly of hypersonic and suborbital rockets in Midland.

We are very optimistic about the growing relationship between the MDC and MITRE Corporation, CALSPAN and the NASA Johnson Space Center, Houston Ellington Spaceport, the Texas Space Commission, the Space Force Association and with Spaceport America, after their familiarization visits to Midland in 2023.

IFG applauds and welcomes the newly acquired parcel of circa 300 acres of land at the Spaceport, to accommodate prospect tenants and potential tenants involved in flight and ground activities such as engine testing, prototype development and flight testing.

In summary, the Spaceport forecast for the Business Park Phase III (2024-2025) is on track, and IFG is extremely confident and optimistic that the Spaceport Business Park will grow even more as an Aerospace and Defense industrial complex financial, economic and diversification asset to the City of Midland. The Space Resources and Energy (R&E) vertical aligns well and empowers Midland as the “Energy” capital of the Nation and indeed, the World.

At IFG, we have domestic and international reach, mainly in Europe, through our Luxembourg office, in both the public and private segments of both the air and space transportation and defense industries. Very importantly for this project, we understand the Midland Air and Spaceport competitive edge very well and are set to attract new companies, and together with the MDC, we can maximize Midland’s competitive edge aligning public and private funding, economic and business development.

An exciting and critical task for 2024 will be to translate and direct to the Midland mainstream public the informational, PR, marketing and communications efforts that IFG is affecting Nationwide at multiple levels. The Midland Air and Spaceport is now firmly on the radar at all levels from Mainstreet-Aerospace and Defense circles to US Government agencies, Congress and Federally funded Research Centers, Agencies, Standards Developers, and others.

We are fully involved in and engaged with these fast-evolving sectors and prepared to apply our expertise to your needs.

For the project deliverables, lines of action and work product, our Professional Fees are (Exhibit A):

1. STRATEGIC-BUSINESS PLAN REVIEWS AND UPDATES - \$22,425
2. FAMILIARIZATION (FAM) TRIPS (MINIMUM 3) - \$40,250
3. MDC REPRESENTATION YEAR-ROUND AT RELEVANT TRADE AND GOVERNMENT EVENTS - \$40,250
4. HIGH SPEED AEROSPACE TRANSPORTATION (HSAT) WORKSHOP - END OF YEAR - \$72,500
 - 7th Edition November 14th and 15th, 2024 -Already highly subscribed

\$175,425 total (contract length of 12 months: February 2024 through January 2025), excludes travel costs.

The project will be billed in four (4) bi-monthly stages of \$43,856 each.

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

Midland Spaceport, we are building success upon success!

Sincerely,



Oscar S. Garcia, Chairman & CEO
InterFlight Global Corporation

EXHIBIT A. FIXED FIRM PRICE OVERVIEW – ALL ELEMENTS

Project Task List and Price:

PROJECT NAME: MIDLAND AIR AND SPACEPORT BUSINESS DEVELOPMENT		2024
	PROJECT ACTIVITY	FIXED FIRM PRICE
Element 1	STRATEGIC-BUSINESS PLAN REVIEWS AND UPDATES	\$22,425
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)	\$40,250
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	\$40,250
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, Lobbying support)	
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		\$175,425

Project Leader

Oscar S. Garcia



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

in the areas of Private-Public Asset, Properties and Investments Economic Development, Strategic Planning, Finance, Marketing and Strategy. He has over twenty years of experience advising and consulting for Senior Management and Governance Boards of startup companies, joint ventures, public entities- governments and large aerospace conglomerates. His expertise includes, but it is not limited to the design, set up, growth and expansion of aerospace, aviation and space related properties, assets and companies.

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

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

Registrations:

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

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

Commercial Spaceflight Federation- Industry Standards Technical Committee Member

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

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

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

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

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

MBA, Embry-Riddle Aeronautical University, 2002

MBA, Embry-Riddle Aeronautical University, 2002

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

International Experience

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

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

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

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

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

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

2006-2015 Flight Research Associates-NASA AMES

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

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

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



InterFlight Global

Intelligent Aviation & Aerospace Solutions



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February 27, 2024

LONDON - MADRID - MIAMI [Head Office] - WASHINGTON D.C. - DUBAI



City Council Meeting

Item Number: 13
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Gabe McClelland, Director
Subject: MOTION APPROPRIATING AND TRANSFERRING THE SUM OF \$418,729.55 FROM THE TIRZ FUND TO THE DOWNTOWN REVITALIZATION PROJECT (DISTRICT 2) (ENGINEERING SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Consider a Motion appropriating and transferring the sum of \$418,729.55 from the TIRZ Fund to the Downtown Revitalization Project

Recommended City Council Action:

Approve

Fiscal Impact:

\$418,729.55 is available in the TIRZ Fund and will be transferred and appropriated to a Downtown Revitalization Project for said purpose.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The Engineering and CIP Departments are finalizing plans for a downtown decorative street lighting project. The three-phase project includes string lighting over sections of Wall Street and Colorado Street. The purpose of this project is to make downtown safer and more vibrant. The decorative string lighting will compliment recent projects downtown, including Centennial Park and Bush Convention Center. The estimated costs for the three-phase lighting project is \$666,320.00. City staff hopes to begin phase 1 of the lighting project soon.

City staff has also identified other projects that could be a part of the Downtown Revitalization

Project, including pavers, alley improvements, pedestrian enhancements, and the addition of trash receptacles.

Frederick D. Out

City Manager's Office



City Council Meeting

Item Number: 14
Meeting Date: February 27, 2024
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (24-329-002) WITH CROWNQUEST OPERATING, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

This motion will provide applicants with a 30' wide right of way to place a 25 Kv, above-ground electric power line, on the City of Midland-owned Plant Farm property. Applicants will need an additional 20' wide temporary workspace for construction.

This Right-of-Way License is proposed for a single ten-year term. Terms are consistent with the City's standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

The following fees will be collected:

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

Annual Lease Rate,

25 Kv electric powerline (\$74 per rod x 30.63 rods) paid 10 years in advance (\$1,133.31)

Surface Damages: included in the new annual rate

Total Collected: \$2,133.31

Strategic Priority:

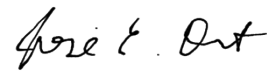
(Strong Economy with More Quality Jobs)

Discussion:

This powerline will attach to an existing Oncor powerline and travel 505.38 feet on two poles and replace a failed buried powerline to an existing Crownquest oilwell on Plant Farm property. This area is away from any Plant operations.

Certificates of Insurance are on file.

The City Secretary is to record all documents.



City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

Date: February 28, 2024

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

Licensor's Representative: Tommy Gonzalez, City Manager

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

Licensee: CrownQuest Operating, LLC

Licensee's Representative: Robert W. Floyd

Licensee's Mailing Address: P.O. Box 53310
Midland, Texas 79710

Property: As described in Article III below

License Number: 24-329-002

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

WITNESSETH:

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

I. Term

A. Term. This License shall be for a term of ten (10) years commencing on the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

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

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

II. Financial Consideration

A. License Fee. A license fee in the amount of ONE THOUSAND ONE HUNDRED THIRTY-THREE and 31/100 Dollars (\$1,133.31) ("License Fee") shall be due and payable on or prior to the Commencement Date.

In the event Licensor terminates this License pursuant to the provisions of Section I.B., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this paragraph shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Application Fee. On or prior to the Commencement Date of this License, Licensee shall pay a non-refundable one-time fee of One Thousand and No/100 Dollars (\$1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for this License.

C. Delivery of Payment. Payment of the above fees shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. Payment of the above fees shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

D. Late Payment. Licensee's failure to make payment of any of the above fees within thirty (30) days after such fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%) of such fee.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the locations with boring operations limited to areas as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a 25 Kv above ground electric power line and to have the right of ingress and egress at convenient points for such purpose and said construction width shall revert to thirty (30) feet after the line is completed (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the line described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the line described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair, at its own expense, any of Licensor's roads that Licensee, its employees, contractors, representatives, agents or assigns damage on Licensor's property, so that such roads will comply with Licensor's standard specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines, water meters and other utility lines owned by Licensor that Licensee, its employees, contractors, representatives, agents or assigns, damage so that such water lines, sewer lines, water meters and other utility lines shall comply with Licensor's standard specifications.

D. Pipeline Depth. Intentionally omitted.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, Licensee shall first obtain written approval of the specifications therefor from Licensor's Representative, which approval shall be at Licensor's Representative's sole discretion.

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S LINE OR OTHER PERMITTED FACILITIES ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor

requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

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

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

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, alter, replace or remove the line or any portion of the line or other permitted facilities built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her prior written approval, which approval shall be at Licensor's Representative's sole discretion. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor workday. If not on a workday, Licensee shall notify Licensor's Representative on the first workday after repairs have begun.

J. Gates and Fences. Without altering or expanding the limitations on ingress, egress and access to the Property set forth in Paragraph A. of Article III above, Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed". Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

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

provision shall survive the termination or expiration of this License.

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

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

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

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

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

Business Automobile Liability: \$1,000,000.00 combined single limit--
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$10,000,000.00 each occurrence
\$10,000,000.00 aggregate

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

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

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

All insurance required pursuant to this License, except for Worker's Compensation Insurance, shall name Licensor as an additional insured. All insurance required pursuant to this License, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to Licensor. The parties agree that, prior to the execution of this License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. Licensor shall determine, in its sole discretion, whether such requirements have been satisfied.

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

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

Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S REPRESENTATIVES, AGENTS, ATTORNEYS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) THIS LICENSE, LICENSEE'S USE OF OR ACTIVITIES ON THE PROPERTY OR ANY OTHER PROPERTY OWNED BY LICENSOR, OR ANY ACT OR OMISSION OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF ANY INDEMNITEE. LICENSEE SHALL PROMPTLY ADVISE LICENSOR OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THIS INDEMNIFICATION MAY APPLY, AND OF WHICH LICENSEE HAS RECEIVED NOTICE, AND LICENSEE, AT LICENSEE'S EXPENSE, SHALL ASSUME ON BEHALF OF LICENSOR (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL REASONABLY SATISFACTORY TO LICENSOR; PROVIDED, HOWEVER, THAT ANY INDEMNITEE SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY LICENSEE TO ASSUME THE DEFENSE OF LICENSOR IN ACCORDANCE WITH THIS INDEMNIFICATION, LICENSOR, AT ITS OPTION, AND WITHOUT RELIEVING LICENSEE OF ITS OBLIGATION HEREUNDER, MAY ASSUME SUCH DEFENSE, AFTER WRITTEN NOTICE THEREOF TO LICENSEE AND LICENSEE'S FAILURE TO RESPOND THERETO WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE (SAID TEN (10) DAY PERIOD SHALL NOT APPLY IN ANY CASE WHERE IMMEDIATE ANSWERS, RESPONSES, OR OTHER AFFIRMATIVE ACTION IS REQUIRED TO PRESERVE THE RIGHTS OF LICENSOR) BUT ALL REASONABLE COSTS AND EXPENSES SO INCURRED BY LICENSOR IN THAT EVENT SHALL BE REIMBURSED BY LICENSEE TO LICENSOR, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE WAS PAID BY LICENSOR UNTIL REIMBURSED BY LICENSEE, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAWS OF THE STATE OF TEXAS.

WITHOUT LIMITING THE FOREGOING, LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY, PROTECT, DEFEND AND SAVE LICENSOR HARMLESS FROM ANY AND ALL CLAIMS, LIENS, JUDGMENTS, SUITS, CAUSES OF ACTION, AND DEMANDS OF ANY SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, OR FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, OR SUPPLIES, IN CONNECTION WITH THE CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE LINE OR OTHER PERMITTED FACILITIES DESCRIBED HEREIN.

WITHOUT LIMITING ANY OF THE FOREGOING, LICENSEE SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS AND DEFEND EACH INDEMNITEE FROM ALL LIABILITIES, SUITS, ACTIONS, CLAIMS, DAMAGES, CAUSES OF ACTION, CHARGES, JUDGMENTS, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, 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 ANY INDEMNITEE, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', REPRESENTATIVES', AGENTS', CONTRACTORS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE, INCLUDING, WITHOUT LIMITATION, SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S LINE OR PERMITTED FACILITIES ON LICENSOR'S PROPERTY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY INDEMNITEE, INCLUDING RELATED ATTORNEY'S FEES.

WITHOUT LIMITING ANY OF THE FOREGOING, LICENSEE, ITS SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) (i) FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, THE

"INDEMNIFYING PARTIES"), TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY INDEMNIFYING PARTY'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR (ii) ANY INDEMNIFYING PARTY'S HANDLING, STORING, RELEASING OR TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE PROVISIONS OF THIS INDEMNIFICATION SHALL APPLY TO AND PROTECT EACH INDEMNITEE FROM THE CONSEQUENCES OF STRICT LIABILITY IMPOSED OR THREATENED TO BE IMPOSED ON SUCH INDEMNITEE, AS WELL AS FROM THE CONSEQUENCES OF THE NEGLIGENCE OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS ARTICLE IV.B.

THE TERMS, PROVISIONS, REQUIREMENTS AND OBLIGATIONS OF THIS ARTICLE IV.B. SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LICENSE, AND SHALL NOT BE LIMITED BY OR TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

C. Assignment. The provisions of this License shall inure to the benefit of and be binding upon Licensor and Licensee and their respective successors and permitted assigns. The rights and privileges granted by Licensor under this License inure to the benefit of Licensee. No rights, privileges or obligations hereunder shall be assignable by Licensee without the express prior written consent of Licensor. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager

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

Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way. The provisions of this subparagraph (D.) shall not be deemed or construed as contradicting, limiting or conflicting with the provisions of subparagraph (M.) below.

E. Attorney Fees. SHOULD LICENSOR BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS LICENSE, OR ANY OF ITS RIGHTS UNDER THIS LICENSE, LICENSOR SHALL BE ENTITLED TO REIMBURSEMENT FROM LICENSEE FOR LICENSOR'S ATTORNEYS' FEES. LICENSEE SHALL REIMBURSE LICENSOR FOR LICENSOR'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS LICENSE. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS LICENSE, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE. WITHOUT LIMITING THE FOREGOING, LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, OR TO THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

F. Governing Law & Venue. All performance and payments made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License, or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License

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

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

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

I. Third-Party Beneficiary. Except as provided in Article IV.B. above with respect to Indemnitees, (i) Licensor's granting of this License does not create any third-party beneficiary, (ii) there is no third-party beneficiary to this License, and (iii) no person or entity who is not a party to this License shall have any third-party beneficiary or other rights hereunder.

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

K. Notice of Alleged Breach; Statutory Prerequisite. Without limiting the provisions of Article IV.G. above, as a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager or other such official of Licensor within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, or maintain Licensor's facilities or structures described herein, rather, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose but does not require the use of the Property for a specific purpose. Licensee is not providing a service to Licensor. Licensee is paying Licensor for temporary rights in real property, not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the

Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

P. Waiver. No waiver of any of the provisions of this License shall be deemed or constitute a waiver of any other provisions of this License, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Likewise, the failure of Licensor to enforce any provision of this License shall not be deemed nor shall constitute a waiver of the right of Licensor to enforce such provision.

Q. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

R. No Release of Liability. Notwithstanding anything to the contrary contained in this License, the termination or expiration of this License shall not relieve Licensee of any liability, duty or obligation under this License, nor shall it preclude Licensor from asserting any right to specific performance, damages or any other rights or remedies to which Licensor may be entitled. Upon termination or expiration of this License for any reason, Licensee shall execute and deliver a recordable release of this License to Licensor in form and substance satisfactory to Licensor.

S. Entire Agreement. This License constitutes the entire agreement between Licensor and Licensee concerning the subject matter hereof, superseding all negotiations, prior discussions, prior licenses and prior agreements and understandings related to the subject matter hereof. This License may only be amended by written instrument executed by Licensor and Licensee.

[Signature Pages Follow]

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Carl Craig, Director of Utilities

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
CROWNQUEST OPERATING, LLC

By: [Signature]
Printed Name: Robert W. Floyd
Title: President

THE STATE OF TX
COUNTY OF Judland

§
§
§

BEFORE ME, the undersigned authority, on this 12th day of February, 2024, personally appeared Robert W. Floyd an officer of CrownQuest Operating, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12th day of February, 2024.

[Signature]
Notary Public, State of TX

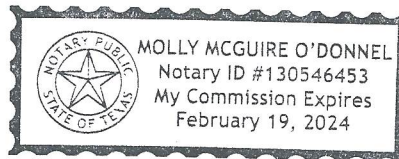


EXHIBIT A

Block 39, T-2-S, T. & P. RR. Co. Survey Midland County, Texas

(57275) 6 5 (S-20008)

N 75°40'13" E 5353.67'

4 (60936)

Fnd. RR. Spk. 1'
West of
C/L of pavement
& 6' South
of in line with
fence to East

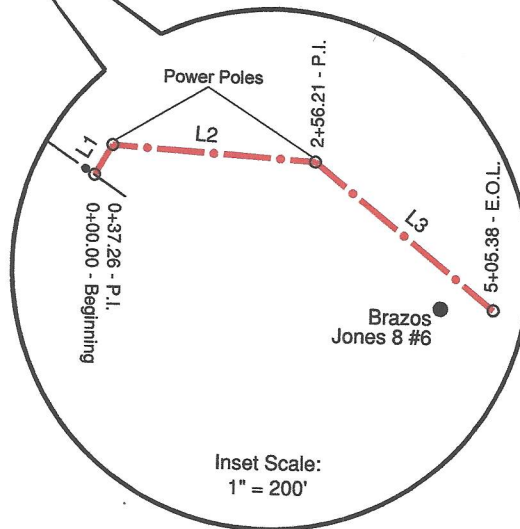
LINE	BEARING	DISTANCE
L1	N 16°14'39" E	37.26'
L2	N 79°34'00" E	218.95'
L3	S 65°33'47" E	249.16'

0+37.26 - P.I.
0+00.00 - Beginning
Brazos
Jones 8 #6
2+56.21 - P.I.
5+05.38 - E.O.L.

0+00.00 - Beginning
Lat: 31°58'48.225"
Long: - 102°01'04.041"
Lat: 31.980063
Long: - 102.017789

5+05.38 - E.O.L.
Lat: 31°58'48.020"
Long: - 102°00'58.782"
Lat: 31.980005
Long: - 102.016328

505.38 Ft. = 30.63 Rods
Surface Owner:
City Of Midland
Vol. 1508, Pg. 593



(S-20009) 7

S 75°52'28" W 5282.04'

(72871) 8 9 (S-20010)

(56652) 14 13 (S-20012)

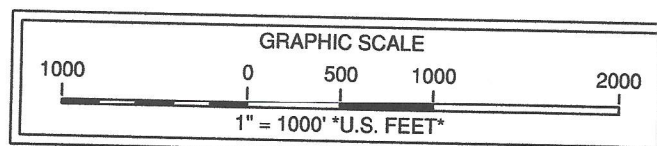
CENTERLINE DESCRIPTION
Of A Proposed 25kV Power Line
Right-of-Way In and Through
Section 8, Block 38, T-2-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at power line station 0+00.00 for the beginning of this proposed 25kV power line right-of-way from which a found railroad spike West of centerline of pavement and six feet South of and in line with fence to East for the Northeast corner of Section 8, Block 39, T-2-S bears N 54°16'09" E, 4014.34 feet.

Thence N 16°14'39" E, a distance of 37.26 feet to power line station 0+37.26 being a P.I.;

Thence N 79°34'00" E, a distance of 218.95 feet to power line station 2+56.21 being a P.I.;

Thence S 65°33'47" E, a distance of 249.16 feet to power line station 5+05.38 being the E.O.L. (End of Line) for this proposed power line right-of-way from which a found railroad spike West of centerline of pavement and six feet South of and in line with fence to East for the Northeast corner of Section 8, Block 39, T-2-S bears N 49°47'35" E, 3674.29 feet.



PACKET

14.18

February 27, 2024

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

Note: Latitudes and Longitudes shown are on NAD'83 Datum.

Note: Bearings and distances are based on The Texas Coordinate System of 1983, Central Zone.

Note: A combined grid factor of 0.999972 must be divided into all distances.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/01/2024

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

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

PRODUCER InSource Insurance Group, LLC 901 W. Wall St. Ste. 200 Midland TX 79701	CONTACT NAME: Kelly Elliott PHONE (A/C, No, Ext): (432) 362-8800 FAX (A/C, No): (432) 362-8855 E-MAIL ADDRESS: kelly.elliott@marshmma.com																					
INSURED CrownQuest Operating, LLC PO Box 53310 Midland TX 79710	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Allied World Assurance Co Inc</td><td></td></tr><tr><td>INSURER B:</td><td>Liberty Mutual Insurance Company</td><td>23043</td></tr><tr><td>INSURER C:</td><td>Axis Surplus Insurance Company</td><td>26620</td></tr><tr><td>INSURER D:</td><td>The First Liberty Insurance</td><td>33588</td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Allied World Assurance Co Inc		INSURER B:	Liberty Mutual Insurance Company	23043	INSURER C:	Axis Surplus Insurance Company	26620	INSURER D:	The First Liberty Insurance	33588	INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** CL23122830334**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ S&A Pollution GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			6004-1674	12/31/2023	12/31/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			AS5-641-445886-013	12/31/2023	12/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			P-001-001313407-01	12/31/2023	12/31/2024	EACH OCCURRENCE \$ 50,000,000 AGGREGATE \$ 50,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N	N / A	WC6-641-445886-023	12/31/2023	12/31/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

SUBJECT TO POLICY TERMS & CONDITIONS AND A WRITTEN CONTRACT:

GL, AUTO & UMBRELLA POLICIES INCLUDE A BLANKET ADDITIONAL INSURED. WC, GL, AUTO & UMBRELLA INCLUDE A BLANKET WAIVER OF SUBROGATION. WHEN REQUIRED BY WRITTEN CONTRACT PRIMARY - NON-CONTRIBUTORY COVERAGE APPLIES. POLICIES INCLUDE 30 DAY NOTICE OF CANCELLATION EXCEPT 10 DAYS FOR NON-PAYMENT OF PREMIUM.

CERTIFICATE HOLDER**CANCELLATION**

City of Midland PO Box 1152 Midland TX 79702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

PACKET

14.10

February 27, 2024

AGENCY CUSTOMER ID: 00002109

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY InSource Insurance Group, LLC		NAMED INSURED CrownQuest Operating, LLC
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance: Notes

Bond # RLB0014710
 Company - RLI Insurance
 Effective 7/30/23 - 7/30/24
 Principal: CrownQuest Operating, LLC
 Blanket Bond \$75,000 limit applicable for Permits to drill wells for oil or gas within the city limits.
 Covered wells:
 COM Nail #1
 COM Nail #2
 COM Nail #3
 City Nail #1

PACKET

14.20

February 27, 2024

Additional Named Insureds

Other Named Insureds

Enerquest Oil & Gas, Ltd.	Limited partnership, Additional Named Insured
EnerQuest Property Management, LLC	Limited Liability Company, Additional Named Insured
Hexagon Interim Partnership	Partnership, Additional Named Insured
Hexagon Partners, Ltd	Limited corporation, Additional Named Insured
Mallard Land Development, LLC	Limited Liability Company, Additional Named Insured
Mallard Land, LLC	Limited Liability Company, Additional Named Insured
Mallard Royalty Holdings, LP	Limited partnership, Additional Named Insured
Mallard Royalty Partners	Partnership, Additional Named Insured
MRH 2018, LP	Limited partnership, Additional Named Insured
Muscovy Land Partners, LLC	Limited Liability Company, Additional Named Insured
Pintail Land Development, LP	Limited partnership, Additional Named Insured
Teal Trading & Development, LP	Limited partnership, Additional Named Insured
Texas Land & Royalty, Ltd.	Limited corporation, Additional Named Insured



AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY InSource Insurance Group, LLC		NAMED INSURED CrownQuest Operating, LLC	
POLICY NUMBER			
CARRIER	NAIC CODE		
		EFFECTIVE DATE:	

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

*EXCESS TOWERS (Total \$50M EXCESS):

Axis Surplus Lines Insurance Co. (NAICS #26620)

POLICY #P-001-001313407-01 12/31/23 - 12/31/24
\$5M Lead Excess

Follow Form to WC, GL, CA

Additional Insured & Primary Non-Contributory Follow Form

Arch Specialty Insurance Co. (NAICS #21199)

Policy #UXP1054121-00 12/31/23 - 12/31/24

\$5M Excess of AXIS \$5M & Controlling Underlying
Follow Form

Hamilton Insurance Designated Activity Company (AMB #091318 AIIN #AA1780104)

Policy #ENGXSHI382437 12/31/23 - 12/31/24

\$7.5M p/o \$15M

Follow Form

Lexington Insurance Co. (NAICS #19437)

Policy #052114992 12/31/23 - 12/31/24

\$7.5M p/o \$15M

Follow Form

Underwriters at Lloyd's

Policy #B1284 10248BE23 12/31/23 - 12/31/24

\$25M excess \$25M

Follow Form

PACKET

14.22

February 27, 2024



City Council Meeting

Item Number: 15
Meeting Date: February 13, 2024
To: City Council / City Manager
From: Daniel Humbert, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, TSC DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH STATE HIGHWAY 349, APPROXIMATELY 380 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)

Purpose:

The applicant, Fierce Property Investments, LLC, is requesting a Zone Change from PD, Planned Development District for a Shopping Center to RR, Regional Retail District for future retail development.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Strong Economy With More Quality Jobs

Discussion:**Current Zoning:**

PD, Planned Development District for a Shopping Center. (Ordinance 10185)

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned Development District for an Industrial District and is the location of Houston Business Park, an office leasing business. This property abuts N. State Highway 349 to the east. The property to the south belongs to the same zoning ordinance (Ord. 10185) and is the location of an O'Reilly Auto Parts, Family Dollar, and Tractor Supply Co. The west adjacent lot is zoned RR, Regional Retail District and is a vacant lot.

Analysis:

The PD ordinance attached to the property has an underlying zoning of RR, Regional Retail District. The applicant wants to change the zoning for the future development of retail 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 comments.

Oil and Gas: (Approved)

No Oil and Gas issues.

Engineering: (Approved)

No objection. [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 2020 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 time of new code edition adoption 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:

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) which calls for restrictive land use, emphasizing single-family detached development. However, as mentioned, the property is adjacent to a vacant lot to the west zoned RR, Regional Retail District as well as adjacent property to the south per the same PD Ordinance (10185) zoned PD for a shopping center with an underlying zoning of RR, Regional Retail District. This is the same zoning as the proposed zoning for the property, proving consistency for regional retail uses within this immediate area. Therefore, this request is consistent with the development surrounding it.

The Planning & Zoning Commission recommended approval of this request on January 16, 2024.

Therefore, staff recommends approval of this zone change from PD, Planned Development District for a Shopping Center to RR, Regional Retail District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of RR, Regional Retail District.**

Letters of Objection:

As of February 5, 2024, staff has not received any letters of objection for this request.

Attachments:

Application
Metes & Bounds (Exhibit A)
Maps
Ordinance 10185

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, TSC DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH STATE HIGHWAY 349, APPROXIMATELY 380 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 1, Block 1, TSC Development, City and County of Midland, Texas (the “Property”) to RR, Regional Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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: 2-23-0357**Applicant** (if acting as Agent, see affidavit on page 2)

Printed Name: Chris Butler - Fierce Property Investments, LLC

Phone (432) 262-0999

Email
chris@cmbcllc.comAddress
4416 Briarwood AveCity
MidlandState
TXZip
79707**Property Owner**

Printed Name: see applicant

Phone (432) 262-0999

Email
432 262-0999

Address

City

State

Zip

Representative (if different from Applicant or Property Owner)

Firm: Maverick Engineering

Printed Name: Paladin Huckaba

Phone (432) 262-0999

Email
phuckaba@maverick-eng.comAddress
1909 W. Wall Street Ste KCity
MidlandState
TXZip
79701**Street Address:** 6409 N HWY 349**Legal Description**

Lot: 1 Block: 1 Subdivision: TSC Development

Current Zoning:

PD

Proposed Zone: RR

(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO GIVE THE PROPOSED 349 RETAIL PLAT A SINGLE ZONING DISTRICT DESIGNATION**Present Use of Property:** VACANT**Proposed Use of Property:** RETAIL & FAST FOOD**How would this zone change affect the public health, safety and welfare?** NO ADVERSE AFFECT**Describe how conditions affecting the property have changed since present zoning designation:** Original site plan for the PD is no longer valid**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

15.7

February 27, 2024

Signature (by property owner only – authorized agent must sign affidavit below)Applicant (signature): [Signature]

Date: 12/14/2023

Applicant (printed): Chris Butler Member

Property Owner (signature): see applicant

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.

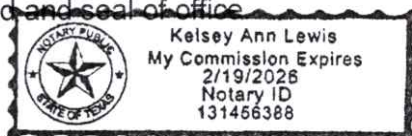
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Force Property Investments, 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.

[Signature]
Authorized Agent (signature)

Subscribed and sworn to before me, this 14th day of December, 2023, to certify which witness my hand and seal of office.



[Signature]

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☒ Property Owner Authorization☐ Dimensioned Site Plan☒ Application Fee☒ Plans in Digital Format (PDF/JPEG)Check # 4611Received By: [Signature]

Date:

DEC 20 2023



FIELD NOTE DESCRIPTION OF A 2.768 ACRE TRACT OF LAND BEING ALL OF LOT 1, BLOCK 1, TSC DEVELOPMENT, A SUBDIVISION OF MIDLAND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF FILED IN CABINET M, ON PAGE 130, PLAT RECORDS OF MIDLAND COUNTY, TEXAS (PR), SAME BEING SITUATED WITHIN AND BEING OUT OF SECTION 11, BLOCK "X", H.P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED FOR REFERENCE PURPOSES ONLY AS FOLLOWS;

BEGINNING AT N.(Y):10721614.33, E.(X):1752862.34, A PK NAIL FOUND IN THE WEST RIGHT OF WAY LINE OF STATE HIGHWAY 349, BEING THE SOUTHEAST CORNER OF LOT 3, HOUSTON INDUSTRIAL PARK ACCORDING TO THE MAP OF PLAT THEREOF FILED IN CABINET I, PAGE 33 OF SAID "PR", AND FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°36'04"E.. ALONG SAID WEST RIGHT OF WAY LINE, 276.95 FEET TO A ONE HALF INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF LOT 2, BLOCK 1 OF SAID TSC DEVELOPMENT AND FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°33'02"W., ALONG THE NORTH LINE OF SAID LOT 2, 436.46 FEET TO A ONE HALF INCH IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET FOR THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, MIDLAND COUNTRY CLUB ESTATES, ACCORDING TO THE MAP OF PLAT THEREOF FILED IN CABINET D, PAGE 374 OF SAID "PR", AND FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°22'40"W., ALONG THE EAST LINE OF SAID LOT 1, BLOCK 1, MIDLAND COUNTRY CLUB ESTATES, 276.31 FEET TO A PK NAIL FOUND AND ACCEPTED FOR THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 1, MIDLAND COUNTRY CLUB ESTATES, AND FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°27'58"E, ALONG THE SOUTH LINE OF SAID LOT 3, HOUSTON INDUSTRIAL PARK, 435.38 FEET TO THE **POINT OF BEGINNING**, CONTAINING 2.768 ACRES, OR 120,586.31 SQUARE FEET OF LAND.

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.

December 13, 2023

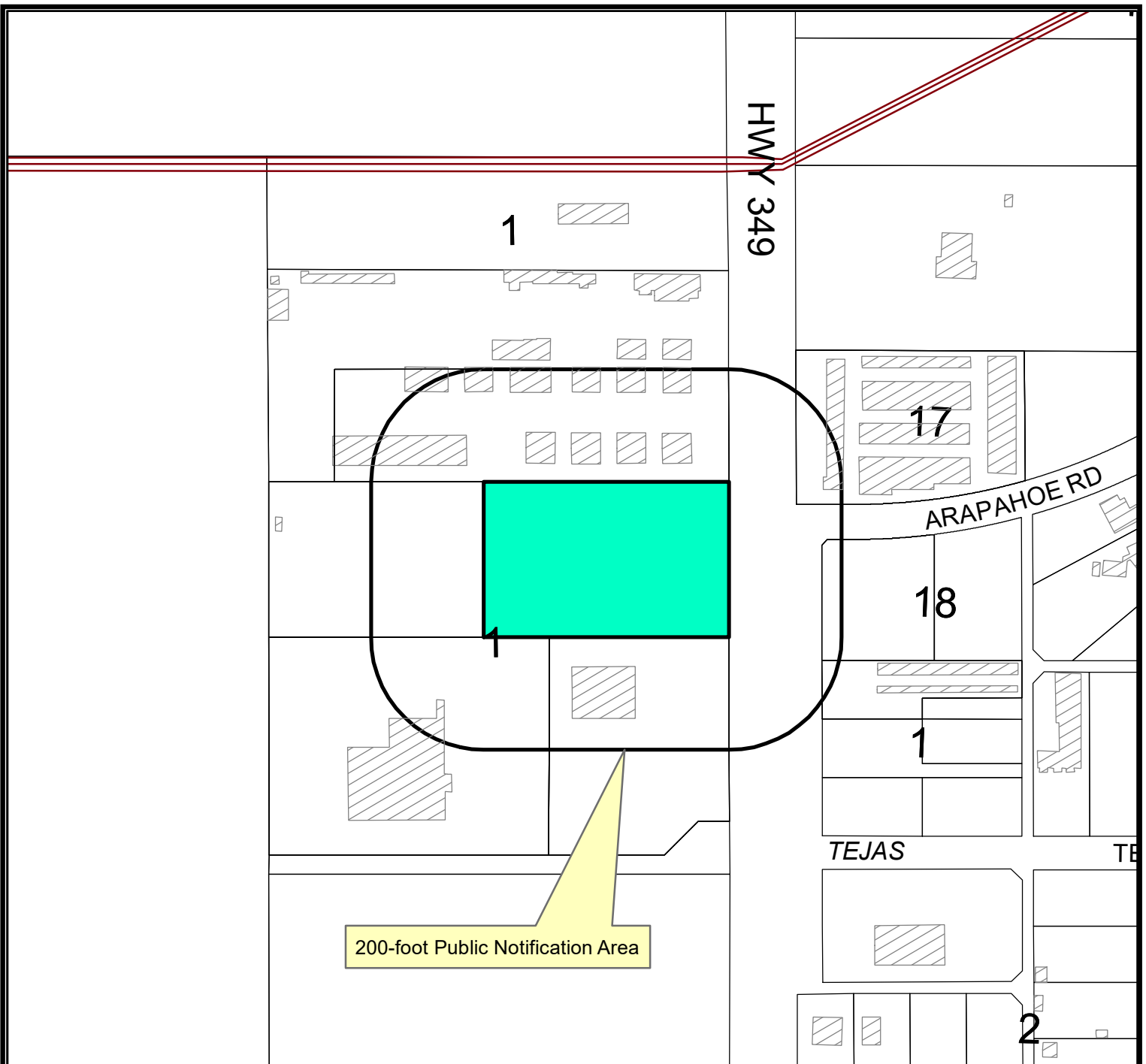
Paladin R. Huckaba

www.maverick-eng.com

Texas RPLS - No. 7027

Maverick Engineering (FIRM – No. 10194514)





LOCATION MAP

Z-23-0357

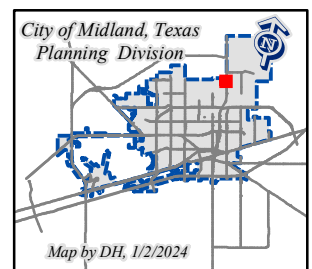
Scale: 1" = 256'

A request by Fierce Property Investments, LLC for a Zone Change from From: PD, Planned Development District for a Shopping Center (Ordinance No. 10185) to RR, Regional Retail District, located on Lot 1, Block 1, TSC Development, City and County of Midland, Texas.

Generally located on the west side of N. State Highway 349 approximately 380 feet north of Tejas. 15.10
(Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

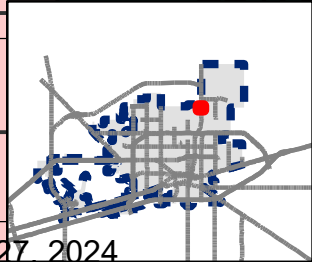


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING DRAWING. IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 27, 2024











ORDINANCE NO. 10185

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.92-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND 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 a 9.92-acre tract of land out of Section 11, Block X, H.P. Hilliard 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 PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from AE, Agricultural Estate District to PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the

RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit “B” and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

- A. That the Property shall significantly conform to the site plan attached hereto as Exhibit “B”.
- B. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.
- C. That the minimum number of required parking spaces shall be as shown in Exhibit “B”.
- D. That the fencing shall significantly conform to Exhibit “B”.
- E. That all signage shall conform to the regulations set forth in Title XI, Chapter 7a of the City Code.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code

of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 11th day of May, A.D., 2021; and passed to second reading on motion of Council member Ladd, seconded by Council member Blong, by the following vote:

Council members voting "AYE": Blong, Trost, Robnett, Payton, Dufford, Ladd Norman

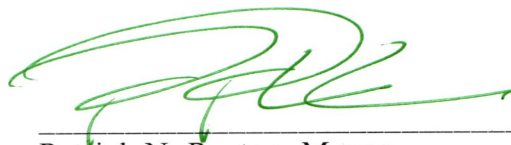
Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Ladd, seconded by Council member Blong, on the 25th day of May, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE": Blong, Trost, Robnett, Payton, Dufford, Ladd Norman

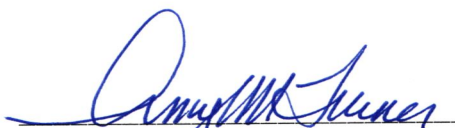
Council members voting "NAY": None

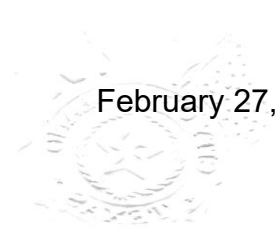
PASSED AND APPROVED THIS 25th day of May, A.D., 2021.



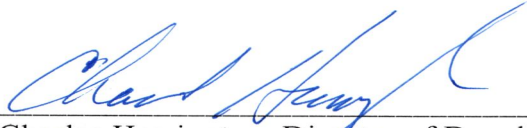
Patrick N. Payton, Mayor

ATTEST:


Amy M. Turner, City Secretary

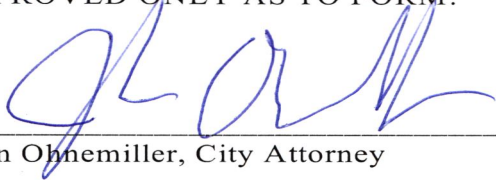


APPROVED AS TO CONTENT
AND COMPLETENESS:

A handwritten signature in blue ink, appearing to read "Charles Harrington", written over a horizontal line.

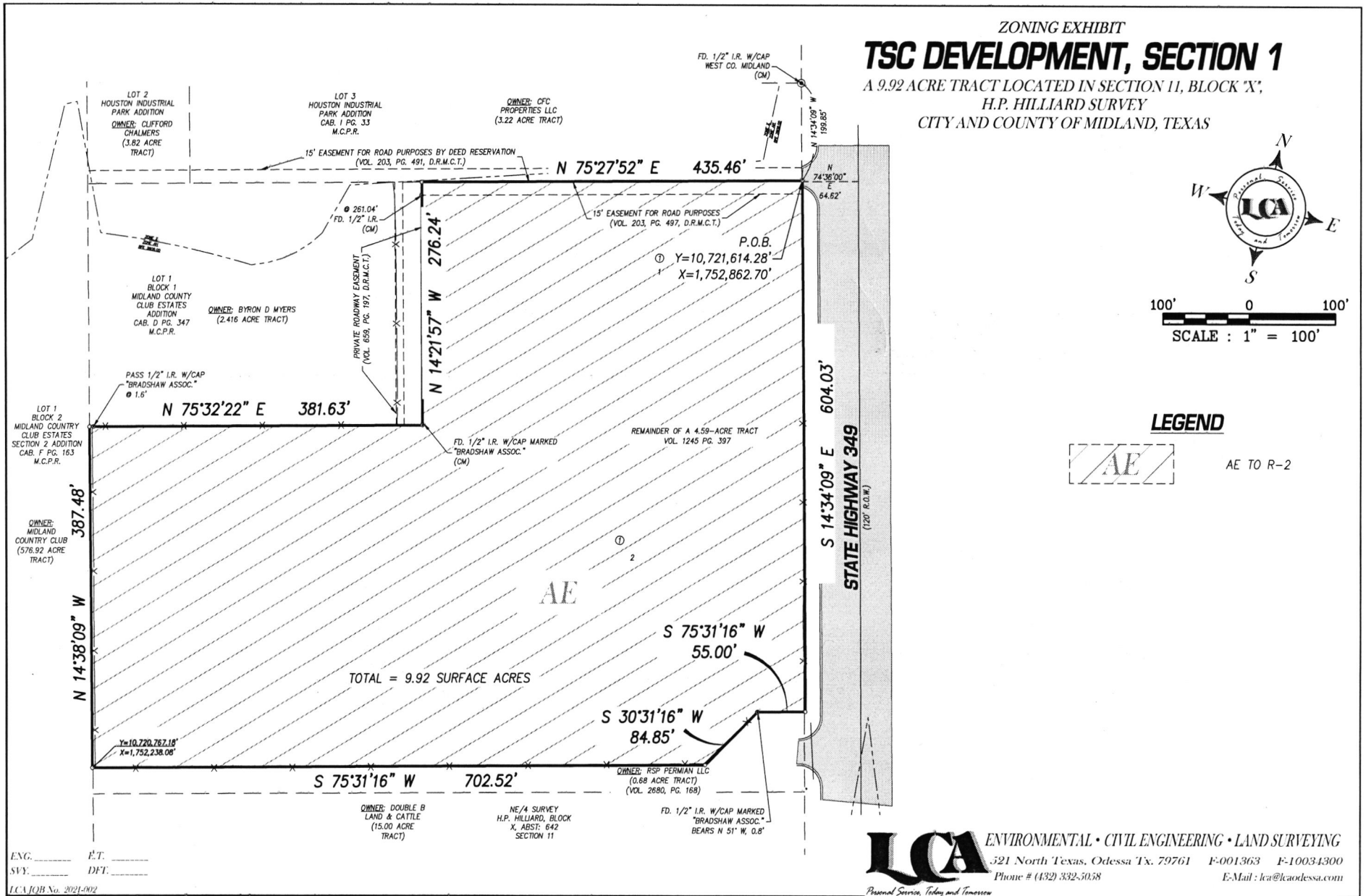
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

A handwritten signature in blue ink, appearing to read "John Ohnemiller", written over a horizontal line.

John Ohnemiller, City Attorney

Exhibit A



102,188 SQ. FT.
2.76 ACRES
FUTURE DEVELOPMENT

63,413 SQ. FT.
1.46 ACRES
FUTURE DEVELOPMENT

55,168 SQ. FT.
1.27 ACRES
FUTURE DEVELOPMENT

192,125 SQ. FT.
4.41 ACRES

PYLON SIGN
LOCATION (N)

SHARED ACCESS EASEMENT

NORTH STATE HWY 349

COROLLA CAPITAL
PARTNERS, LLC
2208 FOWLER AVE.
JONESBORO, AR 72401

Tractor Supply Company
Midland, Texas

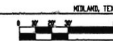
REVISIONS

PROJECT DATA

DATE	03.23.2021
JOB NUMBER	20036
SHEET TITLE	SITE PLAN
SHEET NUMBER	

SITE

SITE PLAN
SCALE: 1" = 30'



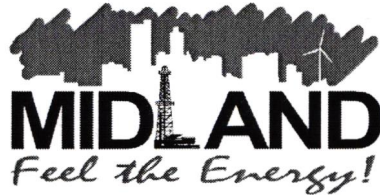
FYRON SIGN

FENCED OUTDOOR
DISPLAY AREA

PERMANENT TRAILER AND EQUIPMENT
DISPLAY AREA

PERMANENT SIDEWALK DISPLAY AREA
W/ 5' CLEAR WALKWAY

DEMISED PREMISES



City Council Meeting

Item Number: 15
Meeting Date: May 25, 2021
To: City Council / City Manager
From: Valerie A. Sherman, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.92-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Landgraf, Crutcher & Associates, is requesting this zone change from AE, Agricultural Estates District to PD, Planned Development District for a shopping center to develop a shopping center.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for an Industrial District and the location

of a business park. The properties to the east across N. State Highway 349, are zoned PD, Planned District for an Industrial District and the location of a storage facility, and RR, Regional Retail District, and the location of vacant lots. The property to the south is zoned PD, Planned District for a Housing Development and the location of a residence. The properties to the west are zoned AE, Agricultural Estate District and the location of a residence, and PD, Planned Development District for a Recreation Center and the location of a golf course.

Analysis:

The applicant is requesting this zone change from AE, Agricultural Estates District to PD, Planned Development District for a Shopping Center with an underlying zoning district of RR, Regional Retail District, to develop a shopping center.

Per the Zoning Ordinance, a Shopping Center is permitted in the RR, Regional Retail District.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

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 entirely within Zone AH, which is a Special Flood Hazard Area subject to inundation by the 1% annual chance flood. Compensatory excavation will be required within floodplain for any fill being placed within the floodplain.

An elevation certificate based off of construction drawings will be required to get a building permit to show compliance to the 1 foot of freeboard above the base flood elevation for residential structures. An elevation certificate based off of finish construction will be required for the Certificate of Occupancy.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Transportation: (Approved)

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban Residential; which calls for single-family detached development, and civic uses are generally allowed with special permission for higher intensity uses; therefore, this zone change complies with the Future Land Use plan.

This request has been recommended for approval by a unanimous vote at the April 19, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from AE, Agricultural Estate District to amended PD, Planned Development District for a Shopping Center, subject to conditions A through F.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District, except as stated below.**
- B. That this property shall conform to the site plan, which is attached hereto and incorporated herein as Exhibit "B".**
- C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**
- D. That the minimum number of required parking spaces shall be shown on Exhibit "B".**
- E. That the fencing shall significantly conform to Exhibit "B".**

F. That the signage for this property shall conform to the regulations set forth in Title XI, Chapter 7a. of the City Code.

Letters of Objection:

Staff has not received any objections as of April 28, 2021.

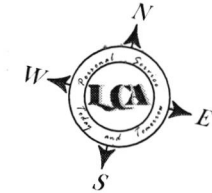
Attachments:

- Metes and Bounds (Exhibit A)
- Site Plan (Exhibit B)
- Application
- Maps

City Manager's Office

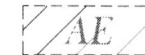
Exhibit A

ZONING EXHIBIT TSC DEVELOPMENT, SECTION 1 A 9.92 ACRE TRACT LOCATED IN SECTION 11, BLOCK "X", H.P. HILLIARD SURVEY CITY AND COUNTY OF MIDLAND, TEXAS

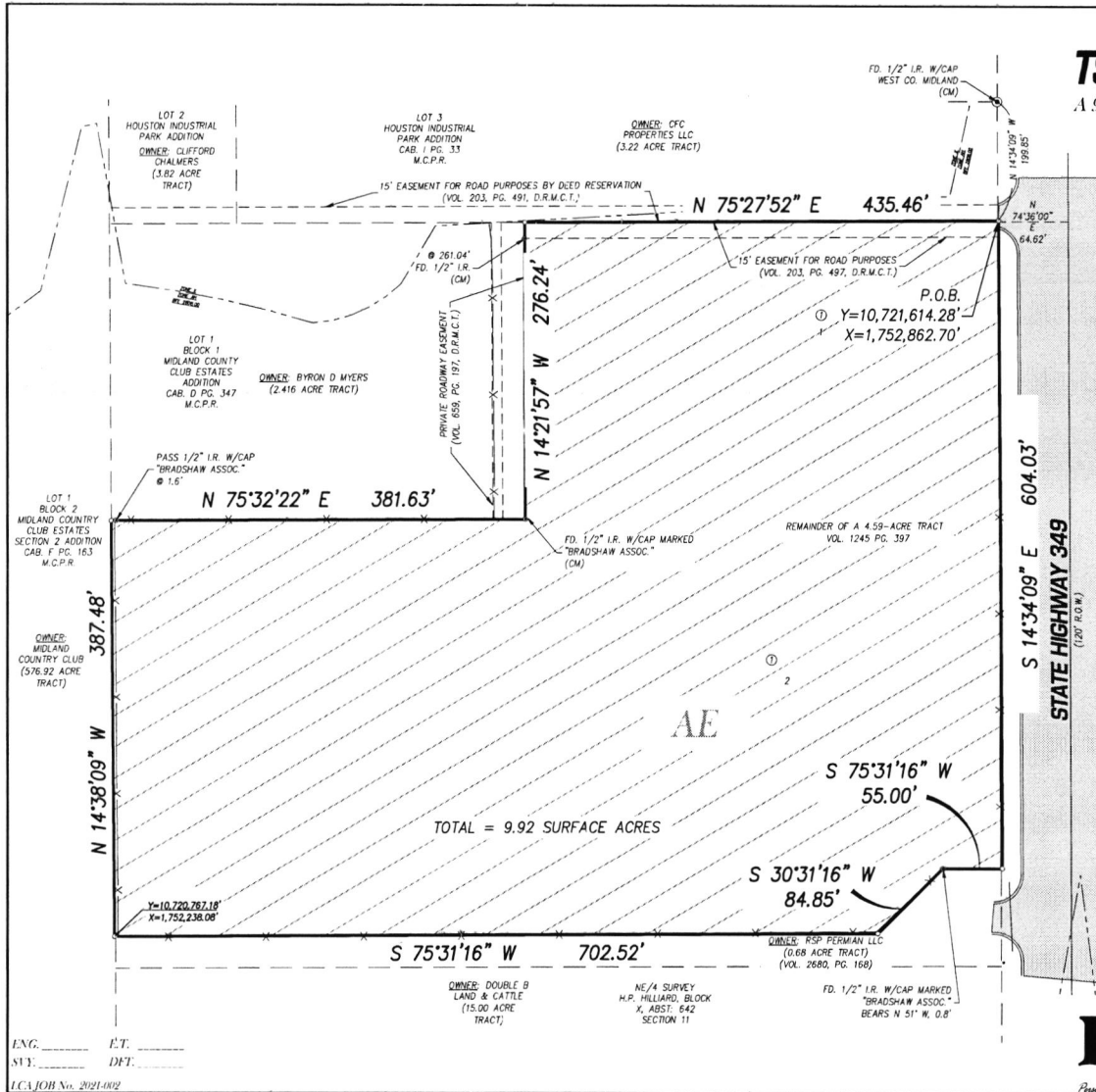


100' 0 100'
SCALE : 1" = 100'

LEGEND



AE TO R-2



LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10031300
Phone # (432) 332-3038 E-Mail : lca@lcaodessa.com
Personal Service, Today and Tomorrow

PACKET
15.9
May 25, 2021

PACKET

15.27

February 27, 2024

102,188 SQ. FT.
2.76 ACRES
FUTURE DEVELOPMENT

PYLON SIGN
LOCATION (N)

SHARED ACCESS EASEMENT

63,413 SQ. FT.
1.46 ACRES
FUTURE DEVELOPMENT

55,168 SQ. FT.
1.27 ACRES
FUTURE DEVELOPMENT

192,125 SQ. FT.
4.41 ACRES

FENCED OUT
DISPLAY AREA
20,100 S.F.

PERMANENT SIDEWALK DISPLAY AREA
5'-0" CLEAR ACCESS ALL TIMES
4,080 SQ. FT.

PERMANENT TRAILER
EQUIP. DISPLAY AREA
3,000 S.F.

SHARED ACCESS EASEMENT

NORTH STATE HWY 349



SITE PLAN
SCALE: 1" = 30'

MIDLAND, TX

PYLON 5304

FENCED OUTDOOR
DISPLAY AREA

PERMANENT TRAILER AND EQUIPMENT
DISPLAY AREA

PERMANENT SIDEWALK DISPLAY AREA
W/ 5' CLEAR WALKWAY

DEMISED PREMISES

DRROLLA CAPITAL
PARTNERS, LLC
108 FOWLER AVE.
FRESBORO, AR 72401

Tractor Supply Company
Midland, Texas

REVISIONS

PROJECT DATA

DATE:	03.23.2021
JOB NUMBER:	20036
SHEET TITLE:	SITE PLAN
SHEET NUMBER:	

SITE

PACKET
15 10
May 15, 2024


**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: 2-21-0232**Applicant** (if acting as Agent, see affidavit on page 2)

Printed Name: _____

Phone ()

Email _____

Address _____

City _____

State _____

Zip _____

Property OwnerPrinted Name: **Christopher Lewis Gurgevich**

Phone (N/A)

Email N/A

Address: **6401 N. Hwy 349**City: **Midland**State: **TX**Zip: **79705****Representative** (if different from Applicant or Property Owner)Firm: Landgraf, Crutcher & AssociatesPrinted Name: **LCA**Phone (**432**) **332-5058**

Email _____

lca@lcaodessa.comAddress **521 N. Texas Avenue**City **Odessa**State **TX**Zip **79761****Street Address: 6401 N. Hwy 349****Legal Description**Lot: **Prop. 1** Block: **Prop. 1** Subdivision: **Proposed TSC DEVELOPMENT, SECTION 1****Current Zoning: Agricultural Estates District
(AE)****Proposed Zone: Planned Development (PD)**
(List by tracts if more than one district is requested)**Reason for Zone Change Request: To comply with a shopping center zoning requirements****Present Use of Property: residential and partially vacant****Proposed Use of Property: Shopping center****How would this zone change affect the public health, safety and welfare?**Traffic may increase in this area**Describe how conditions affecting the property have changed since present zoning designation. Not known****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

15.11

May 25, 2021

PACKET

15.29

February 27, 2024

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature):

Date:

Applicant (printed):

Property Owner (signature):

Date:

Property Owner (printed):

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared George E. Thornley who, being by me duly sworn, upon oath says: That (s)he is authorized by Texas NH Management 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.

George E. Thornley
Authorized Agent (signature)

Subscribed and sworn to before me, this 24 day of March, 2021, to certify which witness my hand and seal of office.



Melanie Martinez
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

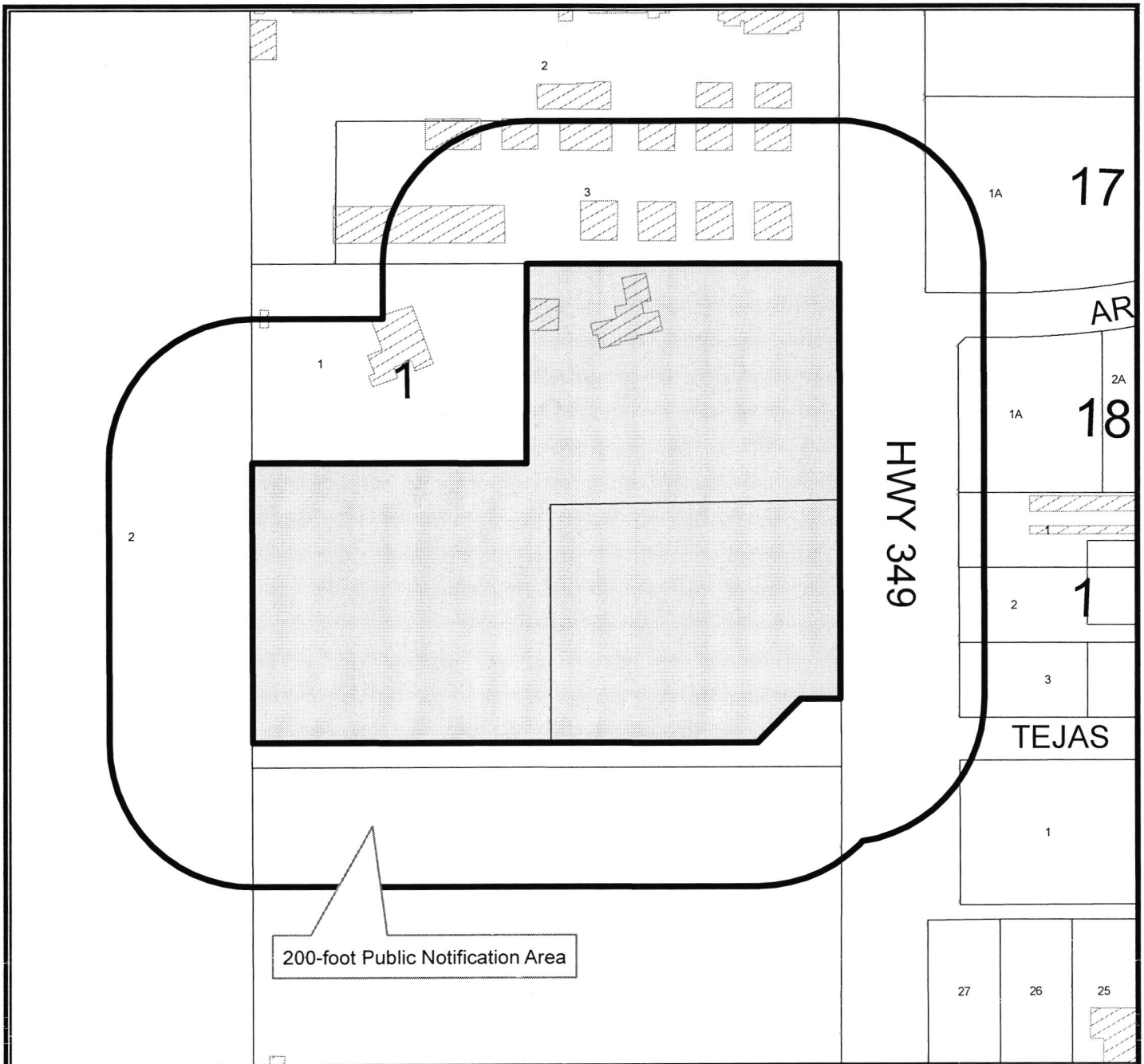
☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 38967

Received By: KM

Date: 3/24/21



LOCATION MAP

Z-21-0232

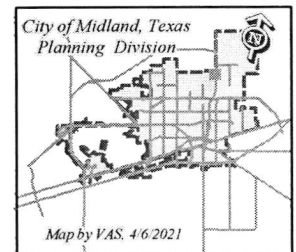
Scale: 1" = 200'

Consider a request by Landgraf, Crutcher & Associates, for a zone change from AE, Agricultural Estates District, to PD, Planned Development District for a Shopping Center, on a 9.92-acres tract of land out of Section 11, Block X, H.P. Hilliard Survey, City and County of Midland, Texas.

Generally located on the northwest corner of the intersection of N. State Highway 349 and Tejas. (Council District 1)

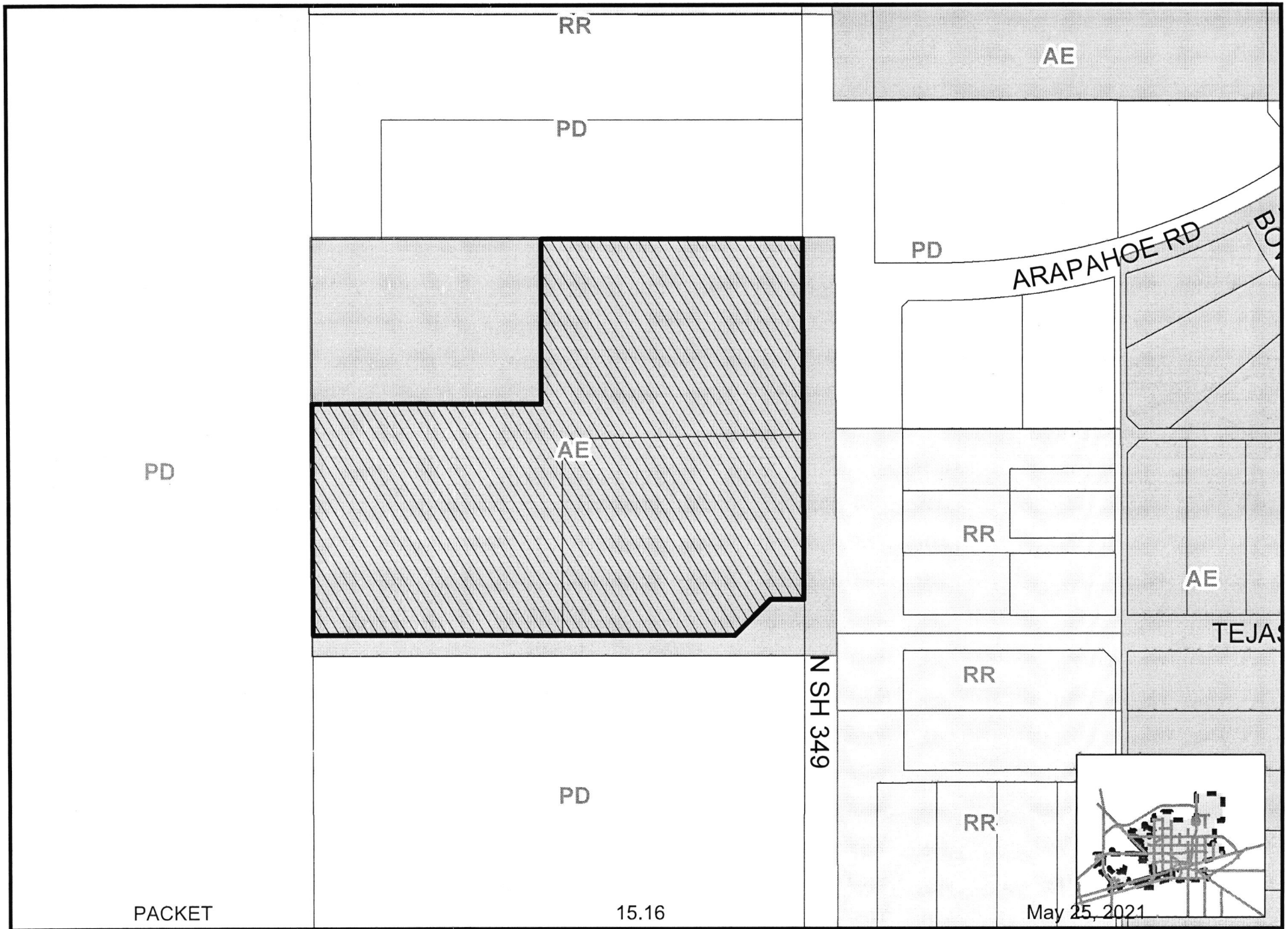
LEGEND

- CITY LIMITS
- PARCEL
- ▨ PRIVATE BLDGS



May 25, 2021

February 27, 2024





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PACKET

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15.33

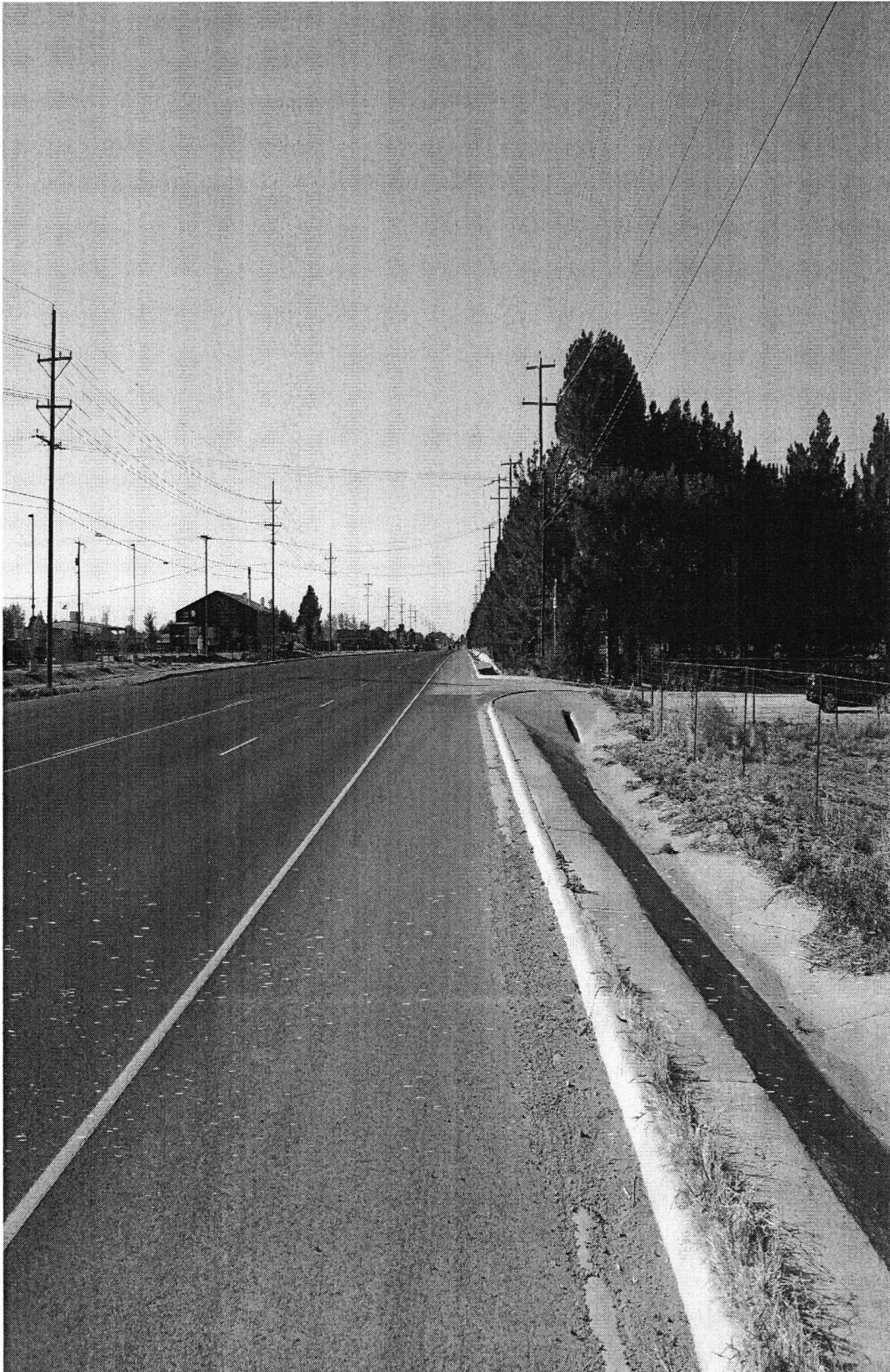
May 25, 2021
February 27, 2024



PACKET
PACKET

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May 25, 2021
February 27, 2024



PACKET
PACKET

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May 25, 2021
February 27, 2024



PACKET
PACKET

15.20
15.36

May 25, 2021
February 27, 2024



PACKET
PACKET

15.21
15.37

May 25, 2021
February 27, 2024

10185



City Council Meeting

Item Number: 16
Meeting Date: February 13, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 5.53-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED APPROXIMATELY 300 FEET NORTHEAST OF HOMELAND DRIVE, AND APPROXIMATELY 520 FEET SOUTH OF WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Robert Graham, is requesting a Zone Change from AE, Agricultural Estate District, to SF-1, Single Family Dwelling District, for a 5.53-acre tract of land, located out of Section 36, Block 40, T-1-S, T&P RR. Co. Survey, City and County of Midland, Texas for future residential development.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

AE, Agricultural Estate District.

Surrounding Zoning and Land Use:

The surrounding zoning includes SF-1, Single Family Dwelling District, to the west, which is currently being developed into a subdivision. To the east is vacant land currently, but the former home to a golf course, and is zoned AE. There is one part of the area to the north that is zoned as CE and is currently vacant.

Analysis:

The subject property is zoned AE, Agricultural Estate District. Robert Graham is seeking this zone change in order to continue subdivision development. This area already has a large SF-1 zoning area. Changing this zoning would help the development of more homes in the area and will conform to existing zoning in the 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.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zoning/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 Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3; The Tall City Tomorrow Plan designated this area as UR-L, Urban residential Low. This designation calls for any single-family zoning district.

Therefore, staff recommends approval of this zone change from AE, Agricultural Estate District, to SF-1, Single Family Dwelling District.

Condition:

- A. That the use and development of this property shall conform to the regulations of the SF-1, Single-Family Dwelling District.**

Letters of Objection:

As of February 5, 2024, staff has received no letters of objection for this request.

Attachments:

Metes and Bounds (Exhibit A)
Application
Maps

Frederick D. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT
MAP OF THE CITY OF MIDLAND TO REZONE A
5.53-ACRE TRACT OF LAND OUT OF SECTION 36,
BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND
COUNTY OF MIDLAND, TEXAS, FROM AE,

WHEREAS, the City Planning and Zoning Commission and the Governing Body
of

SINGLE-FAMILY DWELLING DISTRICT

the City of Midland, in compliance with the City Charter, the City Code, and State law,
have

NORTHEAST OF HOMELAND DRIVE, AND

given the request of the property owner, and after a full
a full

AVENUE); CONTAINING A CUMULATIVE CLAUSE;

and fair hearing to all of the property owners generally and particularly to those
interested

CLAUSE; PROVIDING FOR A MAXIMUM PENALTY

persons situated in the affected area and in the vicinity thereof, the Governing Body
finds

AND ORDERING PUBLICATION

that the public health, safety and general welfare will be best served by rezoning a
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
5.53-acre
CITY OF MIDLAND, TEXAS:

tract of land out of Section 36, Block 40, T-1-S, T&P RR Co. Survey, City and County
of

hereby amended to rezone the Property from AE, Agricultural Estate District, to
Midland, Texas, and the definition is specifically detailed by regulations contained
Exhibit in

Single-Family Dwelling District.

the City Code of the City of Midland, Texas, shall be applicable to such Property.

SE-1 PACKET

16.4

February 27, 2024

Single-Family Dwelling District, as set out hereinafter;

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

this

that covered herein; provided, however, that all prior ordinances or parts of ordinances, for any reason, held to be unconstitutional or invalid, such holding shall not

inconsistent with or in conflict with any of the provisions of this ordinance are hereby affect the validity of the remaining portions of this ordinance. The Council of the City of

expressly repealed to the extent of any such inconsistency or conflict.

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 above and foregoing ordinance was duly proposed, read in full and adopted on

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, on motion of Council member _____, seconded by Council member _____, adopted on the _____ day of _____, A.D., 2024, and passed to second reading,

Council members voting "AYE":

Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00). on motion of Council member _____, seconded by Council member _____, adopted on the _____ day of _____, A.D., 2024, and passed to second reading,

Council members voting "NAY":

SECTION SIX. The City Secretary is hereby authorized and directed to publish

the _____ by the following vote:

_____ 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 _____, adopted on the _____ day of _____, A.D., 2024, and passed to second reading,

Council member _____, adopted on the _____ day of _____, A.D., 2024, and passed to second reading,

16.5

February 27, 2024

member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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"

PENNEL LAND SURVEYING, LLC

SURVEYING FIRM #10193978
2030 W. CUTHBERT, MIDLAND, TEXAS 79701

GRASSLAND ESTATES WEST, SECTION 12, TRACT 'Z' METES AND BOUNDS DESCRIPTION:

BEING a 5.53 acre tract of land situated in Section 36, Block 40, T-1-S, T. & P. RR. Co. Survey, City and County of Midland, Texas and being a portion of tract conveyed to SBC Corporation, according to Volume 1464, Page 174, Official Public Records of Midland County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at (N: 10,698,867.25, E: 1,725,958.27) a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND" for the most Northeasterly corner of this tract;

THENCE S 14°32'51" E, a distance of 480.82 feet to a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND", the beginning of a curve to the right;

THENCE with said curve, which has a radius of 1037.84 feet, an interior angle of 41°11'02", and a length of 745.99 feet (Chord: S 06°04'18" W, 730.04 feet) to a point on the calculated West line of said Section 36, common to the East line of said Section 35, Block 40, T-1-S, T. & P. RR. Co. Survey, to a point for the most Southerly corner of this tract;

THENCE N 14°18'27" W, with the said West line of said Section 36, common to the East line of said Section 35, a distance of 1163.58 feet to the calculated Northwest corner of said Section 36, the same being the calculated Northeast corner of said Section 35, for the most Northwesterly corner of this tract;

THENCE N 75°19'38" E, with the North line of said Section 36, a distance of 171.28 feet to a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND";

THENCE N 75°27'09" E, with the North line of said Section 36, at a distance of 0.96 feet pass an iron pipe found for the Southeast corner of Section 26, common to the Southwest corner of Section 25, both in Block 40, T-1-S, T. & P. RR. Co. Survey, continuing on for a total distance of 80.94 feet to the point of beginning and containing 5.53 acres of land.



PENNEL LAND SURVEYING, LLC

SURVEYING FIRM #10193978
2030 W. CUTHBERT, MIDLAND, TEXAS 79701

GRASSLAND ESTATES WEST, SECTION 12, TRACT 'Z' METES AND BOUNDS DESCRIPTION:

BEING a 5.53 acre tract of land situated in Section 36, Block 40, T-1-S, T. & P. RR. Co. Survey, City and County of Midland, Texas and being a portion of tract conveyed to SBC Corporation, according to Volume 1464, Page 174, Official Public Records of Midland County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at (N: 10,698,867.25, E: 1,725,958.27) a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND" for the most Northeasterly corner of this tract;

THENCE S 14°32'51" E, a distance of 480.82 feet to a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND", the beginning of a curve to the right;

THENCE with said curve, which has a radius of 1037.84 feet, an interior angle of 41°11'02", and a length of 745.99 feet (Chord: S 06°04'18" W, 730.04 feet) to a point on the calculated West line of said Section 36, common to the East line of said Section 35, Block 40, T-1-S, T. & P. RR. Co. Survey, to a point for the most Southerly corner of this tract;

THENCE N 14°18'27" W, with the said West line of said Section 36, common to the East line of said Section 35, a distance of 1163.58 feet to the calculated Northwest corner of said Section 36, the same being the calculated Northeast corner of said Section 35, for the most Northwesterly corner of this tract;

THENCE N 75°19'38" E, with the North line of said Section 36, a distance of 171.28 feet to a 1/2 inch iron rod with red plastic cap marked "WEST CO. MIDLAND";

THENCE N 75°27'09" E, with the North line of said Section 36, at a distance of 0.96 feet pass an iron pipe found for the Southeast corner of Section 26, common to the Southwest corner of Section 25, both in Block 40, T-1-S, T. & P. RR. Co. Survey, continuing on for a total distance of 80.94 feet to the point of beginning and containing 5.53 acres of land.





**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: ROBERT GRAHAM

Phone (432) 697-9866

Email

Address
5908 HOMESTEAD BLVD.

City
MIDLAND

State
TX

Zip
79707-2215

Property Owner

Printed Name: GRASSLANDS IV, LTD.

Phone (432) 697-9866

Email

Address
5908 HOMESTEAD BLVD.

City
MIDLAND

State
TX

Zip
79707-2215

Representative (if different from Applicant or Property Owner)

Firm: WA CIVIL, LLC.

Printed Name: LARRY H. WALKER, PE,PMP

Phone (432) 901-2060

Email lwalker@wacivil.com

Address
223 WEST WALL ST., SUITE 226 (8th FLOOR) Midland Towers

City
MIDLAND

State
TX

Zip
79701

Street Address: Deadwood Dr., Elmwood Dr., Pearwood Dr.

Legal Description

Lot: 31-32; 1, 16-17; Block: 19, 23, 24 Subdivision: GRASSLANDS ESTATES WEST, SECTION 14
1-3, 10-12

Current Zoning: AE

Proposed Zone: SF1

(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Changing from Agricultural Estate District (AE) to Single Family 1 (SF1) to add more lots to the subdivision.

Present Use of Property: Undeveloped land

Proposed Use of Property: Residential (SF1)

How would this zone change affect the public health, safety and welfare? _____

It will not have any adverse affect on the public health, safety, or welfare.

Describe how conditions affecting the property have changed since present zoning designation: _____

No physical conditions have changed, owner owns both pieces of property and decided to add more lots to subdivision.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)

Applicant (signature):

Date:

12/19/23

Applicant (printed): ROBERT GRAHAM

Property Owner (signature):

Date:

12/19/23

Property Owner (printed): ROBERT GRAHAM

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.

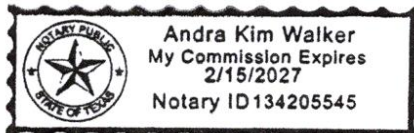
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear LARRY H. WALKER who, being by me duly sworn, upon oath says: That (s)he is the owner of GRASSLANDS IV, LTD. or authorized by ROBERT GRAHAM, 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 19 day of December, 20 23, 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 #

1525

Received By:

15 [Signature]

Date:

DEC 20 2023

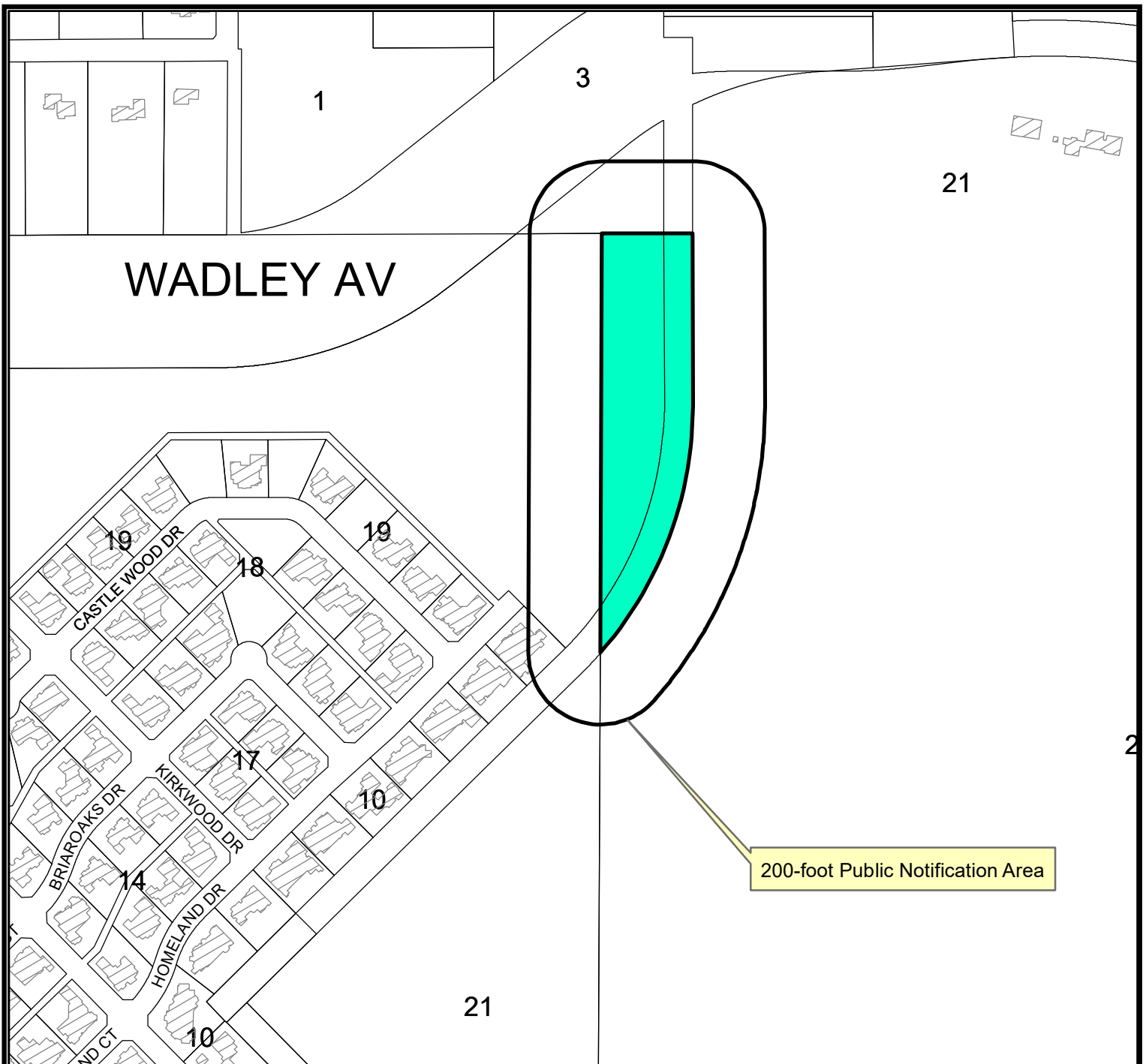
DH

PACKET

16 10

February 27, 2024

Application will not be considered for scheduling until reviewed by a planner.



LOCATION MAP

Z-23-0358

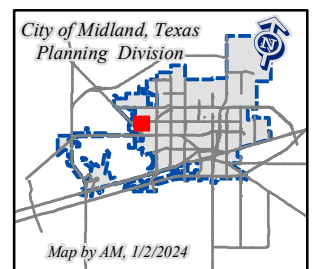
Scale: 1" = 400'

Consider a request by Robert Graham, for a zone change from AE, Agricultural Estate District, to SF-1, Single Family Dwelling District, for a 5.53-acre tract of land, located out of Section 36, Block 40, T-1-S, T&P RR. Co. Survey, City and County of Midland, Texas.

Generally located approximately 300 feet northeast of Homeland Drive, and approximately 520 feet south of Wadley Avenue. (Council District 4)

LEGEND

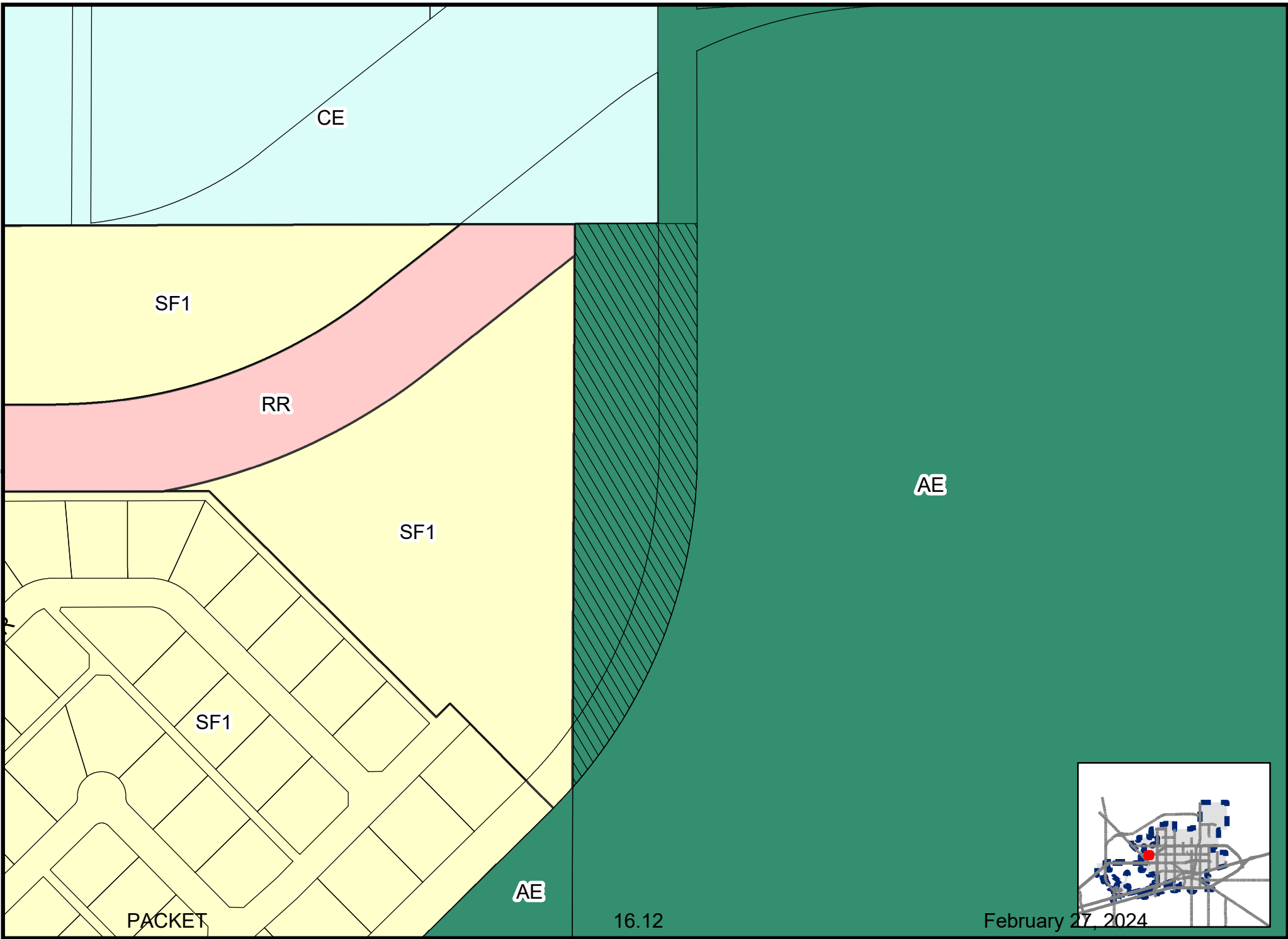
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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February 27, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND NOR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 17
Meeting Date: February 13, 2024
To: City Council / City Manager
From: Gabe McClelland, Director
Subject: AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALLING ORDINANCE NO. 10434; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION (DISTRICT 4) (ENGINEERING SERVICES)

Purpose:

Consider an ordinance altering Prima facie speed limits along certain streets in the City; authorizing installation of appropriate signs and markings; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (200.00; and ordering publication

Recommended City Council Action:

Approve

Fiscal Impact:

None

Strategic Priority:

Set the Standard for a Safe and Secure City

Discussion:

A request from the Homeowners Association has led to multiple traffic studies at the Grasslands Subdivision. Based on these studies, the Engineering Department recommends

altering the speed limit at the following roadways to the new speeds listed below:

Ashwood Court (both directions) 25 mph - in its entirety
Blackwood Drive (both directions) 25 mph - in its entirety
Brandy Hill Road (both directions) 25 mph - in its entirety
Briaroaks Court (both directions) 25 mph - in its entirety
Briaroaks Drive (both directions) 25 mph - in its entirety
Brentwood Drive (both directions) 25 mph - in its entirety
Castle Wood Drive (both directions) 25 mph - in its entirety
Centerview (both directions) 25 mph - in its entirety
Cranston Place (both directions) 25 mph - in its entirety
Deeanna Lane (both directions) 25 mph - in its entirety
Devlin Place (both directions) 25 mph - in its entirety
Drexel Court (both directions) 25 mph - in its entirety
Fringewood Drive (both directions) 25 mph - in its entirety
Gladewood Drive (both directions) 25 mph - in its entirety
Glen Mist Drive (both directions) 25 mph - in its entirety
Grassland Boulevard (both directions) 25 mph - in its entirety
Greenridge (both directions) 25 mph - in its entirety
Hathaway Court (both directions) 25 mph - in its entirety
Haywood Drive (both directions) 25 mph - in its entirety
Heartland Court (both directions) 25 mph - in its entirety
Hereford Boulevard (both directions) 25 mph - in its entirety
Highland Court (both directions) 25 mph - in its entirety
Highland Boulevard (both directions) 25 mph - in its entirety
Hillcrest Place (both directions) 25 mph - in its entirety
Hillcrest Court (both directions) 25 mph - in its entirety
Homestead Boulevard (both directions) 25 mph - in its entirety
Homestead Court (both directions) 25 mph - in its entirety
Homeland Court (both directions) 25 mph - in its entirety
Homeland Drive (both directions) 25 mph - in its entirety
Ironwood Drive (both directions) 25 mph - in its entirety
Jadewood Drive (both directions) 25 mph - in its entirety
Kirkwood Drive (both directions) 25 mph - in its entirety
Mosswood Drive (both directions) 25 mph - in its entirety
Pagewood Drive (both directions) 25 mph - in its entirety
Prairie Ridge Drive (both directions) 25 mph - in its entirety
Ridgemont Court (both directions) 25 mph - in its entirety
Ridgemont Place (both directions) 25 mph - in its entirety
Sterling Place (both directions) 25 mph - in its entirety
Sterling Court (both directions) 25 mph - in its entirety
Stonecrest (both directions) 25 mph - in its entirety
Sundance Place (both directions) 25 mph - in its entirety
Sundance Court (both directions) 25 mph - in its entirety
Winddrift (both directions) 25 mph - in its entirety

Pre t. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10434; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

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

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Ashwood Court (both directions)

25 mph - in its entirety

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Blackwood Drive (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Brandy Hill Road (both directions)

25 mph - in its entirety

Brentwood Drive (both directions)

25 mph - in its entirety

Briaroaks Court (both directions)

25 mph - in its entirety

Briaroaks Drive (both directions)

25 mph - in its entirety

Briarwood Avenue (both directions)

60 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

45 mph - from the centerline of Avalon Drive to the centerline of Holiday Hill Road

40 mph - from the centerline of Holiday Hill Road to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Business State Highway 349C (both directions)

65 mph - from the northern boundary of Midland County to a point 797 feet north of Occidental Parkway

50 mph - from a point 797 feet north of Occidental Parkway to a point 370 feet south of the centerline of the south service road of Loop 250

Candlestick Drive (both directions)

25 mph - in its entirety

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Castle Wood Drive (both directions)

25 mph - in its entirety

Centerview (both directions)

25 mph - in its entirety

Champions Drive (both directions)

25 mph - from the centerline of Tradewinds Boulevard to the centerline of Koufax Court

Clemente Court (both directions)

25 mph - in its entirety

Coliseum Court (both directions)

25 mph - in its entirety

Colt Court (both directions)

25 mph - in its entirety

Comiskey Court (both directions)

25 mph - in its entirety

Coyote Trail (both directions)

40 mph - in its entirety

Cranston Place (both directions)

25 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Crosley Drive (both directions)

25 mph - in its entirety

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

Deeanna Lane (both directions)

25 mph - in its entirety

Devlin Place (both directions)

25 mph - in its entirety

DiMaggio Court (both directions)

25 mph - in its entirety

DiMaggio Drive (both directions)

25 mph - in its entirety

Drexel Court (both directions)

25 mph - in its entirety

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Fringewood Drive (both directions)

25 mph - in its entirety

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Gehrig Avenue (both directions)

25 mph - in its entirety

Gladewood Drive (both directions)

25 mph - in its entirety

Glen Mist Drive (both directions)

25 mph - in its entirety

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Grassland Boulevard (both directions)

25 mph - in its entirety

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Greenridge (both directions)

25 mph - in its entirety

Griffith Court (both directions)

25 mph - in its entirety

Griffith Drive (both directions)

25 mph - from the centerline of Deauville Boulevard to the centerline of Candlestick Drive

Hall of Fame Boulevard (both directions)

25 mph - from the centerline of Avalon Drive to the centerline of Riverfront Drive

Hathaway Court (both directions)

25 mph - in its entirety

Haywood Drive (both directions)

25 mph - in its entirety

Heartland Avenue (both directions)

25 mph - in its entirety

Heartland Court (both directions)

25 mph - in its entirety

Hereford Boulevard (both directions)

25 mph - in its entirety

Highland Boulevard (both directions)

25 mph - in its entirety

Highland Court (both directions)

25 mph - in its entirety

Hillcrest Court (both directions)

25 mph - in its entirety

Hillcrest Place (both directions)

25 mph - in its entirety

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Homeland Court (both directions)

25 mph - in its entirety

Homeland Drive (both directions)

25 mph - in its entirety

Homestead Boulevard (both directions)

25 mph - in its entirety

Homestead Court (both directions)

25 mph - in its entirety

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Ironwood Drive (both directions)

25 mph - in its entirety

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

Jadewood Drive (both directions)

25 mph - in its entirety

King Kelly Court (both directions)

25 mph - in its entirety

Kirkwood Drive (both directions)

25 mph - in its entirety

Koufax Court (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Legends Boulevard (both directions)

25 mph - in its entirety

Mac Drive (both directions)

25 mph - in its entirety

Mantle Court (both directions)

25 mph - in its entirety

Mays Drive (both directions)

25 mph - in its entirety

Mel Ott Lane (both directions)

25 mph - in its entirety

Memorial Court (both directions)

25 mph - in its entirety

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Mockingbird Drive

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mile High Lane (both directions)

25 mph - in its entirety

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of Mockingbird Lane

Mosswood Drive (both directions)

25 mph - in its entirety

Musial Way (both directions)

25 mph - in its entirety

Neely Avenue (both directions)

30 mph - in its entirety

Nolan Ryan Drive (both directions)

25 mph - in its entirety

Olympic Court (both directions)

25 mph - in its entirety

O'Rourke Street (both directions)

25 mph - in its entirety

Pagewood Drive (both directions)

25 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Prairie Ridge Drive (both directions)

25 mph - in its entirety

Rangers Court (both directions)

25 mph - in its entirety

Ridgemont Court (both directions)

25 mph - in its entirety

Ridgemont Place (both directions)

25 mph - in its entirety

Riverfront Drive (both directions)

25 mph - in its entirety

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Shea Lane (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Spahn Street (both directions)

25 mph - in its entirety

State Highway 349 (both directions)

65 mph - from the northern City limits to the southern boundary of Martin County

Sterling Court (both directions)

25 mph - in its entirety

Sterling Place (both directions)

25 mph - in its entirety

Stonecrest (both directions)

25 mph - in its entirety

Sundance Court (both directions)

25 mph - in its entirety

Sundance Place (both directions)

25 mph - in its entirety

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly

Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Three Rivers Lane (both directions)

25 mph - in its entirety

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wagner Drive (both directions)

25 mph - in its entirety

Wagner Street (both directions)

25 mph - in its entirety

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Winndrift (both directions)

25 mph - in its entirety

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar (\$1.00) nor more than Two Hundred Dollars (\$200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 10434 is hereby expressly repealed; and 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.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by

the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. 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 EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 18
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: AN ORDINANCE VACATING AND ABANDONING A 0.027-ACRE PORTION OF FIREWHEEL ROAD RIGHT-OF-WAY AND NORTH FAIRGROUNDS ROAD RIGHT-OF-WAY LOCATED ADJACENT TO LOT 83, BLOCK 1, MOCKINGBIRD RIDGE, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF FIREWHEEL ROAD AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$11.92; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Betenbough Homes, LLC, is requesting to vacate a 0.027-acre portion of Firewheel Road right-of-way and a portion of North Fairgrounds Road right-of-way, located adjacent to Lot 83, Block 1, Mockingbird Ridge, Section 1, City and County of Midland, Texas in order to add a monument sign.

Recommended City Council Action:

Approve

Fiscal Impact:

The 2024 appraised value of the right-of-way is a total value of \$11.92.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The applicant is seeking to vacate a 0.027-acre (1,176.12 square feet) of the Firewheel Road right-of-way to construct a monument sign for the Mockingbird Ridge subdivision out of the City's right-of-way.

The Midland Central Appraisal District's appraisal of this land at a total of \$11.92 using the formula of 1192 square feet X .01 = \$11.92.

The property owner will not replat but take ownership of the portion of right-of-way, along with any maintenance and upkeep.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Code Compliance: (Approved)

No oil and gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Fire: (Approved)

No comments.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

No comment

AT&T: (Approved)

We don't show cable going down that road. If we did, we would be down the sides, not in the center.

Atmos: (Approved)

Atmos Energy has no objection to the above-referenced changes to the street right of way located on Firewheel Dr., east of Fairgrounds Rd. We currently have no gas lines or facilities located within this section of right of way proposed to be vacated.

Astound: (Approved)

If this is the new subdivision of Betenbough off of Fairgrounds Road we do not have anything in that area.

Oncor: (Approved)

Oncor has reviewed and is clear and can move forward with the vacation.

Altice USA: (Approved)

We "Optimum" do not have any plant located on your map location.

Our plant is in the front easement, we did not cross the location marked on your map, in what was originally marked as Overshine Ln. And is now **Firewheel Ln.**

Planning: (Approved with Conditions)

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved the request.

Therefore, staff recommends approval of this vacation subject to condition A.

Conditions:

A. That the value of the property shall be \$11.92.

Letters of Objection:

As of February 21, staff has not received any letters of objection to this request.

Attachments:

Vacation Survey (Exhibit A)
Application
Maps
Responses from Franchise Utility Companies

Pre t. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.027-ACRE PORTION OF FIREWHEEL ROAD RIGHT-OF-WAY AND NORTH FAIRGROUNDS ROAD RIGHT-OF-WAY LOCATED ADJACENT TO LOT 83, BLOCK 1, MOCKINGBIRD RIDGE, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF FIREWHEEL ROAD AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF \$11.92; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.027-acre portion of Firewheel Road right-of-way and North Fairgrounds Road right-of-way located adjacent to Lot 83, Block 1, Mockingbird Ridge, Section 1, City and County of Midland, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all legal purposes (the “Property”), is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the Assistant City Manager has appraised the value of the City’s property interest in the Property at \$11.92, as shown in Exhibit “B” attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the Property;

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

SECTION ONE. That the Property is hereby vacated and abandoned for all public

purposes. Provided, however, that the City is hereby abandoning only the public interest in the Property, and this ordinance in no way affects any private easement or access easement which abutting property owners may have in the Property.

SECTION TWO. That this ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$11.92.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

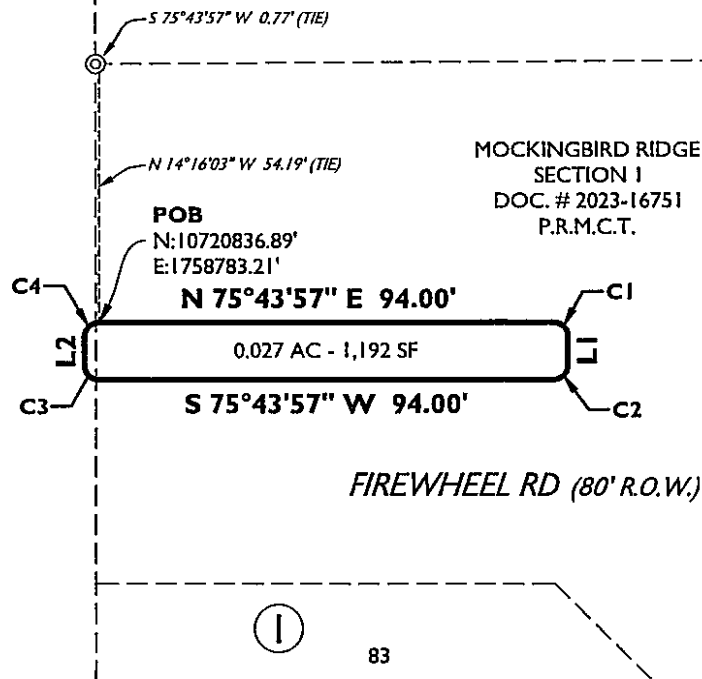
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

N FAIRGROUNDS RD (VARIABLE WIDTH R.O.W.)

DOC. #2019-3532
O.P.R.M.C.T.

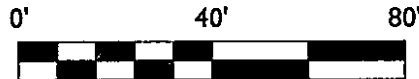
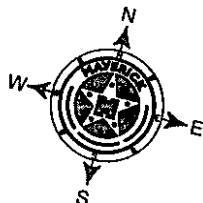


CURVE TABLE

CURVE	ARC LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	4.71'	3.00'	4.24'	S 59° 16' 03\"	90°00'00"
C2	4.71'	3.00'	4.24'	S 30° 43' 57\"	90°00'00"
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LINE TABLE

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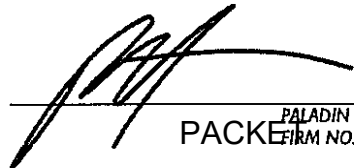


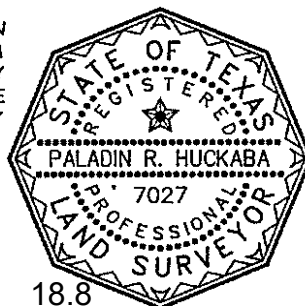
SCALE 1" = 40'

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.
2. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.

I THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.


PALADIN R. HUCKABA, RPLS #7027
FIRM NO. TX #10194514



18.8
8 JANUARY, 2024

"EXHIBIT A"

FIELD NOTE DESCRIPTION OF A 0.027 ACRE TRACT OF LAND, BEING IN-PART OUT OF FIREWHEEL ROAD RIGHT-OF-WAY, A PUBLIC ROADWAY, DEDICATED PER MOCKINGBIRD RIDGE, SECTION 1, A SUBDIVISION OF THE CITY OF MIDLAND ACCORDING TO THE PLAT OF RECORD FILED AS DOCUMENT NUMBER 2023-16751, PLAT RECORDS OF MIDLAND COUNTY, TEXAS (PR), AND BEING IN-PART OUT OF NORTH FAIRGROUNDS ROAD RIGHT-OF-WAY, A PUBLIC ROADWAY, AS DESCRIBED IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2019-3532, OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, ALL AFORESAID BEING SITUATED WITHIN SECTION 18, BLOCK 38, TOWNSHIP ONE SOUTH, ABSTRACT 734, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N(y):10720836.89 E(x):1758783.21, A POINT IN SAID FIREWHEEL ROAD, FROM WHICH A ONE HALF INCH IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" FOR THE RECORD NORTH NORTHWEST CORNER OF SAID MOCKINGBIRD RIDGE, SECTION 1 BEARS, N.14°16'03"W, 54.19 FEET, AND S.75°43'57"W, 0.77 FEET, SAME BEING A POINT AT THE APPROXIMATE BACK OF EXISTING CURB AND A POINT IN THE NORTH LINE HEREOF;

THENCE THE FOLLOWING SEVEN (7) COURSES INTERIOR TO SAID RIGHTS-OF-WAY, ALL TO POINTS ALONG THE APPROXIMATE BACK OF EXISTING CURB;

1. N.75°43'57"E, PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION, 94.00 FEET TO THE POINT OF DEFLECTION FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 3.00 FEET AND A CHORD BEARING AND DISTANCE OF, S.59°16'03"E, 4.24 FEET;
2. ALONG SAID CURVE BEING CONVEX TO THIS TRACT, 4.71 FEET TO THE POINT OF TANGENCY;
3. S.14°16'03"E, 6.00 FEET TO THE POINT OF DEFLECTION FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 3.00 FEET AND A CHORD BEARING AND DISTANCE OF, S.30°43'57"W, 4.24 FEET;
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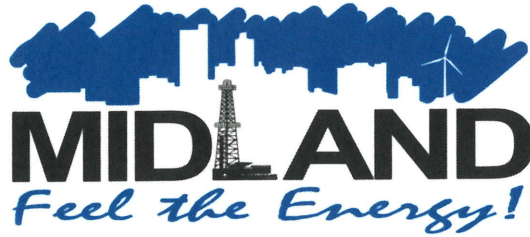
THENCE ALONG SAID CURVE BEING CONVEX TO THIS TRACT, 4.71 FEET TO THE POINT OF BEGINNING, CONTAINING 0.027 ACRES OR 1,192 SQUARE FEET OF LAND.

LEGEND

- TRACT BOUNDARY
- EXISTING LOTS
- SURVEY TIES



MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514
1503 West Wall Street, Suite "K" - Midland, Texas 79701
Tel: (432) 262-0980 Fax: (432) 262-0989
www.Maverick-Eng.com



Office of the City Manager

February 8, 2024

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.027-acre portion of Firewheel Road right-of-way and North Fairgrounds Road right-of-way located adjacent to Lot 83, Block 1, Mockingbird Ridge, Section 1, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$11.92. Upon the City's receipt of this sum from the adjoining property owner(s), the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Jose Ortiz
Assistant City Manager

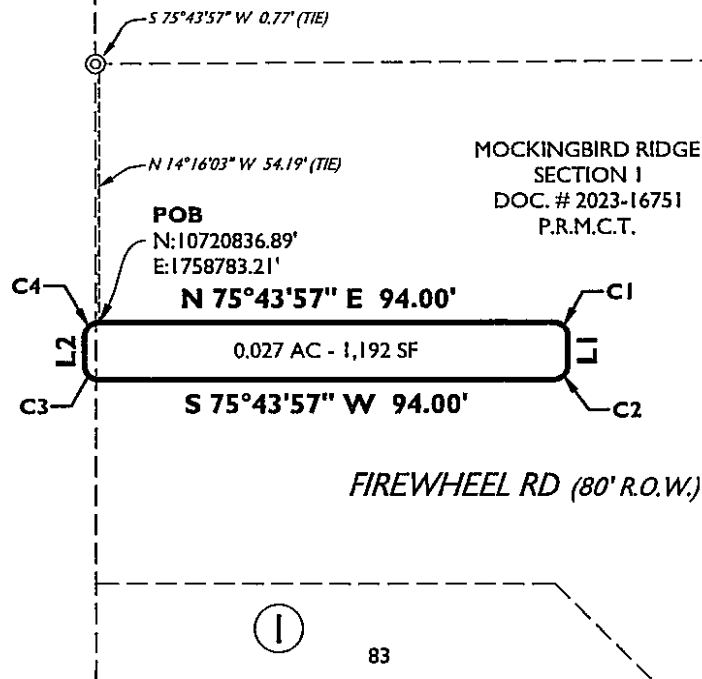
PACKET

18.9

EXHIBIT "B"
February 27, 2024

N FAIRGROUNDS RD (VARIABLE WIDTH R.O.W.)

DOC. #2019-3532
O.P.R.M.C.T.

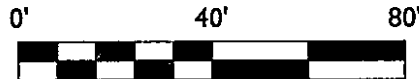
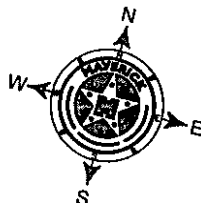


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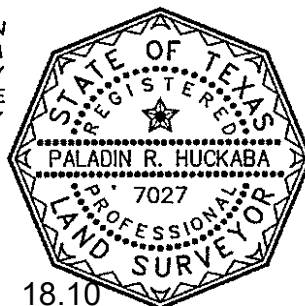
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SURVEY NOTES:

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PALADIN R. HUCKABA, RPLS #7027
FIRM NO. TX #10194514



18.10
8 JANUARY, 2024

"EXHIBIT A"

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LEGEND

	TRACT BOUNDARY
	EXISTING LOTS
	SURVEY TIES



MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514
1503 West Wall Street, Suite "K" - Midland, Texas 79701
Tel: (432) 262-0980 Fax: (432) 262-0989
www.Maverick-Eng.com



Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Betenbough Homes LLC

Phone (432) 262-0999

Email
phuckaba@maverick-eng.comAddress
6305 82nd STCity
LubbockState
TXZip
79424**Application is hereby made to the City Council to vacate the following:**

- ☒ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ☐ Street

Description of Address: see Exhibit A**Reason for Request:** To allow placement of Monument Signs**Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:** no adverse affect, curbing medians existing,Landscaping and monument signage in these areas will improve the look and character of the subdivision**Submittal and Fees****Items to be submitted with this application form:**

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Survey (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- Atmos Energy
- Oncor Electric
- AT&T
- Suddenlink Cable TV Co.
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures

DocuSigned by:
Applicant (signature) Abram Fuentes Date: 1/10/24

Affected Property Owners.

Signature:	Print:	Date:
Signature:	Print:	Date:
Signature:	Print:	Date:
Signature:	Print:	Date:

The Vacation of right-of-way/public utility easement/land/street 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.

FOR OFFICE USE ONLY

☒ 1 FOLDED Copy of Survey ☒ Survey in Digital Format (PDF/JPEG)

☒ Application Fee

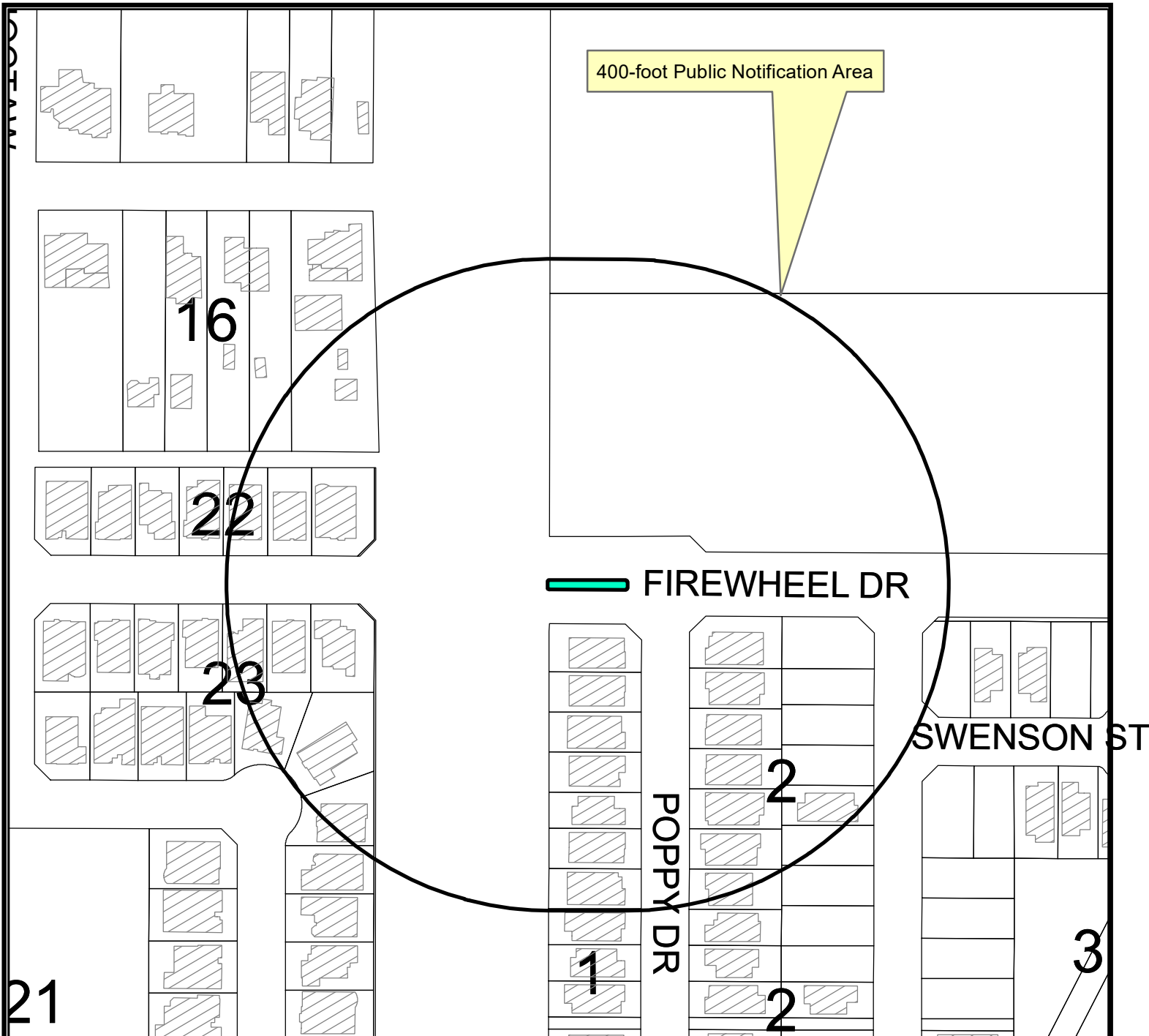
Check # 4625

Received By: [Signature]

Date: 1/10/2024

JAN 10 2024

PACKET 18-12 Application will not be considered for scheduling until reviewed by a planner. February 27, 2024



LOCATION MAP

V-24-0060

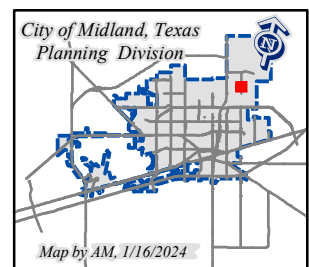
Scale: 1" = 175'

Consider a request by Betenbough Homes, LLC for a vacation of a 0.027-acre tract of land, being a portion of Firewheel Road right-of-way and a portion of North Fairgrounds Road right-of-way, located adjacent to Lot 83, Block 1, Mockingbird Ridge, Section 1, City and County of Midland, Texas.

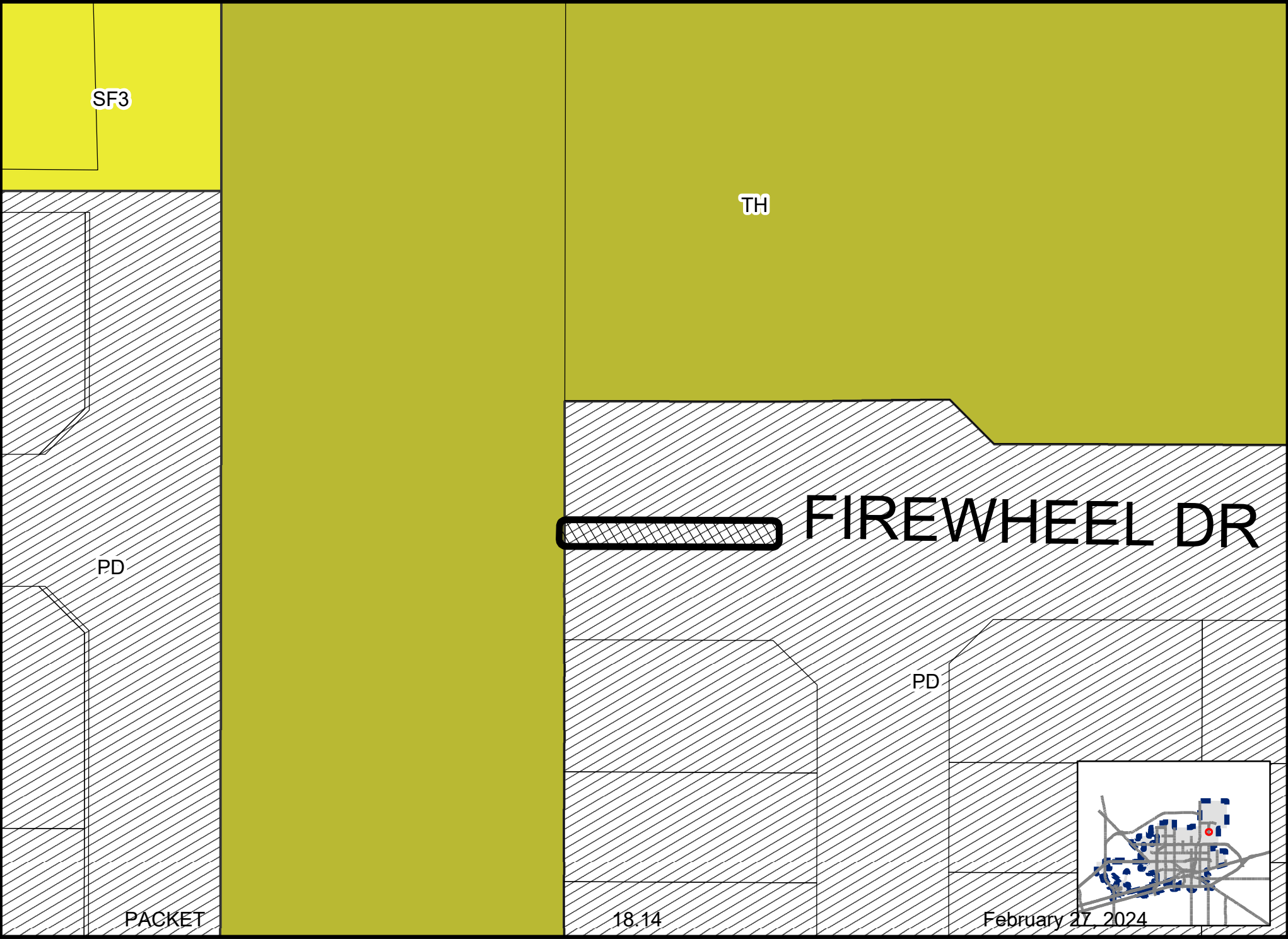
Generally located on the east side of the intersection of Firewheel Road and North Fairgrounds Road. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



February 27, 2024



From: LReyna@midcad.org
To: [Andrew Meyers](#)
Date: Monday, January 22, 2024 5:01:52 PM
Attachments: [ATT00001.png](#)
[MCAD Letter.pdf](#)
[Survey.pdf](#)
[Firewheel Vacation.pdf](#)
Importance: High



1192 sq ft X .01 = \$11.92 mkt value

Andrew,

See above for the value of your request.

Thank you,

***Lisa Reyna, RPA
Assistant Chief Appraiser
Midland Central Appraisal District
4631 Andrews Hwy
Midland, TX 79703
Phone (432) 699-4991
Fax (432) 689-7185***

From: Andrew Meyers <ameyers@midlandtexas.gov>
To: "LReyna@midcad.org" <LReyna@midcad.org>
Date: 01/22/2024 03:32 PM
Subject: Firewheel Vacation

Good Afternoon,

Please see the attached documents and provide a valuation for this right-of-way vacation. This is scheduled to go before City Council on February 27th. Please let me know if you have any comments, or no comments.

Respectfully,

Andrew Meyers

Planner | Development Services
o. (432) 685-7406
ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

From: [UNDERWOOD, JERRY D](#)
To: [Andrew Meyers](#)
Cc: [HERNANDEZ, GUADALUPE](#)
Date: Tuesday, January 23, 2024 6:33:22 AM
Attachments: [image001.png](#)
[Firewheel Vacation.pdf](#)
[ATT Letter.pdf](#)
[Survey.pdf](#)



Good morning,

We don't show cable going down that road. If we did, we would be down the sides, not in the center.

Thanks,
Jerry

Thanks,
Jerry

Jerry Underwood
Sr. Specialist OSP Design Engineer
Midland Engineering
AT&T

AT&T Technology Operations
410 W Missouri, Midland, TX 79701
m 432-296-2821 / ju1659@att.com

From: Andrew Meyers <ameyers@midlandtexas.gov>
Sent: Monday, January 22, 2024 3:59 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: Firewheel Vacation

Good Afternoon,
This vacation is scheduled to go to the February 27th, City Council. Please see the attached documents and inform me if you have any comments, or no comments.
Respectfully,

Andrew Meyers
Planner | Development Services
o. (432) 685-7406
ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

From: [Lieb, Mark](#)
To: [Andrew Meyers](#)
Date: Wednesday, January 24, 2024 10:23:34 AM
Attachments: [image001.png](#)
[Atmos Letter.pdf](#)
[Request to Vacate Firewheel ROW .pdf](#)



Andrew,
Please see attached.
Thanks.

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
Mark.Lieb@atmosenergy.com

From: Andrew Meyers <ameyers@midlandtexas.gov>
Sent: Monday, January 22, 2024 3:28 PM
To: Lieb, Mark <Mark.Lieb@atmosenergy.com>
Subject: [EXT] Firewheel Vacation

CAUTION: Don't be quick to click. This e-mail originated from outside of Atmos Energy. Do not click links or open attachments unless you recognize the sender and know the content is safe.

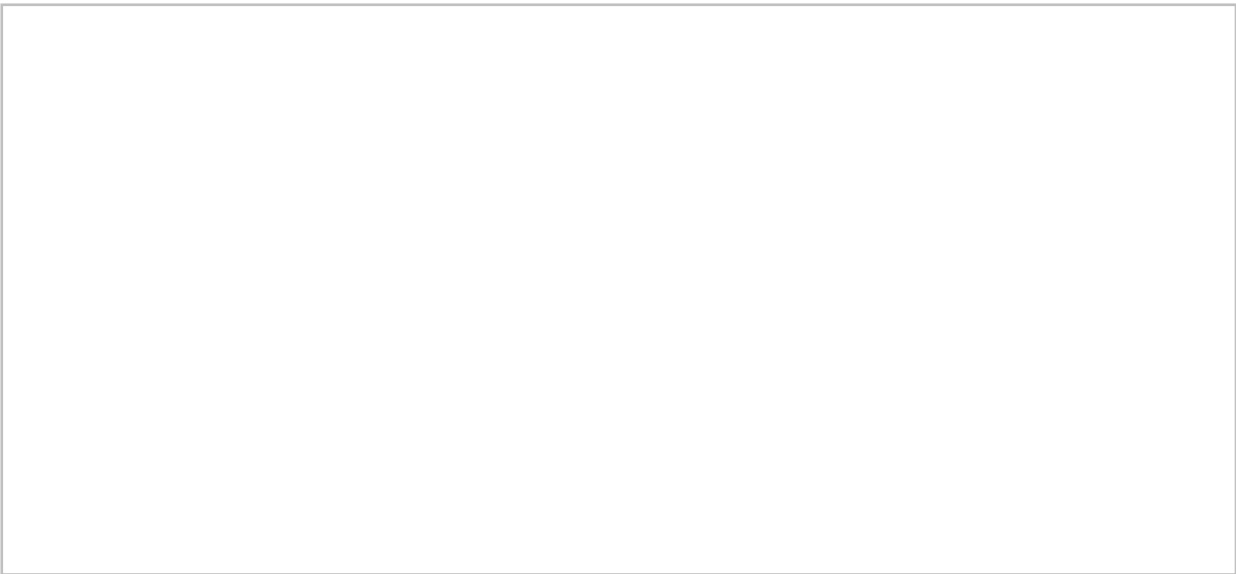
Good Afternoon,

This vacation is scheduled to go to the February 27th, City Council. Please see the attached documents and inform me if you have any comments, or no comments.

Respectfully,

Andrew Meyers

Planner | Development Services
o. (432) 685-7406
ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Andrew Meyers
Planner/Planning Div.
300 N. Loraine
Midland, Texas 79701

January 24, 2024

Re: Case Name: Firewheel
Case Number: V-24-0060

Mr. Humbert,

Atmos Energy has no objection to the above-referenced changes to the street right of way located on Firewheel Dr., east of Fairgrounds Rd. We currently have no gas lines or facilities located within this section of right of way proposed to be vacated. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink that reads "Mark Lieb".

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
mark.lieb@atmosenergy.com

From: [Ruben Guerra](#)
To: [Andrew Meyers](#)
Date: Tuesday, January 23, 2024 7:46:58 AM
Attachments: [image001.png](#)



If this is the new subdivision of Betten Bough off of fairgrounds road we do not have anything in that area.

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

Powered by RCN | Grande | Wave

astound.com

On Mon, Jan 22, 2024 at 5:25 PM Andrew Meyers <ameyers@midlandtexas.gov> wrote:

Good Afternoon,

This vacation is scheduled to go to the February 27th, City Council. Please see the attached documents and inform me if you have any comments, or no comments.

Respectfully,

Andrew Meyers

Planner | Development Services

o. (432) 685-7406

ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

From: [Luis Montez](#)
To: [Andrew Meyers](#)
Date: Wednesday, January 31, 2024 2:15:54 PM
Attachments: [image001.png](#)



Mr. Meyers,

We "Optimum" do not have any plant located on your map location.

Our plant is in the front easement, we did not cross the location marked on your map, in what was originally marked as Overshine Ln. And is now **Firewheel Ln.**

From: Andrew Meyers <ameyers@midlandtexas.gov>
Sent: Monday, January 22, 2024 5:26 PM
To: Luis Montez <Luis.Montez@AlticeUSA.com>
Subject: External E-mail - Firewheel Vacation

[External Email]

Caution: This email originated outside of Altice USA. Please do not click links or attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

This vacation is scheduled to go to the February 27th, City Council. Please see the attached documents and inform me if you have any comments, or no comments.

Respectfully,

Andrew Meyers

Planner | Development Services
o. (432) 685-7406
ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

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From: [Arguello, Martin](#)
To: [Andrew Meyers](#)
Cc: [Hamilton, Hannah](#); [Molina, Sergio](#)
Date: Monday, January 29, 2024 2:57:57 PM
Attachments: [image001.png](#)



Good afternoon Andrew! Checking into Oncor mapping program and the survey that has been provided, Oncor is clear and can move forward with the vacation. Please let me know if there is anything you may need.

From: Andrew Meyers <ameyers@midlandtexas.gov>
Sent: Monday, January 29, 2024 2:41 PM
To: Arguello, Martin <Martin.Arguello@oncor.com>
Cc: Hamilton, Hannah <Hannah.Hamilton@oncor.com>; Molina, Sergio <Sergio.Molina@oncor.com>
Subject: Firewheel Vacation

WARNING: This email message did not originate from Oncor and is from an external organization. **DO NOT CLICK** links or attachments unless you recognize the sender and are certain the content is safe.

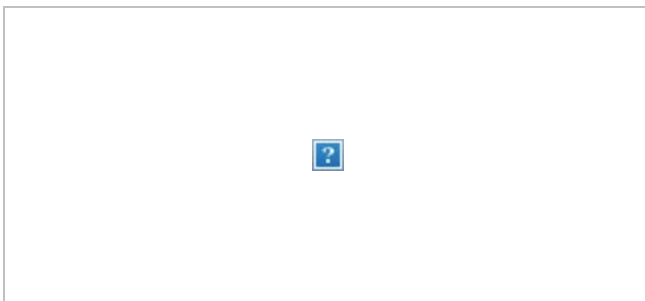
Good Afternoon,

I was following up with an email that was sent last week about a Vacation currently under review on Firewheel. We are shooting for this to go to the February 27th City Council Meeting. Please let me know if you have any questions or concerns.

Respectfully,

Andrew Meyers

Planner | Development Services
o. (432) 685-7406
ameyers@midlandtexas.gov



300 N. Loraine | Midland, TX 79702

contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

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City Council Meeting

Item Number: 19
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.61-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WALL STREET, APPROXIMATELY 580 FEET WEST OF MANN 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, GF Elite Real Estate Holdings, is requesting a zone change from SF-2, Single-Family Dwelling District, in part, and RR, Regional Retail District, in part, to RR, Regional Retail District for the property located at 2903 W. Wall Street to update the overall zoning classification on site so that it is not split by two different districts.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Strategic Priority:

(Quality of Life and Place)

Current Zoning:

RR, Regional Retail District, in part, SF-2, and Single-Family Dwelling District, in part.

Surrounding Zoning and Land Use:

The properties to the north, east and west are commercial buildings and zoned RR, Regional Retail District. The area to the south of the property is zoned SF, Single-Family Dwelling District, and used as a shop.

Analysis:

The applicant is presently utilizing the property for commercial buildings and office use. The property is currently split by two zoning districts which are zoned RR, Regional Retail District, and SF-2, Single-Family Dwelling District. The applicant wants to change the zoning to RR, Regional Retail District, to update the overall zoning of the parcel so that it is no longer split by two different districts. No other changes are being proposed or changes to the 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.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zoning 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

Oil and Gas: (Approved)

No Oil & Gas well issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning: (Approved with Conditions)

The request fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3 - Land Use Vision. The land use map indicates that the property is designated Special Study Area and there are no policies for this area at this time. However, the use of the property is consistent with the surrounding development being that it will be used for offices and commercial use.

Therefore, staff recommends approval of this request, subject to condition A.

Condition A:

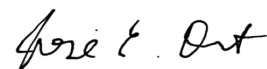
That the use and development of the property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

As of February 21, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Metes & Bounds (Exhibit A)
Maps



ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.61-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WALL STREET, APPROXIMATELY 580 FEET WEST OF MANN 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 a 2.61-acre tract of land out of Section 33, Block 39, 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 RR, Regional Retail District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from SF-2, Single-Family Dwelling District, in part, and RR, Regional Retail District, in part, to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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



FIELD NOTE DESCRIPTION OF A 2.61 ACRE TRACT OF LAND SITUATED IN SECTION 33, BLOCK 39, TOWNSHIP ONE SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, AND BEING THE AGGREGATE OF THOSE TWO TRACTS DESCRIBED AS PARCEL 1 AND PARCEL 2 IN A WARRANTY DEED WITH VENDORS LIEN FILED AS DOCUMENT NUMBER 2018-8152, OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY (OPR), SAME BEING DESCRIBED AS LOT 5, SAVE AND EXCEPT THE EAST 280 FEET THEREOF, BLOCK E, GARRETT PLACE, ACCORDING TO THE PLAT OF RECORD FILED IN CABINET C, ON PAGE 120, DEED RECORDS OF SAID MIDLAND COUNTY (DR), AND AS THE WEST 200 FEET OF THE NORTH 540 FEET OF BLOCK 7, COLLEGE HEIGHTS ADDITION TO MIDLAND, ACCORDING TO THE PLAT OF RECORD FILED IN VOLUME 17, PAGE 616, OF SAID "DR", REPECTIVELY, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS FOR REFERENCE PURPOSES ONLY AS FOLLOWS;

BEGINNING AT N(y):10690187.64, E(x):1747375.04, A ONE HALF INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.30°38'02"W., 530.93 FEET TO A POINT IN THE SOUTHEAST LINE OF WEST WALL STREET RIGHT-OF-WAY, FOR THE NORTHWEST CORNER HEREOF;

THENCE N.41°15'25"E., ALONG SAID WEST WALL STREET, 213.12 FEET TO A POINT FOR THE NORTHEAST CORNER HEREOF;

THENCE S.30°22'39"E., 599.60 FEET TO A POINT FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.60°03'29"W., 199.90 FEET TO THE **POINT OF BEGINNING**, CONTAINING 2.61 ACRES, OR 113,703 SQUARE FEET OF LAND.

SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE (4203), NAD 83, U.S. SURVEY FOOT.
2. THIS DESCRIPTION IS PROVIDED FOR THE PURPOSE OF ADVANCING A REQUEST TO RE-ZONE THE ABOVE-DESCRIBED TRACT ONLY AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY.



PALADIN R. HUCKABA

www.maverick-eng.com

TEXAS RPLS - No. 7027

MAVERICK ENGINEERING (FIRM – No. 10194514)

JANUARY 4, 2023



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page

2) Printed Name: GF Elite Real Estate Holdings

Phone (432) 262-0999

Email
phuckaba@maverick-eng.com

Address 2903 W Wall St

City Midland

State TX

Zip 79701

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: Paladin Huckaba

Phone (432-262)-0999

Email

phuckaba@maverick-eng.com

Address 1909 W Wall St Ste K

City Midland

State TX

Zip 79701

Street Address: 2903 W Wall St

Legal Description

Lot: W.200 of N.540 Block: 7

Subdivision: College Heights

Current Zoning:

SF2, RR

Proposed Zone: RR

(List by tracts if more than one district is requested)

Reason for Zone Change Request: To update the overall zoning conditions on Site so that it is not split by districts

Present Use of Property: Commercial & Offices

Proposed Use of Property: No proposed changes

How would this zone change affect the public health, safety and welfare? _____

No affect to public welfare

Describe how conditions affecting the property have changed since present zoning designation: No change to conditions

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>1/8/2024</u>
Applicant (printed): <u>FILIBERTO LOZAYAN G</u>	
Property Owner (signature): see applicant	Date: <u>1/8/2024</u>
Property Owner (printed): <u>FILIBERTO LOZAYAN G (GF-ELITE PROPERTIES)</u>	
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.	

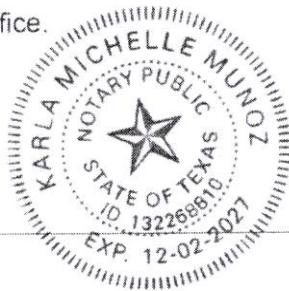
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Filiberto Lozayan who, being by me duly sworn, upon oath says: That (s)he is authorized by GF Elite Real Estate, 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.

[Signature]
Authorized Agent (signature)

Subscribed and sworn to before me, this 8 day of January, 20 24, to certify which witness my hand and seal of office.



Karla Munoz
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan (Metes + Bounds)
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # <u>4624</u>	
Received By: <u>[Signature]</u>	Date: <u>JAN 10 2024</u>

PACKET Application will not be considered for scheduling until reviewed by a planner ** February 27, 2024



FIELD NOTE DESCRIPTION OF A 2.61 ACRE TRACT OF LAND SITUATED IN SECTION 33, BLOCK 39, TOWNSHIP ONE SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, AND BEING THE AGGREGATE OF THOSE TWO TRACTS DESCRIBED AS PARCEL 1 AND PARCEL 2 IN A WARRANTY DEED WITH VENDORS LIEN FILED AS DOCUMENT NUMBER 2018-8152, OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY (OPR), SAME BEING DESCRIBED AS LOT 5, SAVE AND EXCEPT THE EAST 280 FEET THEREOF, BLOCK E, GARRETT PLACE, ACCORDING TO THE PLAT OF RECORD FILED IN CABINET C, ON PAGE 120, DEED RECORDS OF SAID MIDLAND COUNTY (DR), AND AS THE WEST 200 FEET OF THE NORTH 540 FEET OF BLOCK 7, COLLEGE HEIGHTS ADDITION TO MIDLAND, ACCORDING TO THE PLAT OF RECORD FILED IN VOLUME 17, PAGE 616, OF SAID "DR", REPECTIVELY, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS FOR REFERENCE PURPOSES ONLY AS FOLLOWS;

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THENCE N.30°38'02"W., 530.93 FEET TO A POINT IN THE SOUTHEAST LINE OF WEST WALL STREET RIGHT-OF-WAY, FOR THE NORTHWEST CORNER HEREOF;

THENCE N.41°15'25"E., ALONG SAID WEST WALL STREET, 213.12 FEET TO A POINT FOR THE NORTHEAST CORNER HEREOF;

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SURVEY NOTES:

1. BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE (4203), NAD 83, U.S. SURVEY FOOT.
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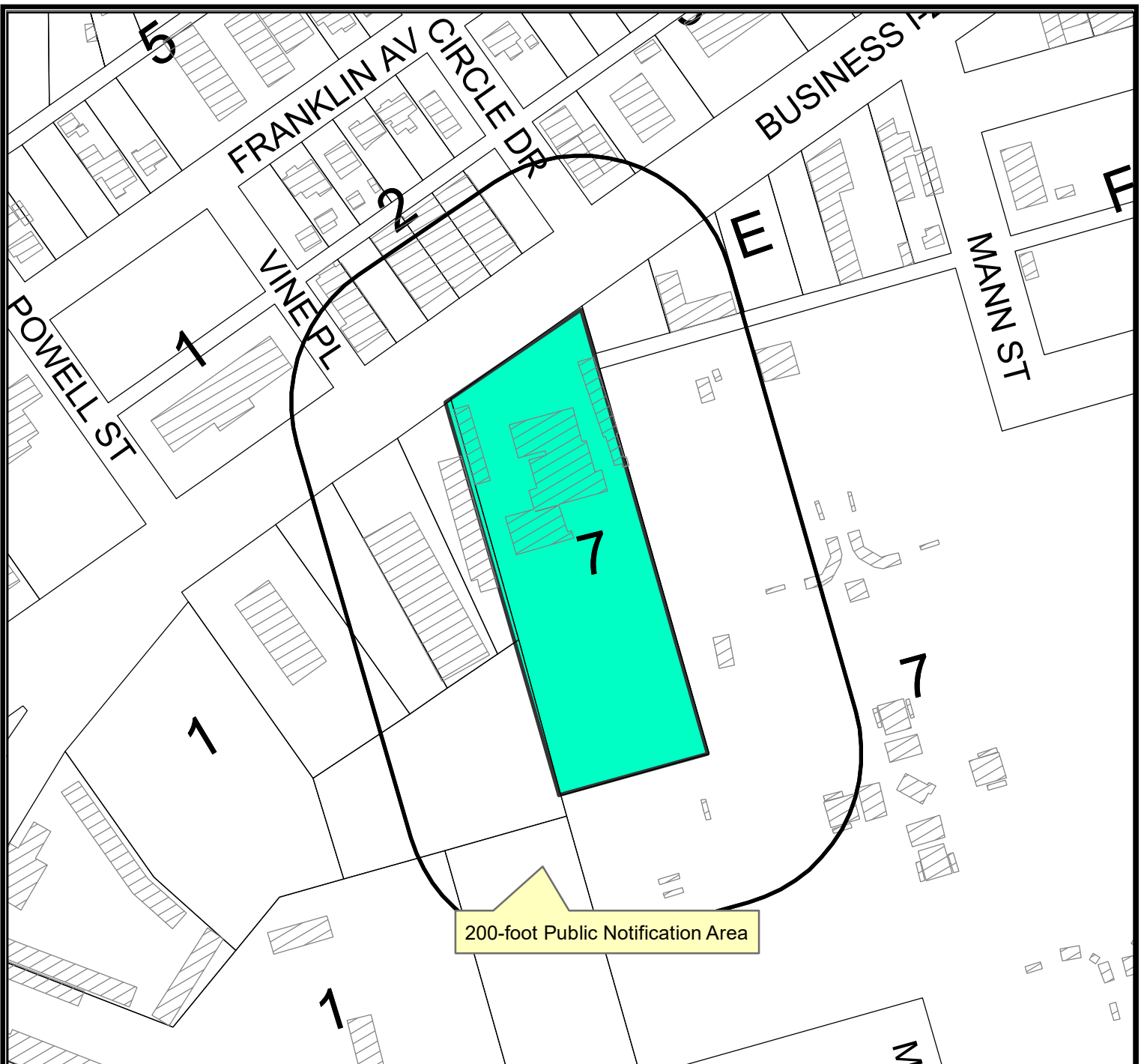
PALADIN R. HUCKABA

www.maverick-eng.com

TEXAS RPLS - No. 7027

MAVERICK ENGINEERING (FIRM – No. 10194514)

JANUARY 4, 2023



LOCATION MAP

Z-24-0359

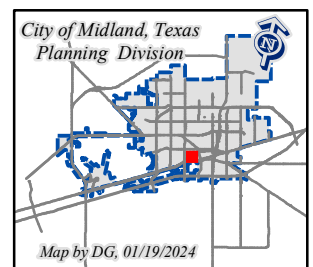
Scale: 1" = 200'

Consider a request by GF Elite Real Estate Holdings, for a zone change from SF-2, Single-Family Dwelling District, in part, and RR, Regional Retail District, in part, to RR, Regional Retail District, for a 2.61-acre tract of land situated in Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located on the south side of West Wall Street, approximately 500 feet west of Mann Street. (District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

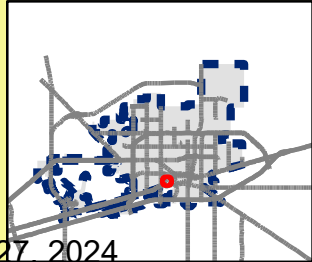
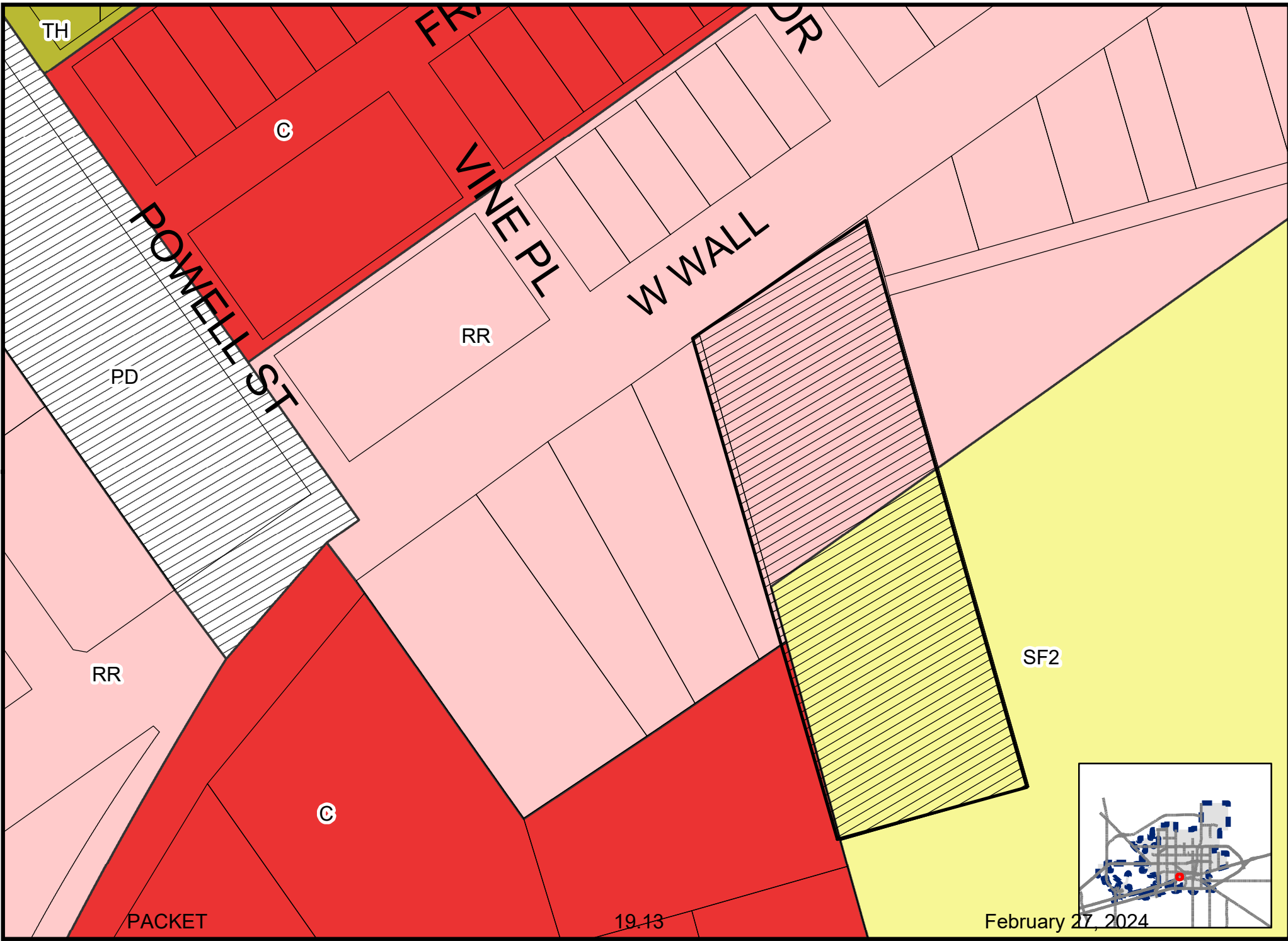


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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 27, 2024













City Council Meeting

Item Number: 20
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 14, 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 NORTHWEST CORNER OF THE INTERSECTION OF EAST WASHINGTON AND SOUTH CLAY 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, Archie Williams Jr., is requesting a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District for the development of a single-family home.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

(Quality of Life and Place)

Current Zoning:

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The properties to the north, west and south are single family homes and zoned MF-22, Multiple-Family Dwelling District. The property to the east is zoned SF-3, Single-Family Dwelling District, and used as a single-family residence.

Analysis:

The property is located at 410 S. Clay Street and the applicant is proposing to build a single-family home on the property. The property is currently zoned MF-22, Multiple-Family Dwelling District, and is the location of a vacant lot. The applicant wants to change the zoning to SF-3, Single-Family Dwelling District, to allow for the development of a single-family home. Per the previous zoning ordinance, single-family homes were allowed within this zoning district. However, the current zoning ordinance, adopted on July 1, 2019, does not allow the use of single-family homes within an MF-22, Multiple-Family Dwelling District. Based on this and the fact that the surrounding area is predominantly single-family residential, staff is in support of the zone change to SF-3, Single-Family Dwelling District which allows single-family homes.

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.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zoning 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

Oil and Gas: (Approved)

No Oil & Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning: (Approved with Conditions)

The property is located within a residential neighborhood with adjacent properties also containing single-family homes. This request fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3-Land Use Vision, which designates the property Urban Residential-Medium (UR-M), which calls for a mix of housing types, including single-family detached, single-family attached and townhouse uses. The UR-M designation also supports Single-Family Dwelling District zoning which is consistent with the SF-3 zoning immediately to the east.

Therefore, staff recommends approval of this zone change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District subject to condition A.

Condition A:

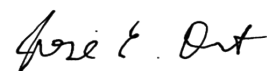
A. That the use and development of the property shall conform to the regulations of the SF-3, Single-Family Dwelling District.

Letters of Objection:

As of February 21, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Survey (Exhibit A)
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 14, 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 NORTHWEST CORNER OF THE INTERSECTION OF EAST WASHINGTON AND SOUTH CLAY STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 6, Block 14, 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., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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)		Phone (432) 889 7437	
Printed Name: <u>Archie Williams Jr</u>		Email: <u>ArchieWilliams2004@yahoo.com</u>	
Address: <u>PO Box 52162</u>	City: <u>MIDLAND</u>	State: <u>TX</u>	Zip: <u>79710</u>

Property Owner		Phone (432) 889 7437	
Printed Name: <u>ALW INTEREST LLC</u>		Email: <u>ArchieWilliams2004@yahoo.com</u>	
Address: <u>PO Box 52162</u>	City: <u>MIDLAND</u>	State: <u>TX</u>	Zip: <u>79710</u>

Representative (if different from Applicant or Property Owner)		Phone ()	
Firm: _____		Email: _____	
Printed Name: _____		_____	
Address: _____	City: _____	State: _____	Zip: _____

Street Address: <u>410 S CLAY</u>		
Legal Description		
Lot: <u>006</u>	Block: <u>014</u>	Subdivision: <u>GREENWOOD</u>

Current Zoning: <u>MF22</u>	Proposed Zone: <u>SF3</u> (List by tracts if more than one district is requested)
------------------------------------	---

Reason for Zone Change Request: <u>The City of Midland has RESTRICTED MF22 DUE TO THE LOT SIZE.</u>
--

Present Use of Property: <u>NOT IN USE (VACANT LOT)</u>
--

Proposed Use of Property: <u>SINGLE FAMILY HOME</u>
--

How would this zone change affect the public health, safety and welfare? <u>IT WOULD NOT</u>

Describe how conditions affecting the property have changed since present zoning designation: <u>CITY OF MIDLAND IS NO LONGER LETTING CONTRACTORS BUILD TWO RESIDENTIAL HOMES ON ONE LOT.</u>
--

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature): <u>Archie Williams Jr</u>	Date: <u>1/9/24</u>
Applicant (printed): <u>Archie Williams Jr</u>	
Property Owner (signature): <u>Archie Williams Jr</u>	Date: <u>1/9/24</u>
Property Owner (printed): <u>Archie Williams Jr</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

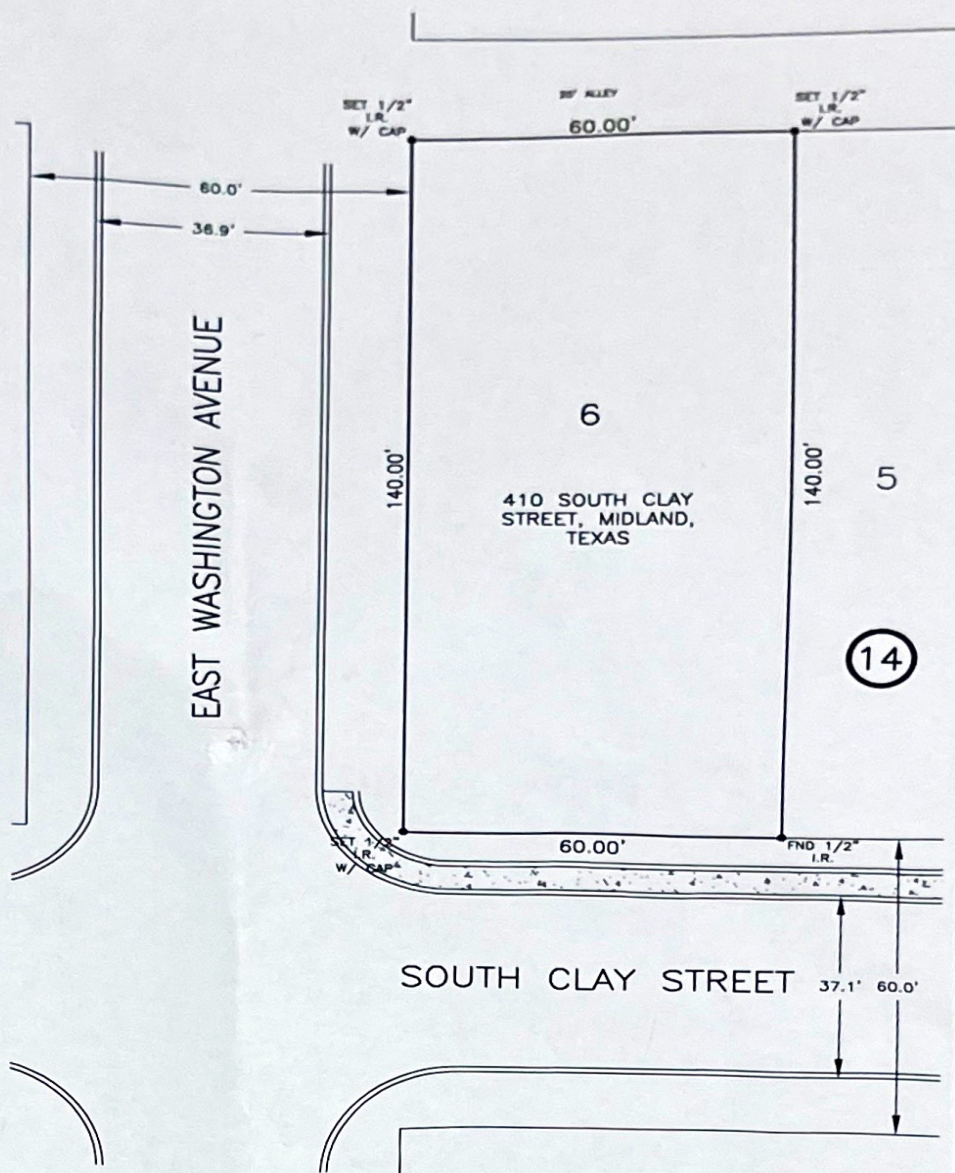
FOR OFFICE USE ONLY	
☐ Property Owner Authorization ☐ Application Fee Check # <u>waived</u>	☒ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By: <u>[Signature]</u>	Date: <u>1 11 24</u>

****Application will not be considered for scheduling until reviewed by a planner.****

PACKET
Special Exception Application

20.9
2

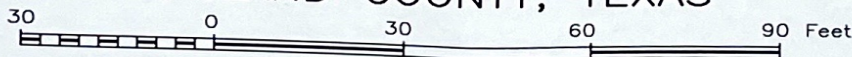
February 27, 2024
Revised 12/6/16



THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT NOR WAS THIS PARCEL ABSTRACTED FOR EASEMENTS OF RECORD AND/OR RIGHTS OF WAY. BRADSHAW AND ASSOCIATES, INC. (FIRM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYOR, MAKE NO GUARANTEES OR REPRESENTATIONS REGARDING INFORMATION SHOWN HEREIN PERTAINING TO EASEMENTS, RESERVATIONS, SET-BACK LINES, AGREEMENTS, RIGHTS-OF-WAY OR OTHER SIMILAR MATTERS OTHER THAN THOSE SHOWN UPON THIS SURVEY. THE UNDERSIGNED SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR ANY TITLES, DEEDS, RESERVATIONS, EASEMENTS, RIGHTS OF WAY, SETBACK LINES, AGREEMENTS OR OTHER SIMILAR MATTERS, OTHER THAN WHAT IS READILY IDENTIFIABLE THROUGH THE COUNTY GIS MAPS, RAILROAD COMMISSION GIS MAPS, AND GENERAL LAND OFFICE GIS MAPS. THE USE OF THESE GIS MAPS IS BY NO MEANS TO BE CONSTRUED AS A PROPER OR THOROUGH INVESTIGATION OF THE PUBLIC RECORDS, AS WOULD BE ACCOMPLISHED BY AN ABSTRACT OF TITLE, AND/OR OPINION OF TITLE BY AN ATTORNEY AT LAW.

BRADSHAW AND ASSOCIATES, INC. (FIRM # 10122900/10122901) AND THE UNDERSIGNED REGISTERED PROFESSIONAL LAND SURVEYOR ALSO MAKE NO REPRESENTATION AS TO THE STATUS OF TITLE TO THE PROPERTY DESCRIBED HEREIN.

PLAT OF LOT 6, BLOCK 14, GREENWOOD ADDITION THIRD, FOURTH & FIFTH SECTIONS AN ADDITION TO THE THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS



SURVEY PLAT FOR: LIZ LAZCANO

THIS SURVEY PLAT IS PROVIDED SOLELY FOR THIS TRANSACTION

PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER TRANSACTION.

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS OR RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND THIS SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY AS SHOWN.



Michael L. McBrayer
REGISTERED PROFESSIONAL LAND SURVEYOR

FILED IN PLAT CABINET B, PAGE 56, PLAT RECORDS, MIDLAND COUNTY, TEXAS.

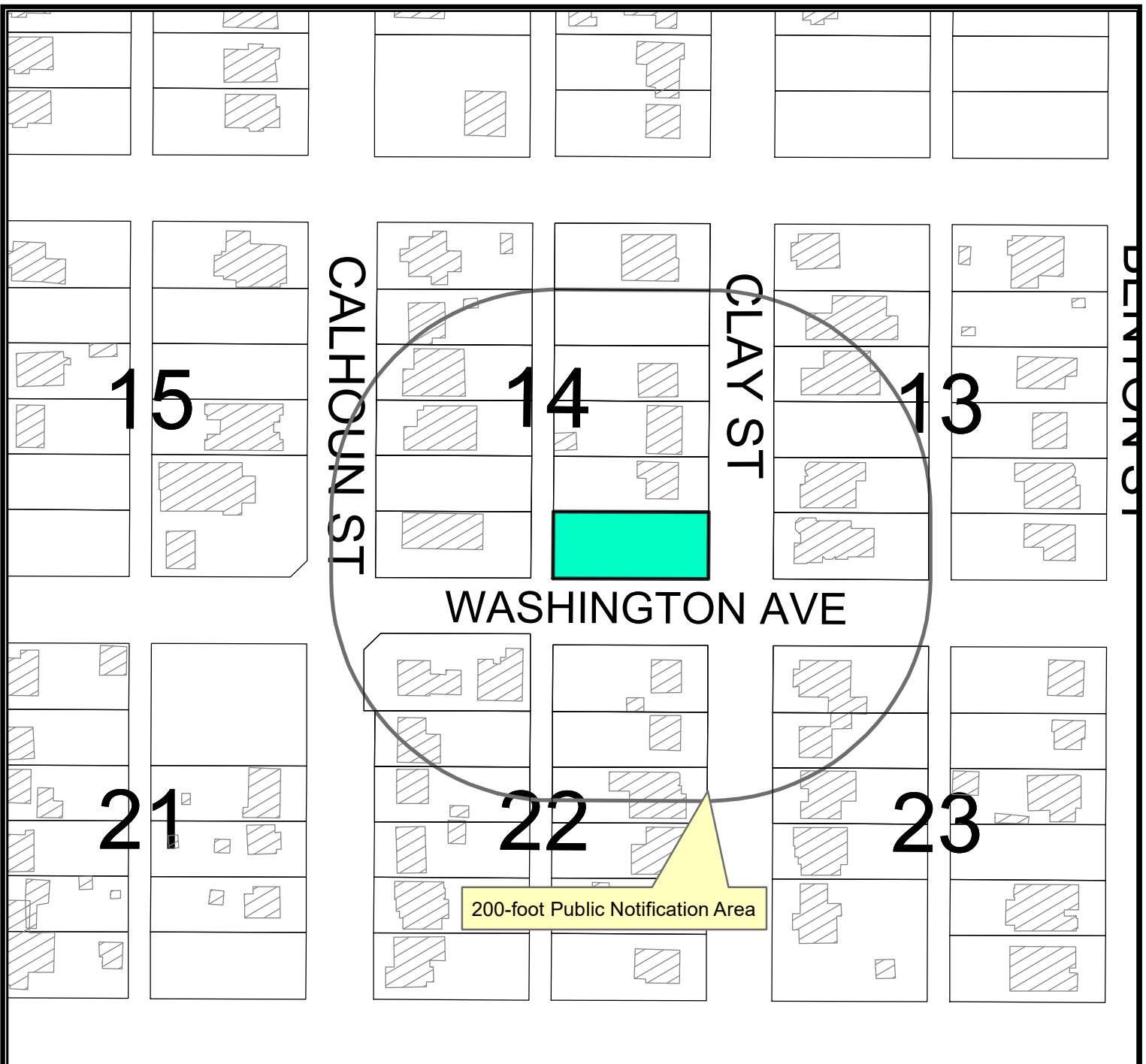
THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL 48329C0206 F DATED SEPTEMBER 16, 2005.

Stored: 21011110

BRADSHAW AND ASSOCIATES, INC.
CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS

FIRM # 10122900/10122901
4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
(432) 682-4400 FAX (432) 682-7997

By	WET	MLM	BB/DP
Date	02-02-2021	02-03-2021	01-27-2021



LOCATION MAP

Z-24-0360

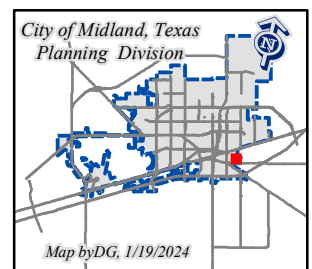
Scale: 1" = 200'

Consider a request by Archie Williams Jr., for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District, on Lot 6, Block 14, Greenwood Addition, Sections 3, 4, and 5, City and County of Midland, Texas.

Generally located on the northwest corner of the intersection of East Washington and South Clay Street. (District 2)

LEGEND

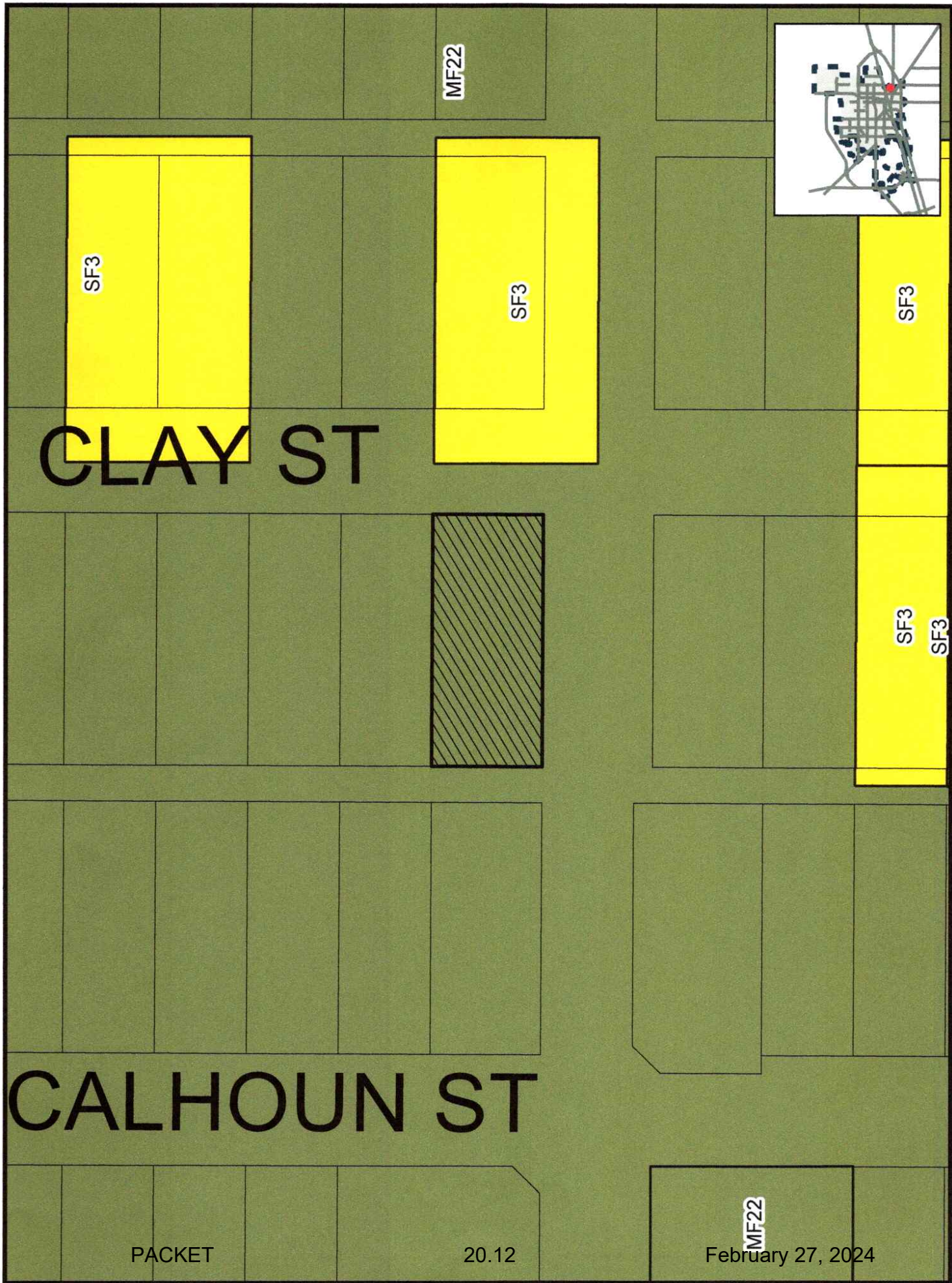
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

February 27, 2024

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.



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ZONING MAP

Scale: 1" = 200'

Z-24-0360

Map By DG, 1/22/2024

PACKET

20.12

February 27, 2024











City Council Meeting

Item Number: 21
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.15-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST FRONT STREET AND NORTH ADAMS 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, G2K Development Partners, is requesting a Zone Change from LI, Light Industrial District, to BP, Business Park District for the property located at 1511 E. Front Street to allow for retail and other future development.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

(Quality of Life and Place)

Current Zoning:

LI, Light Industrial District.

Surrounding Zoning and Land Use:

The properties to the north, east and west are industrial shops and zoned LI, Light Industrial District. The area on the northwest corner of the property is zoned HI, Heavy Industrial District, and used as an industrial shop.

Analysis:

The applicant is proposing to utilize the property for the construction of a Dollar Tree. The property is currently zoned LI, Light Industrial District, and is currently vacant. The applicant wants to change the zoning to BP, Business Park District, to allow them to use the property for retail and other future developments.

A Dollar Tree would fall under the use of Retail Stores and Shops. While the LI, Light Industrial District does not allow retail shops, the business park zoning district does. Therefore the requested zone change to BP, Business Park District, would permit the desired use.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zoning 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

Oil and Gas: (Approved)

No Oil & Gas well concerns.

Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures. Any plugged and

abandoned (P&A) well would need to be identified. No structure shall be built over an abandoned well.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning: (Approved with Conditions)

The request fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3 - Land Use Vision. The land use map indicates that the property is designated (ER) Employment Reserve Area. In accordance with the Tall City Tomorrow Comprehensive Plan, business development is consistent with the (ER). The property is surrounded by industrial buildings and retail stores further down the street at both ends of Front Street.

Therefore, staff recommends approval of this zone change from LI, Light Industrial District, to BP, Business Park District, subject to condition A.

Condition A:

That the use and development of the property shall conform to the regulations of the BP, Business Park District.

Letters of Objection:

As of February 21, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Metes & Bounds (Exhibit A)
Survey (Exhibit B)
Maps

For E. Out

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.15-ACRE TRACT OF LAND OUT OF SECTION 36, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST FRONT STREET AND NORTH ADAMS 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 a 6.15-acre tract of land out of Section 36, Block 39, 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 BP, I-20 Business Park 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 LI, Light Industrial District to BP, I-20 Business Park 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., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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"

LEGAL DESCRIPTION OF A 6.15 ACRE TRACT, previously described in Volume 1841, Page 3, O.P.R.M.C., LOCATED IN SECTION 36, BLOCK 39, T-1-S, T.&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,696,986.27' E= 1,762,077.59') a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Southeast corner of this tract and a previously surveyed 1.072 Acre Tract, from whence the Southeast corner of 0.509 Acre Tract recorded in Volume 520, Page 61, Deed Records of Midland County and the Southwest corner of Nueva La Jolla, 4th Section, recorded in Cabinet H, Page 285, Plat Records of Midland County bears N59°42'59"E, a distance of 103.46 feet, also from said beginning point the unmarked Northeast corner of said Section 36, bears diagonally N71°22'44"E, a distance of 2595.56 feet;

THENCE S59°42'59"W with the claimed North ROW line of Business I-20 based on TxDOT construction plans of US 80 dated in 1953, a distance of 23.51 feet to a broken ROW marker found at a point of deflection;

THENCE S61°07'05"W with the said claimed ROW line, at 161.71 pass a 1/2" iron rod with a plastic cap marked "PLS 1974" found at the Southwest corner of a 1.072 Acre Tract previously surveyed continuing for a total distance of 171.39 feet to a TXDOT brass cap in a concrete ROW marker found at a point of deflection of this tract;

THENCE S61°07'49"W with said claimed ROW line, a distance of 427.45 feet to the base of a disturbed ROW marker found at a point of deflection in the South line of this tract;

THENCE S61°00'30"W with the said claimed ROW line, a distance of 196.42 feet a 1/2" iron rod with a plastic cap marked "PLS 1974" set in the East line of South Adams Street at the Southwest corner of this tract from whence the base of a disturbed ROW marker bears S61°00'30"W, a distance of 35.91 feet;

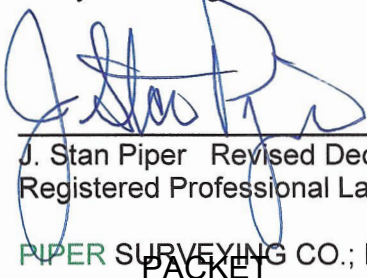
THENCE N14°27'27"W with the West line of this said tract being the East line of said South Adams Street, distance of 441.34 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northwest corner of this tract,

THENCE N75°35'45" E with the South side of South Street and the North line of this said tract, at 608.69 feet pass a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Northwest corner of said 1.072 Acre Tract, continuing for a total distance of 788.72 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Northeast corner of this tract and said 1.072 Acre Tract;

THENCE S15°25'59"E with the West line of said 0.509 Acre Tract, a distance of 235.85 feet to the Place of Beginning, having an area of 268,035 square feet or 6.15 acres of land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.999901875, and a theta angle equal to -0°53'33.701" at City of Midland GPS station "PARK" with published values of Y= 10696,413.57 and X= 1,759,286.52 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same are true and correct to the best of my knowledge and belief as surveyed on the ground on December 21, 2023.


J. Stan Piper Revised December 22, 2023
Registered Professional Land Surveyor No. 1974



Prepared for:
G2K Development Partners
333000 Egypt Lane, Suite D-200
Magnolia, Texas 77354



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: Z-23-0356

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: _____

Phone (423) 790-5880
Email _____

Address _____

City _____

State _____

Zip _____

Property Owner

Printed Name: Martin C Meissner Living Trust

Phone () _____
Email _____

Address 724 W Louisiana Ave

City Midland

State TX

Zip 797071

Representative (if different from Applicant or Property Owner)

Firm: G2K Development Partners

Printed Name: Ronnye Kettler

Phone (832) 330-6003
Email _____

Ronnye.Kettler@g2kpartners.com

Address 33300 Egypt Lane, Suite D200

City Magnolia

State TX

Zip 77354

Street Address: 1511 E Front St

Legal Description

Lot: _____

Block: _____

Subdivision: _____

Current Zoning:

LI (Light Industrial)

Proposed Zone: BP (Business Park)

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Rezoning to allow retail and other supporting uses of the nearby industrial properties. Specifically Dollar Tree on eastern most portion.

Present Use of Property: Vacant

Proposed Use of Property: Retail and other future development

How would this zone change affect the public health, safety and welfare? No

Describe how conditions affecting the property have changed since present zoning designation:

Market for new light industrial uses is diminished. Commercial uses supporting the surrounding areas are desired. Similar uses have developed along E Front St.

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): Ivan M. Meissner

Date: 12/18/2023

Applicant (printed): Ivan M. Meissner

Property Owner (signature): Ivan M. Meissner

Date: 12/18/2023

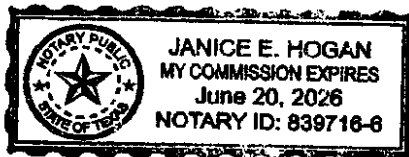
Property Owner (printed): Ivan M. Meissner

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 Ivan M. Meissner, being by me duly sworn, upon oath says: That (s)he is the owner of 1511 E Front or authorized by Martin C. Meissner Living Trust, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.



Ivan M. Meissner
Authorized Agent (signature)

Subscribed and sworn to before me, this 18th day of December, 2023, to certify which witness my hand and seal of office.

Janice Hogan

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: _____

**LEGAL DESCRIPTION OF A 6.15 ACRE TRACT, previously described in
Volume 1841, Page 3, O.P.R.M.C., LOCATED IN SECTION 36, BLOCK 39,
T-1-S, T.&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,696,986.27' E= 1,762,077.59') a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Southeast corner of this tract and a previously surveyed 1.072 Acre Tract, from whence the Southeast corner of 0.509 Acre Tract recorded in Volume 520, Page 61, Deed Records of Midland County and the Southwest corner of Nueva La Jolla, 4th Section, recorded in Cabinet H, Page 285, Plat Records of Midland County bears N59°42'59"E, a distance of 103.46 feet, also from said beginning point the unmarked Northeast corner of said Section 36, bears diagonally N71°22'44"E, a distance of 2595.56 feet;

THENCE S59°42'59"W with the claimed North ROW line of Business I-20 based on TxDOT construction plans of US 80 dated in 1953, a distance of 23.51 feet to a broken ROW marker found at a point of deflection;

THENCE S61°07'05"W with the said claimed ROW line, at 161.71 pass a 1/2" iron rod with a plastic cap marked "PLS 1974" found at the Southwest corner of a 1.072 Acre Tract previously surveyed continuing for a total distance of 171.39 feet to a TXDOT brass cap in a concrete ROW marker found at a point of deflection of this tract;

THENCE S61°07'49"W with said claimed ROW line, a distance of 427.45 feet to the base of a disturbed ROW marker found at a point of deflection in the South line of this tract;

THENCE S61°00'30"W with the said claimed ROW line, a distance of 196.42 feet a 1/2" iron rod with a plastic cap marked "PLS 1974" set in the East line of South Adams Street at the Southwest corner of this tract from whence the base of a disturbed ROW marker bears S61°00'30"W, a distance of 35.91 feet;

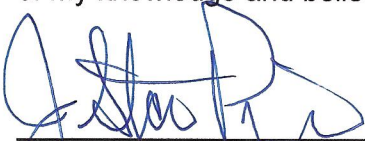
THENCE N14°27'27"W with the West line of this said tract being the East line of said South Adams Street, distance of 441.34 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northwest corner of this tract,

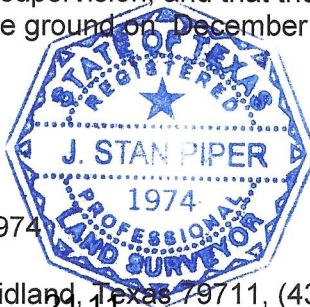
THENCE N75°35'45" E with the South side of South Street and the North line of this said tract, at 608.69 feet pass a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Northwest corner of said 1.072 Acre Tract, continuing for a total distance of 788.72 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Northeast corner of this tract and said 1.072 Acre Tract;

THENCE S15°25'59"E with the West line of said 0.509 Acre Tract, a distance of 235.85 feet to the Place of Beginning, having an area of 268,035 square feet or 6.15 acres of land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.999901875, and a theta angle equal to -0°53'33.701" at City of Midland GPS station "PARK" with published values of Y= 10696,413.57 and X= 1,759,286.52 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same are true and correct to the best of my knowledge and belief as surveyed on the ground on December 21, 2023.


J. Stan Piper Revised December 22, 2023
Registered Professional Land Surveyor No. 1974



Prepared for:
G2K Development Partners
333000 Egypt Lane, Suite D-200
Magnolia, Texas 77354

City of Midland
2.43 Acres

N. LINCOLN
STREET

Frank E. Yarbrough
0.24 Acres
Vol. 896, Pg. 505, D.R.M.C.

ALTA/NSPS LAND TITLE SURVEY
1511 East Front Street

1.072 ACRES WITHIN A 5.9 ACRE TRACT
as described in Volume 1841, Page 3, O.P.R.M.C.
LOCATED IN SECTION 36, BLOCK 39, T-1-S,
T.&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,696,896.31' E= 1,761,915.69') a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract, from whence the unmarked Northeast corner of said Section 36, bears diagonally N70°41'12"E, a distance of 2777.91 feet, also a TXDOT ROW brass cap in concrete monument bears S61°07'05"W, a distance of 9.68 feet;

THENCE N15°25'59"W, at 84.73 and 120.73 pass 1/2" iron rods with a plastic caps marked "PLS 1974" set for easement corners continuing for a total distance of 282.71 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Northwest corner of this tract, from whence the Northwest corner of the said remainder of 5.9 Acre Tract bears S75°35'45"W, a distance of 611.35 feet;

THENCE N75°35'45" E with the South side of South Street, a distance of 180.03 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Northeast corner of this tract and the Northwest corner of a 0.509 Acre Tract as described in Volume 520, Page 61, Deed Records of Midland County, from whence a x-tie post bears S25°31'E, a distance of 17 feet;

THENCE S15°25'59"W with the West line of said 0.509 Acre Tract, a distance of 235.85 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Southeast corner of this tract, from whence the Southeast corner of said 0.509 Acre Tract and the Southwest corner of Nueva La Jolla 4th Section, recorded in Cabinet H, Page 285, Plat Records of Midland County, bears N59°42'59"E, a distance of 103.46 feet;

THENCE S59°42'59"W with the claimed North ROW line of Business I-20 based on TXDOT construction plans of US 80 dated in 1953, a distance of 23.51 feet to a found broken ROW marker at a point of deflection;

THENCE S61°07'05"W with the said claimed ROW line, a distance of 161.71 feet to the Place of Beginning, having an area of 46,717 square feet or 1.072 acres of land.

0.105 ACRE SHARED ACCESS EASEMENT WITHIN A 5.9 ACRE TRACT
as described in Volume 1841, Page 3, O.P.R.M.C. LOCATED IN SECTION 36,
BLOCK 39, T-1-S, T.&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,696,877.42' E= 1,761,881.48') a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract, from whence the unmarked Northeast corner of said Section 36, bears diagonally N70°33'17"E, a distance of 2816.45 feet, also the base of a concrete ROW marker found at a corner of said 5.9 Acre Tract on N. ROW line of Business I-20 bears S61°07'49"W, a distance of 398.06 feet;

THENCE N15°25'59"W, a distance of 129.84 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Northwest corner of this tract;

THENCE N74°34'01"E, a distance of 38.00 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Northeast corner of this tract, from whence a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Northwest corner of a 1.072 Acre Tract surveyed this day bears N15°25'29"W, a distance of 161.98 feet;

THENCE S15°25'59"W with the West line of said 1.072 Acre Tract, a distance of 38.00 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at the Southwest corner of this tract, from whence the Southwest corner of said 1.072 Acre Tract bears S15°25'59"E, a distance of 84.73 feet;

THENCE S74°34'01"W, a distance of 2.00 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set at an interior of this tract;

THENCE S15°25'59"E, a distance of 85.21 feet to a 1/2" iron rod with a plastic cap marked PLS 1974 set the Southeast corner of this tract, from whence a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of said 1.072 Acre Tract bears N61°07'05"E, a distance of 2.06 feet;

THENCE S61°07'05"W with said claimed ROW line, a distance of 7.68 feet to a TXDOT Row brass cap in concrete monument found at an interior corner of this tract;

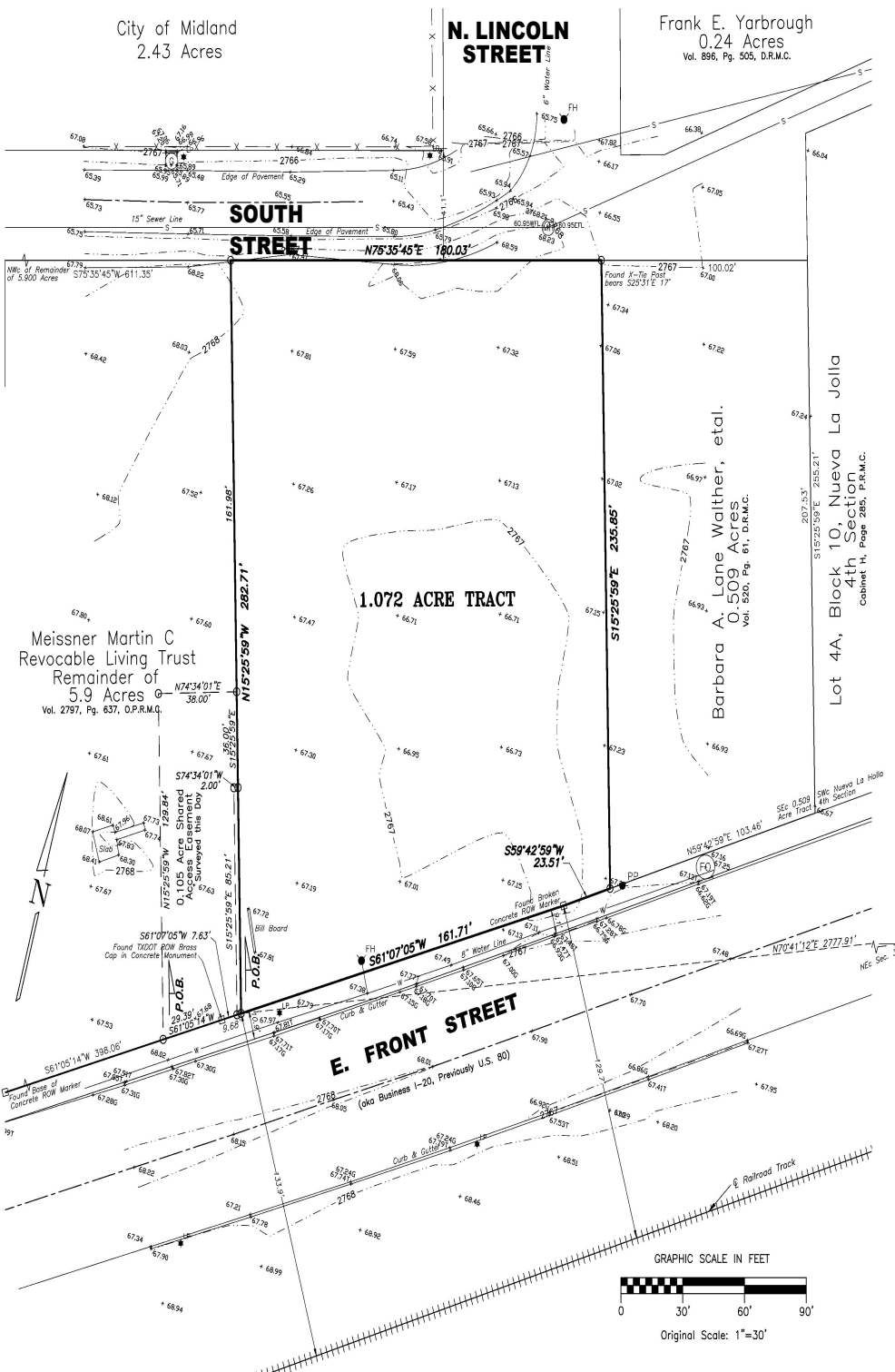
THENCE S61°05'14"W with the said claimed ROW line, a distance of 28.79 feet to the Place of Beginning, having an area of 4591 square feet or 0.105 acres of land.

EXCEPTIONS LISTED IN SCHEDULE B OF TITLE COMMITMENT NO. 2334600
ISSUED BY STEWART TITLE GUARANTY COMPANY ON AUGUST 2, 2023
WITH AN EFFECTIVE DATE OF JULY 7, 2023

- The Right of Way or Easement to the City of Midland, of record in Volume 40, Page 185 and Volume 465, Page 233, Deed Records of Midland County, Texas does not affect subject property. (Item 10d in said Title Commitment.)
- The Right of Way or Easement to the City of Midland, of record in Volume 42, Page 5, Deed Records of Midland County, Texas does affect subject property in a blanket manner and is unplotable. (Item 10e in said Title Commitment.)
- The Right of Way or Easement to Midland County, of record in Volume 148, Page 141, Corrected at Volume 444, Page 651, Deed Records of Midland County, Texas does not affect subject property. (Item 10f in said Title Commitment.)
- The Deed or Conveyance to the City of Midland, of record in Volume 196, Page 15 and 17, Deed Records of Midland County, Texas does not affect subject property. (Item 10g in said Title Commitment.)
- The Right of Way or Easement to Texas Utilities Electric Co., of record in Volume 1642, Page 202 and Volume 1813, Page 821, of the Official Records, of Midland County, Texas does not affect subject property. (Item 10h in said Title Commitment.)
- The Right of Way or Easement to Western Gas Resources, of record in Volume 1951, Page 322, of the Official Records, of Midland County, Texas does not affect subject property. (Item 10i in said Title Commitment.)

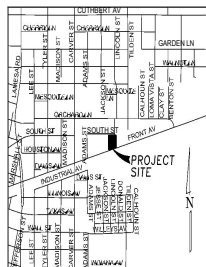
GENERAL NOTES

- Based on the U.S. Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Map, Community Number 481239, Sheet Number 48329C0093 F, revised September 16, 2005, the surveyed property is not located in a special flood hazard area according to the map. The flood zone classification for the surveyed property is Zone X.
- The subject property has direct access to Front Street (aka Business I-20), a public street.
- Except as shown, all visible utilities serving the subject property enter through adjoining public street and/or easements of record.
- There is no visible evidence of recent earth moving work, building construction, or building additions that was observed on the subject property in the process of conduction the field work.
- There are no proposed changes in street right-of-way lines and no visible evidence of recent street or sidewalk construction or repairs that was observed on the subject property in the process of conduction the field work.
- Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone with a combined meridian convergence of 0.00091875, and a theta angle equal to -0.53333701 degrees. The coordinates of the Point of Beginning are Y= 10696,413.57 and X= 1,759,286.52 in U.S. Survey Feet.
- Elevations are relative to 1988 NAVD based on BM A-1061 with an elevation of 2769.71'.



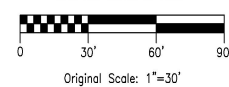
LEGEND

- = Found & Accepted Corner Monument as Described
- = Set 1/2" Iron Rod with Plastic Cap marked "PLS 1974"
- pp = Power Pole
- MR = Sewer Manhole
- T = Traffic Sign
- AT&T = AT&T Manhole
- G = Gas Meter
- LP = Light Pole
- FH = Fire Hydrant



VICINITY MAP
Not to Scale

GRAPHIC SCALE IN FEET



SURVEYOR'S CERTIFICATE

To: G2K Development Partners, LLC; Edward Gus Meissner and Ivan Martin Meissner;
Stewart Title Guaranty Company.

This is to certify that this map or plat and survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 5, 6, 7a, 8, 9, 10, 11b, 13, 16, 17, 18 and 19 of Table A thereof. The field work was completed on October 17, 2023.

"PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR REPLIED UPON AS A FINAL SURVEY DOCUMENT."
Date: October 17, 2023

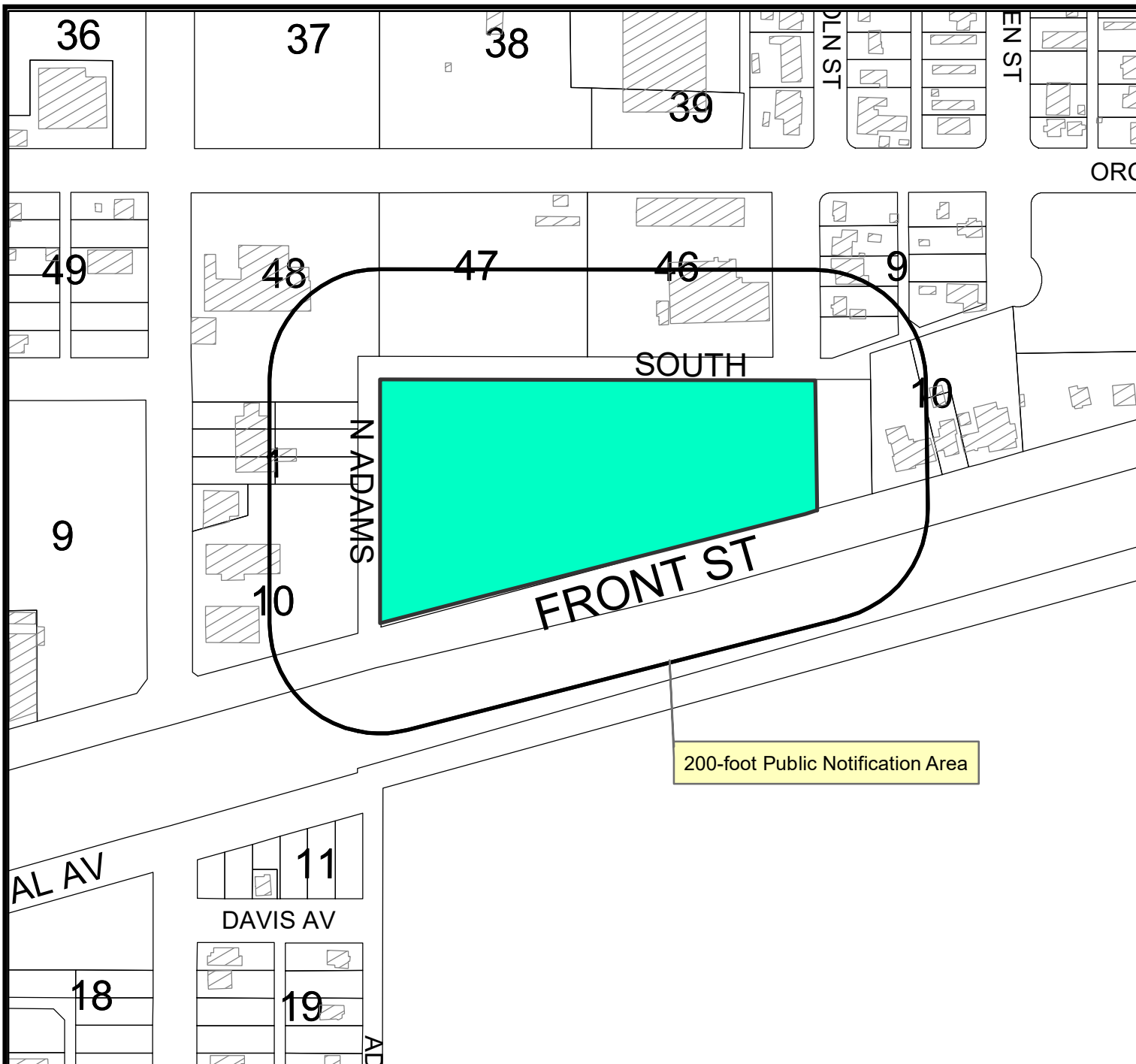
Prepared for:
G2K Development Partners
Attn.: Mr. Romney Kettler
33300 Egypt Lane,
Suite D-200
Magnolia, Texas 77354



PACKET

- 48.35+ = Elevation Shot
- 48.35T+ = Elevation Shot on Top of Curb
- 48.35G+ = Elevation Shot on Gutter
- 48.35FL+ = Elevation Shot on Sewer Flowline
- 48.35R+ = Elevation Shot on Manhole Ring

Drawn by: Gene M. Rodriguez
Scale: 1"=30'
Date: 10/17/23



LOCATION MAP

Z-23-0356

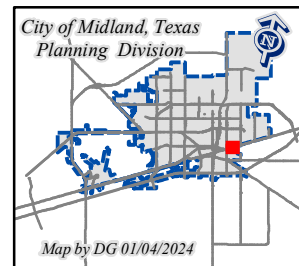
Scale: 1" = 200'

Consider a request by G2K Development Partners, for a zone change from LI, Light Industrial District to BP, Business Park District, for a 6.15-acre tract of land out of Section 36, Block 39, T-1-S, T&P RR, Co. Survey, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of East Front Street and North Adams Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

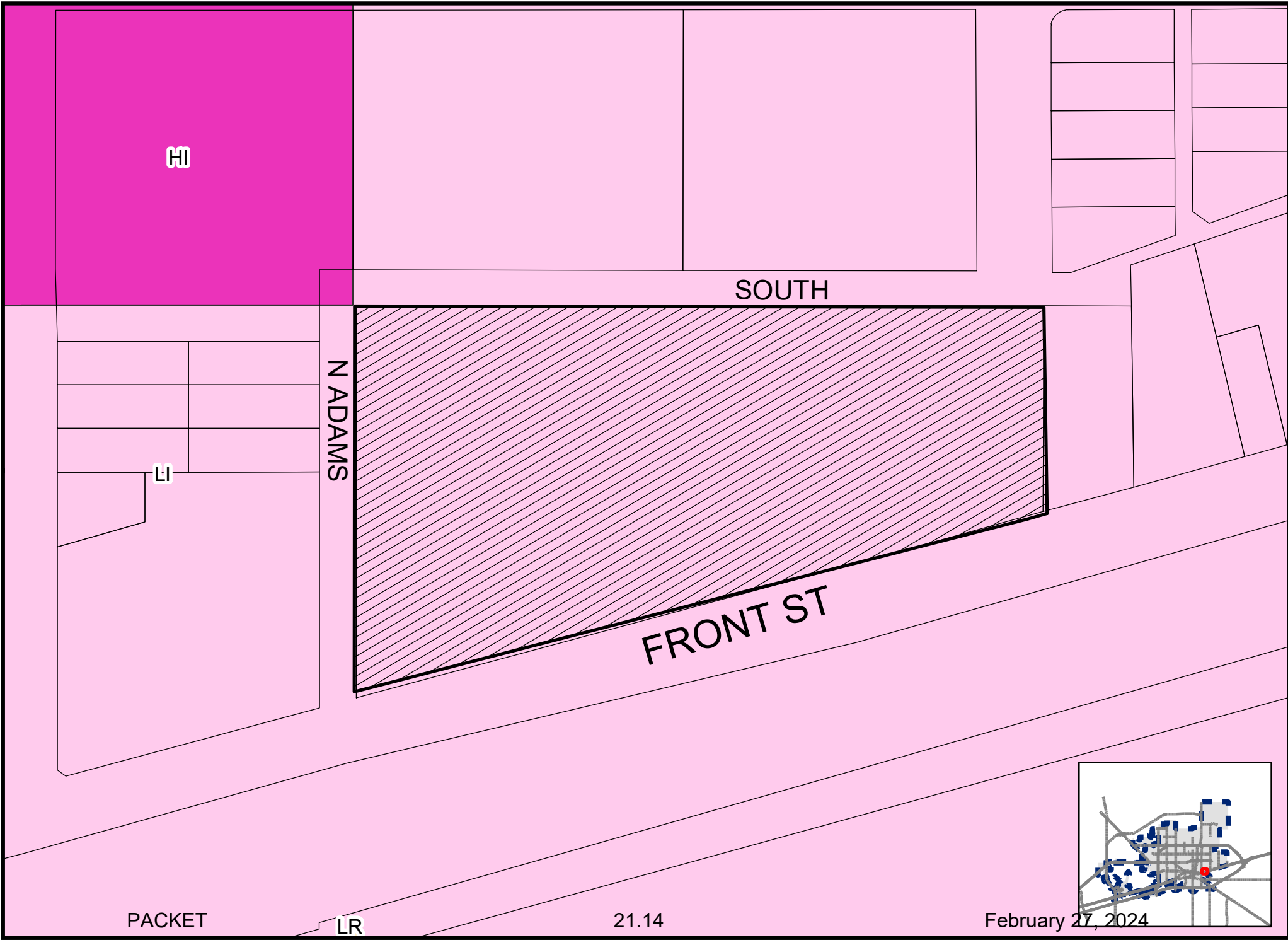


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING PLAN. NOR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

February 27, 2024





PACKET

21.15

February 27, 2024









City Council Meeting

Item Number: 22
Meeting Date: February 27, 2024
To: City Council / City Manager
From: Laurie M. Williams, Interim Community Services Director
Subject: RESOLUTION APPOINTING A BOARD MEMBER TO THE MIDLAND DOWNTOWN PARK CONSERVANCY BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND DOWNTOWN PARK CONSERVANCY (DISTRICT: 2) (COMMUNITY SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Consider a resolution appointing a board member 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:

Approve

Fiscal Impact:

This donation does not have any fiscal impact on the City of Midland

Strategic Priority:

(Quality of Life and Place)

Discussion:

In August 2018, the City Council appointed three (3) directors to the Midland Downtown Park Conservancy Board of Directors. The three directors all have staggered terms.

When the City entered into a Downtown Open Space Development Agreement, part of the

agreement references a Conservancy Board of Directors to oversee the operations and maintenance of the downtown park.

The Board of Directors include a total of seven (7) members. Three appointed by the City, one appointed by the Scharbauer Foundation, one appointed by Concho (now Conoco-Phillips), one by the Downtown Midland Management District, and one at-large.

For E. Out

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION APPOINTING A BOARD MEMBER TO
THE MIDLAND DOWNTOWN PARK CONSERVANCY
BOARD OF DIRECTORS; AND DIRECTING THE CITY
MANAGER TO DELIVER A COPY OF THIS
RESOLUTION TO THE MIDLAND DOWNTOWN PARK
CONSERVANCY**

WHEREAS, the City of Midland, Texas and the Midland Downtown Park Conservancy (the “*Conservancy*”) entered into that certain Downtown Open Space Development Agreement for the purpose of developing Lot 1A, Block 54, and Lot 1A, Block 55, Original Town Addition, Section 14, City and County of Midland, Texas, as a high quality urban park and open space, with related facilities and amenities for the use and enjoyment of residents and visitors of the City for recreational and educational purposes, and for the beautification of and to attract business and business patrons to downtown Midland; and

WHEREAS, the bylaws of the Conservancy provide that three (3) positions on the Conservancy’s Board of Directors shall be filled by a duly-approved resolution of the City Council of the City of Midland, Texas; and

WHEREAS, the term of one (1) of the City-appointed 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 appoint _____ to the Conservancy’s Board of Directors;

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

SECTION ONE. That _____ is hereby appointed 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., 2024, 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 FORM ONLY:

John Ohnemiller, City Attorney



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Danei Garcia

Address: 4403 W Dengar Avenue

Midland Texas 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 39 years.

Professional and/or Community Activities:

Texas Association of School Business Officials - 8 years

Texas Association of Sports Officials - 20 Years(retired)

What is your personal vision for the City?

My personal vision is build Midland as postive and influential city here in Texas, then convey that message to the rest of the country.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy Board

Please tell us why you are interested in serving on this board or commission.

I believe our downtown area has a lot to offer for children, young adults and adults alike. Each group that I speak of has their own unique needs. We need to accomodate as many groups as possible.

Date: 1/25/2024

Phone: 432.2128.6435 (Home)

432.240.1966 (Business)

Email: daniel.garcia@midlandisd.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Purchasing Supervisor

What contribution would you most like to make?

Bouncing ideas with others to make a positive influence.

Additional pertinent information or references:

I am in Midland 101 currently. I should complete this by May of 2024.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Daniel Garcia 1.25.2024

Applications may be submitted online via email or print in order to send by mail:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Kelli Davis

Address: 4102 Stratton Dr.

Midland Texas 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 28 years.

Professional and/or Community Activities:

Founding member of Founder's Blend entrepreneurial group; member of Midland Chamber of Commerce; active member of Stonegate Fellowship; serve with youth group at Stonegate Fellowship.

Date: 1/29/2024

Phone: 806-928-5833 (Home)
432-253-0500 (Business)

Email: kelli@secondstory.co

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Managing Partner at Second Story Coworking

What is your personal vision for the City?

I would love to see Midland continue to grow into a city I am proud to raise my family in. This means finding GOOD solutions to schooling challenges, and seeing improvements in infrastructure and amenities. We're well on our way with current leadership, but strategic development & growth in key areas, like downtown, are crucial.

Please specify any time constraints you may have.

I own three businesses with my husband and have three kids so my time is as limited as anyone else's might be, but I have flexible hours and can make most anything work with advanced notice.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy Board

Please tell us why you are interested in serving on this board or commission.

We have owned a business in downtown Midland for almost 5 years now, and the growth has been amazing. I want to be in the loop on everything downtown-related, and also be a steward for the area. Proper protection & stewardship for our resources is essential.

What contribution would you most like to make?

The perspective of a downtown business owner is invaluable. Additionally, we have over 100 local businesses in and out of our space on a regular basis between our offices, coworking, meeting rooms and mailboxes, so I have my finger on the pulse of our business community. I would like to add this perspective and wisdom to the Downtown Park Conservancy Board.

Additional pertinent information or references:

References: Wes Perry, downtown business and building owner, wes@pbex.com
Laura Roman, downtown business partner and personal reference, laura.roman@weaver.com

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kelli Davis

Digitally signed by Kelli Davis
DN: cn=Kelli Davis, c=US, o=Second Story Coworking,
email=kelli@secondstory.co
Reason: I attest to the accuracy and integrity of this document
Date: 2024.01.29 12:26:18 -06'00'

Applications may be submitted online via email or print in order to send by mail:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Jonny Heins

Address: 3400 Choate Pl

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 6 years.

Professional and/or Community Activities:

I currently serve as the Senior Director of Corporate Affairs at Permian Resources where I oversee government affairs, community affairs, real estate, and charitable giving. Since moving to Midland in 2017, I have been active in the community, serving as the Board President of Spectrum of Solutions, a local nonprofit. I also assisted with the initial development of Centennial Park.

What is your personal vision for the City?

Midland has made great leaps forward since I moved here in 2017. It has been exciting to play a small part in the growth of the City, including working on Concho's real estate development projects and assisting with the Spectrum's headquarters construction. My vision for the City is for the younger generation of Midlanders to continue take an active role in the future development of the City.

Please specify any time constraints you may have.

None. I served as an initial board member for the Midland Downtown Park Conservancy at formation in 2018. I am currently the Secretary of the Conservancy and have attended nearly every board meeting of the Conservancy since inception.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy Board.

Please tell us why you are interested in serving on this board or commission.

Having worked on the formation of the Conservancy, the construction of Centennial Park, and numerous issues that have faced the Conservancy over the past five years, I have a unique understanding of the history and aspirations of the Conservancy. I am

Date: 1/29/2024

Phone: 713-829-3581 (Home)

713-829-3581 (Business)

Email: jonnyheins@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Senior Director of Corporate Affairs/Attorney

an attorney and can also provide legal guidance to the Board, which I have also done in the past.

What contribution would you most like to make?

I would like to assist Centennial Park in its continued role as a catalyst for downtown development. With future projects in the vicinity, including the Santa Rita Hotel, I think there are great opportunities for partnership, which I have the background to assist with. There will also be legal challenges associated with such projects that I can help solve creatively.

Additional pertinent information or references:

I currently serve on (1) the Board of Trustees of Trinity School of Midland, (2) the Board of the Permian Basin Petroleum Association, (3) the Board of the Downtown Midland Management District, (4) the Management Committee of the Permian Strategic Partnership, and (5) the Management Committee of AXPC. References: Chris Boehler (713-320-8313). Scott Kidwell (432-553-0668).

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Jonny Heins

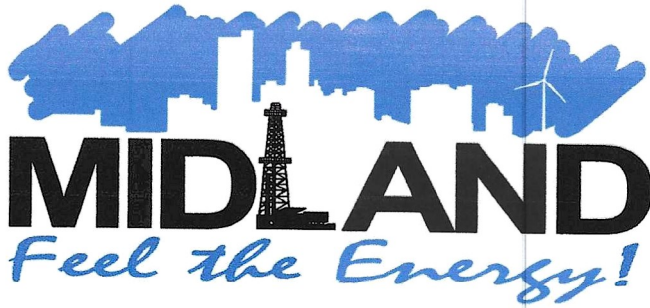
Digitally signed by Jonny Heins
Date: 2024.01.29 17:10:20 -06'00'

Applications may be submitted online via email or print in order to send by mail:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702**

[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: JOHN L KENNEDY

Address: 1202 DOUGLAS AVE

MIDLAND TEXAS 79701

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 38 years.

Professional and/or Community Activities:

TRUSTEE FOR PETROLEUM MUSEUM

FIRST PRESBYTERIAN OF MIDLAND

GRADUATE OF LEADERSHIP MIDLAND

What is your personal vision for the City?

TO BECOME A CITY THAT PEOPLE WANT TO RELOCATE TO
INCREASE OUR QUALITY OF LIFE

Please specify any time constraints you may have.

NONE

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

DOWNTOWN CONSERVANCY

Please tell us why you are interested in serving on this board or commission.

HELP MAKE DOWNTOWN A PLACE TO GO TO

Date: 2/15/2024

Phone: 432-288-4118 (Home)

(Business)

Email: OLKMIDLAND@GMAIL.COM

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: FINANCIAL PROFESSIONAL

What contribution would you most like to make?

My TIME & EFFORT

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Roger Primera

Address: 723 W. Dengar

Midland TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 29 years.

Professional and/or Community Activities:

Volunteer w/ Horses, Hearts & Hands (H3)
Big Brother/Big Sister
YMCA, KMB

What is your personal vision for the City?

This is such an amazing city and a superb place to live. I've
raised my 3 children here and I want to see the city flourish
further into greatness. I want to get the community more involved.

Please specify any time constraints you may have.

none

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

midland Downtown Park Conservancy

Please tell us why you are interested in serving on this board or commission.

I truly love the downtown area now, especially the park.
I want to contribute to all of its glory! I want to see people

Date: 2-1-24

Phone: 432-813-9191 (Home)

_____(Business)

Email: usmctx25@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Human Resources Manager

What contribution would you most like to make?

I already talk about the park (CP) to everyone I see. I would like to speak even more from the heart about its progress, events and improvements.

Additional pertinent information or references:

I know many people in our community and am aware of the "wants" that they seek from the park.

(2) Name of Board/Commission:

Barbara; George H.W. Bush Convention Center
Advisory Board

What contribution would you most like to make?

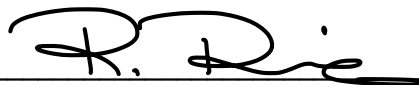
The Midland Center was always a special place for me. The memories will live on. I want to give the Bush Center my attention to not only put it out in the community more, but to also contribute to its future.

Additional pertinent information or references:

Rosco Thomas - longtime friend

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Audrey Stevens

Address: 100 N Main St Apt 410

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ¹⁹ years.

Professional and/or Community Activities:

Currently minimal community activities as I recently moved back to Midland after 14 years living all over the country. Professionally, a part of my job is expanding access to mental healthcare locally and rurally in the greater West Texas region.

What is your personal vision for the City?

I want to see Midland reach its full potential and offer every service and activity that larger metropolitan areas have.

Please specify any time constraints you may have.

With advanced notice, I could likely make any date and time work.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy Board

Please tell us why you are interested in serving on this board or commission.

I am eager to join the board because I am passionate about public parks, as well as downtown Midland. I love living downtown and am thrilled to see how far the Midland downtown area has come in recent years.

Date: 1/22/2024

Phone: 432-279-0868 (Home)

(Business)

Email: draudreystevens@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Clinical Psychologist; Assistant Professor-TTUHSC

What contribution would you most like to make?

I am excited about the proposition of the Hotel Santa Rita and am committed to making downtown Midland the center of business, entertainment, and visitors to the Permian Basin area. I would love to see Centennial Park continue to expand public events offered.

Also, as a clinical psychologist, I know the importance of public outdoor spaces for fostering community and positive mental health.

Additional pertinent information or references:

My parents, Randy and Julie Stevens, have been active community volunteers since they moved to Midland in 1981.

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

Similarly, I would like to expand usage of public parks in Midland. There are so many great parks that offer community gatherings that may be underutilized.

Additional pertinent information or references:

A core part of my childhood revolves around my enjoyable experiences at Fasken Park, and I would love the positive experiences and memories to continue for many generations.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Audrey Stevens Digitally signed by Audrey Stevens
Date: 2024.01.23 10:54:54 -06'00'

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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Traci Proctor

Address: 1607 W. Louisiana Ave
Midland, TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 16 years.

Professional and/or Community Activities:

My husband and I are not from Midland, but consider it our home. We have recently moved back after being in FL for past 10 years. While in Florida I was the CEO of a large non-profit and served both state of Florida and Georgia and worked in collaboration with DOJ, state and local groups. Chaired and started large fundraising events, etc. While in TX, I was ASSOC. EX Director with Brad Swendig, and together we built the COM Physical Therapy and Wellness divisions and the Florence Marie Hall Natatorium. Please see resume for complete list. Thank you.

What is your personal vision for the City?

To proactively recognize need for change, make intentional improvements, & respectfully grow with evolving demands - while preserving the integrity & legacy of our community and history.

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Downtown Park Conservancy

Please tell us why you are interested in serving on this board or commission.

I wish to pull from my experience of developing & growing missions to enhance the quality of life for Midlanders, while increasing both social and economic impact. I would like to be part of your continued success to evolve and enrich residents, visitors, and overall downtown park activities that essentially promote better lifestyles, community respect, and urban vitality for OUR CITY, OUR HOME.

Date: Jan 30, 2024

Phone: 432-349-1783 (Home)

432-682-3753 (Business)

Email: tproctor@btaoil.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Director of Human Resources BTA Oil Producers.
Formerly CEO Non-Profit ORGS for 20+ years

PACKET

2217

February 27, 2024

What contribution would you most like to make?

Together with (and at the discretion of) the Board and Executive Director, I would like to evaluate the program services, revenue generation, fund development strategies, and future planning in order to ensure a long term viable and ever evolving organization.

Additional pertinent information or references:

BJ Beal, BTA Oil Producers

Happy to provide as many relevant Midland references as requested.

Happy to provide as many relevant Florida references as requested.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702

Submit Via Email

Print Application

TRACI S. PROCTOR

PRESIDENT & CEO

Midland, Texas
432-349-1783
comproctor@yahoo.com

EXECUTIVE LEADERSHIP

- *Non-Profit Startup, Turnaround, Expansions*
- *Board Governance and Strategic Direction*
- *Multi-Million Dollar Budgets and Endowment Management*
- *Profitability, Cost Benefit Analysis & Cost Control*
- *Financial Data/Metrics & Outcome measures*
- *Advancing Organizational Missions & Visions*
- *Leadership (400+ staff) & Inclusive Excellence*
- *Integrated Cross-functional Planning & Implementation*
- *Statistical & Analytical Forecasting*
- *Fundraising, Donor Relations and Large Events*
- *Advocacy, PR and Marketing, Public Speaking*
- *Team Building & Performance Motivation*

PROFESSIONAL EXPERIENCE

CEO / PRESIDENT

Ronald McDonald House Charities, Inc. - Tallahassee, FL

October 2017 to Present

- **Strategic Planning:** *Analyzed organizational structures & overall efficiency measures to revamp objectives, accountability, administrative excellence, financial performance, fundraising, board engagement, and employee outcomes*
- **Operational Effectiveness:** *Implemented and administered framework of policies, objectives and accountability systems. Administered needs assessments, created data systems to quantify outcome reports in order to analyze services & programs, satisfaction rates, future needs and organizational performance levels.*
- **Economic Growth:** *Defined short & long-term financial goals, investment plans, return on investments, cost to raise a dollar, financial analysis & metrics. Cut expenses by 38%, increased NET revenue by 350%, restructured fundraising & programming strategies & identified new financial growth, resulting in increased profits & sustainability.*
- **Leadership:** *Empowered employees to take ownership; identify their contribution to overall organizational successes. Strengthened staff and board energy & commitment to professionally invest in project outcomes. Assessed state of the Board of Directors: then strengthened the structure, commitment, and purpose for serving. Improved partnership to increase level of satisfaction and organizational identity via effective communication, transparency & clear expectations.*

EXECUTIVE CONSULTANT

Non-Profit and For Profit Companies - Local, State & National

May 2016 to Present

- **Overall Scope:** *Advise Executives & BODs how to implement more effective systems; improve financial planning and management; operational processes; board relations; bylaws; state & federal regulations & filings, development, etc.*

EXECUTIVE DIRECTOR / CEO - Hired by National Headquarters to recover operations.

Sunrise Group, Inc.- 501c(3)- Georgia Division - (Florida Headquarters)

March 2015 to May 2016

- **Strategic Planning:** *Conducted extensive industry research to formulate internal & external reorganization & regulatory changes. Set priorities, roles, & systematically align resources. Created important partnerships with Georgia Dept. of Behavioral Health and Developmental Disabilities - state and regional levels, Department of Justice, and CMS.*
- **Operational Effectiveness:** *Revamped division resulting in financial recovery & streamlined processes. Analyzed inefficiencies, formed new strategies and implemented systems, control mechanisms & aligned financial resources with growth objectives.*
- **Economic Growth:** *Within first four months, identified and recovered \$4 million lost revenue while securing financial structures for additional \$3.2 million for a non-profit company.*
- **Leadership:** *Lead 150 healthcare employees. Motivated, trained & empowered managers to become confident leaders & decision makers. Established local, state, & national level industry partnerships.*

PACKET

22.19

February 27, 2024

ASSOCIATE EXECUTIVE DIRECTOR

COM AQUATICS, INC., 501c(3) - Midland, Texas

June 2005 to March 2015

- **Strategic Planning:** Converted 501C3 into a self-sufficient, nonprofit corporation capable of generating enough program revenue to cover all operational expenses. Built & operated a wellness & post-surgical physical rehabilitation facility (land & water divisions) - complete with fund relations, building contract negotiations, staffing, operational processes & systems. Secured all medicare, insurance, & workers compensation contracts, fiscal intermediary and regulatory practices. Generated enough income in 3 years to expand with another 40,000 s.f. facility addition: THE FMH NATATORIUM for all ages, sports, wellness and RECREATION.
- **Operational Effectiveness:** Conducted financial management analysis. Developed, planned and recovered 97% aging accounts. Modernized invoicing & receivables & restructured operations resulting in program growth, increased revenue, profits, cash flow, expansion, and employee collaboration. Created HR division, overall communication, incentives, trainings, pay structures & retention while maintaining inclusive environment.
- **Leadership:** Lead a team of 300 staff, 30 programs, 3200 members, 500 wellness participants, 1200 children, 6500 patients visits. Developed partnerships with foundations, sponsors, corporate leaders, Local, State, & National Government, Children's Rehabilitation Center, hospitals, Special Olympics, University of Texas-PB., US Navy, medical facilities, physicians, & surgeons
- **Fundraising:** Lead multiple capital campaigns (more than \$20 million total raised): fundraised, managed, and operated four multi-million dollar facility expansions, including a wellness and therapy division, 40,000 sq. ft. natatorium and courtyard and recognition pavilion. Cultivated relationships with foundations, corporations, community leaders. Grant writing, capital campaigns, presentations, fund source research and outreach, annual giving programs.
- **Economic Growth & Development:** Doubled participation & operating budget: Expanded program options & revenue sources. Motivated & lead employees to reenergize objectives, understand membership perceptions, & identify roles resulting in higher employee retention rates, workplace cohesion, increased profits.
- **Marketing and Public Relations:** Identified & strengthened organization's target market, product & services. Created a market brand, materials & consistency. Increased awareness & mission profile. Assessed & implemented new pricing and payment structures/procedures. Tracked organizational statistics for measurable results, accountability, and assessment. Developed relationships with key leaders, customer test groups, employee teams, community groups to identify perceptions, monitor results, and achieve desired goals.

EDUCATION & PROFESSIONAL TRAINING

THE UNIVERSITY OF ARIZONA

Tucson, AZ

Bachelor of Arts, Graduated with Distinction

PROFESSIONAL TRAINING

- Investment Management & Policy - Carroll & Co, CPAs
- Executive Management - Excellence Program, Atlanta
- Organizational Effectiveness/Leadership - SCI Workshops
- Human Resource Compliance - U.S. Department of Labor
- Fundraising Insights - Benevon, SCI Workshops
- Non-Profit Tax Law - Carr Riggs Ingram
- Conflict Resolution - Univ. of Texas & TIMET
- CMS rules/modifications/fiscal compliance - BMS
- Insurance - Business MNGT Solutions
- Risk Management - SCI Workshops

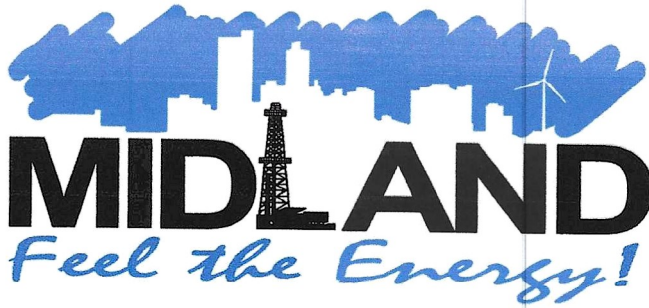
COMMITTEE INVOLVEMENT

- Neighborhood Champions Board, BANK OF AMERICA
- Board of Directors - Ronald McDonald House, SCI
- Compliance Comm.- Ronald McDonald House, COM & SCI
- Audit and Finance - Ronald McDonald House, COM, SCI
- Future Development Committee - Georgia and SCI
- Planning Committee - UA, RMHC, COM
- Executive Committee - State of Georgia
- Fundraising Committee - RMHC, COM INC. & SCI
- Building Committee - COM, INC.
- Scholarship Committee - COM, INC., Odessa College
- Marketing Committee - RMHC, UA, COM
- Events and Fundraising - COM, SCI, RMHC

PACKET

22.20

February 27, 2024



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: JOHN L KENNEDY

Address: 1202 DOUGLAS AVE

MIDLAND TEXAS 79701

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 38 years.

Professional and/or Community Activities:

TRUSTEE FOR PETROLEUM MUSEUM

FIRST PRESBYTERIAN OF MIDLAND

GRADUATE OF LEADERSHIP MIDLAND

What is your personal vision for the City?

TO BECOME A CITY THAT PEOPLE WANT TO RELOCATE TO
INCREASE OUR QUALITY OF LIFE

Please specify any time constraints you may have.

NONE

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

DOWNTOWN CONSERVANCY

Please tell us why you are interested in serving on this board or commission.

HELP MAKE DOWNTOWN A PLACE TO GO TO

Date: 2/15/2024

Phone: 432-288-4118 (Home)

(Business)

Email: OLKMIDLAND@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: FINANCIAL PROFESSIONAL

What contribution would you most like to make?

My TIME & EFFORT

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



City Council Meeting

Item Number: 23

Meeting Date: February 27, 2024

To: City Council / City Manager

From: Elizabeth Triggs, Director

Subject: AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 8, "DANGEROUS AND DILAPIDATED BUILDINGS", OF THE CITY CODE OF MIDLAND, TEXAS, BY CHANGING THE HEADING OF SAID CHAPTER 8 TO "SUBSTANDARD BUILDINGS", RECODIFYING SECTION 7, "ABATEMENT OF SUBSTANDARD BUILDINGS", AS SECTION 1, ESTABLISHING MINIMUM STANDARDS, ADDING SECTION 2, "ADDITIONAL AUTHORITY TO SECURE SUBSTANDARD BUILDINGS", SO AS TO ESTABLISH AN ALTERNATE PROCEDURE FOR SECURING A SUBSTANDARD BUILDING, ADDING SECTION 3, "PROHIBITING ENTRY INTO SUBSTANDARD BUILDINGS", SO AS TO AUTHORIZE THE BUILDING OFFICIAL TO PROHIBIT ENTRY INTO AND OCCUPANCY OF A SUBSTANDARD BUILDING, AND REMOVING CONFLICTING SECTIONS FROM SAID CHAPTER; PROVIDING FOR NOTICE AND A HEARING; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2024; AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

In accordance with Chapter 214 of the Local Government Code, this ordinance authorizes the City of Midland to secure buildings that violate the City's minimum standards and that are unoccupied or are occupied only by persons who do not have a right of possession to the buildings.

Recommended City Council Action:

Approve

Fiscal Impact:

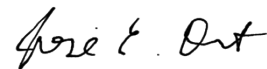
N/A

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

This ordinance revises an existing ordinance with the goal of making language clearer and introducing new strategies to address substandard buildings in the City of Midland. In addition to clarifying definitions and procedures related to these structures, it introduces a new provision enabling the city to more expeditiously board and secure substandard buildings that are unoccupied or occupied only by persons who do not have a right of possession to the building prior to a public hearing. This expedited action is critical in instances demanding immediate intervention to avert potential threats to public safety. However, the property owner of the building retains the right to a public hearing in front of the City Council subsequent to the city's securing of the building. At such hearing, the City Council may take action to affirm, reverse or modify the action taken by the city with respect to securing the building.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 8, “DANGEROUS AND DILAPIDATED BUILDINGS”, OF THE CITY CODE OF MIDLAND, TEXAS, BY CHANGING THE HEADING OF SAID CHAPTER 8 TO “SUBSTANDARD BUILDINGS”, RECODIFYING SECTION 7, “ABATEMENT OF SUBSTANDARD BUILDINGS”, AS SECTION 1, ESTABLISHING MINIMUM STANDARDS, ADDING SECTION 2, “ADDITIONAL AUTHORITY TO SECURE SUBSTANDARD BUILDINGS”, SO AS TO ESTABLISH AN ALTERNATE PROCEDURE FOR SECURING A SUBSTANDARD BUILDING, ADDING SECTION 3, “PROHIBITING ENTRY INTO SUBSTANDARD BUILDINGS”, SO AS TO AUTHORIZE THE BUILDING OFFICIAL TO PROHIBIT ENTRY INTO AND OCCUPANCY OF A SUBSTANDARD BUILDING, AND REMOVING CONFLICTING SECTIONS FROM SAID CHAPTER; PROVIDING FOR NOTICE AND A HEARING; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2024; AND ORDERING PUBLICATION

WHEREAS, Chapter 214 of the Local Government Code authorizes a municipality to enact an ordinance requiring the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is: dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare; unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or boarded up, fenced, or otherwise secured in any manner if the building constitutes a danger to the public even though secured from entry, or the means used to secure the building are inadequate to prevent unauthorized entry or use of the building; and

WHEREAS, Chapter 214 of the Local Government Code authorizes a municipality to enact an ordinance authorizing the municipality to secure buildings that violate the municipality’s minimum standards and that are unoccupied or are occupied only by persons who do not have a right of possession to the buildings; and

WHEREAS, substandard buildings that constitute hazards to the health, safety, or general welfare of occupants, the citizens of the City of Midland, Texas, or the public are public nuisances; and

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the Midland City Code so as to establish minimum standards for the continued use and occupancy of buildings and processes for the abatement and securing of substandard buildings;

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

SECTION ONE. That the Midland City Code Title IV, “Building Regulations”, Chapter 8, “Dangerous and Dilapidated Buildings”, is hereby amended by changing the heading of said Chapter 8 to “Substandard Buildings” and by amending said Chapter 8 to read in its entirety as follows:

4-8-1. ABATEMENT OF SUBSTANDARD BUILDINGS.

- (A) *Applicability.* This Section applies to the abatement of a Building that is in violation of the Minimum Standards, as those terms are defined in Subsection (B), and shall not preclude the application of any other available remedy.
- (B) *Definitions.* As used in this Section:
 - 1. “Building” means a building, bulkhead or other method of shoreline protection, fence, shed, awning, or other structure, or part of a structure.
 - 2. “Building Official” means the Building Official of the City of Midland or an individual designated by the Director of Development Services to determine whether a Building complies with the Minimum Standards.
 - 3. “Commencement of Construction” means:
 - (a) the date when construction materials were placed on or observed on the property; or
 - (b) the date when any construction activity began or was observed on the property.
 - 4. “Minimum Standards” means the minimum standards for the continued use and occupancy of a Building and includes:

- (a) those standards set out in Title IV, Chapters 1, 2, 3, 4, 5, 10, 11, and 12 of the Municipal Code of the City of Midland that are applicable to a Building;
- (b) that a Building shall not endanger or be likely to endanger persons or property;
- (c) that a Building shall not be unfit for human habitation or a hazard to the public health, safety, and welfare;
- (d) that a Building, regardless of its structural condition, that is unoccupied by its owners, lessees, or other invitees shall not be unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children;
- (e) that a Building that is boarded up, fenced, or otherwise secured in any manner:
 - (1) shall not constitute a danger to the public even though it is secured from entry; and
 - (2) shall be secured by means that are adequate to prevent unauthorized entry or use of the Building in the manner described by (d) above; and
- (f) that a Building shall not remain under construction or in the process of being constructed, repaired, remodeled, or demolished, such that the areas under construction are not capable of being fit for human occupancy or human habitation for greater than the following terms:
 - (1) for a single-family dwelling, townhouse, duplex, or triplex, three years from the Commencement of Construction; or
 - (2) for a Building that is not a single-family dwelling, townhouse, duplex, or triplex, five years from the Commencement of Construction.

5. “Substandard Building” means a Building that is in violation of the Minimum Standards.

(C) *Public Nuisance.* A Substandard Building that constitutes a hazard to the health, safety, or general welfare of its occupants, the citizens of the City of Midland, Texas, or the public is declared to be a public nuisance, and the Building shall be vacated, secured, repaired, removed, or demolished, or the occupants relocated, as hereinafter provided.

(D) *Notice of a Public Hearing.*

1. When the Building Official identifies a Building that is a Substandard Building, the Building Official may initiate abatement proceedings by:
 - (a) mailing by certified mail with return receipt requested, delivering by the United States Postal Service using signature confirmation service, or personally delivering to each owner of the Building a notice of a public hearing in accordance with this Subsection (D); and
 - (b) making a diligent effort to discover each lienholder and mortgagee having an interest in the Building or the property on which the Building is located and mailing by certified mail with return receipt requested, delivering by the United States Postal Service using signature confirmation service, or personally delivering to each said lienholder and mortgagee a notice of a public hearing in accordance with this Subsection (D).
2. A notice of a public hearing shall contain the following information:
 - (a) the name and address of the owner of the affected property if that information can be determined;
 - (b) an identification of the Building and the property on which it is located, including a legal description of the affected property;
 - (c) a statement that the Building Official has identified the Building to be a Substandard Building and a concise description of the condition that was identified as a violation of the Minimum Standards;
 - (d) a statement that the Building be vacated, secured, repaired, removed, or demolished, or that the occupants be relocated, as determined by the Building Official, and a concise description of the recommended action;
 - (e) a statement that the owner, lienholders, or mortgagees will be required to submit at the public hearing proof of the scope of any work that may be required to comply with this Section and the time it will take to reasonably perform the work; and
 - (f) the date, time, place, and description of the public hearing to be held by the City Council.
3. The Building Official is authorized to file, or to cause to be filed, each notice of a public hearing in the Official Public Records of Real Property in the county in which the property is located. The filing of the notice of a public hearing is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the public hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(E) *Building Official's Report; Public Hearing.*

1. At a meeting of the City Council at which a public hearing described in this Subsection is to be held, the Building Official shall make a report to the City Council detailing the condition or conditions of the Building that violated the Minimum Standards and the Building Official's recommended action.
2. The City Council shall hold a public hearing in accordance with a notice provided under Subsection (D)2 to determine:
 - (a) whether a Building is a Substandard Building; and
 - (b) if so, whether the Building Official's recommended action or other action should be ordered.
3. The owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this Section and the time it will take to reasonably perform the work.

(F) *City Council's Order.*

1. After the public hearing, if the City Council finds a Building to be a Substandard Building, the City Council shall issue an order requiring the owner, lienholder, or mortgagee of the Building to within 30 days:
 - (a) secure the Building from unauthorized entry; or
 - (b) repair, remove, or demolish the Building, unless the owner, lienholder, or mortgagee establishes at the hearing that the work cannot reasonably be performed within 30 days.
2. The City Council's order may also specify:
 - (a) a reasonable time, not to exceed 30 days, for the Building to be vacated or for the occupants to be relocated by the owner; and
 - (b) an additional reasonable time, not to exceed 30 days, for the Building to be vacated or for the occupants to be relocated by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for ordered action.
3. If the City Council's order allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the Building, the order shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the City Council.

4. The City Council's order may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the Building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:
 - (a) submits a detailed plan and time schedule for the work at the hearing; and
 - (b) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.
5. If the City Council's order allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the Building, the order shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the Building Official to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the City Council or the City Council's designee to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the City's boundaries that exceeds \$100,000 in total value, the City Council's order may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a Building under this Section not later than the 30th day after the date of issuance of the order. In lieu of a bond, the City Council's order may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the City not later than the 30th day after the date of issuance of the order.
6. An order issued under this Subsection constitutes the final decision of the City of Midland.

(G) *Mailing and Filing of the Order; Publication.*

1. After the public hearing, the City shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the Building and to any lienholder or mortgagee of the Building, as determined through the use of the City's best efforts.
2. Within 10 days after the date that the City Council's order is issued, the City shall:
 - (a) file a copy of the order in the City Secretary's Office; and
 - (b) publish in a newspaper of general circulation in the City a notice containing:

- (1) the street address or legal description of the property;
- (2) the date of the hearing;
- (3) a brief statement indicating the results of the order; and
- (4) instructions stating where a complete copy of the order may be obtained.

(H) *Failure to Comply with the Order.* If a Substandard Building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the time allotted by the City Council's order, the City may vacate, secure, remove, or demolish the Building or relocate the occupants at its own expense.

(I) *City's Expenses; Lien.*

1. If the City incurs expenses under Subsection (H), the City may assess the expenses on, and the City has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the Building was located.
2. If the City assesses expenses on the property on which the Building was located, the City shall mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver to each owner, lienholder, and mortgagee to whom the City Council's order was delivered a notice containing the following information:
 - (a) the name and address of the owner if that information can be determined with a reasonable effort;
 - (b) a legal description of the real property on which the Building was located;
 - (c) a description of the action taken by the City for which the City incurred the expenses;
 - (d) the amount of expenses incurred by the City;
 - (e) the balance due;
 - (f) a demand for payment of the balance due;
 - (g) the date on or before which payment is demanded; and
 - (h) if a bond was posted, or if a letter of credit or other financial guaranty was provided, a statement that the City will collect on the bond, letter of credit or other financial guaranty if the City does not receive the payment by the specified date.

3. A lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the following information:
 - (a) the name and address of the owner if that information can be determined with a reasonable effort;
 - (b) a legal description of the real property on which the Building was located;
 - (c) the amount of expenses incurred by the City; and
 - (d) the balance due.
4. A lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses.
5. The City may use any method authorized by law to recover expenses incurred.

(J) *Miscellaneous Provisions.*

1. For purposes of this Section, a requirement to make a diligent effort, to use best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee is satisfied by searching the records identified in Section 214.001(q) of the Local Government Code, as may be amended.
2. When the City mails a notice in accordance with this Section to an owner, lienholder, or mortgagee and the United States Postal Service returns the notice as “refused” or “unclaimed,” the validity of the notice is not affected, and the document is considered delivered.
3. Notwithstanding anything in this Section, all procedures, notices, and orders shall comply with Chapter 214 of the Local Government Code, as may be amended.

4-8-2. ADDITIONAL AUTHORITY TO SECURE SUBSTANDARD BUILDINGS.

- (A) *Applicability.* This Section applies to the securing of a Building that is in violation of the Minimum Standards, as those terms are defined in Section 4-8-1(B). This Section shall not preclude the City’s authority to secure a Building as provided in Section 4-8-1 or the application of any other available remedy.
- (B) *Definitions.* As used in this Section, “Building”, “Building Official”, “Commencement of Construction”, “Minimum Standards”, and “Substandard Building” shall have the meanings given those terms in Section 4-8-1(B).

(C) *Authority to Secure Substandard Building.* The Building Official or the Building Official's designee may secure a Building if the Building Official determines:

1. that the Building violates the Minimum Standards and is a Substandard Building; and
2. that the Building is unoccupied or is occupied only by persons who do not have a right of possession to the Building.

(D) *Notice Requirements.*

1. Before the 11th day after the date a Building is secured in accordance with Subsection (C), the Building Official shall give notice to the Building's owner by:
 - (a) personally serving the owner with written notice;
 - (b) depositing the notice in the United States mail addressed to the owner at the owner's post office address;
 - (c) publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the Building is located if personal service cannot be obtained and the owner's post office address is unknown; or
 - (d) posting the notice on or near the front door of the Building if personal service cannot be obtained and the owner's post office address is unknown.
2. The notice shall contain:
 - (a) an identification, which is not required to be a legal description, of the Building and the property on which it is located;
 - (b) a description of the violation of the Minimum Standards that is present at the Building;
 - (c) a statement that the City will secure or has secured, as the case may be, the Building; and
 - (d) an explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the Building.

(E) *Hearing.*

1. The City Council shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the Building if, within 30 days after the date the City secures the Building, the owner files with the City a written request for the hearing. An owner who requests a hearing under this Subsection shall file the written request for a hearing with the

Building Official or the Building Official's designee. The City Council shall conduct the hearing within 20 days after the date the request is filed.

2. Following the hearing, the City Council may take action to affirm, reverse, or modify an action taken by the Building Official under this Section.

(F) *City's Expenses; Lien.*

1. If the City incurs expenses under Subsection (C), the City may assess the expenses on, and the City has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the Building was located.
2. If the City assesses expenses on the property on which the Building was located, the City shall mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver to each owner, lienholder, and mortgagee to whom the City Council's order was delivered a notice containing the following information:
 - (a) the name and address of the owner if that information can be determined with a reasonable effort;
 - (b) a legal description of the real property on which the Building was located;
 - (c) a description of the action taken by the City for which the City incurred the expenses;
 - (d) the amount of expenses incurred by the City;
 - (e) the balance due;
 - (f) a demand for payment of the balance due;
 - (g) the date on or before which payment is demanded; and
 - (h) if a bond was posted, or if a letter of credit or other financial guaranty was provided, a statement that the City will collect on the bond, letter of credit or other financial guaranty if the City does not receive the payment by the specified date.
3. A lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the following information:
 - (a) the name and address of the owner if that information can be determined with a reasonable effort;

- (b) a legal description of the real property on which the Building was located;
 - (c) the amount of expenses incurred by the City; and
 - (d) the balance due.
- 4. A lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses.
- 5. The City may use any method authorized by law to recover expenses incurred.

4-8-3. PROHIBITING ENTRY INTO SUBSTANDARD BUILDINGS.

- (A) *Applicability.* This Section applies to the prohibition of entry into a Building that is in violation of the Minimum Standards, as those terms are defined in Section 4-8-1(B). This Section shall not preclude the City's authority to secure a Building as provided in Section 4-8-1 or Section 4-8-2 or the application of any other available remedy.
- (B) *Definitions.* As used in this Section, "Building", "Building Official", "Commencement of Construction", "Minimum Standards", and "Substandard Building" shall have the meanings given those terms in Section 4-8-1(B).
- (C) *Authority to Prohibit Entry into a Substandard Building.* The Building Official may prohibit entry into and occupancy of a Building by giving notice in accordance with Subsection (D) if the Building Official determines:
 - 1. that the Building violates the Minimum Standards and is a Substandard Building; and
 - 2. that the Building is unoccupied or is occupied only by persons who do not have a right of possession to the Building.
- (D) *Notice Requirements.*
 - 1. If the Building Official prohibits entry into and occupancy of a Building under this Section, the Building Official shall give notice thereof by:
 - (a) posting a written notice on or near each entrance of the Building; and
 - (b) giving written notice to the owner of the Building by:
 - (1) personally serving the owner with written notice;
 - (2) depositing the notice in the United States mail addressed to the owner at the owner's post office address; or

- (c) publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the Building is located if personal service cannot be obtained and the owner's post office address is unknown.

2. The notice shall contain:

- (a) an identification, which is not required to be a legal description, of the Building and the property on which it is located;
- (b) a description of the violation of the Minimum Standards that is present at the Building;
- (c) the following statement: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY HAS BEEN PROHIBITED BY THE CITY OF MIDLAND"; and
- (d) an explanation of the owner's entitlement to appeal the prohibition against entry and occupancy of the Building.

(E) *Appeal.*

- 1. The City Council shall conduct an appeal hearing at which the owner may testify or present witnesses, written information, or other evidence regarding a prohibition under this Section if, within 30 days after notice is given under Subsection (D), the owner files with the City a written notice of appeal. An owner who desires to appeal a prohibition under this Subsection shall file the written notice of appeal with the Building Official or the Building Official's designee. The City Council shall conduct the hearing within 20 days after the date the request is filed.
- 2. Following the hearing, the City Council may take action to affirm or reverse the prohibition.

(F) *Offense; Penalty; Affirmative Defenses.*

- 1. If the Building Official prohibits entry into and occupancy of a Building in accordance with this Section, a person shall not enter into or occupy such Building.
- 2. If the Building Official prohibits entry into and occupancy of a Building in accordance with this Section, a person shall not permit or authorize any other person to enter into or occupy such Building.
- 3. Each violation of this Section shall be punishable by a fine of not more than \$2,000.00.
- 4. It is an affirmative defense to prosecution under this Section that:
 - (a) the Building Official reversed the prohibition before the trial of the violation;

- (b) following a hearing under Subsection (E), but before the trial of the violation, the City Council reversed the prohibition;
- (c) the person was the owner of the Building, or an employee, contractor, or other agent of the owner of the Building, and entered into or occupied the Building for the purpose of securing the Building from unauthorized entry;
- (d) the person was the owner of the Building, or an employee, contractor, or other agent of the owner of the Building, and entered into or occupied the Building for the purpose of repairing, removing, or demolishing the Building as required by an order of the City Council issued under Section 4-8-1 or as otherwise authorized by the Building Official; or
- (e) the person was acting on behalf of the City of Midland to secure, remove, or demolish the Building as authorized by this Chapter.

SECTION TWO. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00) pursuant to State law.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SIX. The effective date of this ordinance is April 1, 2024.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

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