CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
May 9, 2023 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

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

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

OPENING ITEMS

1. Invocation – Pastor Phil Teaney, Homeline Baptist Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of Proclamation for “Older Americans Month”

   3b. Presentation of “ Sojourner Truth Award” to Emma Threat

   3c. Presentation of Certificates of Completion to the graduates of Midland 101 2022-2023 class.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. BRIEFING SESSION OF APRIL 25, 2023

   4b. REGULAR SESSION OF APRIL 25, 2023

5. 046-2023 – MOTION AUTHORIZING THE INTERIM CITY MANAGER OR THE INTERIM CITY MANAGER’S DESIGNEE TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES ASSOCIATED WITH THE DOUG RUSSELL BATH HOUSE PROJECT AND TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY

COUNCIL (DISTRICT 3) (GENERAL SERVICES)

6. 2023-061 – RESOLUTION RESCINDING RESOLUTION NO. 2020-088, WHICH AUTHORIZED THE CONVEYANCE OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS AN 11.72-ACRE TRACT LOCATED IN SECTION 13, BLOCK 39, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (GENERAL SERVICES)

7. 2023-062 – RESOLUTION AWARDING A CONTRACT FOR THE GRINDING/MULCHING OF TREE LIMBS/YARD WASTE PROJECT TO S&M BUSINESSES, INC., D/B/A AUSTIN LAND SERVICE D/B/A AUSTIN WOOD RECYCLING, INC., IN THE AMOUNT OF $272,412.00 (DISTRICT: ALL) (GENERAL SERVICES)

8. 2023-063 – RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS, AIRPORT AND T-BAR WELL FIELD MAINTENANCE PROJECT TO MARK'S WATER WELL SERVICE, INC., FOR AN ESTIMATED ANNUAL AMOUNT OF $500,000.00 (DISTRICT: NONE) (GENERAL SERVICES)

9. 2023-064 – RESOLUTION SELECTING THE PROPOSAL SUBMITTED BY MIDLAND DOWNTOWN RENAISSANCE, LP, FOR THE DEVELOPMENT OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, TOGETHER WITH CERTAIN MIDLAND DEVELOPMENT CORPORATION-OWNED REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AUTHORIZING THE INTERIM CITY MANAGER AND THE MIDLAND DEVELOPMENT CORPORATION CHAIRMAN TO NEGOTIATE AN AGREEMENT FOR THE PURPOSE OF CARRYING OUT THE INTENT OF SAID PROPOSAL; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT 2) (CITY MANAGER)

10. 043-2023 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND CITY OF MIDLAND AQUATICS, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT 3) (COMMUNITY SERVICES) (DEFERRED FROM APRIL 25, 2023)

11. 047-2023 – MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $105,462.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; SAID GRANT FUNDS TO BE USED TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS NECESSITIES; AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO ACCEPT SAID GRANT FUNDS; AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND (DISTRICT: ALL) (COMMUNITY SERVICES)

12. 2023-065 – RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE,

ON BEHALF OF THE CITY OF MIDLAND, AN INSTRUMENT GRANTING TO THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS TRANSPORTATION COMMISSION ("GRANTEE"), AN APPROXIMATE 1.26-ACRE DRAINAGE EASEMENT FOR HIGHWAY PURPOSES OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING THE ACCEPTANCE OF GRANTEE'S PAYMENT FOR SAID EASEMENT IN THE AMOUNT OF $177,004.00 (DISTRICT 2) (ENGINEERING SERVICES)

13. 2023-066 – RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $109,000.00 FROM THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM PROVIDED BY THE OFFICE OF THE GOVERNOR; SAID GRANT FUNDS SHALL BE USED TO PURCHASE A LEICA RTC 360 LASER SCANNER KIT FOR THE POLICE DEPARTMENT'S CRIME SCENE TECHNOLOGY PROJECT; DESIGNATING AN AUTHORIZED OFFICIAL FOR THE ADMINISTRATION OF SAID GRANT FUNDS AND ASSOCIATED OBLIGATIONS; AUTHORIZING AND DIRECTING; DIRECTING SAID AUTHORIZED OFFICIAL TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS; AND APPROPRIATING SAID GRANT FUNDS (DISTRICT: NONE) (POLICE)

14. 048-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-027) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WEST-TEX LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4, 9, 16, AND 21, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

15. 049-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-028) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WEST-TEX LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 3, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

16. 050-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-029) WITH NUSTAR PERMIAN TRANSPORTATION & STORAGE, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 4, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

17. 051-2023 – MOTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY LICENSE (23-329-021) WITH BANGL, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

18. 052-2023 – MOTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY LICENSE (23-329-022) WITH BANGL, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4, 9 AND 16, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES) (DISTRICT: NONE) (UTILITIES)

19. 053-2023 – MOTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY LICENSE (23-329-023) WITH WHISTLER PIPELINE LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

20. 054-2023 – MOTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY LICENSE (23-329-024) WITH WHISTLER PIPELINE LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4, 9, AND 16, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

21. 055-2023 – MOTION AUTHORIZING THE EXECUTION OF RIGHT-OF-WAY LICENSE (23-329-025) WITH WHISTLER PIPELINE LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

22. 10398 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,126-SQUARE FOOT PORTION OF LOT 1A, BLOCK 11, KIMBER-LEA ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MAXWELL DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD APRIL 25, 2023)

23. 10399 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST 32 FEET OF LOT 3 AND THE EAST 63 FEET OF LOT 4, BLOCK 6, IMPERIAL HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CIMMARON AVENUE, APPROXIMATELY 230 FEET WEST OF WHITNEY DRIVE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD APRIL 25, 2023)

PUBLIC HEARINGS

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

24. 056-2023 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE OIL AND GAS WELL KNIGHT 120 MIPA UNIT H120LS; SAID WELL BEING GENERALLY LOCATED 1,878 FEET EAST OF NORTH A STREET EXTENSION AND 1,833 FEET SOUTH OF WEST LOOP 250 NORTH (DISTRICT 3) (DEVELOPMENT SERVICES)

25. 10400 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED APPROXIMATELY 520 FEET SOUTH OF WEST LOOP 250 NORTH AND APPROXIMATELY 515 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

26. 10401 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1 AND THE EAST HALF OF LOT 2, BLOCK 76, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH N 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 3) (DEVELOPMENT SERVICES)

27. 10402 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 200 FEET SOUTH OF EAST WASHINGTON AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

28. 10403 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,200-SQUARE FOOT PORTION OF LOT 2, BLOCK 1, W.P. KNIGHT ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH POWELL STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES

CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

29. 10404 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 1,600-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, PAVILION PARK, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 310 FEET SOUTHEAST OF SAN FELIPE DRIVE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; 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 (DISTRICT1) (DEVELOPMENT SERVICES)

30. 10405 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 258.87-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF EAST MOCKINGBIRD LANE, APPROXIMATELY 900 FEET EAST OF NORTH FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

MISCELLANEOUS

31. 057-2023 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF MOCKINGBIRD RIDGE, BEING A PLAT OF A 258.87-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST MOCKINGBIRD LANE, APPROXIMATELY 900 FEET EAST OF NORTH FAIRGROUNDS ROAD) (DISTRICT 1) (DEVELOPMENT SERVICES)

32. 10406 – DISCUSSION AND CONSIDERATION OF ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF "CITY OF MIDLAND, TEXAS GENERAL OBLIGATION BONDS, SERIES 2023" INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH BONDS, ESTABLISHING PARAMETERS FOR THE SALE AND ISSUANCE OF SUCH BONDS AND DELEGATING CERTAIN MATTERS TO AN AUTHORIZED OFFICIAL OF THE CITY (DISTRICT: NONE) (FINANCE)

PUBLIC COMMENT

33. 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

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

a. Section 551.071, Consultation with Attorney

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

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.

Respectfully Submitted,

Morris Williams Jr
Interim City Manager

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

MIDLAND CITY COUNCIL
BRIEFING SESSION
MINUTES
April 25, 2023

The City Council convened in briefing session in the Basement Conference Room, City Hall, Midland, Texas, at 9:30 AM, April 25, 2023.

Council Members present:	Amy Stretcher Burkes, Dan Corrales, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	None
Staff members present:	City Attorney John Ohnemiller, City Manager Robert Patrick, Deputy City Manager Morris Williams Jr, Assistant City Manager Tina Jauz

The meeting was called to order at 9:30 a.m.

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

1. Receive and discuss a presentation from Jose Ortiz, Director of Engineering, regarding the City's engineering design manual.

   Engineering Services Director Jose Ortiz gave a brief overview of the City of Midland's Engineering Design Manual. This document provides comprehensive guidance on the design and construction of public infrastructure within the City.

   Mr. Ortiz reported that they looked at various scenarios, such as, but not limited to; roadway and traffic designs, pedestrian facilities and storm drainage.

   Mr. Ortiz also reported on the goals of the current updates, remaining projected schedule and upcoming items such as revising the City code.

2. Receive a presentation from Tim Stallard regarding Bush Tennis Center.

   Belinda Norman with Bush Tennis Center reported how the Bush Tennis Center was instrumental in her daughters life.

   Tim Stallard with Bush Tennis Center reported on membership growth and the ACE (Advice, Counsel, Encourage) Outreach Program. Mr. Stallard also reported on the Bush ACE Athletic Center (BAC) which will be a 35 acre campus and will allow expansion into

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many other sporting areas within the Midland community.

Mr. Stallard reported on the cost, need for funds, fundraising and a timeline of the process. He reported they would like to maintain the no-debt philosophy they have.

Mr. Stallard added that the Bush Tennis Center has facilities for the two fastest growing sports; Pickleball and Paddleball.

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

PASSED AND APPROVED May 9, 2023.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer /City Secretary

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MIDLAND CITY COUNCIL
MINUTES
April 25, 2023

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., April 25, 2023.

Council Members present:	Amy Stretcher Burkes, Dan Corrales, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	None
Staff members present:	City Manager Robert Patrick, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr, Assistant City Manager Tina Jauz

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

OPENING ITEMS

1. Invocation – Pastor David Hall, Midland Bible Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Proclamation honoring “Municipal Clerks Week”

   3b. Presentation of Proclamation for “Midland Lions Club Day”

   3c. Presentation of Proclamation for “Tasha Sport Day”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. BRIEFING SESSION OF APRIL 11, 2023

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4b. REGULAR SESSION OF APRIL 11, 2023

5. 2023-058 – RESOLUTION APPROVING THE PURCHASE OF TWO (2) 2-3 YARD DUMP BODIES WITH LIFT GATES FROM ROYAL TRUCK BODY OF DALLAS, TEXAS FOR A TOTAL COST OF $54,647.08; AND APPROVING THE PURCHASE TWO (2) UTILITY BODIES AND TWO (2) UTILITY BODIES WITH LIFT GATES FROM RRPFG, LP D/B/A RANDALL REED'S PLANET FORD 635 OF GARLAND, TEXAS, FOR A TOTAL COST OF $63,692.00 (DISTRICT: NONE) (GENERAL SERVICES)

6. 2023-059 – RESOLUTION AWARDING A CONTRACT IN THE AMOUNT OF $247,304.51 FOR THE IMPLEMENTATION OF ELECTRONIC BIDDING SOFTWARE AND RELATED SERVICES TO GTY SOFTWARE INC., D/B/A BONFIRE INTERACTIVE LTD. (DISTRICT: NONE) (GENERAL SERVICES)

8. 041-2023 – MOTION APPROVING PLANS AND SPECIFICATIONS FOR THE PAUL DAVIS WELLFIELD DEVELOPMENT PROJECT, SAID PLANS AND SPECIFICATIONS BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE NUMBER AND DATE OF THIS MOTION, AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE FOR COMPETITIVE BIDS FOR SAID PROJECT PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN SAID SPECIFICATIONS (DISTRICT: NONE) (GENERAL SERVICES)

11. 044-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-019) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 10, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

12. 045-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-020) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 44, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

Dan Corrales moved to approve Consent Agenda items 4-12, excluding items 7, 9, & 10; seconded by Robin Poole.

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

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

7. 2023-060 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL

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SERVICES AGREEMENT IN THE AMOUNT OF $845,000.00 WITH JSA ARCHITECTS, INC., FOR ARCHITECTURAL, DESIGN, AND ENGINEERING SERVICES FOR THE NEW HEALTH SERVICES FACILITY DESIGN PROJECT; APPROVING $84,500.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID AGREEMENT (DISTRICT: NONE) (GENERAL SERVICES)

Community Services Director Cristina Burns gave a brief overview of the item noting the services JSA Architects would provide are site visibility and programming, along with design and development of construction documents. The location of a new health facility has not yet been determined, however, the City owned property at the Southwest corner of Lamesa and Loop 250 is of interest.

Health Services Manager Dr. Whitney Craig reported that the new health services facility would allow the City to expand clinical services and see more patients. On the environmental side, it would allow for more inspectors for restaurants, pools and daycare facilities just to name a few. This would also allow expansion of the Community Health Education section which would create more outreach within the community.

Dan Corrales moved to approve Resolution No. 2023-060; seconded by Scott Dufford.

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

9. 042-2023 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND HISPANIC CULTURAL CENTER OF MIDLAND, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT 2) (CITY MANAGER)

Amy Stretcher Burkes moved to approve Motion No. 042-2023; seconded by Scott Dufford.

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

Midland Development Corporation Director Sara Harris gave a brief overview of the promotional aspect of the Hispanic Cultural Center agreement. The Hispanic Cultural Center has a list of activities to promote the City. These activities will include mentioning the City of Midland and the Midland Development Corporation in press releases, publications and promotional materials for all events and showcases just to name a few.

10. 043-2023 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND CITY OF MIDLAND AQUATICS, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND, TEXAS, FOR THE

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PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT 3) (COMMUNITY SERVICES)

John Norman moved to defer Motion No. 043-2023 until the next City Council meeting on May 9, 2023; seconded by Scott Dufford.

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

Midland Development Corporation Director Sara Harris gave a brief overview of the item noting that this agreement is in two parts. The funds will go specifically to reline the COM Aquatics competition pool and the promotional aspect is that COM Aquatics will bring in a significant amount of visitors and activities to the City of Midland. It also provides a great community resource for citizens. The MDC board considered the fact that this is also a good recruiting tool for people visiting Midland for work related events; they may use COM Aquatics as an amenity.

Brad Swendig, 4900 Kingsboro Ct, Executive Director of COM Aquatics, thanked the City for their support. Mr. Swendig gave a brief overview of some of the activities COM Aquatics is involved in that benefit the City. Some of these activities have resulted in Olympic recognition.

Mr. Swendig reported that the cost of relining the pool actually came in underbid at around $550,000.00. The amount requested was about $700,000.00.

Mr. Swendig also reported that the Wellness program has about 400 members, water aerobics has about 300 and the physical therapist see around 40 to 50 patients per day.

Council requested to defer this item to discuss funding options.

City Attorney John Ohnemiller reported on the use of promotional funds.

SECOND READINGS

13. 10395 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1B, BLOCK 33, NORTHGATE ADDITION, SECTION 24, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDLAND DRIVE AND BRIARWOOD 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 1) (DEVELOPMENT SERVICES) (FIRST READING HELD APRIL 11, 2023)

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Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10395.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10395; seconded by John Norman.

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

14. 10396 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 1, W. P. KNIGHT ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER TO PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH POWELL STREET AND WEST WALL STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD APRIL 11, 2023)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10396.

John Norman moved to approve the second and final reading of Ordinance No. 10396; seconded by Scott Dufford.

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

15. 10397 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 4, BLOCK 2, COUNTRY VILLA ESTATES, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND BRINSON LANE), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, IN PART, AND TP, TECHNOLOGY PARK DISTRICT, IN PART, 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 (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD APRIL 11, 2023)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10397.

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Robin Poole moved to approve the first of two readings of Ordinance No. 10397; seconded by Scott Dufford.

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

PUBLIC HEARINGS

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

16. 10398 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,126-SQUARE FOOT PORTION OF LOT 1A, BLOCK 11, KIMBER-LEA ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MAXWELL DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10398.

Mayor Blong opened the public hearing at 11:00 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. 10398; seconded by Dan Corrales.

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

17. 10399 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST 32 FEET OF LOT 3 AND THE EAST 63 FEET OF LOT 4, BLOCK 6, IMPERIAL HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CIMMARON AVENUE, APPROXIMATELY 230 FEET WEST OF WHITNEY DRIVE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND

DRAFT

COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10399.

Mayor Blong opened the public hearing at 11:02 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. 10399; seconded by Amy Stretcher Burkes.

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

PUBLIC COMMENT

18. 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.)

Denzel Calwell, Midland (no physical address), asked that when the Council is in Executive Session that they use a scripture he provided when making their decisions.

Lori Vanhoozer, 5007 Chapel Hill Dr., spoke on the Animal Services dog intake process being closed due to sick animals and thanked Council Member Stretcher Burkes and Council Member Corrales for going to the shelter and stopping the euthanasia of the animals.

Beth Meeks, 2607 McClintic, expressed her concerns and also thanked Council Member Stretcher Burkes and Corrales for stopping the euthanasia of animals.

Kathryn Walthall, 6000 Briarwood Ave., spoke on the euthanasia of animals at the Animal Shelter and asked for support to save the animals.

EXECUTIVE SESSION

19. 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 551.072, DELIBERATION REGARDING REAL PROPERTY

a1. DISCUSS THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF

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REAL PROPERTY.

The City Council recessed to Executive Session at 11:13 a.m.

All the business at hand having been completed, the meeting adjourned at 12:15 p.m.

PASSED AND APPROVED May 9, 2023.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary

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City Council Meeting

Item Number: 5

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION AUTHORIZING THE INTERIM CITY MANAGER OR THE INTERIM CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES ASSOCIATED WITH THE DOUG RUSSELL BATH HOUSE PROJECT AND TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT 3) (GENERAL SERVICES)

Purpose:

Motion authorizing the Interim City Manager or the Interim City Manager's Designee to advertise a request for qualifications for architectural and engineering services associated with the Doug Russell Bath House Project and to negotiate a professional services agreement for said services; provided, however, that said agreement shall not become effective until approved by City Council.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a motion authorizing the Interim City Manager or the Interim City Manager's designee to advertise a request for qualifications for the Doug Russell Bath House Project including but not limited to engage with an Architectural/Engineering firm to provide

complete Architectural/Engineering and Project Management services for the design, demolition and construction of a new Bath House at Doug Russell Pool located at 900 North Midland Drive. Please see the attached memo from Cristina Burns, Community Services Director for more information.

Tina Daugherty

City Manager's Office

Parks and Recreation Divisions
Interoffice Memorandum

Date: April 25, 2023
To: Regina Stephenson, General Services Director
From: Cristina Burns, Community Services Director
Subject: Request for Qualifications – Consulting Services for the Design, Development and Project Management of the Doug Russell Pool Bath House Project

This Request for Qualifications is to engage an Architectural/Engineering firm to provide complete Architectural/Engineering and Project Management services for the design, demolition and construction of a new Bath House at Doug Russell Pool located at 900 North Midland Drive.

The firm must be qualified to provide the following in the scope of their work. These tasks will include, but not be limited to:

1) Analyze existing Bath House Conceptual Plan
2) Prepare design plans and associated costs
    a. Present options for renovations
    b. Recommend priorities with budget
3) Prepare construction documents
4) Work with City to prepare bid documents
5) Provide construction oversight

A Professional Service Agreement for the Doug Russell Bath House Design, Development and Project Management would be executed in June 2023. Completion of the construction documents would be by September 2023. The construction of the project would commence in November 2023 with completion in time for the 2024 pool season in May 2024.

Funds in the amount of $3,125,000 were approved in the FY2023 budget in the Parks Special Revenue Fund (077094 57002) and will be transferred and appropriated to a project for said purpose in the Special Revenue Capital Projects Fund (080).
(Need funding language from Finance to move the funds in the FY 2023 budget into a project.)

REQUEST FOR QUALIFICATIONS
FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
FOR THE
CITY OF MIDLAND, TEXAS

RFQ 23003692
Design, Development and Project Management of the Doug Russell Pool Bath House Project

INTRODUCTION

The City of Midland is seeking to engage an Architectural/Engineering firm to: Provide complete Architectural/Engineering and Project Management services for the design, demolition and construction of a new Bath House at Doug Russell Pool located at 900 North Midland Drive.

GENERAL SCOPE OF SERVICES AND TASKS

The selected consultant will be responsible for providing complete Architectural/Engineering and Project Management services for developing and constructing a new Bath House at Doug Russell Pool.

All text and exhibit products shall be computer-based and provided in both hard copy and electronic format compatible with Microsoft Office 2010.

RFQ DUE DATE: 2:00 p.m. Wednesday, June 14, 2023.

Five (5) copies of the qualifications and one (1) 1 electronic copy in pdf format on a flash drive shall be submitted in accordance with this RFQ. Please mark the package "Request for Qualifications 23003692 for the City of Midland, Doug Russell Bath House Project". Submit Package to:

City of Midland
Purchasing Office
Attn: Erika Martinez, Purchasing Manager
300 N. Loraine St. Suite 220
Midland, TX 79701

Final consultant approval will be by the City Council and is subject to budget approval. Consultants may contact Erika Martinez, Purchasing Manager, by email for additional information at purchasing@midlandtexas.gov. All qualifications are considered public records. The Community Services Department reserves the right to request additional information from consultants submitting qualifications. If selected, staff will make a

recommendation to City Council for approval; additional copies of the qualifications may be required.

INTRODUCTION AND SUMMARY

The City of Midland, Texas is seeking an Architectural/Engineering firm to perform complete Architectural/Engineering as well as Project Management services for renovating the existing Doug Russell Pool Bath House located at 900 N. Midland Drive. The facility needs to be designed to meet all applicable safety codes and current ADA Standards. The Project Vision includes new restrooms, showers, offices, lifeguard break area, concession facility and entry area.

Project Timeline

The Architectural/Engineering firm shall work with the city to establish a project timeline, phasing, and associated costs. Expected completion of the construction drawings and a projected timeline is September 1, 2023. Anticipated start of construction would be November 1, 2023. The completion date is May 1, 2024.

GENERAL SCOPE OF SERVICES & TASKS

These tasks will include, but will not be limited to:

1) Analyze existing Bath House Conceptual Plan
2) Prepare design plans and associated costs
   a) Present options for renovations
   b) Recommend priorities with budget
3) Prepare construction documents
4) Work with City to prepare bid documents
5) Provide construction oversight

The above list is intended to enhance the statement of work and is not intended to limit the respondent's description of the project's process or services provided.

INFORMATION FOR CONSULTANTS

Form of Qualifications

The consultant qualifications shall include the following information:

1. Description of the firm's interest in participating in the project.
2. Names and titles of professionals and support staff that will work on the project, a brief description of previous team experience on this type of project, and copies of their resumes. If the project is to be a joint venture between consulting firms, the qualifications should state so.
3. Work history of the company.

4. A proposed work program and timeline to respond to the scope of work in this RFQ.
5. Unique challenges in completing similar projects and outcomes.
6. Description of up to five projects indicating relevant experience and including a brief description of the project, client and phone number, budget, and role. Please include sample pages, websites, etc. for committee review.
7. Your current project schedule in relation to the time and attention, which you anticipate devoting to this project.
8. Names, addresses, and telephone numbers of references or clients for whom the consultant has recently performed services.
9. List all legal challenges and outcomes for this type of project within the last five (5) years.

Questions Prior to Submission of RFQ

Questions should be addressed to the Purchasing Office by email at purchasing@midlandtexas.gov, no later than June 2, 2023 at 2:00 PM.

Evaluation of Qualifications

The following criteria will be considered in evaluating the qualifications and selecting a consultant:

- Firm experience and capability; credentials and experience of staff assigned to the study;
- References and quality of comparable work performed for other municipalities;
- Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs;
- Likelihood of ability to produce a quality product in the given time frame; and
- Methodology;

In addition, the City reserves the right to request additional information from consultants submitting qualifications. All qualifications are considered public records. The City reserves the right to reject any or all qualifications and the right, in its sole discretion, to accept the qualifications it considers most favorable to the City's interest. The City further reserves the right to reject all qualifications and seek new qualifications when such procedure is deemed reasonable and in its best interest.

Weighting Factors

The final overall score will be computed by scoring each factor separately, and multiplying that score by the appropriate weighted percentage, and then adding all of the scores together.

FACTOR	WEIGHT
Firm experience and capability; credentials and experience of staff assigned to the study	25%
References and quality of comparable work performed for other public agencies	25%
Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs	20%
Likelihood of ability to produce a quality product within the given time frame	15%
Methodology	15%

Selection of Consultant

The City shall review and interview firms that meet the criteria explained within this RFQ. Community Services shall prepare a short list of consultants and interview those consultants. A firm will be selected for recommendation to the City Council for the purpose of negotiating contracts terms, including a fair and reasonable price. The firm will submit additional hardcopies and digital copies of their qualifications to be forwarded to the City Council.

If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider, and attempt to negotiate with that firm. The City reserves the right to discontinue the process and reopen the process for proposals if an agreement cannot be reached.

Method of Compensation

Upon selection, the consultant will provide the necessary information for a contract to the City. The contract with the consultant is for a not-to-exceed amount, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of the requested services. The Assistant Director of Community Services will review and approve for payment all invoices submitted by the consultant under the contract.

Liabilities

No costs associated with the presentation of the qualifications, or incurred in any manner by the proposer, may be charged to the City. All responses shall become property of the City and subject to disclosure under the Texas Open Records Law.

INSTRUCTIONS FOR QUALIFICATIONS

1. Qualifications must be submitted to:

   City of Midland
   Purchasing Office
   RFQ 23003692
   Attn: Erika Martinez, Purchasing Manager
   300 N Loraine St. Suite 220
   Midland, Texas 79701

2. Five (5) copies of the qualifications and one(1) 1 electronic copy in pdf format on a flash drive must be received at the above address by 2:00 p.m. on **June 14, 2023**. The qualifications package should be labeled "Request for Qualifications for the City of Midland, Doug Russell Pool Bath House Project."
3. Any questions concerning qualifications should be directed to the Purchasing Office at purchasing@midlandtexas.gov, no later than June 2, 2023 at 2:00 PM.

WAIVER

A. <u>WAIVER OF CLAIMS ARISING FROM THE COMPETITIVE REQUEST FOR QUALIFICATION PROCESS OF AWARD OF CONTRACT</u>

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.**

2. **WAVIER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE STATEMENT OF QUALIFICATIONS OR THE CONTRACT DOCUMENTS.**

3. **ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.**

4. **AWARD OF CONTRACT.**

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

B. WAIVER OF ATTORNEY FEES

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR ITS RESPECTIVE EMPLOYEES AND REPRESENTATIVES, FOR THE AWARD OF ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS, WAIVER OF ANY REQUIREMENTS UNDER THIS RFP, ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATIONS, AND AWARD OF THE CONTRACT. BY SUBMITTING A STATEMENT OF QUALIFICATIONS, THE SUBMITTER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001, ET. SEQ., AS AMENDED).

The submitter agrees that this is the intentional relinquishment of a presently existing known right.

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

SOVEREIGN IMMUNITY

The City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

QUESTIONS REGARDING THIS REQUEST

Questions should be directed to the Purchasing Department by email at purchasing@midlandtexas.gov.

On-line responses will not be allowed for this solicitation.

Delivery of Submittals: Bid packets must be received in the City Secretary's Office no later than designated bid date and time. Bidders are responsible for the means of timely delivering the bid packet. Delays due to any instrumentality used to transmit the bid packet (e.g., delay occasioned by a bidder, City's internal mailing system, etc.) are the sole responsibility of the bidder. **Late bid packets will not be accepted under any circumstances.**

Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

The City Secretary's Office
City of Midland
P. O. Box 1152
Midland, TX 79702

OR

Physical Address:

The City Secretary's Office
City of Midland
300 N. Loraine, Suite 330
Midland, TX 79701

PROFESSIONAL SERVICES AGREEMENT
23003692

THIS AGREEMENT is made and effective the _____ day of _____ 2023, by and between the CITY OF MIDLAND, TEXAS ("*CITY*"), a home-rule municipal corporation, and _____ ("*COMPANY*"). CITY and COMPANY are at times individually referred to as a "*Party*" and collectively referred to as the "*Parties*."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform design, develop, and project management of the Doug Russell Pool Bath House Project (the "*Services*") for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

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

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

ARTICLE IV. TERM

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

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

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

ARTICLE IX. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

If to COMPANY: _____
_____
_____

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit

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

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

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

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

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

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

this Agreement;

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

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

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

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

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

Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Morris Williams Jr., Interim 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 _____, 2023 personally appeared, _____, an officer of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the __day of _____, 2023.

_____
Notary Public, State of Texas

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 _____ _____

Signature of vendor doing business with the governmental entity Date May 9, 2023

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

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021

City Council Meeting

Item Number: 6

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION RESCINDING RESOLUTION NO. 2020-088, WHICH AUTHORIZED THE CONVEYANCE OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS AN 11.72-ACRE TRACT LOCATED IN SECTION 13, BLOCK 39, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution rescinding Resolution 2020-088 authorizing the conveyance of certain City-owned real property described as an 11.72-acre tract located in Section Thirteen (13), Block Thirty-nine (39), Township 1 South, T&P RR Co. Survey, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Council authorized the conveyance of certain City-owned real property described as an 11.72-acre tract located in Section Thirteen (13), Block Thirty-nine (39), Township 1 South, T&P RR Co. Survey, City and County of Midland, Texas on May 12, 2020. The City Manager was directed by Resolution 2020-088 to negotiate, execute, and file all agreements and documents necessary for the conveyance of said property. A purchase and sale agreement was drafted to Simplmodular, the successful proposer. Staff is recommending the rescindment of the conveyance of the property to Simplmodular because they are unable to provide an executed purchase and sale agreement. Please see corresponding memo from Regina Stephenson,

General Services Director, for more information.

Therefore, please consider approval of a resolution rescinding Resolution 2020-088 authorizing the conveyance of certain City-owned real property described as an 11.72-acre tract located in Section Thirteen (13), Block Thirty-nine (39), Township 1 South, T&P RR Co. Survey, City and County of Midland, Texas.

Tina Gaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Tina Jauz, Assistant City Manager

FROM: Regina Stephenson, General Services Director

SUBJECT: Rescind Resolution 2020-088 conveying an 11.72 acre tract (save and except an approximate 2.5 acre portion adjacent to Loop 250) located in Section Thirteen (13), Block Thirty-Nine (39), Township 1 South, T&P RR Co. Survey, City of Midland, Midland County, Texas also known as 4500 North Lamesa Road

DATE: May 9, 2023

Resolution 2019-307 authorized advertisement of a request for proposals from nonprofit organizations for the development of City owned property described as an 11.72 acre tract located in Section thirteen (13), Block thirty-nine (39), Township 1 South, T & P RR CO. Survey, City of Midland, Midland County, Texas, also known as 4500 North Lamesa Road as authorized by Chapter 253 of the Texas Local Government Code. Twenty-three (23) Affordable Housing request for proposals were issued. Because we received one (1) incomplete proposal, one (1) late proposal which was returned to the organization and one (1) organization tried to submit their proposal via email which is not allowed we requested that City Council reject all proposals and authorize re-issuance of the request for proposals. Resolution 2019-355 rejected all proposals and authorized re-issuance of the request for proposals. Thirty-three (33) request for proposals were re-issued. We received four (4) proposals. The City Manager was directed by Resolution 2020-088 to negotiate, execute, and file all agreements and documents necessary for the conveyance of said property.

After extensive review of all proposals received, Simplmodular was awarded the conveyance of the property. A purchase and sale agreement and special warranty deed were drafted conveying the property to Simplmodular for the property. Staff began requesting approval of the draft purchase and sale agreement from Simplmodular on June 3, 2020. After repeated requests to Simplmodular for the signed purchase and sale agreement for the past 3 years, the City has not received a signed purchase and sale agreement from Simplmodular for the subject property.

Therefore, staff is requesting rescinding Resolution 2020-088 so that the subject property will be available to the City for other uses.

RESOLUTION NO. _____

RESOLUTION RESCINDING RESOLUTION NO. 2020-088, WHICH AUTHORIZED THE CONVEYANCE OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS AN 11.72-ACRE TRACT LOCATED IN SECTION 13, BLOCK 39, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

WHEREAS, the City Council finds it to be in the public interest to rescind Resolution No. 2020-088, which authorized the conveyance of certain City-owned real property described as an 11.72-acre tract located in Section 13, Block 39, Township 1 South, T&P RR Co. Survey, City of Midland, Midland County, Texas;

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

THAT Resolution No. 2020-088 is hereby rescinded, revoked, and of no further force or effect.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Morris Williams, Jr., Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

RESOLUTION NO. 2020-088

RESOLUTION AUTHORIZING THE CONVEYANCE OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS AN 11.72-ACRE TRACT (SAVE AND EXCEPT AN APPROXIMATE 2.5-ACRE PORTION ADJACENT TO LOOP 250) LOCATED IN SECTION THIRTEEN (13), BLOCK THIRTY-NINE (39), TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE, AND FILE ALL AGREEMENTS AND DOCUMENTS NECESSARY FOR THE CONVEYANCE OF SAID PROPERTY; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, ALL INSTRUMENTS OF CONVEYANCE

WHEREAS, the City Council authorized the issuance of a request for proposals for the development of certain City-owned real property described as an 11.72-acre tract (save and except an approximate 2.5-acre portion adjacent to Loop 250) located in Section Thirteen (13), Block Thirty-Nine (39), Township 1 South, T&P RR Co. Survey, City of Midland, Midland County, Texas (the "*Property*"); and

WHEREAS, the City Council finds that the proposal submitted by Simplmodular ("*Proposer*") to be the most advantageous; and

WHEREAS, the City Council finds it to be in the public interest to authorize the conveyance of the Property to Proposer;

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

SECTION ONE. That the above recitals are hereby approved and adopted.

SECTION TWO. That the City Manager is hereby authorized and directed to execute a deed conveying the Property to Proposer.

SECTION THREE. That the City Manager is hereby authorized and directed to negotiate, execute, and file all agreements, documents, and legal instruments necessary and appropriate for the conveyance of the Property and to carry out the intent of the Proposal.

SECTION FOUR. That the City Manager is hereby authorized and directed to

negotiate the apportionment and payment of closing costs for said conveyance with Proposer.

SECTION FIVE. That the closing for said conveyance shall be held at a title company mutually agreed to by the City Manager and Proposer.

SECTION SIX. That the City Comptroller is hereby authorized and directed to pay closing costs, if any, associated with the conveyance of the Property to the above-referenced title company from funds available in the 2020 Operating Budget of the General Fund (001) upon proper receipt of invoices or statements approved by the City Manager.

SECTION SEVEN. That the City Secretary is hereby authorized and directed to file, or ensure that the title company files, all instruments of conveyance acquired in accordance with this Resolution in the Deed of Records of Midland County, Texas. Copies of said instruments of conveyance shall be maintained in the office of the City Secretary and referenced by the date and number of this Resolution.

On motion of Council member Robnett, seconded by Council member Norman, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 12th day of May, A.D., 2020, by the following vote:

Council members voting "AYE": Trost, Robnett, Payton, Dufford, Norman

Council members voting "ABSTAIN": Blong

Council members voting "NAY": Ladd

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Morris Williams Jr. ACM for
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

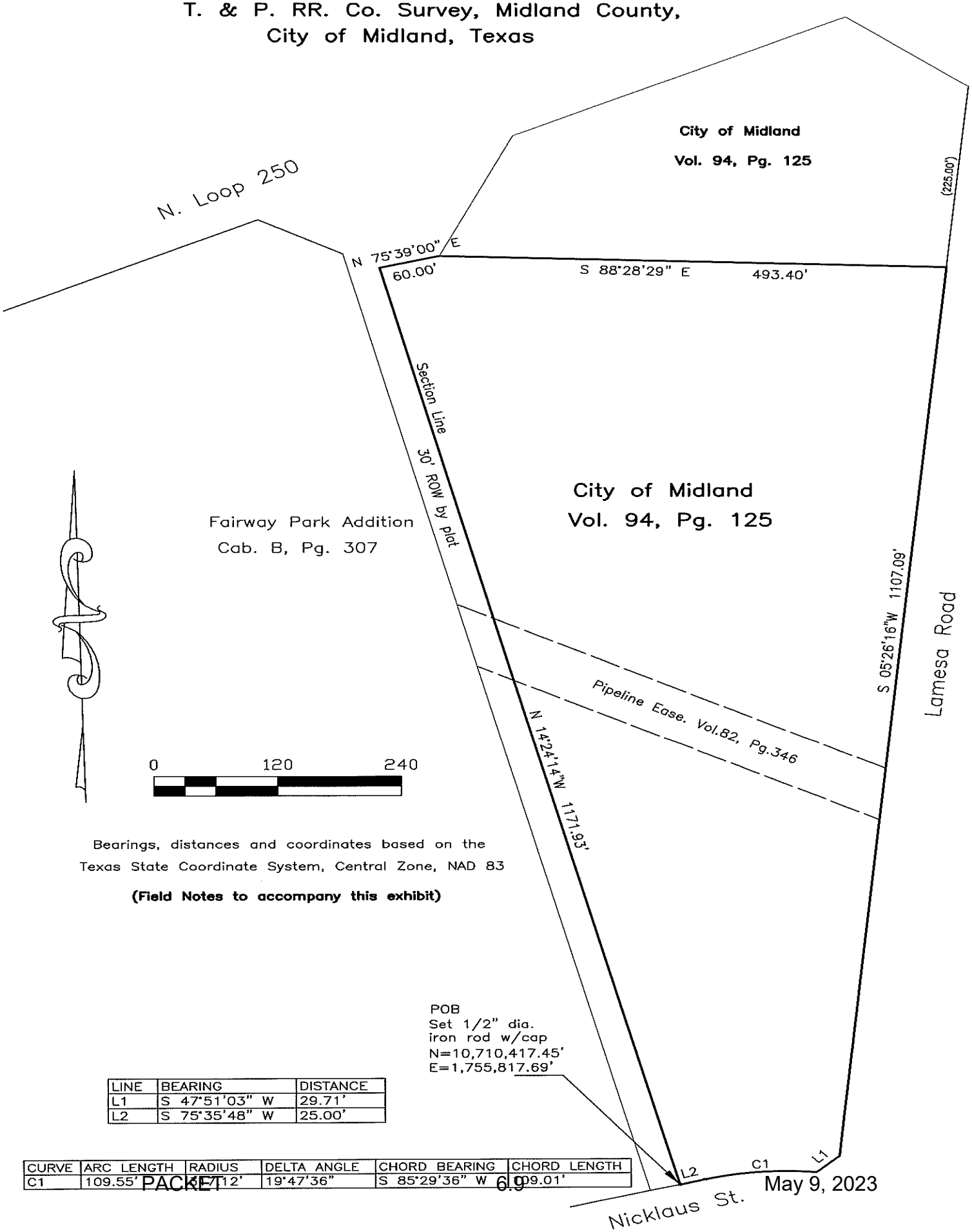
Regina Stephenson
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2020\Contracts\Sale of 11 Acre Tract out of Sec 13, Blk 39.wpd

Exhibit showing a 9.22 acre tract located in Section 13, Block 39, T–1–S T. & P. RR. Co. Survey, Midland County, City of Midland, Texas



Bearings, distances and coordinates based on the Texas State Coordinate System, Central Zone, NAD 83

(Field Notes to accompany this exhibit)

LINE	BEARING	DISTANCE
L1	S 47°51'03" W	29.71'
L2	S 75°35'48" W	25.00'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	109.55'	317.12'	19°47'36"	S 85°29'36" W	109.01'

Legal Description for a 9.22 acre Tract

For a 9.22 acre tract located in Section 13, Block 39, T-1-S, T. & P. RR. Co. Survey, Midland County, City of Midland, Texas and being a portion of the land conveyed to the City of Midland, Texas by deed as recorded in Vol. 94, Pg. 125 of the Midland County Deed Records and being more fully described as follows;

Beginning at a set ½" diameter iron rod with cap in the north line of Nicklaus Street and in the east line of a 30 foot wide right-of-way dedicated by the plat titled Fairway Park Addition as recorded in Cab. "B", Pg. 307 of the Midland County Plat Records for the southwest corner of the herein described tract and having a coordinate of N= 10,710,417.45 ft., E= 1,755,817.69 ft.,

Thence N 14° 24' 14" W along the east line of said 30 foot right-of-way a distance of 1171.93 ft. to a set ½" diameter iron rod with cap in same for the northwest corner of the herein described tract and in the south line of North Loop 250,

Thence N 75° 39' 00" E along the north line of the herein described tract a distance of 60.00 ft. to a set ½" diameter iron rod w/cap at an angle point in same,

Thence S 88° 28' 29" E along the north line of the herein described tract a distance of 493.40 ft. to a set ½" diameter iron rod w/cap in the west line of Lamesa Road,

Thence S 05° 26' 16" W along the west line of Lamesa Road a distance of 1107.09 ft. to a set ½" diameter iron rod with cap in same at a cut back corner in the north line of Nicklaus Street,

Thence S 47° 51' 03" W along said cut back corner a distance of 29.71 ft. to a set ½" diameter iron rod with cap in the south line of the herein described tract at the beginning of a curve to the left,

Thence along the north line of said Nicklaus St., the south line of the herein described tract and said curve to the left having a radius of 317.12 ft., an arc length of 109.55 ft. with a chord bearing of S 85° 29' 36" W and a chord length of 109.01 ft. to a set ½" diameter iron rod with cap at the end of this curve,

Thence S 75° 35' 48" W along the north line of said Nicklaus St. and the south line of the herein described tract a distance of 25.00 ft. to the place of beginning and containing 9.22 acres.

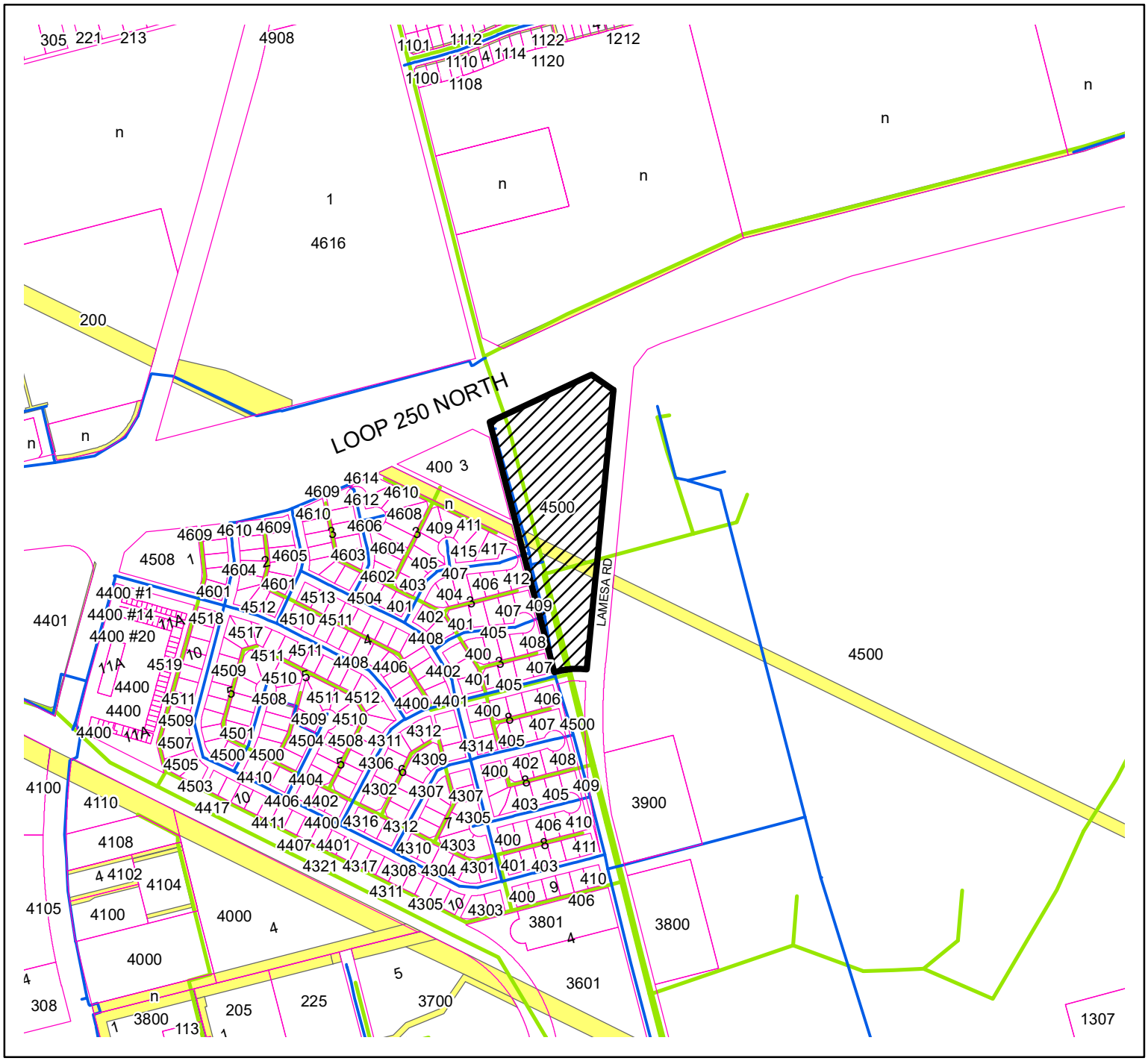
Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.

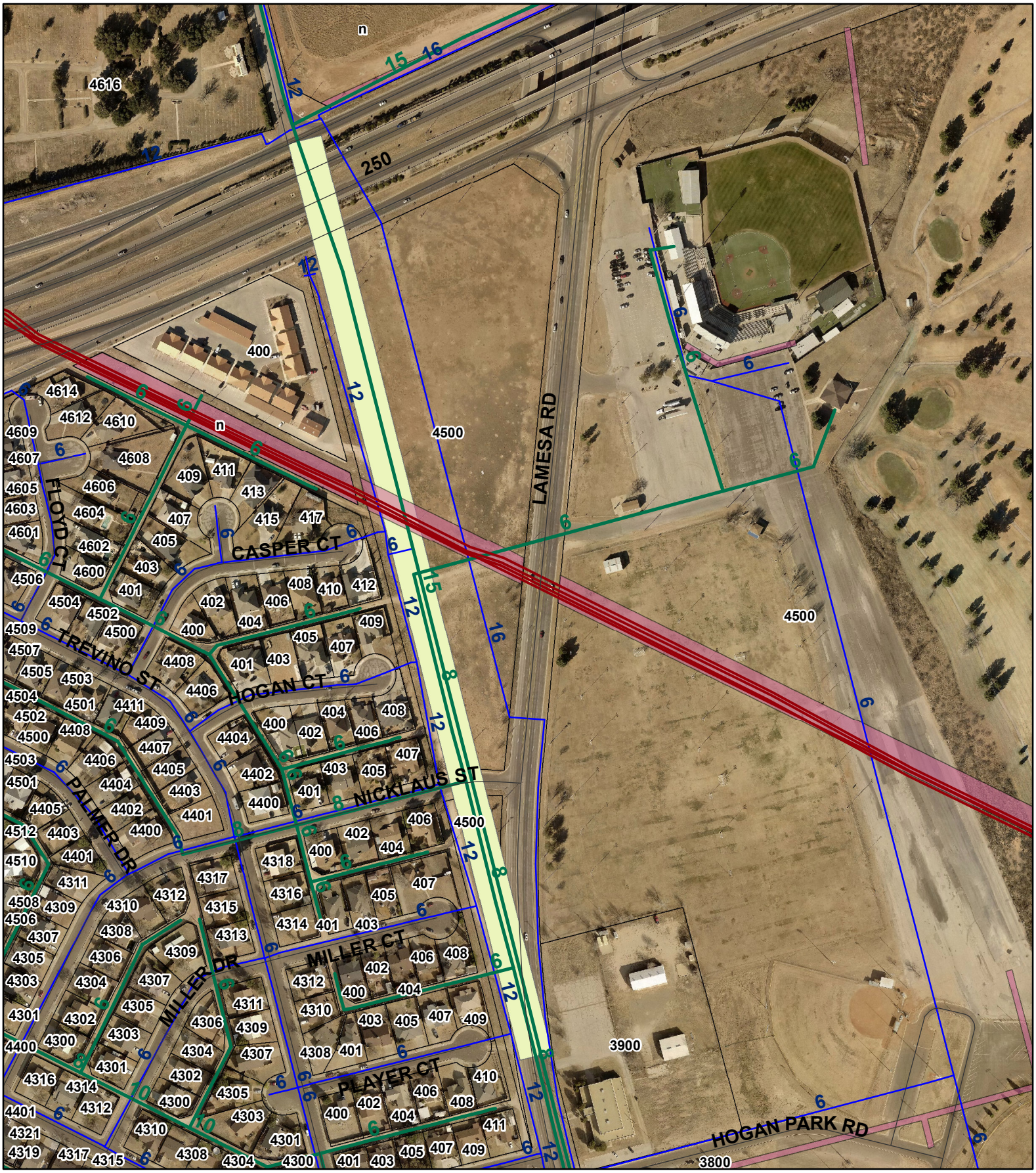


Richard A. Shelton 5-19-20

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7372

EXHIBIT "A"


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Legend

- Sewer Gravity Main
- Water Pressure Main
- Railroad Commission 2018 pipeline
- Easement
- Vacation
- Parcel

PACKET

Date: 10/30/2019

Lamesa Utilities Area

1 inch = 300 feet

May 9, 2023

©THE CITY OF MIDLAND - 2019
THIS IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 7

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE GRINDING/MULCHING OF TREE LIMBS/YARD WASTE PROJECT TO S&M BUSINESSES, INC., D/B/A AUSTIN LAND SERVICE D/B/A AUSTIN WOOD RECYCLING, INC., IN THE AMOUNT OF $272,412.00 (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution awarding an agreement for the Grinding/Mulching of Tree Limbs/Yard Waste Project to S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling of Hutto, Texas for the Solid Waste Department for the amount of $272,412.00; and authorizing payment.

Recommended City Council Action:

Approve

Fiscal Impact:

$272,412.00 is available in the FY 2023 Solid Waste Fund operating budget.

Discussion:

The City Manager approved the issuance of a request for proposals advertisement for the Grinding/Mulching of Tree Limbs/Yard Waste Project. The bid request was sent out to fifty-six (56) vendors. We received one (1) proposal. Staffs recommends awarding a contract to S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling. Please see the attached memo from Jeffery Ahrlett, Director of Solid Waste, for more information.

Therefore, please consider a resolution awarding an agreement to S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling of Hutto, Texas for the Grinding/Mulching for Tree Limbs/Yard Waste Project for the amount of $272,412.00; and authorizing payment.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: **Erika Munoz Martinez, Purchasing Manager**

FROM: **Jeffery Ahrlett, Director of Solid Waste**

SUBJECT: **Award Bid for Grinding/Mulching Tree Limbs and Yard Waste Debris**

DATE: **April 21, 2023**

Solid Waste is requesting approval of the bid received from Austin Wood Recycling, Inc. for Grinding/Mulching tree limbs and yard waste debris at the City of Midland Landfill and Citizen Collection Stations. Below are the associated fees.

- $14.00 per ton to Mulch/Grind the material
- $9.44 per cubic yard to haul mulch material to Landfill or $850.00 per load.

We currently mulch tree limbs and yard waste debris once per year at all locations that accept these materials. We grind down tree limbs and other yard waste debris to create on opportunity to repurpose the trees as mulch and makes clearing these materials easier to managed by enabling the debris to be trucked more efficiently.

Solid Waste is seeking council approval to bidder Austin Wood Recycling, Inc., for Grinding/Mulching services at an amount not to exceed $272,412.00. Funding is available in Sanitation Fund operating budget.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE GRINDING/MULCHING OF TREE LIMBS/YARD WASTE PROJECT TO S&M BUSINESSES, INC., D/B/A AUSTIN LAND SERVICE D/B/A AUSTIN WOOD RECYCLING, INC., IN THE AMOUNT OF $272,412.00

WHEREAS, the City Manager approved plans and specifications and authorized the issuance of a request for proposals for the Grinding/Mulching of Tree Limbs/Yard Waste Project; and

WHEREAS, the sole proposal was opened on April 12, 2023, for a total cost of $272,412.00 submitted by S&M Businesses, Inc., d/b/a Austin Land Service d/b/a Austin Wood Recycling, Inc., as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by S&M Businesses, Inc., d/b/a Austin Land Service d/b/a Austin Wood Recycling, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to S&M Businesses, Inc., d/b/a Austin Land Service d/b/a Austin Wood Recycling, Inc., for the Grinding/Mulching of Tree Limbs/Yard Waste Project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with S&M Businesses, Inc., d/b/a Austin Land Service d/b/a Austin Wood Recycling, Inc., for the Grinding/Mulching of Tree Limbs/Yard Waste Project in the amount of $272,412.00. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That $272,412.00 shall be available in the FY 2023 Solid Waste Fund operating budget.

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

pay S&M Businesses, Inc., d/b/a Austin Land Service d/b/a Austin Wood Recycling, Inc., pursuant to the terms of said contract from funds available upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Morris Williams, Jr., Interim 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 - Bid Tabulation

BID # 23002846R **Grinding/ Mulching for Tree Limbs and Yard Waste** **OPENED** April 12, 2023		**Austin Wood Recycling, Inc** **2100 Co Rd 118** **Hutto, Texas 78634** **512-259-7430**	
ITEM	**DESCRIPTION**	**Cost Ea.**	**Total**
1	Cost per ton for Grinding/Mulching	$14.00	
2	Cost for Hauling Grinding Material to the Landfill	$9.44	
	Per Cycle		
2A	Hauling Grinding Material to the Landfill	$850.00	
	Per Load for 90 Cubic Yard Truck- Price is to load and haul mulch		
	Delivery		
	TOTALS:		

Bidding Summary:

56 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

55 **Bidders did not respond.**

AGREEMENT

THIS AGREEMENT is made and effective the 10 day of May 2023, by and between the CITY OF MIDLAND, TEXAS ("*CITY*"), a home-rule municipal corporation, and S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling ("*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 Yard Waste Mulching 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 $272,412.00 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 May 10, 2023 until May 9, 2024 unless the Services are completed sooner or the Agreement is terminated as provided below. The City may at its option, renew this agreement for a period of three (3) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits

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

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT AND HAD THE

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

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

If to COMPANY: S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling
2100 Co Rd. 118
Hutto, TX 78634

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

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

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

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

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

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any

related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said statutes and regulations are made terms and conditions of this Agreement, to which the Parties have agreed to be bound.

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

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

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

K. Compliance. COMPANY shall comply with Texas Government Code § 2252.908, *et*

seq., as amended, and Texas Local Government Code § 176.006, *et seq.*, as amended.

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

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

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

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

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

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

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

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

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

ARTICLE XV. INDEMNITY

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

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

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

THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION XV SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Morris Williams Jr., Interim 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 S&M Businesses, Inc. dba Austin Land Service dba Austin Wood Recycling, 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 _____, 2023.

_____
Notary Public, State of Texas

Request for Proposals

RFP 23002846R

for

Grinding/Mulching for Tree Limbs/Yard Waste

Proposals for this requirement will be accepted until 2:00 P.M. on Wednesday, April 12, 2023

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.

2. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK

3. COMPLIANCE. – COMPANY AGREES THAT IT SHALL COMPLY WITH TEXAS GOVERNMENT CODE SECTION 2252.908, *ET SEQ.*, AS AMENDED. COMPANY AGREES THAT IT SHALL COMPLY WITH TEXAS LOCAL GOVERNMENT CODE SECTION 176.006, *ET SEQ.*, AS AMENDED.

SCHEDULE OF EVENTS

RFP 23002846R

For

Grinding/Mulching for Tree Limbs/Yard Waste

Event	Date*
RFP Released	March 29, 2023
Cutoff Date for inquiries and clarification	April 7, 2023
Proposal Due Date	April 12, 2023
Notification of Vendor Interviews / Product Demonstrations	To Be Determined
Intended Date for Contract Award	May 9, 2023

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.

2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offeror's. All copies of the proposal may be delivered in the same box/package.

3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.

4. Late proposals will not be accepted under any circumstances.

5. Proposal should give full firm name and address of Offeror. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Solid Waste Department (City) is requesting Proposals from qualified firms to contract with the City to provide Grinding/Mulching services for tree limbs and yard waste materials. The selected firm will contract directly with the City and will work cooperatively with the City and other project team members to successfully provide the full scope of services required to complete project requirements.

1.2. BACKGROUND INFORMATION

The City of Midland Solid Waste Department currently collects tree limbs and yard waste materials at the Citizen Collection Stations and City Landfill. Yard wastes (limbs, leaves, and grass clippings), land clearing debris (branches, stumps, and logs) are collected at these designated areas for periodic grinding into mulch. Initial Evaluation

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of

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

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.10. FORMAT FOR INQUIRIES:

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

1.11. INTERPRETATION:

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

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

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

1.12. PROPOSAL ORGANIZATION AND SUBMISSION

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

"(Offeror's Name)", understands and will comply.

1.13. OFFER PRICING

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

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

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

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

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

1.15.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.16. RIGHTS RESERVED

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

A) waive any formality;

b) cancel or terminate this RFP;

c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.17. **BONDING REQUIREMENTS**
Intentionally Omitted

1.18. **OFFEROR INTERVIEW / PRODUCT DEMONSTRATION**
After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.19. **SUBCONTRACTING**

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

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

1.20. **INSURANCE REQUIREMENTS**
See Contract or Agreement

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

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

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

1.23. **CONTRACT PROVISIONS AND TERMS**

1.23.1. Contract Execution

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

1.23.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is attached.

1.23.3. Exceptions to Contract Terms & Conditions

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

1.23.4. The initial contract(s) term is for a period of one (1) year. Renewals of the contract may be made at one (1) year intervals, not to exceed a total of (3) three years, at the

City's option.

1.23.5. Contract Extension

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

1.23.6. Escalation

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

2. PROPOSAL WAIVERS:

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

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

2.3. **OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.**

2.4. **WAIVER:**

2.5. **BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE**

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

2.6. **THE ADMINISTRATION, EVALUATION OR RECOMMEND-ATION OF ANY PROPOSAL;**

2.7. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**

2.8. **ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR**

2.9. **AWARD OF THE CONTRACT.**

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

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

3. REQUIREMENTS

NOTE: Where the term "required Field" appears in the requirements, the intent is that the user may not leave that field blank.

*Included means that if the feature or requirement is normally included and will be at No Extra Charge

**Will be at an additional cost. These added costs shall be listed on the cost summary/price sheet proposal page (whichever is attached)

The following tasks will be required of the awardee:

3.1. The contractor shall provide all equipment, materials, and labor necessary to grind/mulch all yard waste debris received at the Citizen Collection Stations and City of Midland landfill and shall be responsible for all cost associated with performing the service.

3.2. The City may request that all grinding materials be hauled to the City of Midland Landfill from the Citizen Collection Stations. This decision will be made prior to the start of the grinding.

3.3. Grinding shall be performed as needed or at a minimum, once per fiscal year.

3.4. Screen size for the grinder will be at least five (5) inches or more.

3.5. Must use horizontal grinding.

3.6. Excavator must be 250 or equivalent.

3.7. Fee quoted for brush and yard wastes shall be price per ton.

4. CONTENTS OF PROPOSAL

The City requests well prepared and thorough proposals which include but are not limited to the following items:

4.1. Extent and quality of municipal solid waste grinding/mulching experience of the individual or firm, local office personnel to be involved, references of former and present clients.

- Examples of previous grinding/mulching services provided.
- List the names, titles, and contact information for personnel involved
- Contact information from at least three references (former or present clients)

4.2. Contractors' ability and willingness to meet the requirements and needs of the City with respect to the grinding requirements as outlined in this request for proposal.

- Describe the methods your firm will utilize to fulfill the requirements presented in the scope of work
- Provide a statement of services that differentiate your firm from other respondents.

4.3. Proven ability of the firm to meet work schedules.

4.4. Proposed cost of the engagement

- Provide your fee for the proposed services.
- Cost per ton for Grinding/Mulching $14.00 Per Ton
- Cost for hauling grinding material to the Landfill $9.44 per cyd or $850 per load for 90cyd Trucks. price is to load 1 Haul mulch
- Fee quotes should be detailed by service.
- Outline billing and payment expectations, including timing and method of payment.
- Describe any remaining fees not previously detailed above.

4.5. Any initial exceptions to the attached example Agreement

- Please note that the number and extent of exceptions may be a consideration during the evaluation process.

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

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

5.3.1.2. These references should include City government and universities where the offeror, preferably within the last three (3) years, has successfully completed a Solid Waste Services Cost of Service Study and Rate Analysis project.

5.3.1.3. These references should include (any other desired information) _____

5.3.2. Vendor Stability

5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.

5.3.2.2. Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.

5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) _____.

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

6.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

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

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

6.2. EVALUATION CRITERIA

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

6.2.1. Extent and quality of rate study experience of the individual or firm, local office personnel to be involved, based on information provided by the firm as well as references of former and present clients: **30%**

6.2.2. Consultant's ability and willingness to meet the requirements and needs of the City with respect to the study as outlined in this request for proposal and as demonstrated in the prpposal: **25%**

6.2.3. Proven ability of the firm to meet work schedules: **25%**

6.2.4. Proposed cost of the engagement: **20%**

7. PROPOSAL CONTENTS

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

7.1. **THE RFP**

7.2. **THE COST SUMMARY OR PROPOSAL FORM**

7.3. **REQUESTED ATTACHMENTS**

7.3.1. References

7.3.2. Resumes

7.3.3. Financial Information

7.3.4. Signed Execution of Offer

8. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

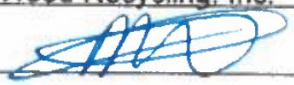
In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: Austin Wood Recycling, Inc.

SIGNATURE (INK): 

NAME: (TYPED/PRINTED) Michael Yaw

TITLE: C.O.O

STREET: 2100 Co Rd 118

CITY/STATE/ZIP: Hutto, Texas, 78634

TELEPHONE: (512)259-7430 FAX: _____

E-MAIL ADDRESS: Mikey@austinwoodrecycling.com

MIDLAND
Purchasing Division

Contractor's Name

PROPOSAL
RFP #23002846R

To: Purchasing Manager
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the request for proposal and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached request for proposal and contract for the sum of:

Total Proposal _____ DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within _____ calendar days.

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

NOTE: Bid and Proposal terms are interchangeable.

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

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

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY

RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER 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, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE BIDDER.

THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE BIDDER AND THE CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

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

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

C. **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, Bidder or his

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

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

By Signing below, your company agrees to the above waiver(s). If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

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.**

Austin Wood Recycling, Inc.		(512)259-7430
Bidder	Authorized Signature	Telephone
2100 Co Rd 118 Hutto, TX 78634	Michael Yaw, COO	
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

☑ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (**Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

CITY OF MIDLAND

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

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

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

X NOT APPLICABLE

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

_____ _____

Signature of vendor doing business with the governmental entity Date

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

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

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

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
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 or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

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

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."
Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

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

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

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

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

31. THIRD PARTY BENEFICIARY - The Buyer's approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this agreement. No person or entity who is not a party to this agreement shall have any third party beneficiary or other rights hereunder.

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

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

THE SELLER AND BUYER ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

35. FEDERAL WAGE REQUIREMENTS - If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this agreement, 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.

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2023-999745

Date Filed:
03/28/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Austin Wood Recycling, Inc.
Hutto, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Midland

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

23002846R
Yard waste mulching

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Martin, Michael	Hutto, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is Michael Yaw, and my date of birth is _____.

My address is 2100 Co Rd 118 (street), Hutto (city), TX (state), 78634 (zip code), USA (country).

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

Executed in Williamson County, State of Texas, on the 28th day of March (month) 20 23 (year).

Signature of authorized agent of contracting business entity
(Declarant)

Reference List

1. Comal County – James Tart (210)213-0284
2. City of McAllen - Robert Trevino (956)534-7151
3. Republic Services – Jimmy Rivera (956)793-9897

Client#: 816354 AUSTIWOOD

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/28/2023

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Olivia Mohle
Marsh McLennan Agency 2500 Bee Cave Road, Suite 125 Austin, TX 78746 512 453-0031	PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: olivia.mohle@marshmma.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Old Republic Insurance Company	24147
INSURER B : Landmark American Insurance Company	33138
INSURER C : Gotham Insurance Company	25569
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Austin Wood Recycling Inc.
Thelin Recycling Co. LP
2100 CR 118
Hutto, TX 78634

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			MWZY31618722	07/01/2022	07/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$1,000,000 $500,000 $25,000 $1,000,000 $2,000,000 $2,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] HIRED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] NON-OWNED AUTOS ONLY			MWTB31618822	07/01/2022	07/01/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$1,000,000 $ $ $ $
B	[ ] UMBRELLA LIAB [ ] OCCUR [X] EXCESS LIAB [X] CLAIMS-MADE [ ] DED [X] RETENTION $			LHA098580	07/01/2022	07/01/2023	EACH OCCURRENCE AGGREGATE $	$2,000,000 $2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [Y] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			MWC31618622	07/01/2022	07/01/2023	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $1,000,000 $1,000,000 $1,000,000
C	Excess Liability			EX202200002498	07/01/2022	07/01/2023	$3,000,000 Each Occ. $3,000,000 Aggregate	

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

Additional Insured - Owners, Lessees Or Contractors - Scheduled Person or Organization - CG2010 12/19
Additional Insured - Owners, Lessees or Contractors - Completed Operations - CG2037 12/19
Waiver of Transfer of Rights of Recovery Against Others to Us Waiver of Subrogation Automatic -CG2453 12/19
Designated Construction Project(S)General Aggregate Limit - CG2503 05/09
Primary and Non-Contributory-Other Insurance Condition - CG2001 (12/19)
(See Attached Descriptions)

CERTIFICATE HOLDER

City of Midland
300 N Loraine, Suite 330 PO Box
1152
Midland, TX 79702

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation)- CA0444 10/13
Additional Insured And Primary and Non-Contributory Endorsement - PCA048 9/19
Texas Waiver Of Our Rights To Recover From Others Endorsement - WC420304B 06/14
Project: Grinding/Mulching for Tree Limbs & Yard Waste.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION) – AUTOMATIC

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations as required by written contract or agreement	All locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
All persons or organizations as required by written contract or agreement	All completed operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 28 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
All persons or organizations as required by written contract or agreement
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - VENDORS - AUTOMATIC STATUS WHEN REQUIRED IN AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any "vendor", but only with respect to liability for "bodily injury" or "property damage" arising out of "your product" which is distributed or sold in the regular course of the "vendor's" business.

However, the insurance afforded to such "vendor":

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such "vendor".

B. With respect to the insurance afforded to any "vendor", the following additional exclusions apply:

1. The insurance afforded the "vendor" does not apply to:
   - **a.** "Bodily injury" or "property damage" for which the "vendor" is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the "vendor" would have in the absence of the contract or agreement;
   - **b.** Any express warranty unauthorized by you;
   - **c.** Any physical or chemical change in the product made intentionally by the "vendor";
   - **d.** Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
   - **e.** Any failure to make such inspections, adjustments, tests or servicing as the "vendor" has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
   - **f.** Demonstration, installation, servicing or repair operations, except such operations performed at the "vendor's" premises in connection with the sale of the product;
   - **g.** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the "vendor"; or
   - **h.** "Bodily injury" or "property damage" arising out of the sole negligence of the "vendor" for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
     - **(1)** The exceptions contained in Subparagraphs **d.** or **f.**; or
     - **(2)** Such inspections, adjustments, tests or servicing as the "vendor" has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

C. With respect to the insurance afforded to these "vendors", the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the "vendor" is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

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This endorsement shall not increase the applicable limits of insurance.

D. The following definition is added to the **Definitions** section:

"Vendor" means any person or organization who distributes or sells "your product" in the regular course of its business when you have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):
The project(s) as specified in the written contracts or agreements
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A**, and for all medical expenses caused by accidents under Section **I** – Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
   a. Insureds;
   b. Claims made or "suits" brought; or
   c. Persons or organizations making claims or bringing "suits".
3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Number of Days' Notice 10 (For non-payment of premium)

Number of Days' Notice 90 (For any other reason, other than nonpayment of premium)

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The number of days required for notice of Cancellation, as provided in the Cancellation policy Condition or as amended by an applicable state endorsement, is increased to the number of days shown in the Schedule.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Specific Waiver
   Name of person or organization

   (X) Blanket Waiver
   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:
   ALL TEXAS OPERATIONS

3. Premium:
   The premium charge for this endorsement shall be 0 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: **INCLUDED**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 07-01-2022 Policy No. MWC 316186 22 Endorsement No.

Insured AUSTIN WOOD RECYCLING, INC. Premium $ INCL.

Insurance Company OLD REPUBLIC INSURANCE COMPANY

Countersigned By Craig R. Smith

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AND PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Designated Person(s) or Organization(s):

All persons or organizations where required by written contract

A. **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, paragraph **1. Who Is An Insured** is amended to include the person(s) or organization(s) shown in the above Schedule as an additional "insured", but only with respect to "accidents" arising out of your work while being performed for such person(s) or organization(s).

B. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This policy's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to the "insured" person(s) or organization(s) shown in the above Schedule provided that:

1. Such "insured" is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Austin Wood Recycling, Inc.

Endorsement Effective Date: 07/01/22

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
All persons or organizations as required by written contract or agreement
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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City of Midland - Bid Tabulation

BID # 23002846R **Grinding/ Mulching for Tree Limbs and Yard Waste** **OPENED** April 12, 2023		**Austin Wood Recycling, Inc** **2100 Co Rd 118** **Hutto, Texas 78634** **512-259-7430**	
ITEM	**DESCRIPTION**	**Cost Ea.**	**Total**
1	Cost per ton for Grinding/Mulching	$14.00	
2	Cost for Hauling Grinding Material to the Landfill	$9.44	
	Per Cycle		
2A	Hauling Grinding Material to the Landfill	$850.00	
	Per Load for 90 Cubic Yard Truck- Price is to load and haul mulch		
	Delivery		
	TOTALS:		

Bidding Summary:

56 **Bid requests were issued.**

1 **Bids listed above**

0 **NO BIDS were received.**

55 **Bidders did not respond.**

City Council Meeting

Item Number: 8

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS, AIRPORT AND T-BAR WELL FIELD MAINTENANCE PROJECT TO MARK'S WATER WELL SERVICE, INC., FOR AN ESTIMATED ANNUAL AMOUNT OF $500,000.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract for the Paul Davis, Airport & T-Bar Well Field Maintenance Project to Mark's Water Well Service, Inc. of Odessa, Texas for the Utilities Department for an estimated annual amount of $500,000.00; and authorizing payment.

Recommended City Council Action:

Approve

Fiscal Impact:

$500,000.00 is available in the FY 2023 Water & Sewer Fund operating budget.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for the Paul Davis, Airport & T-Bar Well Field Maintenance Project. The bid request was sent to out to thirty-six (36) vendors. We received two (2) bids. Staff is recommends awarding the contract to Mark's Water Well Service, Inc. Please see the attached memo from Raymond Saddler, Water Purification Plant Superintendent, for more information.

Therefore, please consider a resolution awarding a contract to Mark's Water Well Service, Inc. of Odessa, Texas for the Paul Davis, Airport & T-Bar Well Field Maintenance Project for an estimated annual amount of $500,000.00; and authorizing payment.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, Director of General Services

FROM: Raymond Saddler, Water Purification Plant Superintendent

SUBJECT: **Annual Paul Davis, T-Bar & Airport Well Maintenance** for FY2023

DATE: April 26, 2023

The recommended Vendor for the Wellfields Maintenance Service for 2023-2024 contract term is as follows:

Marks Water Well Service is recommended as the competent low bidder for the Annual wellfield Maintenance services for Utilities.

Funding for $500,000.00 is available in the FY 2023 Water & Sewer Fund operating budget.

City of Midland - Bid Tabulation

BID # 23002490 Water Well Service Maintenance at Paul Davis Airport & T-Bar Well Field OPENED April 19, 2023			Marks Water Well Service, Inc. P.O. Box 271 Odessa, Texas 79760 markswaterwell5@aol.com		Elite Drillers Corporation 5545 E Marigold St Gardendale, Texas 79758 elitedrillerscorporation@gmail.com	
ITEM	**QTY**	**DESCRIPTION**	**Cost per Foot to Remove**	**Cost per Foot to Install**	**Cost per Foot to Remove**	**Cost per Foot to Install**
1	1	**Submersible Pump (1,000 ft.est.)**			$5.00	$6.00
2	**1**	**4" diameter pump & casing (1,000 ft.est.)**			$7.00	$8.00
		4" Certa-Lok	$3.25	$3.25		
		4" Bore-Line	$2.45	$2.45		
		4" Steel	$5.85	$3.90		
3	1	**6" diameter pump & casing (1,000 ft. est.)**			$7.00	$8.00
		6" Certa-Lok	$3.25	$3.25		
		6" Bore-Line	$2.34	$2.34		
		6" Steel	$7.02	$4.68		
4	**1**	**8" diameter pump & casing (600ft. est.)**			$7.00	$8.00
		8" Certa-Lok	$3.25/Ft			
5	**1**	**10" diamter pump & casing (600ft. est.)**	$5.50/ Ft		$7.00	$8.00
6		**Materials & Parts Cost Plus**				
		100 Hp Motor Stainless Steel	$23,800.00			
		100 Hp Wet-End	$21,825.00			
		MOBILIZATION				
7		**How much notification required to move into area?**	48 Hour Notification		48 hrs	
8		**State Premiums for emergency mobilization**				
		a) Weekends	$250.00		$1,500.00	
		b)Holidays	$300.00		$1,500.00	
		c)Off hours	$250.00		$1,500.00	
9		**Vendor to List**				
		a) Holidays				
		b) Regular working hours	$195.00			
		MOVE IN CHARGES (EST. 5 WELLS)				
10		**Mileage per Mile**	$2/Hr			
11	**1**	**Set up each well**	$150.00		$1,500.00	
12	**1**	**Bailing, per hour**	$195.00		$425.00	
13	**1**	**Fishing, per hour, includes wait time for tool delivery**	$195.00		$425.00	
14	**1**	**Shop and machine work, per hour**	$165.00		$425.00	
		TEST PUMPING (24hour test)				
15		**4" pump, per test (est 2 pumps)**	$4,500.00		$10,200.00	
16		**6" pump, per test (est 1 pump)**	$6,000.00		$10,200.00	
17		**8" pump, per test (est 1 pump)**	$7,500.00		$10,200.00	
18		**10" pump, per test (est 1 pump)**	$6,000.00		$10,200.00	
		Estimated Contract Cost per year				

Bidding Summary:

36 **Bid requests were issued.**

2 **Bids listed above**

1 **NO BIDS were received.**

33 **Bidders did not respond.**

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE PAUL DAVIS, AIRPORT AND T-BAR WELL FIELD MAINTENANCE PROJECT TO MARK'S WATER WELL SERVICE, INC., FOR AN ESTIMATED ANNUAL AMOUNT OF $500,000.00

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the Paul Davis, Airport and T-Bar Well Field Maintenance Project; and

WHEREAS, bids were opened on April 19, 2023, with the lowest bid being submitted by Mark's Water Well Service, Inc., as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Mark's Water Well Service, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Mark's Water Well Service, Inc., for the Paul Davis, Airport and T-Bar Well Field Maintenance Project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Mark's Water Well Service, Inc., for the Paul Davis, Airport and T-Bar Well Field Maintenance Project for an estimated annual amount of $500,000.00. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That $500,000.00 shall be available in the FY 2023 Water and Sewer Fund operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Mark's Water Well Service, Inc., pursuant to the terms of said contract upon receipt of

proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Morris Williams, Jr., Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

CITY OF MIDLAND
SERVICE CONTRACT
#23002490

THIS CONTRACT, effective this 10 day of May 2023, by and between the City of Midland, hereinafter referred to as the "CITY" and Mark's Water Well Service, Inc. hereinafter referred to as the "COMPANY".

Projected Annual Cost: $500,000.00

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

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> 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 CONNECTEDWITH 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 eighteen (18) months commencing on May 23, 2023, and terminating on November 24, 2024 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 the proposal.

9. COMPANY shall:

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

Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) 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 (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

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

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

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

To CITY:

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

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

To COMPANY: Mark's Water Well Service
P.O Box 271
Odessa TX 79760

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. <u>WAIVER OF ATTORNEY FEES</u>: 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 DECLARATORYJUDGMENTS 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. **<u>NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES</u>:** 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 statutoryprerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

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

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

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

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

28. **TERMINATION AT WILL:** CITY may terminate this Contract at will for no or any reason upon

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

29. **INSURANCE**

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

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

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

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

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided

the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

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

31. To the extent that Sections 2271.002 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 energycompanies and will not boycott energycompanies 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: _____
Morris Williams Jr., Interim 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 _____, 2023 personally appeared, _____, an officer of Mark's Water Well Service Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 2023.

_____
Notary Public, State of _____

CITY OF MIDLAND

PURCHASING DIVISION DATE: 3/23/2023

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 23002490**

OPENING TIME: 2:00 PM **CLOSING DATE: 04/19/23**

CITY OF MIDLAND
300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 320
UNTIL 2:00 P.M. 4/19/23 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Paul Davis & Airport & T-Bar Well Fields

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Paul Davis, Airport & T-Bar Well Field Maintenance in accordance with the attached detail sheets and contract.		
				TOTAL	

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.
6. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Marks Water Well Service
ADDRESS P.O Box 271
CITY Odessa ST Tx ZIP 79760
PHONE NO. 432-770-8962 FAX NO. _____
EMAIL: Marks waterwell5@Aol.com

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE _____

AUTHORIZED SIGNATURE [signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Vendor Name: Marks Water Well Service

MIDLAND
Purchasing Division

Detail Sheet
For
23002490 Paul Davis & T-Bar Well Field Maintenance

ITEM	DESCRIPTION	COST PER FOOT TO REMOVE:	COST PER FOOT TO INSTALL:
1	Submersible pump (up to 1,000 ft. est.)	$	$
2	4 inch diameter pump & casing (1,000 ft. est.)	$	$
3	6 inch diameter pump & casing (600 ft. est.)	$	$
4	8 inch diameter pump & casing (600 ft. est.)	$	$
5	10 inch diameter pump & casing (600 ft. est.)	$	$
6	Materials and parts: COST +		$ %
	MOBILIZATION		
7	How much notification will be required to move into area?		
8	State premiums for emergency mobilization on:		
	a) Weekends		$250.00
	b) Holidays		$300.00
	c) Off Hours		$250.00
9	Vendor to list: a) Holidays		
	b) Regular working hours		$195.00
	MOVE IN CHARGES (EST. 5 WELLS):		
10	Mileage, per mile	$	$
11	Set up, each well	$ 150.00	$
12	Bailing, per hour	$ 195.00	$
13	Fishing, per hour, includes waiting time for tool delivery	$ 195.00	$
14	Shop and machine work, per hour	$	$
	TEST PUMPING: (24 hour test)		
15	4 inch pump, per test, (est. 2 pumps)	$ 4500.00	$

See Attachment

ITEM	DESCRIPTION	COST PER FOOT TO REMOVE:	COST PER FOOT TO INSTALL:
16	6 inch pump, per test, (est. 1 pump)	$ 6000.00	$
17	8 inch pump, per test, (est. 1 pump)	$ 7500.00	$
18	10 inch pump, per test, (est. 1 pump)	$	$

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

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

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

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

BID WAIVERS:

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE BID DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE BIDDER

FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE BIDDER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF

SOVEREIGN IMMUNITY.

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

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

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

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

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

4-19-2023
Delivery Date

MarksWaterwell5@aol.com
E-mail Address

Marks Water Well Service
Company Name

Date

Authorized Signature

432-770-8962 Jason
432-381-7128 office
Phone

Jason Mehlhoff
Print Above Name

Fax

Vendor Name: Marks Waterwell Servi

MIDLAND
Purchasing Division

Detail Sheet (Cont.)
For
23002490 Well Service Additional Vendor Specs:

1. **Vendor must be able to provide, service and install up to 6" Boreline & fittings at the T-bar/Clearwater wells**
2. **All Boreline wells require stainless steel check valves with Knockouts**
3. **Boreline Wiring must be double Jacketed**
4. **Vendor must have the ability to spool and reel Boreline hose onsite**
5. **T-Bar Clearwater wells require any and all new installs must be Stainless pumps**
6. **All pulled wells are required to be camera surveyed or and upon request if jetted.**
7. **All wells to be disinfected in accordance with AWWA Standards prior to reinstalling**
8. **NOTICE: ALL vendors are excluded from the use of Franklin pumps or motors for any well field install.**

Submersible Pump (up to 1,000 Ft Est.)	Cost Per Foot T Remove	Cost Per Foot To Install
4 Inch Diameter pump & casing (1,000 ft est.)	$	$
4" Certa-Lok	$3.25	$3.25
4" Bore-Line	$2.45	$2.45
4" Steel	$5.85	$3.90
6 Inch Diameter pump & casing (600 ft est.)	$	$
6" Certa-Lok	$3.25	$3.25
6" Bore-Line	$2.34	$2.34
6" Steel	$7.02	$4.68
8 Inch Diameter pump & casing (600 ftest.	$	$
8" Certa-Lok	$	$
10 inch diameter pump & casing (600 ft est.)		
Materials and parts: Cost +		
100 Hp Motor Stainless Steel	$23,800.00	
100 Hp Wet-End	$21,825.00	
30 Hp Motor Stainless Steel	$5,175.00	
30 Hp Wet-end Stainless Steel	$6,895.00	
Galv. Pipe Per Ft.		
3"	$15.60	
4"	$21.45	
5"	$31.60	
6"	$46.00	
Certa-Lok		
3" Certa-Lok Pipe	$34.85	
3" Change Overs	$528.00	
4" Certa-Lok Pipe	$47.00	
4" Change Overs	$704.00	
5" Certa-Lok Pipe	$64.40	
5" Change Overs	$902.00	
6" Certa-Lok Pipe	$86.20	
6" Change Overs	$1,008.00	
8" Certa-Lok Pipe	$128.00	
8"Change Overs	$1,595.00	
4" Bore-Line	$54.00	
Fittings	$1,285.00	
Centerlizers	$820.00	
6" Bore-Line	$86.00	
6" Fittings	$2,645.00	
6" Centerlizers	$2,100.00	
MOBILZATION		

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/20/2022

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
Higginbotham Insurance Agency, Inc.
4800 E University Blvd., Suite B
Odessa TX 79762

CONTACT NAME: Vanessa Villarreal
PHONE (A/C, No, Ext): 432-614-1109 FAX (A/C, No): 432-368-7505
E-MAIL ADDRESS: VVillarreal@higginbotham.net

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Texas Mutual Insurance Company	22945
INSURER B : American Hallmark Insurance Company	34037
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED MARKS15
Mark's Water Well Service, Inc.
P O Box 271
Odessa TX 79760

COVERAGES **CERTIFICATE NUMBER:** 1946740566 **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	
B	X COMMERCIAL GENERAL LIABILITY			44CL009005354-02	12/25/2022	12/25/2023	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ Excluded
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY			44CL009005354-02	12/25/2022	12/25/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N	N/A		0001280563	12/25/2022	12/25/2023	X PER STATUTE OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH)						E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	Leased/Rented Equip Scheduled Equipment			44CL009005354-02	12/25/2022	12/25/2023	See Below See Below	See Below See Below

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liability and Automobile Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status and General Liability, Automobile Liability and Workers' Compensation policy includes a blanket waiver of subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability includes a blanket Primary & Non-Contributory endorsement that affords that coverage to certificate holders only where there is a written contract between the Named Insured and the certificate holder that requires such status.

See Attached...

CERTIFICATE HOLDER

City of Midland
300 N Lorraine
Midland TX 79701

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: MARKS15

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Higginbotham Insurance Agency, Inc.	Mark's Water Well Service, Inc. P O Box 271 Odessa TX 79760
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

Equipment Policy #44CL009005354-02 includes coverage for:

Leased/Rented Equipment from Others - $5,000 Any One Item / $5,000 Total Limit
Scheduled Equipment Limit - $913,242
Deductibles: 5% with Max amount of $10,000 and minimum of $1,000.
Coverage Basis is Actual Cash Value

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CITY OF MIDLAND

ADDENDUM

BID # 23002490

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: April 17, 2023

The following questions were raised by one or more of the proposers. The answers are provided as a matter of clarification for all proposers as follows:

Q1. What size pumps are needed; Stainless Steel or Standard?

A1. Both sizes are needed.

Q2. Pulling per foot; boreline, certa-lok or steel?

A2. All of the pulling are needed

Q3. Pulling per foot; boreline, certa-lok or steel?

A3. All

Q4. Replacing per foot; boreline, certa-lok or steel?

A4. All

Q5. Pressure wash and clean pipe before running back in?

A5. Yes

Q6. Do the wells need to be chlorinated?

A6. Please see specs sheet.

Q7. Do the wells need to be videoed?

A7. Please see specs sheet.

Q8. If the wire needs to be replaced, what kind and size of wire is needed?

A8. Please see specs, or replace same as removed.

Q9. Is this quote just for pulling wells and reinstalling?

A9. General Service agreement for service, repair, and pulling.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Marks Water Well Service
Company Name

Bidder Authorized Signature

4-19-23
Date

Jason A Mehlhoff
Please Print Above Name

432-770-8962
432-381-7128
Phone

On-line responses will not be allowed for this solicitation.

Delivery of Submittals: Bid packets must be received in the City Secretary's Office no later than designated bid date and time. Bidders are responsible for the means of timely delivering the bid packet. Delays due to any instrumentality used to transmit the bid packet (e.g., delay occasioned by a bidder, City's internal mailing system, etc.) are the sole responsibility of the bidder. **Late bid packets will not be accepted under any circumstances.**

Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

The City Secretary's Office
City of Midland
P. O. Box 1152
Midland, TX 79702

OR

Physical Address:

The City Secretary's Office
City of Midland
300 N. Loraine, Suite 330
Midland, TX 79701

ATTENTION: The deadline for submitting additional questions is 72 working hours before the bid opening date. Questions submitted before the Noon deadline will be included in the Addendum. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

No-Bid
Response
For
Request #: 23002490

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Agent
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523. IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

Signature of vendor doing business with the governmental entity

Date May 9, 2023

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

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

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

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
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 or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

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

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, includingWorker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

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

24. ASSIGNMENT - Seller shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

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

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

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

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

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

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

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

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

31. THIRD PARTY BENEFICIARY - The Buyer's approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this agreement. No person or entity who is not a party to this agreement shall have any third party beneficiary or other rights hereunder.

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

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

THE SELLER AND BUYER ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

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

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

35. FEDERAL WAGE REQUIREMENTS - If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this agreement 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.

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

City of Midland - Bid Tabulation

BID # 23002490 Water Well Service Maintenance at Paul Davis Airport & T-Bar Well Field OPENED April 19, 2023			Marks Water Well Service, Inc. P.O. Box 271 Odessa, Texas 79760 markswaterwell5@aol.com		Elite Drillers Corporation 5545 E Marigold St Gardendale, Texas 79758 elitedrillerscorporation@gmail.com	
ITEM	**QTY**	**DESCRIPTION**	**Cost per Foot to Remove**	**Cost per Foot to Install**	**Cost per Foot to Remove**	**Cost per Foot to Install**
1	1	**Submersible Pump (1,000 ft.est.)**			$5.00	$6.00
2	**1**	**4" diameter pump & casing (1,000 ft.est.)**			$7.00	$8.00
		4" Certa-Lok	$3.25	$3.25		
		4" Bore-Line	$2.45	$2.45		
		4" Steel	$5.85	$3.90		
3	1	**6" diameter pump & casing (1,000 ft. est.)**			$7.00	$8.00
		6" Certa-Lok	$3.25	$3.25		
		6" Bore-Line	$2.34	$2.34		
		6" Steel	$7.02	$4.68		
4	**1**	**8" diameter pump & casing (600ft. est.)**			$7.00	$8.00
		8" Certa-Lok	$3.25/Ft			
5	**1**	**10" diamter pump & casing (600ft. est.)**	$5.50/ Ft		$7.00	$8.00
6		**Materials & Parts Cost Plus**				
		100 Hp Motor Stainless Steel	$23,800.00			
		100 Hp Wet-End	$21,825.00			
		MOBILIZATION				
7		**How much notification required to move into area?**	48 Hour Notification		48 hrs	
8		**State Premiums for emergency mobilization**				
		a) Weekends	$250.00		$1,500.00	
		b)Holidays	$300.00		$1,500.00	
		c)Off hours	$250.00		$1,500.00	
9		**Vendor to List**				
		a) Holidays				
		b) Regular working hours	$195.00			
		MOVE IN CHARGES (EST. 5 WELLS)				
10		**Mileage per Mile**	$2/Hr			
11	**1**	**Set up each well**	$150.00		$1,500.00	
12	**1**	**Bailing, per hour**	$195.00		$425.00	
13	**1**	**Fishing, per hour, includes wait time for tool delivery**	$195.00		$425.00	
14	**1**	**Shop and machine work, per hour**	$165.00		$425.00	
		TEST PUMPING (24hour test)				
15		**4" pump, per test (est 2 pumps)**	$4,500.00		$10,200.00	
16		**6" pump, per test (est 1 pump)**	$6,000.00		$10,200.00	
17		**8" pump, per test (est 1 pump)**	$7,500.00		$10,200.00	
18		**10" pump, per test (est 1 pump)**	$6,000.00		$10,200.00	
		Estimated Contract Cost per year				

Bidding Summary:

36 **Bid requests were issued.**

2 **Bids listed above**

1 **NO BIDS were received.**

33 **Bidders did not respond.**

City Council Meeting

Item Number: 9

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: **RESOLUTION SELECTING THE PROPOSAL SUBMITTED BY MIDLAND DOWNTOWN RENAISSANCE, LP, FOR THE DEVELOPMENT OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, TOGETHER WITH CERTAIN MIDLAND DEVELOPMENT CORPORATION-OWNED REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AUTHORIZING THE INTERIM CITY MANAGER AND THE MIDLAND DEVELOPMENT CORPORATION CHAIRMAN TO NEGOTIATE AN AGREEMENT FOR THE PURPOSE OF CARRYING OUT THE INTENT OF SAID PROPOSAL; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT 2) (CITY MANAGER)**

Purpose:

Resolution selecting the proposal submitted by Midland Downtown Renaissance LP for the development of certain City-owned property described as Lots 7 and 8, Block 35, Original Town of Midland, City of Midland, Midland County, Texas, together with certain Midland Development Corporation-owned real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing the Interim City Manager to negotiate all related agreements, amendments, easements, legal instruments, and documents necessary and appropriate to carry out the intent of said property.

Recommended City Council Action:

Approve

Fiscal Impact:

None at this time.

Discussion:

On October 11, 2022, the City of Midland, in conjunction with the Midland Development Corporation (MDC), issued an RFP for the block of land in downtown owned by both entities. The area is where the Western United Life Building was demolished.

On March 31, 2023, the RFP closed with a total of four submissions.

On April 5, and again on April 20, 2023, the RFP Subcommittee, consisting of three City Council Members (Dan Corrales, Scott Dufford, and John Norman) and three MDC members (Chase Gardaphe, P. Lourcey Sams, and Brad Bullock), evaluated the proposals following criteria listed in the RFP. The criteria included: bid amount, value of private investment in downtown, ratio of private/public investment, financial capabilities, concept aesthetics, timeline, long-term downtown impact, and project team capabilities.

Midland Downtown Renaissance LP (MDR) was the selected proposal based on the scoring criteria. The proposal included a downtown hotel, retail space, and a parking garage.

The next steps will include negotiating with MDR and learning more about their plans and their proposed partnership with the City and MDC.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION SELECTING THE PROPOSAL SUBMITTED BY MIDLAND DOWNTOWN RENAISSANCE, LP, FOR THE DEVELOPMENT OF CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, TOGETHER WITH CERTAIN MIDLAND DEVELOPMENT CORPORATION-OWNED REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AUTHORIZING THE INTERIM CITY MANAGER AND THE MIDLAND DEVELOPMENT CORPORATION CHAIRMAN TO NEGOTIATE AN AGREEMENT FOR THE PURPOSE OF CARRYING OUT THE INTENT OF SAID PROPOSAL; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, Motion 117-2022 approved the advertisement of a request for proposals for the development of certain City-owned real property described as Lots 7 and 8, Block 35, Original Town Addition, City of Midland, Midland County, Texas, together with certain Midland Development Corporation-owned real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town Addition, City of Midland, Midland County, Texas (the "*Project*"); and

WHEREAS, four (4) proposals were received and reviewed by the joint subcommittee established for such purpose, with the subcommittee recommending the selection of proposal submitted by Midland Downtown Renaissance, LP; and

WHEREAS, the City Council finds that Midland Downtown Renaissance, LP, is qualified to develop the Project; and

WHEREAS, the City Council finds it to be in the public interest to select the proposal submitted by Midland Downtown Renaissance, LP, for the development of the Project; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Interim City Manager and the Midland Development Corporation Chairman to negotiate an agreement for the purpose of carrying out the intent of the proposal submitted by Midland

Downtown Renaissance, LP;

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

SECTION ONE. That the City Council hereby selects the proposal submitted by Midland Downtown Renaissance, LP, for the development of the Project. Said proposal shall be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the Interim City Manager and the Midland Development Corporation Chairman are hereby authorized and directed to negotiate an agreement for the purpose of carrying out the intent of the proposal submitted by Midland Downtown Renaissance, LP; provided, however, that said agreement shall not become effective until approved by the City Council.

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

_____
Morris Williams, Jr., Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney



RESPONSE TO THE RFP TO THE

CITY OF

MIDLAND

AND

MIDLAND DEVELOPMENT CORPORATION

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The information contained in this presentation is proprietary and confidential and confidential information belonging to Midland Downtown Renaissance, LP and solely for use by the City of Midland and Midland Development Corporation and not for public dissemination. The renderings and site plans shown herein are included for illustration purposes and confidential information subject to change.



MIDLAND
Feel the Energy!

THE VISION IS HERE
THE NEED IS HERE
THE PRIVATE AND PUBLIC CAPITAL ARE HERE
THE LEADERSHIP IS HERE
LET'S DO THIS!
FOR US AND FOR OUR FUTURE GENERATIONS





PROPRIETARY AND CONFIDENTIAL

Midland Downtown Renaissance, LP's vision becomes a reality only if the City expands its vision for the City Property and allows for creative ideas that include a larger area and thus, a larger positive impact. The work contemplated by MDR's vision requires a successful collaboration of public and private entities combining numerous properties currently under different ownerships that will become the site of a signature development for Midland and the Permian Basin. Achieving this vision will require careful planning, extensive communications, and financial and philosophical support from many different entities.

MDR's vision is bigger than the RFP contemplates, but the opportunity is even greater. We look forward to engaging in serious discussions about how this - and more - can become a reality for the City of Midland, its residents, and businesses.



PROPRIETARY AND CONFIDENTIAL

INTRODUCTION

Midland Downtown Renaissance, LP ("MDR") is a collaborative effort by leading Midland-based companies and private investors and Franklin Mountain Investments, which has a proven and successful track record in executing downtown renaissance projects.

MDR is proposing the development of a high-quality, full-service hotel and a structured parking garage in Phase II (Phase I to include surface parking lot) on and adjacent to the Proposal Property, thereby creating connectivity with Centennial Park and the Bush Convention Center. The success of the Bush Convention Center and Centennial Park serve as catalysts to MDR's plans to further enhance the downtown experience for visitors and residents, while also increasing Midland's property tax base. The proposed project will further encourage local residents to enjoy downtown Midland and serve the needs of Midland's business community providing first class

HOTEL
SANTA
RITA
MIDLAND . TEXAS



accommodations, dining and meeting space for its visitors. Midland residents and visitors alike will be able to enjoy the first-class amenities of the proposed project, while enjoying the first-class city park and convention center. MDR believes that in this plan there is an opportunity to re-develop and re-purpose other downtown sites for an even more impactful and useful downtown and plans to continue to pursue such opportunities if the City shares in MDR's greater vision for downtown Midland. MDR's proposal activates two city blocks downtown, not just one.

PROPRIETARY AND CONFIDENTIAL



MDR's team brings together professional and experienced support in the development, construction and operation of first-class hotels and parking garages, and who understand the importance of downtown revitalization to cities. This experience and commitment to the betterment of Midland makes MDR the right partner for the City and MDC.

FRANKLIN MOUNTAIN INVESTMENTS™

SCHARBAUER FOUNDATION

Hedloc Investment Co.

OGX Minerals

Round Table DESIGN

JORDAN FOSTER CONSTRUCTION

OVERLAND ARCHITECTURE + URBAN DESIGN

HHM

PACKET

9.11

May 9, 2023

PROPRIETARY AND CONFIDENTIAL

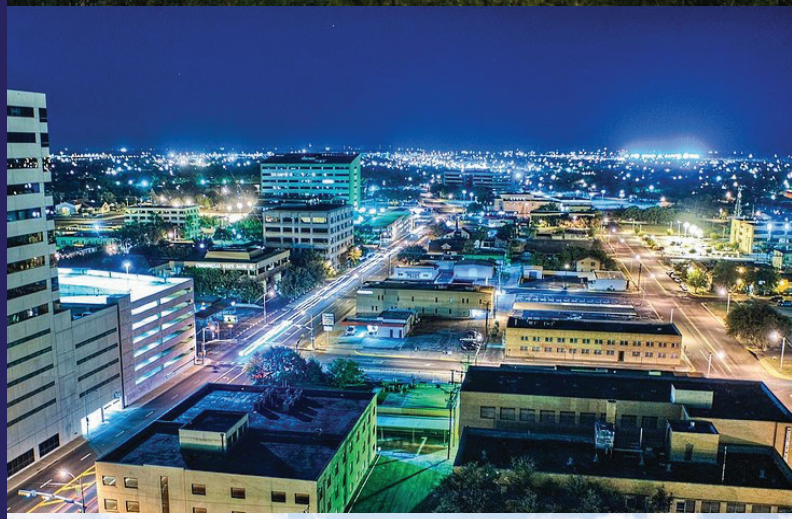
COMMUNITY OVERVIEW

- Midland lies in the heart of the Permian Basin, the largest petroleum-producing basin in the United States. Approximately 40% of America's oil and gas reserves are in reservoirs in the Basin.

- The Bureau of Economic Analysis in 2021 ranked 384 metropolitan areas in terms of per capita income and again Midland ranked No. 1 at $124,667, which was more than double the national average. It also marked at least the third straight year Midland topped the rankings.

- Midland's population continues to trend younger, with an average age of 31, and draws families from all over the world for the professional and personal opportunities this region provides.







PROPRIETARY AND CONFIDENTIAL

COMMUNITY OVERVIEW

Centennial Park is a shared green space celebrating the spirit of our vibrant city core, home to a great lawn facing a stage pavilion for live entertainment and much more. Shaded groves come to life daily as outdoor living spaces for visitors looking for a place to lunch, rest, or meet.

Downtown Midland family activities get a natural boost with parks within parks, featuring a kids play area, dedicated dog parks for the furriest family members, and an energetic splash pad to provide some fun heat relief.



PROPRIETARY AND CONFIDENTIAL

- Hotels are essential for business and tourism. Hotel stays create revenue and jobs, but it encourages growth in other sectors of the economy. This is called the multiplier effect, which is how many times does the money spent by a visitor circulate through the local economy and better the City of Midland and the Permian Basin.

- Job Creation:This project would create numerous new job opportunities, from construction to operations. This job creation helps the entire community.

- Invite Visitors: Midland needs a high-quality, full-service hotel to encourage travelers, both business and personal, to stay and enjoy their time in our great city.

- Purchase local foods, goods and services: Local, state and federal taxes collected from the sales return to funding the government and its agencies, which translates into improved infrastructure and increased essential services.

- Invite competition: MDR has seen firsthand the results of a revitalized downtown. One excellent hotel brings more innovation to the area. Surrounding properties will increase in value as improvements are made, further increasing the property tax base.

- This project is needed.

COMMUNITY OVERVIEW





PROPRIETARY AND CONFIDENTIAL

PROJECT OVERVIEW

The project to be built is a 135-key high-quality, full-service hotel and parking on and adjacent to the Proposal Property in Downtown Midland. Our preliminary analysis indicates the project could cost approximately $125 million to $140 million (not including Phase II, the structured parking garage). The hotel will be situated on a surface parking lot owned by FMI directly west from the Centennial Park and the Bush Convention Center. MDR requests that the City not sell or otherwise convey or encumber the RFP lot until such time as this group has had time to work with the City to further the objectives of this offer. MDR anticipates construction to begin in 2024 with completion anticipated for late 2025 or early 2026.







PROPERTY PROGRAMING

135 ROOMS	#	Sq Ft
Kings	85	350 SF
Queens	30	350 SF
Suites	20	1,400 SF

AMENITIES

- 8,000 SF divisible ballroom
- 4 separate meeting rooms (500 – 5,000 SF each)
- 4,000 SF 3-meal restaurant and bar (approx. 185 seats)
- Lobby bar
- Market café featuring coffee, snacks, beverages and sundries
- Resort pool
- Room Service
- Concierge Service
- Retail locations along first level of parking garage

PROPRIETARY AND CONFIDENTIAL

At such time as demand for additional downtown development of other hotels, additional office occupancy, a sports venue and museums warrants additional parking, the Phase I surface parking lot would be converted into the Phase II structured parking garage.

Costs have risen dramatically in the last couple of years due to post-COVID inflation and supply chain challenges. While those are easing somewhat, costs remain high.

The lot that is subject to the RFP is needed to replace the parking spaces taken from the office buildings and to serve as a staging area during construction. Furthermore, a bank has expressed interest in building a new bank facility with a corresponding motor bank on the site, which can be accommodated as part of this overall project.

PROJECT OVERVIEW



PROPRIETARY AND CONFIDENTIAL

PROJECT OVERVIEW

PRIVATE AND PUBLIC INVESTMENT

The private investors that have expressed a commitment to investing in this project understand the challenges and are willing to make a civic oriented investment that 1) has a low rate of return for them, 2) returns their capital from future debt recapitalizations and 3) is based on a patient investment horizon in order to fully return their capital. However, the cost of the project is not fully covered by private investment and requires public support. Public support is needed, including but not limited to, the following forms:

- 100% Hotel Occupancy Tax (HOT) rebates over a long period
- Rebate of the City's portion of sales tax over a long period
- Rebate of the City's portion of sales tax on construction materials at the end of construction
- Rebate of the City's portion of property tax over a long period
- Conveyance of a shovel-ready site for the surface parking lot (structured parking garage in Phase II) at no cost
- Waiving of all city permit fees for construction
- Substantial cash incentive payments during the construction and opening periods to cover any remaining construction cost deficits (which could range from $15 million to $30 million, excluding Phase II)
- Grants and rebates and incentives similar to those above for Phase II (the structured parking garage) at such time as Phase II makes economic sense.
- MDR will also pursue any federal, state and county incentive programs that may be available to assist with the project and the City



PROPRIETARY AND CONFIDENTIAL



PROJECT OVERVIEW

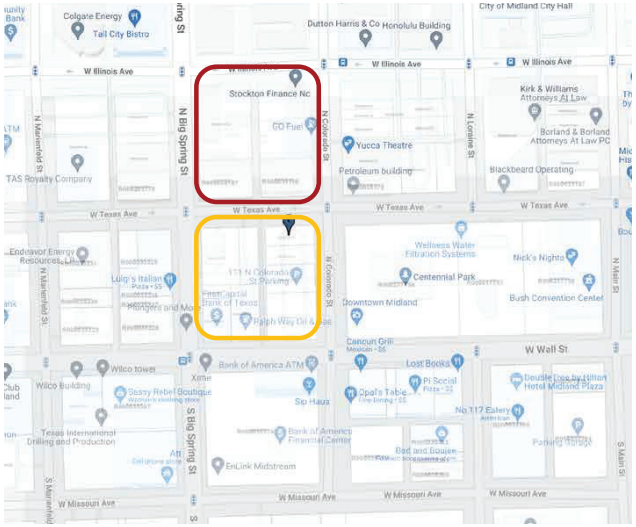
PROPRIETARY AND CONFIDENTIAL

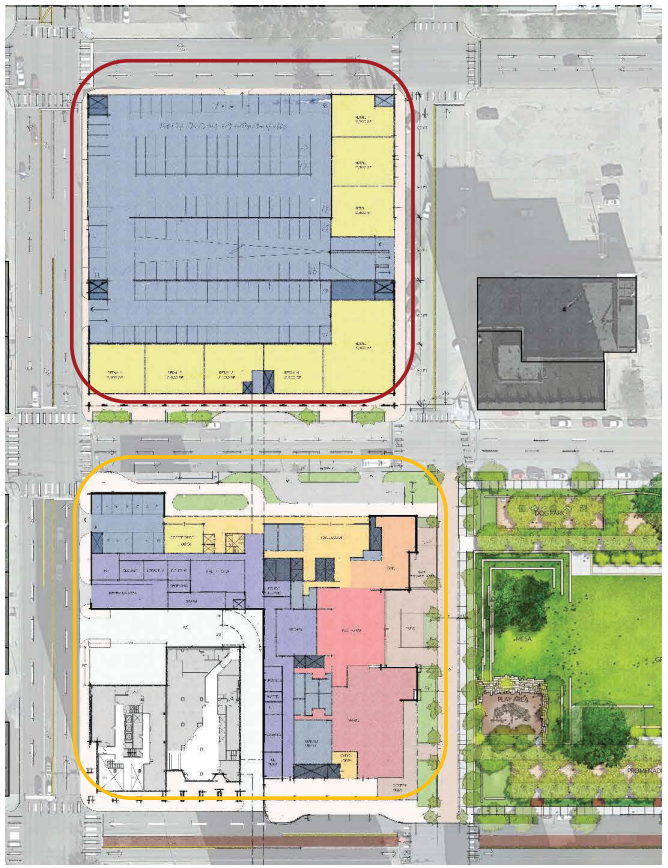
The Phase II structured parking garage would be constructed on the City/MDC owned property and connected by sky-bridge to the hotel, at such future date as demand materializes.

The proposal would include restricting traffic to emergency use only for Colorado Street between Wall and Texas to create pedestrian connectivity with Centennial Park.

The plans for the Phase II parking garage include space for over 1,000 vehicles and over 24,000 sq ft of retail space at ground level serving both the hotel visitors, as well as visitors to other downtown attractions.

PROJECT OVERVIEW





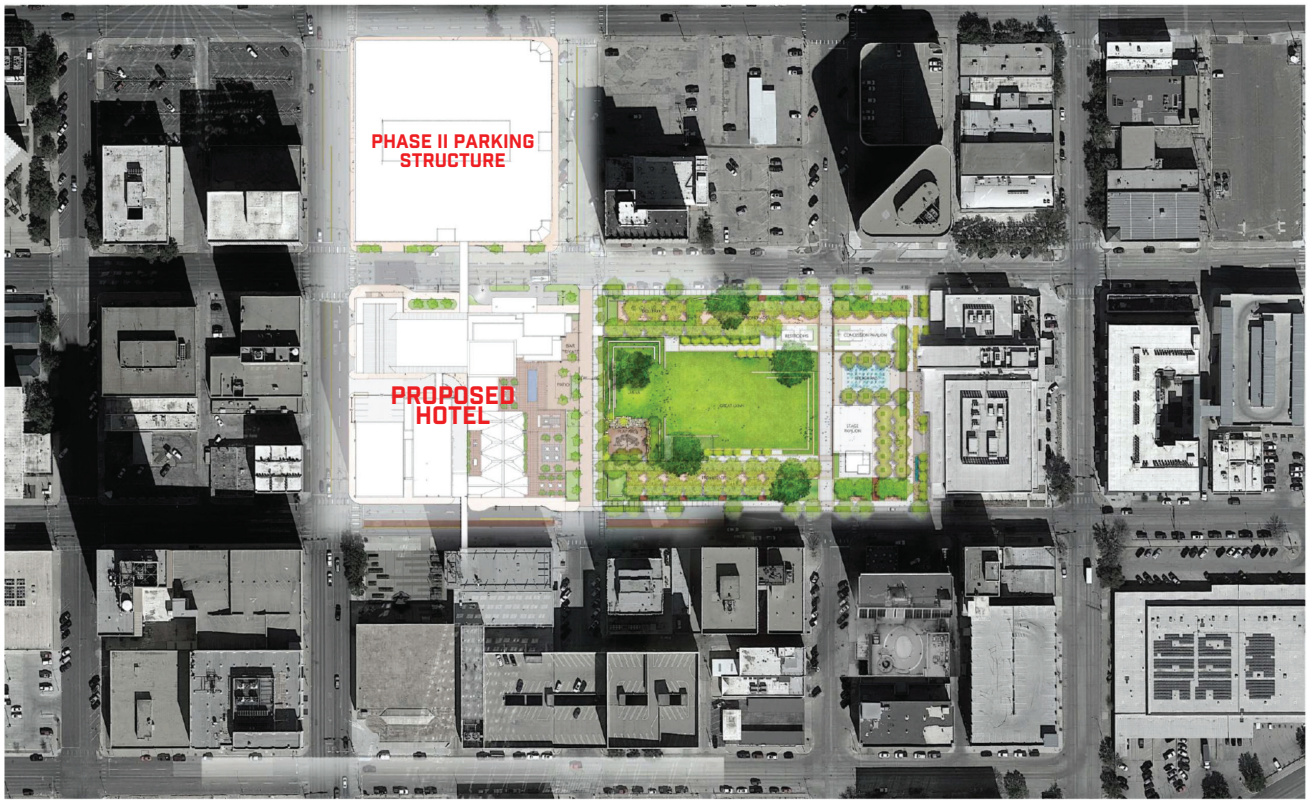
PACKET

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May 9, 2023

PROPRIETARY AND CONFIDENTIAL

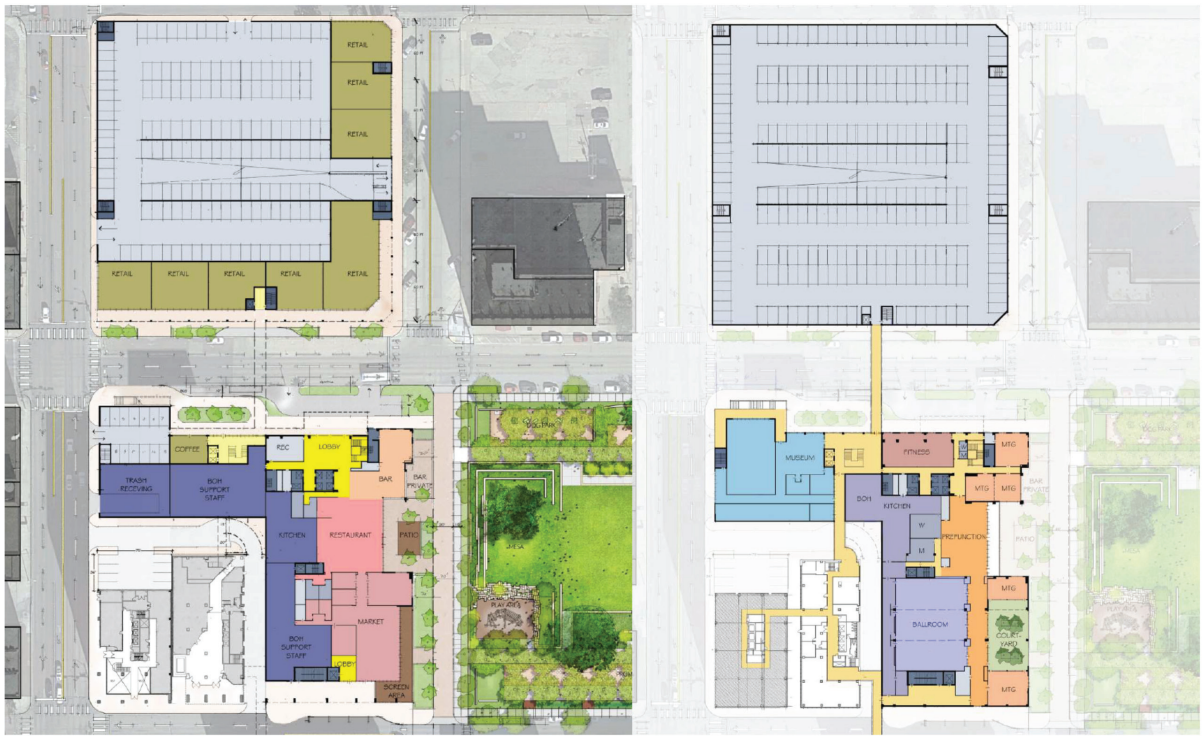
SITE PLAN



PROJECT OVERVIEW

PROPRIETARY AND CONFIDENTIAL

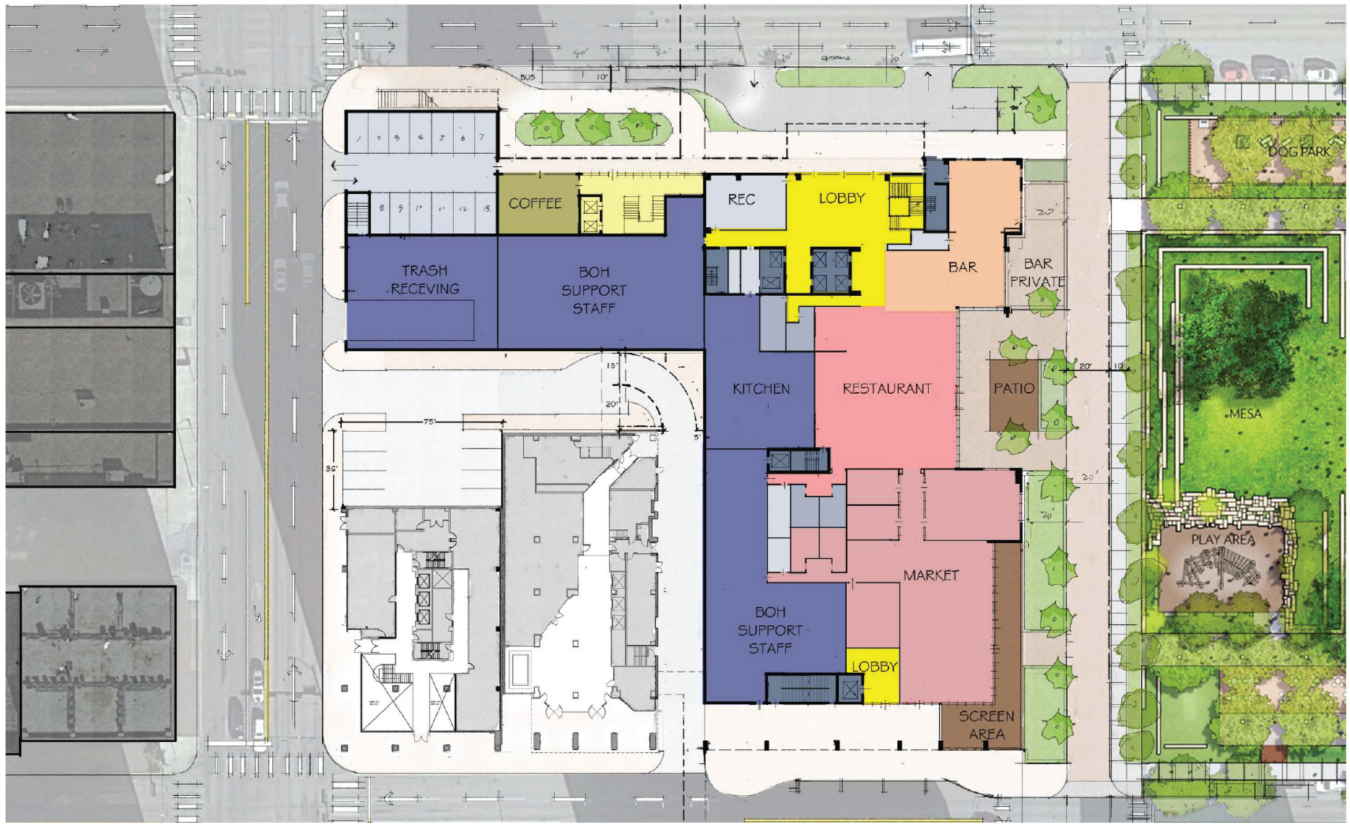
GROUND FLOOR & LEVEL 2



PROJECT OVERVIEW

PROPRIETARY AND CONFIDENTIAL

HOTEL GROUND FLOOR



PROJECT OVERVIEW

PROPRIETARY AND CONFIDENTIAL

MDR's development of this downtown hotel and parking garage project will create new opportunities for aspirational projects, such as a sports venue, museums, farmers market, retail and restaurants and many others. Additionally, this will drive the redevelopment, modernization and/or repurposing of Midland's impressive inventory of existing, but dated, office buildings. MDR also believes there is an opportunity for the City to move its City Hall into a redeveloped office building in the core of this redevelopment district to meet the city's needs for the next 40 years. All of this excitement in the Downtown area will also serve as a catalyst for additional residential development.

ASPIRATIONAL PROJECTS









PROPRIETARY AND CONFIDENTIAL

Franklin Mountain Investments (FMI) is a diversified investment company owned by Paul L. Foster. The Company has investments in numerous businesses, including Energy, Private Equity, Real Estate, Construction, Aviation, Sports, Restaurants, Medical Devices, and more.

FMI has extensive expertise across the real estate sector, including construction management, first-class hotel development and operations, restaurant management and private equity investments.

SPONSORS



PROPRIETARY AND CONFIDENTIAL

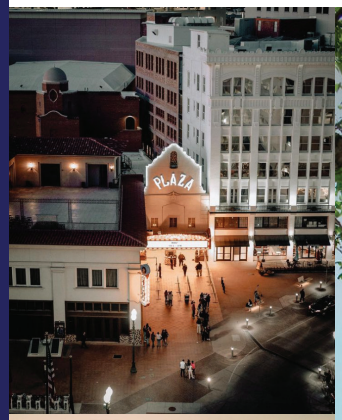
Most notably, FMI has led the redevelopment efforts of downtown El Paso to include hotels, office buildings, retail and restaurants, some of which are identified herein.

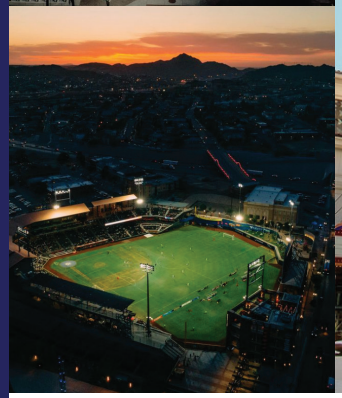
Plaza Theatre – FMI preserved the theater as it was scheduled for demolition. It is known as a National Historic Building of Significance, built in 1930 and restored to its original atmospheric theater splendor in 2006. Today it is considered a gem of the community providing a variety of entertainment.

Mills & Centre Buildings - Each building was in poor condition when FMI began redeveloping them with support from State and Federal tax credits and Federal New Markets tax credits as well as city incentives. Today they are 100% occupied and have among the highest rents in Downtown El Paso.

El Paso Chihuahuas – The baseball team has been an instrumental part in developing Downtown El Paso as they serve as a venue for fun family entertainment. The very popular and nationally recognized Chihuahuas have been a primary catalyst for spurring downtown redevelopment and reactivation with its draw of thousands of people to the downtown area.

SPONSORS





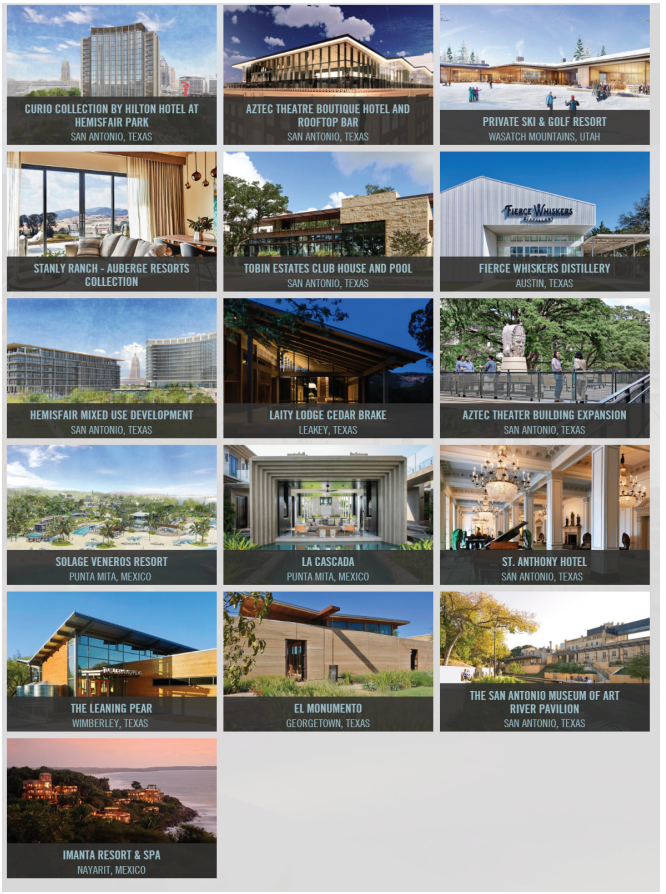


PROPRIETARY AND CONFIDENTIAL

PROJECT TEAM

Overland Partners, founded in 1987 in San Antonio, brings together diverse talents to provide comprehensive services in architectural design, urban design, and master planning throughout the world. Sensitive to the environmental and aesthetic contexts of our projects, we thoughtfully integrate technology, art, and craft to uncover world-class, innovative sustainable solutions for highly complex projects.

Our projects in Texas and across the United States and China, Latin America and the Middle East are diverse: Fortune 500 headquarters and art museums to visitors centers, homeless shelters to luxury private homes, universities to urban planning. Our work has received more than 200 international, national, regional, and local design awards and has been published in numerous national and international publications.



PROPRIETARY AND CONFIDENTIAL

Round Table Design was conceived in the spirit of collaboration. One of the key components in creating a well-executed project. We work in a variety of styles which all share a sophisticated, eclectic sensibility. Each design plan relates to the needs of our client and closely aligns with the architecture of the building.

Our small but mighty, unconventional team gather disciplines from all sectors of the creative world: art, architecture, interiors, product design/engineering, textile design, lighting design, and sourcing. The result is the ability to re-imagine the possibilities of each project. The studio provides services inclusive of the purchasing process, allowing clients to invest in “the whole design process” not just individual disciplines. Furniture, textiles, accessories, and art are meticulously specified and designed for function, quality and style.

PROJECT TEAM

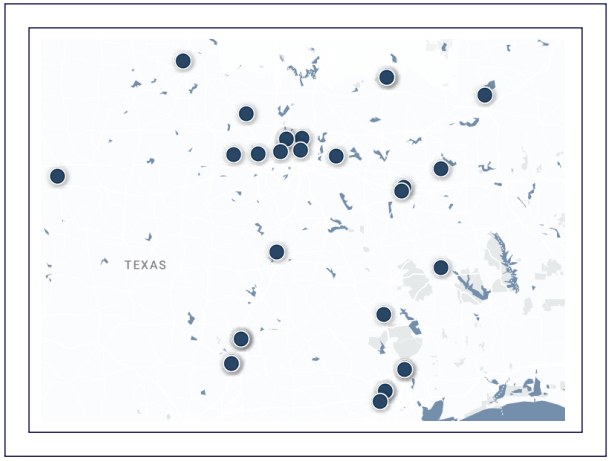


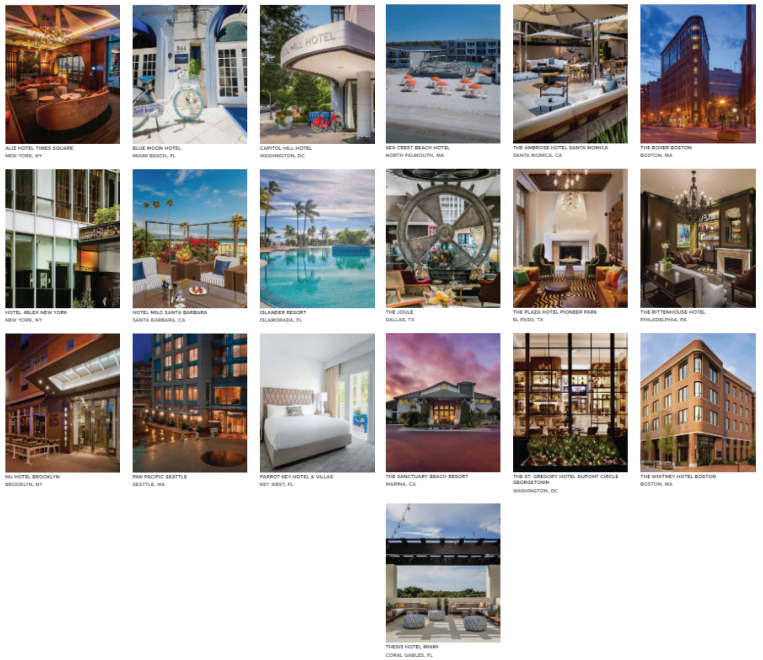
PROPRIETARY AND CONFIDENTIAL

HHM is an industry leader in hospitality. We are among the fastest growing -and most stable- management, investment and development firms in our sector, with 235 hotels and over $1B in managed revenues from coast to coast. We remain tireless in our approach to delivering results to our owners and fully understand that our people and their capabilities are our advantage.

Our portfolio includes over 235 full service, select service, and extended-stay hotels in the most competitive hospitality markets in the United States and Canada. We represent the biggest brands in the business and truly independent "one of a kind" luxury and lifestyle hotels.

PROJECT TEAM





PACKET

9.28

May 9, 2023

PROPRIETARY AND CONFIDENTIAL



William Kell

Chief Operating Officer

Franklin Mountain Investments

123 W Mills Ave. Suite 600

El Paso, TX 79901

915-247-7751

wkell@fmmep.com

Dan Hord III

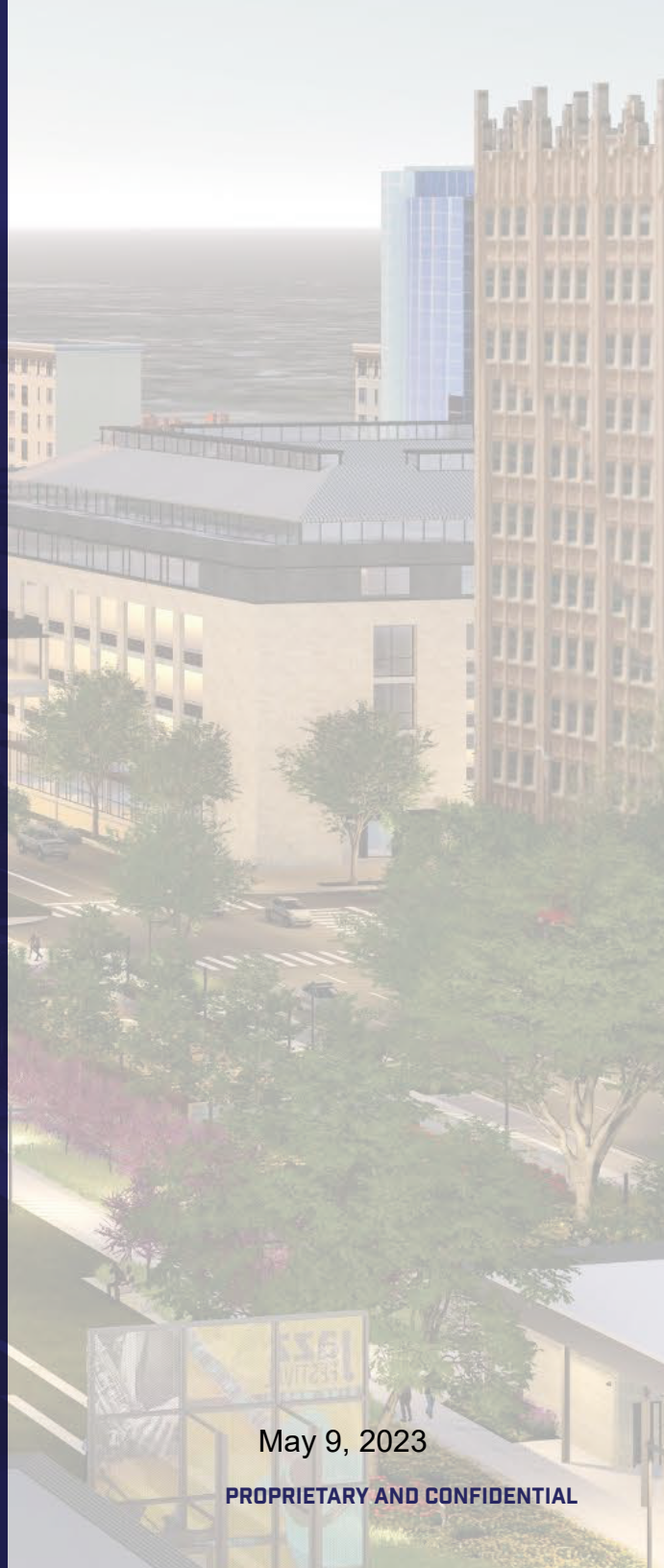
HEDLOC Investment Co, L.P.

223 W. Wall Street, Suite 300

Midland, TX 79701

Phone: 432.253.7805

danhord@hedlocinv.com



PROPRIETARY AND CONFIDENTIAL

EXHIBITS



PROPRIETARY AND CONFIDENTIAL

EXHIBITS



PROPRIETARY AND CONFIDENTIAL

EXHIBITS



PROPRIETARY AND CONFIDENTIAL

EXHIBITS

PHASE II



PROPRIETARY AND CONFIDENTIAL

EXHIBITS
PHASE II

GARAGE GROUND FLOOR



PROPRIETARY AND CONFIDENTIAL

City Council Meeting

Item Number: 10

Meeting Date: April 25, 2023, May 9, 2023

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND CITY OF MIDLAND AQUATICS, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES **(DISTRICT 3) (COMMUNITY SERVICES)**

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on April 3, 2023 a promotional agreement with City of Midland Aquatics, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

$700,000.00

Discussion:

This agreement provides funding intended to re-line COM's competition pool.

Morris Williams Jr.

City Manager's Office

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT ("***Agreement***") is made and effective the 25th day of April, 2023, by and between THE MIDLAND DEVELOPMENT CORPORATION ("***MDC***"), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and CITY OF MIDLAND AQUATICS, INC. ("***COM Aquatics***"), a Texas nonprofit corporation. In this Agreement, MDC and COM Aquatics are sometimes individually referred to as a "***Party***" and collectively referred to as the "***Parties***."

W I T N E S S E T H:

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code; and

WHEREAS, MDC's expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties to combine their efforts for the purpose of promoting economic development within the City of Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COM Aquatics shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. As a condition precedent to MDC's obligations under this Agreement, COM Aquatics shall enter a contract to provide for the relining of its fifty (50) meter competition pool (the "***Relining Contract***") on or before October 1, 2023. Upon COM Aquatic's execution of the Relining Contract, COM Aquatics shall provide MDC with a copy of the executed Relining Contract. Within seven (7) business days following MDC's receipt of a copy of the executed Relining Contract, MDC shall make one (1) lump sum payment in the amount of Seven Hundred Thousand and No/100 Dollars ($700,000.00).The total funds provided by the MDC under this Agreement shall not exceed $700,000.00. The Parties covenant and agree that all funds provided by the MDC under this Agreement are in exchange for COM Aquatics' advertising and promotional services as set forth herein.

B. COM Aquatics Services. COM Aquatics shall use commercially reasonable efforts to provide those services described in **Exhibit A**, which is attached hereto and incorporated herein

for all purposes. COM Aquatics shall perform all services in a workmanlike manner. COM Aquatics shall coordinate with MDC's Chairman, or his designee, regarding the design, nature, content, and implementation of the services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement.

C. COM Aquatics Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, COM Aquatics shall provide MDC with a report or presentation containing a detailed summary of COM Aquatics' efforts to promote new and expanded business enterprises within the City of Midland.

III. INDEPENDENT CONTRACTOR

COM Aquatics shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of MDC. COM Aquatics shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, employees or contractors. In no event shall any person participating in or performing any of COM Aquatics' duties or responsibilities hereunder be considered an officer, agent, 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. COM Aquatics 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 COM Aquatics' work. COM Aquatics shall assume exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective April 25, 2023, and shall terminate on September 30, 2024, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

B. Termination. MDC may terminate this Agreement at will for any or no reason upon giving at least ninety (90) days' written notice to COM Aquatics. The parties to this Agreement understand and agree that it is in MDC's sole and absolute discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. COM Aquatics has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

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

E. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to MDC:	*If to COM Aquatics:*
Executive Director	Brad Swendig, Executive Director
Midland Development Corp.	City of Midland Aquatics, Inc.
200 N. Loraine St., Suite 610	3003 North A Street
Midland, Texas 79701	Midland, Texas 79705

F. Assignment. This Agreement shall be binding upon the Parties and their successors and assigns. This Agreement may not be assigned by COM Aquatics without the prior written consent of MDC.

G. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COM AQUATICS 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 COM AQUATICS 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 MDC'S NEGLIGENCE.

H. Amendments. This Agreement may be amended by written instrument executed by both Parties expressly stating the intention to amend this Agreement.

I. 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.**

J. Waiver of Attorney Fees. By executing this Agreement, **THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. THE**

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

K. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All payments under this Agreement are deemed to have taken place in Midland County, Texas.

L. Third-Party Beneficiary. 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.

M. Governmental Function. MDC and COM Aquatics hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, COM Aquatics releases MDC from any present or future claims asserting that MDC's performance or obligations under this Agreement are not governmental functions.

[Signature Pages Follow]

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

MIDLAND DEVELOPMENT CORPORATION

_____
Chase Gardaphe, Chairman

ATTEST:

_____
Jill Pennington, Secretary

[Signature Page Follows]

CITY OF MIDLAND AQUATICS, INC.

By_____

Name _____

Title _____

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of CITY OF MIDLAND AQUATICS, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

_____
Notary Public, State of Texas

Promotional Services to be Provided by COM Aquatics

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises on website, brochure and media materials, when feasible.
2. Promoting COM Aquatics.
3. Including references to the Midland Development Corporation's support for COM Aquatics in a press release.
4. Including a description and logo for the Midland Development Corporation in COM Aquatics promotional materials, when feasible.

Exhibit A

City Council Meeting

Item Number: 11

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Whitney Craig, Manager, Health and Senior Services

Subject: MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $105,462.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; SAID GRANT FUNDS TO BE USED TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS NECESSITIES; AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO ACCEPT SAID GRANT FUNDS; AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND (DISTRICT: ALL) (COMMUNITY SERVICES)

Purpose:

Motion authorizing the acceptance of grant funds in the amount of $105,462.00 from the Texas Department of State Health Services to assist the City of Midland Health Services Division with the funding and delivery of public health emergency preparedness necessities; authorizing the City Manager or his designee to execute all necessary acceptance documents; and authorizing and directing the City Treasurer to deposit said grant funds into the general fund.

Recommended City Council Action:

Approve

Fiscal Impact:

$105,462.00 in reimbursement funds from the Texas Department of State Health Services.

Discussion:

City of Midland Health Services Division is seeking approval for the acceptance of this grant. These funds are instrumental in allowing the City to provide public health services to the community. The Public Health Emergency Preparedness grant is accepted annually.

Morris Williams Jr.

City Manager's Office

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SIGNATURE DOCUMENT FOR
DEPARTMENT OF STATE HEALTH SERVICES
GRANT AGREEMENT,
CONTRACT NO. HHS001311200020
UNDER THE
CENTER FOR HEALTH EMERGENCY PREPAREDNESS AND RESPONSE GRANT PROGRAM

The parties to this agreement ("Grant Agreement" or "Contract") are Department of State Health Services ("System Agency"), a pass-through entity, and City of Midland Health Department ("Grantee"), having its principal office at 3303 W. Illinois Ave. Sp.22, Midland, Texas 79703 each a "Party" and collectively the "Parties".

I. PURPOSE

The purpose of this Grant Agreement is to perform activities in support of the Public Health Emergency Preparedness ("PHEP") Cooperative Agreement between the Centers for Disease Control and Prevention ("CDC") and the Department of State Health Services to advance public health preparedness.

II. LEGAL AUTHORITY

This Grant Agreement is entered into pursuant to the authority granted by and in compliance with the Interlocal Cooperation Act, Texas Government Code Chapter 791 and Texas Health and Safety Code Title 12 Chapter 1001 and Title 2 Chapter 12.

III. DURATION

This Grant Agreement is effective on July 1, 2023 and expires on June 30, 2024, unless sooner terminated or renewed or extended. System Agency, at its sole discretion, may extend this Grant Agreement for up to four (4) years for a maximum term of five (5) years.

Notwithstanding the limitation in the preceding paragraph and with at least 30 calendar days' advance written notice to Grantee, at the end of the initial term or any renewal period, System Agency at its sole discretion, may extend this Grant Agreement as necessary to ensure the continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State for up to six (6) months, in one-month intervals, at the then-current contract rate or rates (if applicable) as modified during the term of the Grant Agreement.

IV. STATEMENT OF WORK

The Scope of Grant Project to which Grantee is bound is incorporated into and made a part of this Grant Agreement for all purposes and included as **ATTACHMENT A, FY2024 STATEMENT OF WORK.**

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V. BUDGET

The total amount of this Grant Agreement will not exceed **TOTAL CONTRACT AMOUNT $116,008.00.**

This includes the System Agency share of $105,462.00 and Grantee's required match amount of $10,546.00.

The total not-to-exceed amount includes the following:

Total Federal Funds: $105,462.00

All expenditures under the Grant Agreement will be in accordance with **ATTACHMENT B, FY2024 BUDGET**.

VI. NOTICE TO PROCEED

Funding for this Contract is dependent on the award of the applicable federal grant. No activities may commence, and no expenses incurred prior to the issuance of a written Notice to Proceed by System Agency. The Notice to Proceed may include an amended or ratified budget which will be incorporated into this Contract by a subsequent amendment, as necessary. Notwithstanding the preceding, at the discretion of System Agency, Grantee may be eligible to receive reimbursement for eligible expenses incurred during the period of performance as defined by 2 CFR §200.309.

VII. REPORTING REQUIREMENTS

Grantee shall submit the reports outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE** by the due dates and submission methods specified therein. DSHS may add contractual requirements and revise reporting due dates throughout the term of this grant agreement to comply with modifications made to the grant award by the CDC. DSHS will notify Grantee of these modifications through a Technical Guidance Letter. A Technical Guidance Letter will become effective as of the date indicated in the Letter and will be attached to the Contract and incorporated as if fully set forth therein.

VIII. CONTRACT REPRESENTATIVES

The following will act as the representative authorized to administer activities under this Grant Agreement on behalf of their respective Party.

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System Agency	**Grantee**
Beverly Taylor	Whitney Craig
Department of State Health Services	City of Midland Health Department
1100 W. 49th Street MC 1990	3303 W. Illinois Ave Sp.22
Austin, Texas 78756	Midland, Texas 78703
Beverly.taylor@dshs.texas.gov	wcraig@midlandtexas.gov

IX. NOTICE REQUIREMENTS

A. All notices given by Grantee shall be in writing, include the Contract number, comply with all terms and conditions of the Grant Agreement, and be delivered to the System Agency's Contract Representative identified above.

B. Grantee shall send legal notices to System Agency at the address below and provide a copy to the System Agency's Contract Representative:

Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe, Mail Code 1100
Austin, Texas 78751

with a copy to:

Department of State Health Services
Attention: General Counsel
1100 W. 49th Street, Mail Code 1919
Austin, Texas 78756

C. Notices given by System Agency to Grantee may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by System Agency. Notices sent by mail shall be deemed delivered when deposited by the System Agency in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the System Agency with a common carrier, overnight, signature required.

D. Notices given by Grantee to System Agency shall be deemed delivered when received by System Agency.

E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

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X. FEDERAL AWARD INFORMATION

GRANTEE'S UNIQUE ENTITY IDENTIFIER IS: CPZ1T3B85A64

Federal funding under this Grant Agreement is a subaward under the following federal award.

Federal Award Identification Number (FAIN): NU90TP922045
A. Assistance Listings Title, Number, and Dollar Amount: Centers for Disease Control and Prevention, Public Health Emergency Preparedness (PHEP) Cooperative Agreement, 93.069 – TBD
B. Federal Award Date: TBD
C. Federal Award Period: 7/1/2023-6/30/2024
D. Name of Federal Awarding Agency: Centers for Disease Control and Prevention
E. Federal Award Project Description: Public Health Emergency Preparedness (PHEP) Cooperative Agreement
F. Awarding Official Contact Information: TBD
G. Total Amount of Federal Funds Awarded to System Agency: TBD
H. Amount of Funds Awarded to Grantee: $105,462.00
I. Identification of Whether the Award is for Research and Development: No

XI. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Grant Agreement for all purposes.

ATTACHMENT A – FY2024 STATEMENT OF WORK
ATTACHMENT A-1 - SUPPLEMENTAL GRANT GUIDANCE
ATTACHMENT B – FY2024 BUDGET
ATTACHMENT C – FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE
ATTACHMENT D – HHS CONTRACT AFFIRMATIONS -V. 2.2 (MAY 2022)
ATTACHMENT E – HHS UNIFORM TERMS AND CONDITIONS – GRANT V. 3.2 (JULY 2022)
ATTACHMENT F – HHS DATA USE AGREEMENT
ATTACHMENT F-1 – DATA USE AGREEMENT-SECURITY AND PRIVACY INQUIRY
ATTACHMENT G – ADDITIONAL PROVISIONS-GRANT
ATTACHMENT H– FEDERAL ASSURANCES – V. 1.1
ATTACHMENT I – CERTIFICATION REGARDING LOBBYING
ATTACHMENT J – FFATA CERTIFICATION FORM
ATTACHMENT K – WORK PLAN

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In the event of conflict, ambiguity or inconsistency between the terms and conditions set forth in the documents that comprise this Grant Agreement, the controlling documents shall be this Signature Document, the remaining documents in the following order of precedence:

ATTACHMENT F – HHS DATA USE AGREEMENT
ATTACHMENT F-1-DATA USE AGREEMENT-SECURITY AND PRIVACY INQUIRY
ATTACHMENT A – FY2024 STATEMENT OF WORK
ATTACHMENT C – FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE
ATTACHMENT K– WORK PLAN
ATTACHMENT E – HHS UNIFORM TERMS AND CONDITIONS – GRANT V. 3.2 (JULY 2022)
ATTACHMENT D – HHS CONTRACT AFFIRMATIONS -V. 2.2 (MAY 2022)
ATTACHMENT G – ADDITIONAL PROVISIONS-GRANT
ATTACHMENT A-1 - SUPPLEMENTAL GRANT GUIDANCE
ATTACHMENT B – FY2024 BUDGET
ATTACHMENT H – FEDERAL ASSURANCES – V. 1.1
ATTACHMENT I – CERTIFICATION REGARDING LOBBYING
ATTACHMENT J – FFATA CERTIFICATION FORM

XII. SIGNATURE AUTHORITY

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement. Any services or work performed by Grantee before this Grant Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

SIGNATURE PAGE FOLLOWS

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SIGNATURE PAGE FOR SYSTEM AGENCY GRANT AGREEMENT,
CONTRACT NO. HHS001311200020

DEPARTMENT OF STATE HEALTH SERVICES

DocuSigned by:
Dave Gruber
B113A6B1CFEC4CE...
Signature

Printed Name: Dave Gruber

Title: Associate Commissioner for RLHS

Date of Signature: April 20, 2023

City of Midland Health Department

DocuSigned by:
Whitney S. Craig, Dr.PH, MPH
85EBFB330306D49F...
Signature

Printed Name: Whitney S. Craig, Dr.PH, MPH

Title: Health Services Manager

Date of Signature: April 3, 2023

DocuSign Envelope ID: 5B5E1A70-6A59-4244-8B65-9A0987747F10

ATTACHMENT A
FY2024 STATEMENT OF WORK

July 1, 2023, through June 30, 2024

I. GRANTEE RESPONSIBILITIES

Grantee shall:

A. Perform activities in support of the Public Health Emergency Preparedness ("PHEP") Cooperative Agreement between the Centers for Disease Control and Prevention ("CDC") and the Department of State Health Services ("System Agency") to advance public health emergency preparedness.

B. Perform the activities required under this Contract in the following cities, counties or groups of counties: Midland (Grantee's "Jurisdiction").

C. Provide System Agency with situational awareness data generated through interoperable networks of electronic data systems.

D. Coordinate with System Agency program staff to develop a preparedness activity plan for Grantee's jurisdiction. At minimum, Grantee shall ensure at least three of the following public health emergency preparedness capabilities are achieved on an annual basis:

1. Capability 1 – Community preparedness is the ability of communities to prepare for, withstand, and recover from public health incidents in both the short- and long-term.
2. Capability 2 – Community recovery is the ability of communities to identify critical assets, facilities, and other services within public health, emergency management, health care, human services, mental/behavioral health, and environmental health sectors that can guide and prioritize recovery operations.
3. Capability 3 – Emergency operations coordination is the ability to coordinate with emergency management and to direct and support an incident or event with public health or health care implications by establishing a standardized, scalable system of oversight, organization, and supervision that is consistent with jurisdictional standards and practices and the National Incident Management System ("NIMS").
4. Capability 4 – Emergency public information and warning is the ability to develop, coordinate, and disseminate information, alerts, warnings, and notifications to the public and incident management personnel.
5. Capability 5 – Fatality management is the ability to coordinate with partner organizations and agencies to provide fatality management services to ensure the proper recovery and preservation of remains; identification of the deceased; determination of cause and manner of death; release of remains to an authorized individual; and provision of mental/behavioral health assistance for the grieving. The role also may include supporting activities for the identification, collection, documentation, retrieval, and transportation of human remains, personal effects, and evidence to the examination location or incident morgue.
6. Capability 6 – Information sharing is the ability to conduct multijurisdictional and

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multidisciplinary exchange of health-related information and situational awareness data among federal, state, local, tribal, and territorial levels of government and the private sector. This capability includes the routine sharing of information as well as issuing of public health alerts to all levels of government and the private sector in preparation for and in response to events or incidents of public health significance.

7. Capability 7 – Mass care is the ability of public health agencies to coordinate with and support partner agencies to address, within a congregate location (excluding shelter-in-place locations), the public health, health care, mental/behavioral health, and human services needs of those impacted by an incident. This capability includes coordinating ongoing surveillance and public health assessments to ensure that health needs continue to be met as the incident evolves.
8. Capability 8 – Medical countermeasure dispensing and administration is the ability to provide medical countermeasures to targeted population(s) to prevent, mitigate, or treat the adverse health effects of a public health incident, according to public health guidelines. This capability focuses on dispensing and administering medical countermeasures, such as vaccines, antiviral drugs, antibiotics, and antitoxins.
9. Capability 9 – Medical materiel management and distribution is the ability to acquire, manage, transport, and track medical materiel during a public health incident or event and the ability to recover and account for unused medical materiel, such as pharmaceuticals, vaccines, gloves, masks, ventilators, or medical equipment after an incident.
10. Capability 10 – Medical surge is the ability to provide adequate medical evaluation and care during events that exceed the limits of the normal medical infrastructure of an affected community. It encompasses the ability of the health care system to endure a hazard impact, maintain or rapidly recover operations that were compromised, and support the delivery of medical care and associated public health services, including disease surveillance, epidemiological inquiry, laboratory diagnostic services, and environmental health assessments.
11. Capability 11 – Nonpharmaceutical interventions are actions that people and communities can take to help slow the spread of illness or reduce the adverse impact of public health emergencies. This capability focuses on communities, community partners, and stakeholders recommending and implementing nonpharmaceutical interventions in response to the needs of an incident, event, or threat. Nonpharmaceutical interventions may include isolation; quarantine; restrictions on movement and travel advisories or warnings; social distancing; external decontamination; hygiene; and precautionary protective behaviors.
12. Capability 12 – Public health laboratory testing is the ability to implement and perform methods to detect, characterize, and confirm public health threats. It also includes the ability to report timely data, provide investigative support, and use partnerships to address actual or potential exposure to threat agents in multiple matrices, including clinical specimens and food, water, and other environmental samples. This capability supports passive and active surveillance when preparing for, responding to, and recovering from

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biological, chemical, and radiological (if a Radiological Laboratory Response Network is established) public health threats and emergencies.

13. Capability 13 – Public health surveillance and epidemiological investigation is the ability to create, maintain, support, and strengthen routine surveillance and detection systems and epidemiological investigation processes. It also includes the ability to expand these systems and processes in response to incidents of public health significance.
14. Capability 14 – Responder safety and health is the ability to protect public health and other emergency responders during pre-deployment, deployment, and post-deployment.
15. Capability 15 – Volunteer management is the ability to coordinate with emergency management and partner agencies to identify, recruit, register, verify, train, and engage volunteers to support the jurisdictional public health agency's preparedness, response, and recovery activities during pre-deployment, deployment, and post-deployment.

E. In the event of a local, state, or federal emergency, utilize approximately five percent (5%) of the Grantee's staff's time supporting this Contract for response efforts. System Agency will reimburse Grantee up to five percent of the total Contract award for personnel costs in responding to an emergency event. Grantee shall maintain records to document the personnel time spent on response efforts for audit purposes. Within five (5) calendar days of the onset of the emergency, Grantee shall notify the assigned System Agency Contract Representative as identified in the Signature Document in writing of its implementation of this provision.

F. In the event of a public health emergency involving a portion of the state; mobilize and dispatch staff or equipment purchased with funds from previous PHEP cooperative agreements, and not currently performing critical duties in the jurisdiction served, to the affected area of the state upon receipt of a written request from System Agency.

G. Coordinate activities and response plans within Grantee's jurisdiction with the state, regional, and other local jurisdictions, among local agencies, and with hospitals and major health care entities, jurisdictional Metropolitan Medical Response Systems, and Councils of Government.

H. Inform System Agency in writing if Grantee will not continue performance under this Contract within thirty (30) days of receipt of System Agency's notification of an amended standard(s) or guideline(s). System Agency may terminate this Contract immediately or within a reasonable period of time as determined by System Agency.

I. Develop, implement, and maintain a timekeeping system for accurately documenting staff time and salary expenditures for all staff funded through this Contract, including partial full-time employees and temporary staff.

J. Have plans, processes, and training in place to meet NIMS compliance requirements.

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K. When using volunteers during the Contract term, designate a Texas Disaster Volunteer Registry ("TDVR") State Emergency System for the Advanced Registration of Volunteer Health Professionals ("ESAR-VHP") System Administrator, participate in required administrator trainings, and utilize the system to identify volunteers.

L. To ensure consistency and coordination of requirements at the local level and eliminate duplication of effort between the various domestic preparedness funding sources in the state, the Grantee shall coordinate all planning, training and exercises performed under this Contract with other Local Health Entities, Texas Division of Emergency Management ("TDEM"), or other points of contact at the discretion of System Agency.

M. Coordinate all risk communication activities with System Agency Communications Unit by using System Agency's core messages posted on the System Agency website and submitting copies of draft risk communication materials to System Agency for coordination prior to dissemination.

N. Work with the Regional Health Care Coalition to develop comprehensive preparedness strategies. Plans shall be submitted to System Agency via the Operational Readiness Review.

O. Incorporate Access and Functional Needs ("AFN") partners in an annual PHEP exercise. Local jurisdictions can fulfill this requirement by incorporating at least one AFN partner in a tabletop, a functional, or a full-scale exercise, or during an incident or public health event in which the AFN partner participates.

P. Designate a member of the PHEP program to attend two regional healthcare coalition meetings during the Contract term.

II. REPORTING REQUIREMENTS

Grantee shall:

A. Complete and submit the programmatic reports outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE** and as needed to satisfy the information-sharing requirements set forth in Texas Government Code, Sections 421.071 and 421.072 (b) and (c). Grantee shall provide System Agency with other reports, including financial reports, that System Agency determines necessary to accomplish the objectives of this Contract and to monitor compliance.

B. Submit the Vulnerable Populations Plan to the Department of State Health Services ("DSHS") Center for Health Emergency Preparedness and Response ("CHEPR")

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according to the established due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE.**

C. Prepare and submit a Work Plan with a Budget to System Agency. The Work Plan will be attached to and incorporated into the Contract as **ATTACHMENT K.** Revisions to the approved Work Plan are subject to System Agency prior written approval.

D. Prepare and submit a current Integrated Preparedness Plan ("IPP"), which must include at least four years of progressive exercise, planning and training to System Agency according to the due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE**. The IPP must be based on the results of the Grantee's training needs assessment and the evaluations of previous exercises and responses, including the AAR submitted in Section II. F of this document.

The IPP must include a description of:
1. The proposed location, month(s), and year(s) of future exercise(s);
2. The type of future exercise(s) that will take place; and
3. The expected departmental participants and partner organizations.

E. Submit documentation of AFN participation according to the due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE.**

F. Prepare and submit an After-Action Review/Improvement Plan ("AAR/IP") for the annual PHEP exercise with Access and Functional Needs. All AAR/IPs must be submitted to System Agency within 60 calendar days, or 120 calendar days of a Real-World Incident ("RWI"), of the completion of the exercise/response according to the due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE**.

G. Complete and submit specific forms identified by the System Agency from the Operational Readiness Review ("ORR") to System Agency by uploading supporting documentation to System Agency according to the due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE**.

H. Prepare and submit a Programmatic Mid-Year and End-of-Year Performance Report to System Agency according to the due date and submission method outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE.**

I. Submit evidence of attendance at two regional healthcare coalition meetings during the Contract term according to the due date and submission method outlined in **ATTACHMENT**

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C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE.

J. Submit a Financial Status Report (FSR) in accordance with the due dates and submission methods outlined in **ATTACHMENT C, FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE**. The first FSR (for the period July 1, 2023, through December 31, 2023) is due by January 31, 2024. The second FSR (for the period January 1, 2024, through June 30, 2024) is due by August 15, 2024. Grantee shall electronically submit Financial Status Reports (FSR) to invoices@dshs.texas.gov and FSRGrants@dshs.texas.gov, with a copy to the assigned System Agency Contract Representative identified in the Signature Document.

K. If System Agency determines Grantee needs to submit reports by mail or fax, Grantee shall send the required information to one of the following:

1. For submission by mail, use address below:
   Department of State Health Services
   Claims Processing Unit
   P.O. Box 149347
   Austin, TX 78714-9347

2. For submission by fax, use number below:
   (512) 458-7442

L. Immediately notify System Agency in writing if Grantee is legally prohibited from providing any report required under this Contract.

III. RULES

Grantee shall:

A. Comply with all applicable federal and state laws, rules, and regulations, as amended, including, but not limited to, the following:

1. Texas Government Code Chapter 418 (§418.074);
2. Public Law 109-417, Pandemic and All-Hazards Preparedness and Advancing Innovation Act ("PAHPAI");
3. Texas Health and Safety Code Chapter 81; and
4. Section 319C-1 of the Public Health Service (PHS) Act (47 USC § 247d-3a), as amended.

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IV. PERFORMANCE MEASURES

A. System Agency will monitor the Grantee's performance of the requirements in this Statement of Work and compliance with the Contract's terms and conditions.

B. Grantee must adhere to PHEP reporting deadlines and the capability to receive, stage, store, distribute, and dispense material during a public health emergency. Failure to meet these requirements may result in System Agency withholding a portion of the current fiscal year PHEP base award.

C. Upon request by System Agency, Grantee shall reasonably revise any performance measure to System Agency's satisfaction and in accordance with the requirements set forth in this Contract.

V. INVOICE AND PAYMENT

A. Grantee shall request monthly payments by the 30th day following the service month using the State of Texas Purchase Vouchers (Form B-13 and Form B-13A) at http://www.dshs.texas.gov/grants/forms.shtm. System Agency will issue reimbursement payments to Grantee on a monthly basis for reported actual cash disbursements which are supported by adequate documentation. Invoice approval and payment is contingent upon receipt of adequate supporting documentation and submitting acceptable supporting documentation by electronic mail to invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov, with a copy to the assigned System Agency Contract Representative identified in the Signature Document.

At a minimum, every invoice should include:

1. Grantee name, address, email address, vendor identification number and telephone number;
2. DSHS Contract or Purchase Order number;
3. Identification of service(s) provided;
4. The total invoice amount; and
5. Any additional supporting documentation which is required by this Statement of Work or as requested by System Agency.

B. Grantee shall electronically submit all invoices with supporting documentation to invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov and a copy to the assigned System Agency Contract Representative identified in the Signature Document. Alternative submission arrangements must be approved by the assigned System Agency Contract Representative identified in the Signature Document.

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C. System Agency will pay Grantee monthly on a cost reimbursement basis. System Agency will reimburse Grantee only for allowable and reported expenses incurred within the grant term.

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ATTACHMENT A- 1

PUBLIC HEALTH EMERGENCY PREPAREDNESS COOPERATIVE AGREEMENT (PHEP) GRANT GUIDANCE

The Assistance Listing Number (ALN) for the PHEP is 93.069, and the award period is July 1, 2023 through June 30, 2024. As a subrecipient of the PHEP Grant, Grantee must adhere to each of the following requirements:

I. PHEP GRANT

A. Grantee may not use funds for research, clinical care, fundraising activities or lobbying, construction or major renovations, reimbursement of pre-award costs, to supplant existing state or federal funds for activities, payment or reimbursement of backfilling costs for staff, purchase of vehicles of any kind, uniforms, buildings or real property, or funding an award to another party or provider who is ineligible.

B. None of the funds made available under this Contract may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

C. Grantee must initiate the purchase of all equipment approved in writing by System Agency, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase equipment must be submitted to the assigned System Agency Contract Manager.

D. Grantee must maintain an inventory of equipment, supplies defined as Controlled Assets, and real property. Grantee shall submit an annual cumulative report of the equipment and other property on HHS System Agency Grantee's Property Inventory Report (Form GC-11) according to the due dates and submission methods outlined in **ATTACHMENT C, FY2024 REQUIREMENTS SCHEDULE.** Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more, but less than $5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, and medical and laboratory equipment. Controlled Assets are considered Supplies in the categorical budget.

E. At the expiration or termination of this Contract for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to System Agency. Title may be also transferred to another party at the sole discretion of System Agency. System Agency may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Grantee.

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F. Grantee shall not use System Agency funds to lease buildings or real property without prior written approval from System Agency.

G. System Agency reserves the right to redirect funds in the event of financial shortfalls. System Agency will monitor Grantee's expenditures on a biannual basis. If expenditures are below that projected in Grantee's total Contract amount, Grantee's budget may be subject to a decrease for the remainder of the Contract term. Vacant positions existing after ninety (90) days may result in a decrease in funds.

H. Grantee may request a one-time working capital advance not to exceed twelve percent (12%) of the total amount of the Contract. All advances must be expended by the end of the Contract term. Advances not expended by the end of the Contract term must be refunded to System Agency. System Agency may require Grantee to repay all or part of advance funds at any time during the Contract's term. However, if the advance has not been repaid prior to the last three months of the Contract term, the Grantee must deduct at least one-third of the remaining advance from each of the last three months' reimbursement requests. If the advance is not repaid prior to the last three months of the Contract term, System Agency will reduce the reimbursement request by one-third of the remaining balance of the advance.

II. MATCHING FUNDS

A. Grantee shall match funds awarded under this Contract with costs or third-party contributions that are not paid by the federal government under another award, except where authorized by federal statute to be used for cost-sharing or matching. The non-federal contributions ("match") may be provided directly or through donations from public or private entities and may be in cash or in-kind donations, fairly evaluated, including plant, equipment, or services. The costs that the Grantee incurs in fulfilling the matching or cost-sharing requirement are subject to the same requirements, including the cost principles, that are applicable to the use of federal funds, including prior approval requirements and other rules for allowable costs as described in 45 CFR 74.23 and 45 CFR 92.24, as amended.

B. Grantee shall provide matching funds in the amount of ten percent (10%) of the DSHS Direct Costs and Indirect Costs amount as set forth in **ATTACHMENT B**, **FY2024 BUDGET**. Cash match is defined as an expenditure of cash by the Grantee on allowable costs of this Contract that are borne by the Grantee. In-kind match is defined as the dollar value of non-cash contributions by a third party given in goods, commodities, or services that are used in activities that benefit this Contract's project and that are contributed by non-federal third parties without charge to the Grantee. The criteria for match must:

1. Be an allowable cost under the applicable federal cost principle;
2. Be necessary and reasonable for the efficient accomplishment of project or program objectives;

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3. Be verifiable within the Grantee's (or subgrantee's) records;
4. Be documented, including methods and sources, in the approved budget (applies only to cost reimbursement contracts);
5. Not be included as contributions toward any other federally-assisted project or program (match can count only once);
6. Not be paid by the federal government under another award, except where authorized by federal statute to be used for cost-sharing or match;
7. Conform to other provisions of governing circulars/statutes/regulations as applicable for the Contract;
8. Be adequately documented;
9. Follow procedures for generally accepted accounting practices as well as meet audit requirements; and
10. Value the in-kind contributions reported and be supported by documentation reflecting the use of goods and/or services during the Contract term.

III. AUDIT REQUIREMENTS

Grantee shall adhere to the following requirements:

1. If Grantee expends $750,000.00 or more in federal financial assistance during the program's fiscal year, an independent financial and compliance audit must be completed by a Certified Public Accounting firm in accordance with 2 CFR 200 (Uniform Grant Guidance). Grantee must submit two (2) copies of the audit report to the Texas Health and Human Services Commission within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section of **Attachment E**, HHS **Uniform Terms and Conditions-Grant v. 3.2 (July 2022). (See Article IV, Section 4.2**.) Grantee must submit one (1) copy of these documents electronically via https://hhsportal.hhs.state.tx.us/heartwebextrSau as described in instructions that the Texas Health and Human Services Commission shall provide.

2. If the Certified Public Accounting firm's audit report includes findings or questioned costs, Grantee must submit updates on the implementation of the corrective action plan to the Texas Health and Human Services Commission at Single_Audit_Report@hhs.texas.gov no later than the date designated by the Texas Health and Human Services Commission.

3. Grantee must retain records to support expenditures and make those records available for review or audit by appropriate officials of the awarding agency, the General Accountability Office and/or their representatives.

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ATTACHMENT B
FY2024 Budget
July 1, 2023, through June 30, 2024

A. Funding Source: Federal

B. Compliance with the following Grant requirements is required:

1. Grant Technical Assistance Guide located at System Agency website: https://hhs.texas.gov/doing-business-hhs/grants;
2. Texas Grant Management Standards
3. 2 C.F.R. Part 200

C. System Agency total reimbursement for the grant term will not exceed $116,008.00 for the period July 1, 2023 through June 30, 2024. Grantee is required to provide a match amount of 10% of the total grant award. All expenditures under this Grant Agreement shall be in accordance with the following cost categories:

Budget Categories	**DSHS Funding**
Personnel	$40,200.00
Fringe Benefits	$17,286.00
Travel	$4,157.00
Equipment	$575.00
Supplies	$31,018.00
Contractual	$0.00
Other	$12,226.00
Sum of DSHS Direct Costs	**$105,462.00**
Indirect Costs	$0.00
Sum of DSHS Direct Costs and Indirect Costs	**$105,462.00**
Plus Required Match (Cash or In-Kind)	$10,546.00
Total Contract Amount	**$116,008.00**

D. Cost Reimbursement Budget:

1. Grantee's approved cost reimbursement budget documents all approved and allowable expenditures.

2. Grantee shall *only* utilize the funding for approved and allowable costs. If Grantee requests to utilize funds for an expense not documented on the approved cost reimbursement budget, Grantee shall notify System Agency assigned contract manager, in writing, and request approval prior to utilizing the funds. System Agency shall provide written notification if the requested expense is approved.

3. If needed, Grantee may revise the System Agency-approved cost reimbursement budget. Revision requirements are as follows:

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a. System Agency approves Grantee's transfer of up to twenty-five (25) percent of funds from budgeted direct cost categories only, excluding the "Equipment" category. Budget revisions exceeding twenty-five (25) percent requirement require System Agency's written approval.
b. Grantee may request revisions to the approved annual cost reimbursement budget direct cost categories that exceed the twenty-five (25) percent requirement, excluding "Equipment" and "Indirect Cost" categories, by submitting a written request to the System Agency assigned contract manager. This change will require a formal contract amendment. System Agency will amend the Contract if Grantee's revision request is approved. Grantee's budget revision is not authorized, and funds cannot be utilized until the contract amendment is executed.
c. Grantee may revise the annual cost reimbursement budget "Equipment" and/or "Indirect Cost" categories, however a formal contract amendment is required. Grantee shall submit to the System Agency assigned contract manager a written request to revise the budget, which includes a justification for the revisions. System Agency will amend the Contract if Grantee's revision request is approved. Grantee's budget revision is *not* authorized, and funds *cannot* be utilized until the contract amendment is executed.

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ATTACHMENT C - FY2024 PHEP CONTRACTUAL REQUIREMENTS SCHEDULE			
MONTH	**DAY**	**CONTRACTUAL REQUIREMENT**	**SUBMIT TO:**
2023			
July	**1**	**Start of new FY24 contract year**	
August	**31**	July B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		July Support Documentation	
September	**30**	August B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		August Support Documentation	
October	**16**	**FY24 Vulnerable Populations Work Plan**	DSHS CHEPR External Sharepoint Site
	16	**Contractor's Property Inventory Report (GC-11)**	PHEP@dshs.texas.gov and Assigned Contract Manager
	24-25	**HPP PHEP Joint Meetings - Tentative Date**	Norris Conference Center
	31	September B-13	Invoices@dshs.texas.gov and invoices@dshs.texas.gov
		September Support Documentation	
November	**30**	October B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		October Support Documentation	
December	**29**	November B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		November Support Documentation	
2024			
January	**31**	December B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		December Support Documentation	
		1st Biannual FSR	FSRGrants@dshs.texas.gov and invoices@dshs.texas.gov
February	**28**	**Programmatic Mid-Year Performance Report**	DSHS CHEPR External SharePoint Site
		January B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		January Support Documentation	
March	**31**	February B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		February Support Documentation	
April	**23-24**	**HPP PHEP Joint Meetings - Tentative Date**	Norris Conference Center
	30	March B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		March Support Documentation	
May	**1**	**Integrated Preparedness Plan (IPP) Schedule/Plan**	DSHS CHEPR External SharePoint Site
	31	April B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		April Support Documentation	
June	**30**	May B-13	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		May Support Documentation	
		Submit proof of attendance of two (2) regional healthcare coalition meetings from the contract period	DSHS CHEPR External SharePoint Site
		Annual PHEP Exercise with Access and Functional Needs (AFN) Partners	DSHS CHEPR External SharePoint Site
July	**1**	**Start of new FY25 contract year**	
August	**15**	June B-13 (Final)	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		June Support Documentation (Final)	
		2nd Biannual FSR	FSRGrants@dshs.texas.gov and invoices@dshs.texas.gov
		4th Quarter B-13A (Final)	Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov
		Programmatic End-of-Year Performance Report	DSHS CHEPR External SharePoint Site
NON-SPECIFIC DATE DEADLINES			
Performance Measures due to DSHS in a format specified by DSHS pending release of the report template from CDC.			**DSHS CHEPR External SharePoint Site**
Complete and submit the Operational Readiness Review (ORR) and all supporting documentation twenty (20) business days prior to the review in a format specified by DSHS. [DCIPHER for CRI and a Word Document for Non- CRI jurisdictions] - Most forms are waived. Workforce Development and Training (WDT) and Access and Functional Needs (AFN) forms will be used to evaluate the PHEP Annual Exercise and the IPP.			**DSHS External CHEPR SharePoint Site**
DSHS may add contractual requirements and revise reporting due dates in this FY2024 PHEP Contractual Reporting Schedule to comply with modifications made to the grant award by the CDC. DSHS will notify Grantee of these modifications through a Technical Guidance Letter.			
PHEP Inbox - phep@dshs.texas.gov			**Preparedness Exercise Inbox - Preparednessexercise@dshs.texas.gov**
Attachment C- FY2024 PHEP Contractual Requirements Schedule			

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HEALTH AND HUMAN SERVICES Contract: HHS001311200020

Attachment D CONTRACT AFFIRMATIONS

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as "Contractor") regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

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5. Assignment

A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.

B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. HHS Right to Use

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

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and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM*) maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,"* published by the United States Department of the Treasury, Office of Foreign Assets Control.'

15. Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

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18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

24. Television Equipment Recycling Program

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

25. Cybersecurity Training

A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

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26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: http://sao.fraud.state.tx.us/

All reports made to the OIG must be made through one of the following avenues:

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- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
  Attn: Fraud Hotline
  MC 1300
  P.O. Box 85200
  Austin, Texas 78708-5200

29. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and

C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

30. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

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31. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

32. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings**.**

33. Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

34. E-Verify

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

35. Former Agency Employees – Certain Contracts

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

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36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

1. Name of individual(s) (Contractor or employee(s));
2. Status;
3. The nature of the previous employment with HHSC or the other State of Texas agency;
4. The date the employment was terminated and the reason for the termination; and
5. The annual rate of compensation for the employment at the time of its termination.

B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

37. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

1. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

38. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

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39. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

40. COVID-19 Vaccine Passports

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

41. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

42. Entities that Discriminate Against Firearm and Ammunition Industries

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

43. Security Controls for State Agency Data

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.

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44. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.

45. Office of Inspector General Investigative Findings Expert Review

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

46. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

47. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

48. Critical Infrastructure Subcontracts

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote

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access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

49. Enforcement of Certain Federal Firearms Laws Prohibited

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

50. Prohibition on Abortions

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

51. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

52. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

53. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

54. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

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55. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

56. Signature Authority

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

Signature Page Follows

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Authorized representative on behalf of Contractor must complete and sign the following:

City of Midland Health Department

Legal Name of Contractor

City of Midland Health Department

Assumed Business Name of Contractor, if applicable (d/b/a or 'doing business as')

City of Midland Health Department

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

DocuSigned by:
Whitney S. Craig, Dr.PH, MPH
Signature of Authorized Representative

April 3, 2023
Date Signed

Whitney S. Craig, Dr.PH, MPH
Printed Name of Authorized Representative First, Middle Name or Initial, and Last Name

Health Services Manager
Title of Authorized Representative

3303 W. Illinois Ave Sp. 22
Physical Street Address

Midland, TX 79705
City, State, Zip Code

300 N. Loraine St
Mailing Address, if different

Midland, TX 79705
City, State, Zip Code

432-681-7645
Phone Number

432-699-6290
Fax Number

wcraig@midlandtexas.gov
Email Address

073186579
DUNS Number

17560006086016

17560006086
Federal Employer Identification Number

17560006086
Texas Identification Number (TIN)

000

CPZ1T3B85A64
Texas Franchise Tax Number

Texas Secretary of State Filing Number

SAM.gov Unique Entity Identifier (UEI)

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Attachment E

TEXAS
Health and Human Services

Health and Human Services (HHS)

Uniform Terms and Conditions - Grant

Version 3.2

Published and Effective – July 2022

Responsible Office: Chief Counsel

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ABOUT THIS DOCUMENT

In this document, Grantees (also referred to in this document as subrecipients or contractors) will find requirements and conditions applicable to grant funds administered and passed-through by both the Texas Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). These requirements and conditions are incorporated into the Grant Agreement through acceptance by Grantee of any funding award by HHSC or DSHS.

The terms and conditions in this document are in addition to all requirements listed in the RFA, if any, under which applications for this grant award are accepted, as well as all applicable federal and state laws and regulations. Applicable federal and state laws and regulations may include, but are not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; requirements of the entity that awarded the funds to HHS; Chapter 783 of the Texas Government Code; Texas Comptroller of Public Accounts' agency rules (including Uniform Grant and Contract Standards set forth in Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code); the Texas Grant Management Standards (TxGMS) developed by the Texas Comptroller of Public Accounts; and the Funding Announcement, Solicitation, or other instrument/documentation under which HHS was awarded funds. HHS, in its sole discretion, reserves the right to add requirements, terms, or conditions.

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

As used in this Grant Agreement, unless a different definition is specified, or the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

"Amendment" means a written agreement, signed by the Parties, which documents changes to the Grant Agreement.

"Contract" or "Grant Agreement" means the agreement entered into by the Parties, including the Signature Document, these Uniform Terms and Conditions, along with any attachments and amendments that may be issued by the System Agency.

"Deliverables" means the goods, services, and work product, including all reports and project documentation, required to be provided by Grantee to the System Agency.

"DSHS" means the Department of State Health Services.

"Effective Date" means the date on which the Grant Agreement takes effect.

"Federal Fiscal Year" means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

"GAAP" means Generally Accepted Accounting Principles.

"GASB" means the Governmental Accounting Standards Board.

"Grantee" means the Party receiving funds under this Grant Agreement. May also be referred to as "subrecipient" or "contractor" in this document.

"HHSC" means the Texas Health and Human Services Commission.

"Health and Human Services" or "HHS" includes HHSC and DSHS.

"Intellectual Property Rights" means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such right may be evidenced by or embodied in:

i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
iv. domain name registrations; and
v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

"Parties" means the System Agency and Grantee, collectively.

"Party" means either the System Agency or Grantee, individually.

PACKET 11.41 May 9, 2023

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"Project" means specific activities of the Grantee that are supported by funds provided under this Grant Agreement.

"Signature Document" means the document executed by all Parties for this Grant Agreement.

"Solicitation," "Funding Announcement" or "Request for Applications (RFA)" means the document (including all exhibits, attachments, and published addenda), issued by the System Agency under which applications for grant funds were requested, which is incorporated by reference in the Grant Agreement for all purposes in its entirety.

"Solicitation Response" or "Application" means Grantee's full and complete Solicitation response (including any attachments and addenda), which is incorporated by reference in the Grant Agreement for all purposes in its entirety.

"State Fiscal Year" means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

"State of Texas *Textravel*" means the Texas Comptroller of Public Accounts' state travel rules, policies, and guidelines.

"Statement of Work" means the description of activities Grantee must perform to complete the Project, as specified in the Grant Agreement and as may be amended.

"System Agency" means HHSC or DSHS, as applicable.

"Work Product" means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the deliverables, that are developed, produced, generated or provided by Grantee in connection with Grantee's performance of its duties under the Grant Agreement or through use of any funding provided under this Grant Agreement.

"Texas Grant Management Standards" or "TxGMS" means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies. Under this Grant Agreement, TxGMS applies to Grantee except as otherwise provided by applicable law or directed by System Agency. Additionally, except as otherwise provided by applicable law, in the event of a conflict between TxGMS and applicable federal or state law, federal law prevails over state law and state law prevails over TxGMS.

1.2 INTERPRETIVE PROVISIONS

A. The meanings of defined terms include the singular and plural forms.
B. The words "hereof," "herein," "hereunder," and similar words refer to this Grant Agreement as a whole and not to any particular provision, section, attachment, or schedule of this Grant Agreement unless otherwise specified.
C. The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Grant Agreement, (i) references to contracts

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(including this Grant Agreement) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Grant Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

D. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Grant Agreement are references to these documents as amended, modified, or supplemented during the term of the Grant Agreement.
E. The captions and headings of this Grant Agreement are for convenience of reference only and do not affect the interpretation of this Grant Agreement.
F. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Grant Agreement.
G. This Grant Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
H. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase "in its sole discretion."
I. Time is of the essence in this Grant Agreement.
J. Prior to execution of the Grant Agreement, Grantee must notify System Agency's designated contact in writing of any ambiguity, conflict, discrepancy, omission, or other error. If Grantee fails to notify the System Agency designated contact of any ambiguity, conflict, discrepancy, omission or other error in the Grant Agreement prior to Grantee's execution of the Grant Agreement, Grantee:
    i. Shall have waived any claim of error or ambiguity in the Grant Agreement; and
    ii. Shall not contest the interpretation by the System Agency of such provision(s).

No grantee will be entitled to additional reimbursement, relief, or time by reason of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 TAXES

Grantee represents and warrants that it shall pay all taxes or similar amounts resulting from the Grant Agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of Grantee or its employees. System Agency shall not be liable for any taxes resulting from the Grant Agreement.

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2.3 Ancillary and Travel Expenses

A. Except as otherwise provided in the Grant Agreement, no ancillary expenses incurred by the Grantee in connection with its provision of the services or deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to, costs associated with transportation, delivery, and insurance for each deliverable.

B. Except as otherwise provided in the Grant Agreement, when the reimbursement of travel expenses is authorized by the Grant Agreement, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller's *Textravel* guidelines, which can currently be accessed at: https://fmx.cpa.texas.gov/fmx/travel/textravel/.

2.4 Billing

Unless otherwise provided in the Grant Agreement, Grantee shall bill the System Agency in accordance with the Grant Agreement. Unless otherwise specified in the Grant Agreement, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.5 Use of Funds

Grantee shall expend funds under this Grant Agreement only for approved services and for reasonable and allowable expenses directly related to those services.

2.6 Use for Match Prohibited

Grantee shall not use funds provided under this Grant Agreement for matching purposes in securing other funding without the written approval of the System Agency.

2.7 Program Income

Program income refers to gross income directly generated by a supporting activity during the period of performance. Unless otherwise required under the Grant Agreement, Grantee shall use Program Income, as provided in TxGMS, to further the Project, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Grant Agreement, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Grant Agreement term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Grant Agreement.

2.8 Nonsupplanting

Grant funds must be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds that have been appropriated, allocated, or disbursed for the same purpose. System Agency may conduct Grant monitoring or audits may be conducted to review, among other things, Grantee's compliance with this provision.

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2.9 INDIRECT COST RATES

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable Grant Agreements. For subrecipients receiving federal funds, indirect cost rates will be determined in accordance with applicable law including, but not limited to, 2 CFR 200.414(f). For recipients receiving state funds, indirect costs will be determined in accordance with applicable law including, but not limited to, TxGMS. Grantees funded with blended federal and state funding will be subject to both state and federal requirements when determining indirect costs. In the event of a conflict between TxGMS and applicable federal law or regulation, the provisions of federal law or regulation will apply. Grantee will provide any necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and TxGMS.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

This Grant Agreement is subject to termination or cancellation, without penalty to System Agency, either in whole or in part, subject to the availability and actual receipt by System Agency of state or federal funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Grantee's delivery or performance under the Grant Agreement impossible or unnecessary, the Grant Agreement will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Grantee for any damages that are caused or associated with such termination or cancellation, and System Agency will not be required to give prior notice. Additionally, System Agency will not be liable to Grantee for any remaining unpaid funds under this Grant Agreement at time of termination.

3.2 NO DEBT AGAINST THE STATE

This Grant Agreement will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBTS AND DELINQUENCIES

Grantee agrees that any payments due under the Grant Agreement shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support during the entirety of the Grant Agreement term.

3.4 REFUNDS AND OVERPAYMENTS

A. At its sole discretion, the System Agency may (i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s); or (ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice – to System Agency any funds erroneously paid by System Agency which are not expressly authorized under the Grant Agreement.

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B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Grant Agreement, including any unapproved expenditures. Grantee understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Grant Agreement. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Grant Agreement.

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

A. Allowable Costs are restricted to costs that are authorized under Texas Uniform Grant Management Standards (TxGMS) and applicable state and federal rules and laws. This Grant Agreement is subject to all applicable requirements of TxGMS, including the criteria for Allowable Costs. Additional federal requirements apply if this Grant Agreement is funded, in whole or in part, with federal funds.

B. System Agency will reimburse Grantee for actual, allowable, and allocable costs incurred by Grantee in performing the Project, provided the costs are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Grant Agreement. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from remaining funds available under this Grant Agreement in amounts necessary to fulfill Grantee's repayment obligations. Grantee and all payments received by Grantee under this Grant Agreement are subject to applicable cost principles, audit requirements, and administrative requirements including applicable provisions under 2 CFR 200, 48 CFR Part 31, and TxGMS.

C. OMB Circulars will be applied with the modifications prescribed by TxGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

i. Grantee understands and agrees that Grantee is subject to any and all applicable audit requirements found in state or federal law or regulation or added by this Grant Agreement

ii. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee maybe subject to sanctions and remedies for non-compliance.

iii. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal

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threshold amount includes federal funds passed through by way of state agency awards.

iv. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with TxGMS. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and TxGMS.

v. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or TxGMS, as applicable, for their program-specific audits.

vi. Each Grantee required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with applicable provisions of 2 CFR 200 and TxGMS.

B. Financial Statements.

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements for the audit period.

4.3 Submission of Audits and Financial Statements

A. Audits.

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit one electronic copy of the single audit or program-specific audit to the System Agency via:

i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau or,

ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements.

Due no later than nine months after the Grantee's fiscal year-end, Grantees not required to submit an audit, shall submit one electronic copy of their financial statements via:

i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau; or,

ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 Warranty

Grantee warrants that all work under this Grant Agreement shall be completed in a manner consistent with standards under the terms of this Grant Agreement, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Grant Agreement; and all deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Grantee has failed to complete work timely or to perform satisfactorily under conditions required by this Grant Agreement, the System Agency may require Grantee, at its sole expense, to:

i. Repair or replace all defective or damaged work;

ii. Refund any payment Grantee received from System Agency for all defective or damaged work and, in conjunction therewith, require Grantee to accept the return of such work; and,

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iii. Take necessary action to ensure that Grantee's future performance and work conform to the Grant Agreement requirements.

5.2 General Affirmations

Grantee certifies that, to the extent affirmations are incorporated into the Grant Agreement, the Grantee has reviewed the affirmations and that Grantee is in compliance with all requirements.

5.3 Federal Assurances

Grantee further certifies that, to the extent federal assurances are incorporated into the Grant Agreement, the Grantee has reviewed the federal assurances and that Grantee is in compliance with all requirements.

5.4 Federal Certifications

Grantee further certifies that, to the extent federal certifications are incorporated into the Grant Agreement, the Grantee has reviewed the federal certifications and that Grantee is in compliance with all requirements. In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Grant Agreement.

5.5 State Assurances

Except to the extent of any conflict under applicable law or requirements or guidelines of any federal awarding agency from which funding for this Grant Agreement originated, the Grantee must comply with the applicable state assurances included within the TxGMS which are incorporated here by reference.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 Ownership of Work Product

A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Grantee and Grantee's employees will have no rights in or ownership of the Work Product or any other property of System Agency.

B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Grantee hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

C. Grantee agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.

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D. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Grantee. Grantee shall provide System Agency access during normal business hours to all Grantee materials, premises, and computer files containing the Work Product.

6.2 Grantee's Pre-Existing Works

A. To the extent that Grantee incorporates into the Work Product any works of Grantee that were created by Grantee or that Grantee acquired rights in prior to the Effective Date of this Grant Agreement ("**Incorporated Pre-existing Works**"), Grantee retains ownership of such Incorporated Pre-existing Works.
B. Grantee hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
C. Grantee represents, warrants, and covenants to System Agency that Grantee has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

6.3 Third Party IP

A. To the extent that any Third Party IP is included or incorporated in the Work Product by Grantee, Grantee hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business or governmental purposes only, to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and to authorize others to do any or all of the foregoing.
B. Grantee shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Grantee shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
C. Grantee shall provide System Agency all supporting documentation demonstrating Grantee's compliance with this Section 6.3, including without limitation documentation indicating a third party's written approval for Grantee to use any Third Party IP that may be incorporated in the Work Product.

6.4 Agreements with Employees and Subcontractors

Grantee shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Grantee's compliance with Grantee's obligations under this Article VI, Intellectual Property.

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6.5 Delivery upon Termination or Expiration

No later than the first calendar day after the termination or expiration of the Grant Agreement or upon System Agency's request, Grantee shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Grantee's failure to timely deliver such Work Product is a material breach of the Grant Agreement. Grantee will not retain any copies of the Work Product or any documentation or other products or results of Grantee's activities under the Grant Agreement without the prior written consent of System Agency.

6.6 Survival

The provisions and obligations of this Article survive any termination or expiration of the Grant Agreement.

6.7 System Agency Data

A. As between the Parties, all data and information acquired, accessed, or made available to Grantee by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Grantee in the course of providing data processing services in connection with Grantee's performance hereunder (the "System Agency Data"), is owned solely by System Agency.
B. Grantee has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Grantee to fulfill its obligations under the Grant Agreement or as authorized in advance in writing by System Agency.
C. For the avoidance of doubt, Grantee is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
D. Grantee shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
E. Furthermore, the proprietary nature of Grantee's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Grantee's performance of its obligations hereunder.

ARTICLE VII. PROPERTY

7.1 Use of State Property

A. Grantee is prohibited from using State Property for any purpose other than performing Services authorized under the Grant Agreement.
B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.,* laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.

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C. Grantee shall not remove State Property from the continental United States. In addition, Grantee may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
D. Grantee shall not perform any maintenance services on State Property unless the Grant Agreement expressly authorizes such Services.
E. During the time that State Property is in the possession of Grantee, Grantee shall be responsible for:
   i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
   ii. all charges attributable to Grantee's use of State Property that exceeds the Grant Agreement scope. Grantee shall fully reimburse such charges to System Agency within ten (10) calendar days of Grantee's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Grant Agreement shall constitute breach of contract and may result in termination of the Grant Agreement and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

7.2 DAMAGE TO STATE PROPERTY

A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Grantee or Grantee's employees, agents, Subcontractors, or suppliers, Grantee shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
B. Grantee shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Grantee shall reimburse System Agency and the State of Texas for such property damage within ten (10) calendar days after Grantee's receipt of System Agency's notice of amount due.

7.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Grant Agreement is terminated for any reason or expires, State Property remains the property of the System Agency and must be returned to the System Agency by the earlier of the end date of the Grant Agreement or upon System Agency's request.

7.4 EQUIPMENT AND PROPERTY

A. The Grantee must ensure equipment with a per-unit cost of $5,000 or greater purchased with grant funds under this award is used solely for the purpose of this Grant or is properly pro-rated for use under this Grant. Grantee must have control systems to prevent loss, damage, or theft of property funded under this Grant. Grantee shall maintain equipment management and inventory procedures for equipment, whether acquired in part or whole with grant funds, until disposition occurs.
B. When equipment acquired by Grantee under this Grant Agreement is no longer needed for the original project or for other activities currently supported by System Agency, the Grantee must properly dispose of the equipment pursuant to 2 CFR and/or TxGMS, as applicable. Upon termination of this Grant Agreement, use and disposal of equipment by the Grantee shall conform with TxGMS requirements.
C. Grantee shall initiate the purchase of all equipment approved in writing by the System Agency in accordance with the schedule approved by System Agency, as applicable.

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Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter in the Grant Agreement must be submitted to the assigned System Agency contract manager.

D. Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more, but less than $5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Controlled Assets are considered supplies.

E. System Agency funds must not be used to purchase buildings or real property without prior written approval from System Agency. Any costs related to the initial acquisition of the buildings or real property are not allowable without written pre-approval.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 Record Maintenance and Retention

A. Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Grant Agreement and all state and federal rules, regulations, and statutes.

B. Grantee shall maintain and retain legible copies of this Grant Agreement and all records relating to the performance of the Grant Agreement, including supporting fiscal documents adequate to ensure that claims for grant funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by the Grantee for a minimum of seven (7) years after the Grant Agreement expiration date or seven (7) years after all audits, claims, litigation or disputes involving the Grant Agreement are resolved, whichever is later.

8.2 Agency's Right to Audit

A. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Grantee pertaining to the Grant Agreement for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.

B. In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Grant Agreement. If the Grant Agreement includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized

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representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHS's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority.

C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee shall produce original documents related to this Grant Agreement.
D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
E. Grantee shall include this provision concerning the right of access to, and examination of, sites and information related to this Grant Agreement in any Subcontract it awards.

8.3 Response/Compliance with Audit or Inspection Findings

A. Grantee must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Grant Agreement and the services and Deliverables provided. Any such correction will be at Grantee's or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance shall be solely the decision of the System Agency.
B. As part of the services, Grantee must provide to HHS upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Grant Agreement.

8.4 State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Grant Agreement or indirectly through a subcontract under the Grant Agreement. The acceptance of funds directly under the Grant Agreement or indirectly through a subcontract under the Grant Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.5 Confidentiality

Grantee shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Grant Agreement. This requirement must be included in all subcontracts awarded by Grantee.

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ARTICLE IX. GRANT REMEDIES, TERMINATION AND PROHIBITED ACTIVITIES

9.1 REMEDIES

A. To ensure Grantee's full performance of the Grant Agreement and compliance with applicable law, System Agency reserves the right to hold Grantee accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to the following:
   i. temporarily withholding cash disbursements or reimbursements pending correction of the deficiency;
   ii. disallowing or denying use of funds for the activity or action deemed not to be in compliance;
   iii. disallowing claims for reimbursement that may require a partial or whole return of previous payments or reimbursements;
   iv. suspending all or part of the Grant Agreement;
   v. requiring the Grantee to take specific actions in order to remain in compliance with the Grant Agreement;
   vi. recouping payments made by the System Agency to the Grantee found to be in error;
   vii. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
   viii. prohibiting the Grantee from receiving additional funds for other grant programs administered by the System Agency until satisfactory compliance resolution is obtained;
   ix. withholding release of new grant agreements; and
   x. imposing any other remedies, sanctions or penalties authorized under this Grant Agreement or permitted by federal or state statute, law, regulation or rule.

B. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended.

C. No action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as a waiver of any other rights or remedies available to System Agency under the Grant Agreement or pursuant to law. Additionally, no action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as an acceptance, waiver, or cure of Grantee's breach. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended or after termination.

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Grant Agreement, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

9.3 TERMINATION FOR CAUSE

A. Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Grant Agreement, in whole or in part, upon either of the following conditions:

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i. Material Breach

The System Agency may terminate the Grant Agreement, in whole or in part, if the System Agency determines, in its sole discretion, that Grantee has materially breached the Grant Agreement or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, whether or not such violation prevents or substantially impairs performance of Grantee's duties under the Grant Agreement. Grantee's misrepresentation in any aspect including, but not limited to, of Grantee's Solicitation Application, if any, or Grantee's addition to the SAM exclusion list (identification in SAM as an excluded entity) may also constitute a material breach of the Grant Agreement.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Grant Agreement if the System Agency, in its sole discretion, determines that Grantee no longer maintains the financial viability required to complete the services and deliverables, or otherwise fully perform its responsibilities under the Grant Agreement.

B. System Agency will specify the effective date of such termination in the notice to Grantee. If no effective date is specified, the Grant Agreement will terminate on the date of the notification.

9.4 Grantee Responsibility for System Agency's Termination Costs

If the System Agency terminates the Grant Agreement for cause, the Grantee shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Grantee. These costs include, but are not limited to, the costs of procuring a substitute grantee and the cost of any claim or litigation attributable to Grantee's failure to perform any work in accordance with the terms of the Grant Agreement.

9.5 Inherently Religious Activities

Grantee may not use grant funding to engage in inherently religious activities, such as proselytizing, scripture study, or worship. Grantees may engage in inherently religious activities; however, these activities must be separate in time or location from the grant-funded program. Moreover, grantees must not compel program beneficiaries to participate in inherently religious activities. These requirements apply to all grantees, not just faith-based organizations.

9.6 Political Activities

Grant funds cannot be used for the following activities:

A. Grantees and their relevant sub-grantees or subcontractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying, advocating for legislation, campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties, and voter registration campaigns. Grantees may use private, or non-System Agency money or contributions for political purposes but may not charge to, or be reimbursed from, System Agency contracts or grants for the costs of such activities.

B. Grant-funded employees may not use official authority or influence to achieve any political purpose and grant funds cannot be used for the salary, benefits, or any other compensation of an elected official.

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C. Grant funds may not be used to employ, in any capacity, a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist. Additionally, grant funds cannot be used to pay membership dues to an organization that partially or wholly pays the salary of a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist.
D. As applicable, Grantee will comply with 31 USC § 1352, relating to the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.

ARTICLE X. INDEMNITY

10.1 General Indemnity

A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE GRANT AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE GRANT AGREEMENT.

B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.

C. For the avoidance of doubt, System Agency shall not indemnify Grantee or any other entity under the Grant Agreement.

10.2 Intellectual Property

GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

i. THE PERFORMANCE OR ACTIONS OF GRANTEE PURSUANT TO THIS GRANT AGREEMENT;
ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR
iii. SYSTEM AGENCY'S AND/OR GRANTEE'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY GRANTEE OR OTHERWISE TO WHICH SYSTEM

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AGENCY HAS ACCESS AS A RESULT OF GRANTEE'S PERFORMANCE UNDER THE GRANT AGREEMENT.

10.3 Additional Indemnity Provisions

A. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.

B. THE DEFENSE SHALL BE COORDINATED BY THE GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.

C. GRANTEE SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF GRANTEE OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND GRANTEE SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.

ARTICLE XI. GENERAL PROVISIONS

11.1 Amendments

Except as otherwise expressly provided, the Grant Agreement may only be amended by a written Amendment executed by both Parties.

11.2 No Quantity Guarantees

The System Agency makes no guarantee of volume or usage of work under this Grant Agreement. All work requested may be on an irregular and as needed basis throughout the Grant Agreement term.

11.3 Child Abuse Reporting Requirements

A. Grantees shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Grantee to report child abuse.

B. Grantee shall use the Texas Abuse Hotline Website located at https://www.txabusehotline.org/Login/Default.aspx as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

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11.4 Certification of Meeting or Exceeding Tobacco-Free Workplace Policy Minimum Standards

A. Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:
   i. Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
   ii. Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Grant Agreement are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
   iii. Applying to all employees and visitors in this designated area; and
   iv. Providing for or referring its employees to tobacco use cessation services.

B. If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

11.5 Insurance and Bonds

Unless otherwise specified in this Contract, Grantee shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage. In addition, if required by System Agency, Grantee must obtain and have on file a blanket fidelity bond that indemnifies System Agency against the loss or theft of any grant funds, including applicable matching funds. The fidelity bond must cover the entirety of the grant term and any subsequent renewals. The failure of Grantee to comply with these requirements may subject Grantee to remedial or corrective actions detailed in section 10.1, General Indemnity, above.

These and all other insurance requirements under the Grant apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

11.6 Limitation on Authority

A. Grantee shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Grant Agreement; no other authority, power, or use is granted or implied. Grantee may not incur any debt,

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obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.

B. Grantee may not rely upon implied authority and is not granted authority under the Grant Agreement to:
   i. Make public policy on behalf of the System Agency;
   ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
   iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Grant Agreement. However, upon System Agency request and with reasonable notice from System Agency to the Grantee, the Grantee shall assist the System Agency in communications and negotiations regarding the Work under the Grant Agreement with state and federal governments.

11.7 Change in Laws and Compliance with Laws

Grantee shall comply with all laws, regulations, requirements and guidelines applicable to a Grantee providing services and products required by the Grant Agreement to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Grant Agreement. Notwithstanding Section 11.1, Amendments, above, System Agency reserves the right, in its sole discretion, to unilaterally amend the Grant Agreement to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.8 Subcontractors

Grantee may not subcontract any or all of the Work and/or obligations under the Grant Agreement without prior written approval of the System Agency. Subcontracts, if any, entered into by the Grantee shall be in writing and be subject to the requirements of the Grant Agreement. Should Grantee subcontract any of the services required in the Grant Agreement, Grantee expressly understands and acknowledges System Agency is in no manner liable to any subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Grant Agreement.

11.9 Permitting and Licensure

At Grantee's sole expense, Grantee shall procure and maintain for the duration of this Grant Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Grant Agreement. Grantee shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Grant Agreement.

11.10 Independent Contractor

Grantee and Grantee's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services

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under the Grant Agreement. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. The Grantee is not a "governmental body" solely by virtue of this Grant Agreement or receipt of grant funds under this Grant Agreement. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Grant Agreement shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

11.11 GOVERNING LAW AND VENUE

The Grant Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Grant Agreement is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

11.12 SEVERABILITY

If any provision contained in this Grant Agreement is held to be unenforceable by a court of law or equity, such construction will not affect the legality, validity, or enforceability of any other provision or provisions of this Grant Agreement. It is the intent and agreement of the Parties this Grant Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Grant Agreement will continue in full force and effect.

11.13 SURVIVABILITY

Expiration or termination of the Grant Agreement for any reason does not release Grantee from any liability or obligation set forth in the Grant Agreement that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Grant Agreement, including without limitation the provisions regarding return of grant funds, audit requirements, records retention, public information, warranty, indemnification, confidentiality, and rights and remedies upon termination.

11.14 FORCE MAJEURE

Neither Grantee nor System Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Grant Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

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11.15 No Implied Waiver of Provisions

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Grantee which is in violation or breach of the terms of the Grant Agreement shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

11.16 Funding Disclaimers and Labeling

A. Grantee shall not use System Agency's name or refer to System Agency directly or indirectly in any media appearance, public service announcement, or disclosure relating to this Grant Agreement including any promotional material without first obtaining written consent from System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Grantee's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Grantee. This does not limit the Grantee's responsibility to comply with obligations related to the Texas Public Information Act or Texas Open Meetings Act.

B. In general, no publication (including websites, reports, projects, etc.) may convey System Agency's recognition or endorsement of the Grantee's project without prior written approval from System Agency. Publications funded in part or wholly by HHS grant funding must include a statement that "HHS and neither any of its components operate, control, are responsible for, or necessarily endorse, this publication (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)" at HHS's request.

11.17 Media Releases

A. Grantee shall not use System Agency's name, logo, or other likeness in any press release, marketing material or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Grantee is not authorized to make or participate in any media releases or public announcements pertaining to this Grant Agreement or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.

B. Grantee may publish, at its sole expense, results of Grantee performance under the Grant Agreement with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

11.18 Prohibition on Non-Compete Restrictions

Grantee shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements, that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

11.19 Sovereign Immunity

Nothing in the Grant Agreement will be construed as a waiver of the System Agency's or the State's sovereign immunity. This Grant Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the

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System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Grant Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Grant Agreement or by its conduct prior to or subsequent to entering into the Grant Agreement.

11.20 Entire Contract and Modification

The Grant Agreement constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Grant Agreement will be harmonized with this Grant Agreement to the extent possible.

11.21 Counterparts

This Grant Agreement may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Grant Agreement.

11.22 Proper Authority

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement.

11.23 E-Verify Program

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

A. all persons employed to perform duties within Texas during the term of the Grant Agreement; and
B. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Grant Agreement within the United States of America.

11.24 Civil Rights

A. Grantee agrees to comply with state and federal anti-discrimination laws, including:
   i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
   ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
   iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
   iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
   v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
   vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
   vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Grant Agreement.
B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from

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participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters.

E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.

G. Grantee must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Grant Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail CodeW206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hhsc.state.tx.us.

11.25 Enterprise Information Management Standards

Grantee shall conform to HHS standards for data management as described by the policies of the HHS Office of Data, Analytics, and Performance. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.26 Disclosure of Litigation

A. The Grantee must disclose in writing to the contract manager assigned to this Grant Agreement any material civil or criminal litigation or indictment either threatened or

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pending involving the Grantee. “Threatened litigation” as used herein shall include governmental investigations and civil investigative demands. “Litigation” as used herein shall include administrative enforcement actions brought by governmental agencies. The Grantee must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Grant Agreement or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Grantee’s financial condition.

B. This is a continuing disclosure requirement; any litigation commencing after Grant Agreement Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.27 NO THIRD PARTY BENEFICIARIES

The Grant Agreement is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Grant Agreement as a third-party beneficiary or otherwise.

11.28 BINDING EFFECT

The Grant Agreement shall inure to the benefit of, be binding upon, and be enforceable against each Party and their respective permitted successors, assigns, transferees, and delegates.

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ATTACHMENT F

HHS DATA USE AGREEMENT

This Data Use Agreement ("DUA"), effective as of the date the Base Contract into which it is incorporated is signed ("Effective Date"), is entered into by and between a Texas Health and Human Services Enterprise agency ("HHS"), and the Contractor identified in the Base Contract, a political subdivision of the State of Texas ("CONTRACTOR.

ARTICLE 1.
PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR's rights and obligations with respect to the Confidential Information. ***45 CFR 164.504(e)(1)-(3)***. This DUA also describes HHS's remedies in the event of CONTRACTOR's noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2.
DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq*.) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

"Authorized Purpose" means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

"Authorized User" means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

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(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR, or that CONTRACTOR may, for an Authorized Purpose, create, receive, maintain, use, disclose or have access to, that consists of or includes any or all of the following:

(1) Client Information;

(2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (herein "PHI");

(3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;

(4) Federal Tax Information;

(5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;

(6) Social Security Administration Data, including, without limitation, Medicaid information;

(7) All privileged work product;

(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

"Legally Authorized Representative" of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; and Estates Code Ch. 752.

ARTICLE 3.
CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in

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a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. ***45 CFR 164.502(b)(1); 45 CFR 164.514(d)***

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in ***45 C.F.R. 160.103***) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. ***45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101***

All of CONTRACTOR's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request.***45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)***

(D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. ***45 CFR 164.504(e)(2)(ii)(A)***

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. ***45 CFR 164.502(d)(2)(i) and (ii)*** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. ***45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002***

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply with all applicable laws, rules and regulations. ***45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).***

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(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. ***45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.***

(H) If CONTRACTOR maintains PHI in a Designated Record Set which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. ***45 CFR 164.524and 164.504(e)(2)(ii)(E).***

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. ***45 CFR 164.504(e)(2)(ii)(E) and (F).***

(J) If PHI is subject to this Agreement, CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. ***45 CFR 164.504(e)(2)(ii)(G) and 164.528.***

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request**.** ***45 CFR 164.504(e)(2).***

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. ***45 CFR 164.308; 164.530(c); 1 TAC 202.***

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the

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proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: ***45 CFR 164.504(e)(4)(A).***

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D); or

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. ***45 CFR 164.504(e)(4)(ii)(B).***

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if required by law and requested by HHS, use commercially reasonable efforts to use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. ***45 CFR 164.504(e)(2)(i)(B)***

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHSC and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. ***45 CFR 164.504(e)(2)(ii)(J)***

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated

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threats or hazards to the security or integrity of such information or unauthorized uses. ***45 CFR 164.306; 164.530(c)***

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. ***45 CFR 164.306.***

(R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. ***45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).***

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official ***45 CFR 164.530(a)(1)*** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. ***45 CFR 164.308(a)(2).***

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. ***45 CFR 164.502; 164.514(d).***

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they

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agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. ***45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).***

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR for an Authorized Purpose for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. ***45 CFR 164.308; 164.514(d).***

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary of the U.S. Department of Health and Human Services, or other federal or state law. ***45 CFR 164.504(e)(2)(i)(I).***

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information *in motion* includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information *at rest* requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. ***45 CFR 164.312; 164.530(d).***

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;

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- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).

ARTICLE 4.
BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414.

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

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(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's reasonable satisfaction (the "incident response period"). ***45 CFR 164.404.***

(C) Breach Notice:

(1) Initial Notice.

(a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.

(b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. ***45 CFR 164.410.***

(c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available***: For (a) - (m) below: 45 CFR 164.400-414.***

(a) The date the Event or Breach occurred;

(b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

(c) A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

(d) A brief description of CONTRACTOR's investigation and the status of the investigation;

(e) A description of the types and amount of Confidential Information involved;

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(f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the Individual and if applicable the, Legally Authorized Representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

(g) CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

(h) CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

(i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

(j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

(k) Identify, describe or estimate the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

(l) A reasonable schedule for CONTRACTOR to provide regular updates during normal business hours to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

(m) Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to

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expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the reasonable satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the reasonable satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

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(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5.
STATEMENT OF WORK

"Statement of Work" means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6.
GENERAL PROVISIONS

6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

6.02 HHS Commitment and Obligations

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA shall be extended or amended concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

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(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(C) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

(1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or

(2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or

(3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or

(4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violated is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(E) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

6.05 Governing Law, Venue and Litigation

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

6.06 Injunctive Relief

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this

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DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

6.07 Responsibility.

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

6.08 Insurance

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

6.08 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

6.09 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract as an amendment thereto and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

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6.10 Automatic Amendment and Interpretation

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

TEXAS Health and Human Services

Texas HHS System - Data Use Agreement - Attachment 2
SECURITY AND PRIVACY INQUIRY (SPI)

If you are a bidder for a new procurement/contract, in order to participate in the bidding process, you must have corrected any "No" responses (except A9a) prior to the contract award date. If you are an applicant for an open enrollment, you must have corrected any "No" answers (except A9a and A11) prior to performing any work on behalf of any Texas HHS agency.

For any questions answered "No" (except A9a and A11), an *Action Plan for Compliance with a Timeline* must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

SECTION A: APPLICANT/BIDDER INFORMATION (To be completed by Applicant/Bidder)

1. Does the applicant/bidder access, create, disclose, receive, transmit, maintain, or store Texas HHS Confidential Information in electronic systems (e.g., laptop, personal use computer, mobile device, database, server, etc.)? **IF NO, STOP. THE SPI FORM IS NOT REQUIRED.**	(X) Yes ( ) No
2. Entity or Applicant/Bidder Legal Name City of Midland Health Department	Legal Name: City of Midland Health Department Legal Entity Tax Identification Number (TIN) (Last Four Numbers Only): 6086 Procurement/Contract#: 000 Address: 3303 W. Illinois Ave Sp. 22 City: Midland State: TX ZIP: 79703 Telephone #: 432-681-7613 Email Address: midlandhealth@midlandtexas.gov
3. Number of Employees, at all locations, in Applicant/Bidder's Workforce "Workforce" means all employees, volunteers, trainees, and other Persons whose conduct is under the direct control of Applicant/Bidder, whether or not they are paid by Applicant/ Bidder. If Applicant/Bidder is a sole proprietor, the workforce may be only one employee.	Total Employees: 27
4. Number of Subcontractors (if Applicant/Bidder will not use subcontractors, enter "0")	Total Subcontractors: 0
5. Name of Information Technology Security Official and Name of Privacy Official for Applicant/Bidder (Privacy and Security Official may be the same person.)	**A. Security Official:** Legal Name: Jennifer Frescaz Address: 601 N. Loraine City: Midland State: TX ZIP: 79701 Telephone #: 432-685-7489 Email Address: jfrescaz@midlandtexas.gov
	B. Privacy Official: Legal Name: Jennifer Frescaz Address: 601 N. Loraine City: Midland State: TX ZIP: 79701 Telephone #: 432-685-7489 Email Address: jfrescaz@midlandtexas.gov

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6. Type(s) of Texas HHS Confidential Information the Applicant/Bidder will create, receive, maintain, use, disclose or have access to: (Check all that apply) • *Health Insurance Portability and Accountability Act (HIPAA) data* • *Criminal Justice Information Services (CJIS) data* • *Internal Revenue Service Federal Tax Information (IRS FTI) data* • *Centers for Medicare & Medicaid Services (CMS)* • *Social Security Administration (SSA)* • *Personally Identifiable Information (PII)*	HIPAA	CJIS	IRS FTI	CMS	SSA	PII
	X			X		X
	Other (Please List) none					

7. Number of Storage Devices for Texas HHS Confidential Information (as defined in the Texas HHS System Data Use Agreement (DUA)) Cloud Services involve using a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server or a personal computer. A Data Center is a centralized repository, either physical or virtual, for the storage, management, and dissemination of data and information organized around a particular body of knowledge or pertaining to a particular business.	Total # (Sum a-d) 20
a. Devices. Number of personal user computers, devices or drives, including mobile devices and mobile drives.	0
b. Servers. Number of Servers that are not in a data center or using Cloud Services.	1
c. Cloud Services. Number of Cloud Services in use.	0
d. Data Centers. Number of Data Centers in use.	1

8. Number of unduplicated individuals for whom Applicant/Bidder reasonably expects to handle Texas HHS Confidential Information during one year:	Select Option (a-d)
a. 499 individuals or less	○ a.
b. 500 to 999 individuals	○ b.
c. 1,000 to 99,999 individuals	○ c.
d. 100,000 individuals or more	○ d.

9. HIPAA Business Associate Agreement	
a. Will Applicant/Bidder use, disclose, create, receive, transmit or maintain protected health information on behalf of a HIPAA-covered Texas HHS agency for a HIPAA-covered function?	○ Yes ○ No
b. Does Applicant/Bidder have a Privacy Notice prominently displayed on a Webpage or a Public Office of Applicant/Bidder's business open to or that serves the public? (This is a HIPAA requirement. Answer "N/A" if not applicable, such as for agencies not covered by HIPAA.)	○ Yes ○ No ○ N/A
Action Plan for Compliance with a Timeline:	Compliance Date:

10. Subcontractors. If the Applicant/Bidder responded "0" to Question 4 (indicating no subcontractors), check "N/A" for both 'a.' and 'b.'	
a. Does Applicant/Bidder require subcontractors to execute the DUA Attachment 1 Subcontractor Agreement Form?	○ Yes ○ No ○ N/A
Action Plan for Compliance with a Timeline:	Compliance Date:

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b. Will Applicant/Bidder agree to require subcontractors who will access Confidential Information to comply with the terms of the DUA, not disclose any Confidential Information to them until they have agreed in writing to the same safeguards and to discontinue their access to the Confidential Information if they fail to comply?	○ Yes ○ No ○ N/A
Action Plan for Compliance with a Timeline:	Compliance Date:
11. Does Applicant/Bidder have any **Optional Insurance** currently in place? Optional Insurance provides coverage for: (1) Network Security and Privacy; (2) Data Breach; (3) Cyber Liability (lost data, lost use or delay/suspension in business, denial of service with e-business, the Internet, networks and informational assets, such as privacy, intellectual property, virus transmission, extortion, sabotage or web activities); (4) Electronic Media Liability; (5) Crime/Theft; (6) Advertising Injury and Personal Injury Liability; and (7) Crisis Management and Notification Expense Coverage.	○ Yes ○ No ○ N/A

SECTION B: PRIVACY RISK ANALYSIS AND ASSESSMENT (To be completed by Applicant/Bidder)

For any questions answered "No," an Action Plan for Compliance with a Timeline must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

1. Written Policies & Procedures. Does Applicant/Bidder have current written privacy and security policies and procedures that, at a minimum:	**Yes or No**
a. Does Applicant/Bidder have current written privacy and security policies and procedures that identify Authorized Users and Authorized Purposes (as defined in the DUA) relating to creation, receipt, maintenance, use, disclosure, access or transmission of Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
b. Does Applicant/Bidder have current written privacy and security policies and procedures that require Applicant/Bidder and its Workforce to comply with the applicable provisions of HIPAA and other laws referenced in the DUA, relating to creation, receipt, maintenance, use, disclosure, access or transmission of Texas HHS Confidential Information on behalf of a Texas HHS agency?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
c. Does Applicant/Bidder have current written privacy and security policies and procedures that limit use or disclosure of Texas HHS Confidential Information to the minimum that is necessary to fulfill the Authorized Purposes?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
d. Does Applicant/Bidder have current written privacy and security policies and procedures that respond to an actual or suspected breach of Texas HHS Confidential Information, to include at a minimum (if any responses are "No" check "No" for all three): i. Immediate breach notification to the Texas HHS agency, regulatory authorities, and other required Individuals or Authorities, in accordance with Article 4 of the DUA; ii. Following a documented breach response plan, in accordance with the DUA and applicable law; & iii. Notifying Individuals and Reporting Authorities whose Texas HHS Confidential Information has been breached, as directed by the Texas HHS agency?	○ Yes ○ No

Action Plan for Compliance with a Timeline:	Compliance Date:
e. Does Applicant/Bidder have current written privacy and security policies and procedures that conduct annual workforce training and monitoring for and correction of any training delinquencies?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
f. Does Applicant/Bidder have current written privacy and security policies and procedures that permit or deny individual rights of access, and amendment or correction, when appropriate?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
g. Does Applicant/Bidder have current written privacy and security policies and procedures that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a Texas HHS agency?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
h. Does Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:

j. Does Applicant/Bidder have current written privacy and security policies and procedures that restrict permissions or attempts to re-identify or further identify de-identified Texas HHS Confidential Information, or attempt to contact any Individuals whose records are contained in the Texas HHS Confidential Information, except for an Authorized Purpose, without express written authorization from a Texas HHS agency or as expressly permitted by the Base Contract?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
k. If Applicant/Bidder intends to use, disclose, create, maintain, store or transmit Texas HHS Confidential Information outside of the United States, will Applicant/Bidder obtain the express prior written permission from the Texas HHS agency and comply with the Texas HHS agency conditions for safeguarding offshore Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
l. Does Applicant/Bidder have current written privacy and security policies and procedures that require cooperation with Texas HHS agencies' or federal regulatory inspections, audits or investigations related to compliance with the DUA or applicable law?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
m. Does Applicant/Bidder have current written privacy and security policies and procedures that require appropriate standards and methods to destroy or dispose of Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
n. Does Applicant/Bidder have current written privacy and security policies and procedures that prohibit disclosure of Applicant/Bidder's work product done on behalf of Texas HHS pursuant to the DUA, or to publish Texas HHS Confidential Information without express prior approval of the Texas HHS agency?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
2. Does Applicant/Bidder have a current Workforce training program? Training of Workforce must occur at least once every year, and within 30 days of date of hiring a new Workforce member who will handle Texas HHS Confidential Information. Training must include: (1) privacy and security policies, procedures, plans and applicable requirements for handling Texas HHS Confidential Information, (2) a requirement to complete training before access is given to Texas HHS Confidential Information, and (3) written proof of training and a procedure for monitoring timely completion of training.	○ Yes ○ No

Action Plan for Compliance with a Timeline:	Compliance Date:
3. Does Applicant/Bidder have Privacy Safeguards to protect Texas HHS Confidential Information in oral, paper and/or electronic form? "Privacy Safeguards" means protection of Texas HHS Confidential Information by establishing, implementing and maintaining required Administrative, Physical and Technical policies, procedures, processes and controls, required by the DUA, HIPAA (45 CFR 164.530), Social Security Administration, Medicaid and laws, rules or regulations, as applicable. Administrative safeguards include administrative protections, policies and procedures for matters such as training, provision of access, termination, and review of safeguards, incident management, disaster recovery plans, and contract provisions. Technical safeguards include technical protections, policies and procedures, such as passwords, logging, emergencies, how paper is faxed or mailed, and electronic protections such as encryption of data. Physical safeguards include physical protections, policies and procedures, such as locks, keys, physical access, physical storage and trash.	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
4. Does Applicant/Bidder and all subcontractors (if applicable) maintain a current list of Authorized Users who have access to Texas HHS Confidential Information, whether oral, written or electronic?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
5. Does Applicant/Bidder and all subcontractors (if applicable) monitor for and remove terminated employees or those no longer authorized to handle Texas HHS Confidential Information from the list of Authorized Users?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:

SECTION C: SECURITY RISK ANALYSIS AND ASSESSMENT (to be completed by Applicant/Bidder)

This section is about your electronic system. If your business DOES NOT store, access, or transmit Texas HHS Confidential Information in electronic systems (e.g., laptop, personal use computer, mobile device, database, server, etc.) select the box to the right, and "YES" will be entered for all questions in this section.	**No Electronic Systems** ☐

For any questions answered "No," an Action Plan for Compliance with a Timeline must be documented in the designated area below the question. The timeline for compliance with HIPAA-related items is 30 calendar days, PII-related items is 90 calendar days.

1. Does the Applicant/Bidder ensure that services which access, create, disclose, receive, transmit, maintain, or store Texas HHS Confidential Information are maintained **IN** the United States (no offshoring) unless **ALL** of the following requirements are met? **a.** The data is encrypted with FIPS 140-2 validated encryption **b.** The offshore provider does not have access to the encryption keys **c.** The Applicant/Bidder maintains the encryption key within the United States **d.** The Application/Bidder has obtained the express prior written permission of the Texas HHS agency *For more information regarding FIPS 140-2 encryption products, please refer to:* *http://csrc.nist.gov/publications/fips*	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
2. Does Applicant/Bidder utilize an IT security-knowledgeable person or company to maintain or oversee the configurations of Applicant/Bidder's computing systems and devices?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
3. Does Applicant/Bidder monitor and manage access to Texas HHS Confidential Information (e.g., a formal process exists for granting access and validating the need for users to access Texas HHS Confidential Information, and access is limited to Authorized Users)?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
4. Does Applicant/Bidder a) have a system for changing default passwords, b) require user password changes at least every 90 calendar days, and c) prohibit the creation of weak passwords (e.g., require a minimum of 8 characters with a combination of uppercase, lowercase, special characters, and numerals, where possible) for all computer systems that access or store Texas HHS Confidential Information. **If yes, upon request must provide evidence such as a screen shot or a system report.**	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:

5. Does each member of Applicant/Bidder's Workforce who will use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information have a unique user name (account) and private password?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
6. Does Applicant/Bidder lock the password after a certain number of failed attempts and after 15 minutes of user inactivity in all computing devices that access or store Texas HHS Confidential Information?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
7. Does Applicant/Bidder secure, manage and encrypt remote access (including wireless access) to computer systems containing Texas HHS Confidential Information? (e.g., a formal process exists for granting access and validating the need for users to remotely access Texas HHS Confidential Information, and remote access is limited to Authorized Users). *Encryption is required for all Texas HHS Confidential Information. Additionally, **FIPS 140-2** validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.* *For more information regarding FIPS 140-2 encryption products, please refer to:* *http://csrc.nist.gov/publications/fips*	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
8. Does Applicant/Bidder implement computer security configurations or settings for all computers and systems that access or store Texas HHS Confidential Information? (e.g., non-essential features or services have been removed or disabled to reduce the threat of breach and to limit exploitation opportunities for hackers or intruders, etc.)	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
9. Does Applicant/Bidder secure physical access to computer, paper, or other systems containing Texas HHS Confidential Information from unauthorized personnel and theft (e.g., door locks, cable locks, laptops are stored in the trunk of the car instead of the passenger area, etc.)?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:

10. Does Applicant/Bidder use encryption products to protect Texas HHS Confidential Information that is *transmitted* over a public network (e.g., the Internet, WiFi, etc.)? **If yes, upon request must provide evidence such as a screen shot or a system report.** *Encryption is required for all HHS Confidential Information. Additionally, **FIPS 140-2** validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.* *For more information regarding FIPS 140-2 encryption products, please refer to:* *http://csrc.nist.gov/publications/fips*	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
11. Does Applicant/Bidder use encryption products to protect Texas HHS Confidential Information *stored* on end user devices (e.g., laptops, USBs, tablets, smartphones, external hard drives, desktops, etc.)? **If yes, upon request must provide evidence such as a screen shot or a system report.** *Encryption is required for all Texas HHS Confidential Information. Additionally, **FIPS 140-2** validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.* *For more information regarding FIPS 140-2 encryption products, please refer to:* *http://csrc.nist.gov/publications/fips*	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
12. Does Applicant/Bidder require Workforce members to formally acknowledge rules outlining their responsibilities for protecting Texas HHS Confidential Information and associated systems containing HHS Confidential Information before their access is provided?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
13. Is Applicant/Bidder willing to perform or submit to a criminal background check on Authorized Users?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
14. Does Applicant/Bidder prohibit the access, creation, disclosure, reception, transmission, maintenance, and storage of Texas HHS Confidential Information with a subcontractor (e.g., cloud services, social media, etc.) unless Texas HHS has approved the subcontractor agreement which must include compliance and liability clauses with the same requirements as the Applicant/Bidder?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:

15. Does Applicant/Bidder keep current on security updates/patches (including firmware, software and applications) for computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
16. Do Applicant/Bidder's computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information contain up-to-date anti-malware and antivirus protection?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
17. Does the Applicant/Bidder review system security logs on computing systems that access or store Texas HHS Confidential Information for abnormal activity or security concerns on a regular basis?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
18. Notwithstanding records retention requirements, does Applicant/Bidder's disposal processes for Texas HHS Confidential Information ensure that Texas HHS Confidential Information is destroyed so that it is unreadable or undecipherable?	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:
19. Does the Applicant/Bidder ensure that all public facing websites and mobile applications containing Texas HHS Confidential Information meet security testing standards set forth within the Texas Government Code (TGC), Section 2054.516; including requirements for implementing vulnerability and penetration testing and addressing identified vulnerabilities? *For more information regarding TGC, Section 2054.516 DATA SECURITY PLAN FOR ONLINE AND MOBILE APPLICATIONS, please refer to: https://legiscan.com/TX/text/HB8/2017*	◯ Yes ◯ No
Action Plan for Compliance with a Timeline:	Compliance Date:

SECTION D: SIGNATURE AND SUBMISSION (to be completed by Applicant/Bidder)

Please sign the form digitally, if possible. If you can't, provide a handwritten signature.

1. I certify that all of the information provided in this form is truthful and correct to the best of my knowledge. If I learn that any such information was not correct, I agree to notify Texas HHS of this immediately.

2. Signature	**3.** Title	**4.** Date:
DocuSigned by: Whitney S. Craig, Dr.PH, MPH 83EBFB35036D49F...	Health Services Manager	April 3, 2023

To **submit** the completed, signed form:

- Email the form as an attachment to the appropriate Texas HHS Contract Manager(s).

Section E: To Be Completed by Texas HHS Agency Staff:

Agency(s): HHSC: ☐ DFPS: ☐ DSHS: ☐	Requesting Department(s):
Legal Entity Tax Identification Number (TIN) (Last four Only): ■■■■■■■	PO/Contract(s) #:

Contract Manager:	Contract Manager Email Address:	Contract Manager Telephone #:
Contract Manager:	Contract Manager Email Address:	Contract Manager Telephone #:
Contract Manager:	Contract Manager Email Address:	Contract Manager Telephone #:
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DocuSign Envelope ID: 5B5E1A70-6A59-4244-8B65-9A0987747F10

INSTRUCTIONS FOR COMPLETING THE SECURITY AND PRIVACY INQUIRY (SPI)

Below are instructions for Applicants, Bidders and Contractors for Texas Health and Human Services requiring the Attachment 2, Security and Privacy Inquiry (SPI) to the Data Use Agreement (DUA). Instruction item numbers below correspond to sections on the SPI form.

If you are a bidder for a new procurement/contract, in order to participate in the bidding process, you must have corrected any "No" responses (except A9a) prior to the contract award date. If you are an applicant for an open enrollment, you must have corrected any "No" answers (except A9a and A11) prior to performing any work on behalf of any Texas HHS agency.

For any questions answered "No" (except A9a and A11), an *Action Plan for Compliance with a Timeline* must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

SECTION A. APPLICANT /BIDDER INFORMATION

Item #1. *Only contractors that access, transmit, store, and/or maintain Texas HHS Confidential Information will complete and email this form as an attachment to the appropriate Texas HHS Contract Manager.*

Item #2. Entity or Applicant/Bidder Legal Name. *Provide the legal name of the business (the name used for legal purposes, like filing a federal or state tax form on behalf of the business, and is not a trade or assumed named "dba"), the legal tax identification number (last four numbers only) of the entity or applicant/bidder, the address of the corporate or main branch of the business, the telephone number where the business can be contacted regarding questions related to the information on this form and the website of the business, if a website exists.*

Item #3. Number of Employees, at all locations, in Applicant/Bidder's workforce. *Provide the total number of individuals, including volunteers, subcontractors, trainees, and other persons who work for the business. If you are the only employee, please answer "1."*

Item #4. Number of Subcontractors. *Provide the total number of subcontractors working for the business. If you have none, please answer "0" zero.*

Item #5. Number of unduplicated individuals for whom Applicant/Bidder reasonably expects to handle HHS Confidential Information during one year. *Select the radio button that corresponds with the number of clients/consumers for whom you expect to handle Texas HHS Confidential Information during a year. Only count clients/consumers once, no matter how many direct services the client receives during a year.*

Item #5. Name of Information Technology Security Official and Name of Privacy Official for Applicant/Bidder. *As with all other fields on the SPI, this is a required field. This may be the same person and the owner of the business if such person has the security and privacy knowledge that is required to implement the requirements of the DUA and respond to questions related to the SPI. In 4.A. provide the name, address, telephone number, and email address of the person whom you have designated to answer any security questions found in Section C and in 4.B. provide this information for the person whom you have designated as the person to answer any privacy questions found in Section B. The business may contract out for this expertise; however, designated individual(s) must have knowledge of the business's devices, systems and methods for use, disclosure, creation, receipt, transmission and maintenance of Texas HHS Confidential Information and be willing to be the point of contact for privacy and security questions.*

Item #6. Type(s) of HHS Confidential Information the Entity or Applicant/Bidder Will Create, Receive, Maintain, Use, Disclose or Have Access to: *Provide a complete listing of all Texas HHS Confidential Information that the Contractor will create, receive, maintain, use, disclose or have access to. The DUA section Article 2, Definitions, defines Texas HHS Confidential Information as:*

> *"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of Texas HHS that consists of or includes any or all of the following:*
>
> *(1) Client Information;*
> *(2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;*
> *(3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;*

(4) Federal Tax Information;
(5) Personally Identifiable Information;
(6) Social Security Administration Data, including, without limitation, Medicaid information;
(7) All privileged work product;
(8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

Definitions for the following types of confidential information can be found the following sites:

- *Health Insurance Portability and Accountability Act (HIPAA) - http://www.hhs.gov/hipaa/index.html*
- *Criminal Justice Information Services (CJIS) - https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center*
- *Internal Revenue Service Federal Tax Information (IRS FTI) - https://www.irs.gov/pub/irs-pdf/p1075.pdf*
- *Centers for Medicare & Medicaid Services (CMS) - https://www.cms.gov/Regulations-and-Guidance/Regulations-and-Guidance.html*
- *Social Security Administration (SSA) - https://www.ssa.gov/regulations/*
- *Personally Identifiable Information (PII) - http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf*

Item #7. Number of Storage devices for Texas HHS Confidential Information. *The total number of devices is automatically calculated by exiting the fields in lines a - d. Use the <Tab> key when exiting the field to prompt calculation, if it doesn't otherwise sum correctly.*

- ***Item 7a. Devices****. Provide the number of personal user computers, devices, and drives (including mobile devices, laptops, USB drives, and external drives) on which your business stores or will store Texas HHS Confidential Information.*
- ***Item 7b. Servers****. Provide the number of servers not housed in a data center or "in the cloud," on which Texas HHS Confidential Information is stored or will be stored. A server is a dedicated computer that provides data or services to other computers. It may provide services or data to systems on a local area network (LAN) or a wide area network (WAN) over the Internet. If none, answer "0" (zero).*
- ***Item 7c. Cloud Services****. Provide the number of cloud services to which Texas HHS Confidential Information is stored. Cloud Services involve using a network of remote servers hosted on the Internet to store, manage, and process data, rather than on a local server or a personal computer. If none, answer "0" (zero.)*
- ***Item 7d. Data Centers.*** *Provide the number of data centers in which you store Texas HHS Confidential Information. A Data Center is a centralized repository, either physical or virtual, for the storage, management, and dissemination of data and information organized around a particular body of knowledge or pertaining to a particular business. If none, answer "0" (zero).*

Item #8. Number of unduplicated individuals for whom the Applicant/Bidder reasonably expects to handle Texas HHS Confidential Information during one year*. Select the radio button that corresponds with the number of clients/consumers for whom you expect to handle Confidential Information during a year. Only count clients/consumers once, no matter how many direct services the client receives during a year.*

Item #9. HIPAA Business Associate Agreement*.*

- ***Item #9a.*** *Answer "Yes" if your business will use, disclose, create, receive, transmit, or store information relating to a client/consumer's healthcare on behalf of the Department of State Health Services, the Department of Disability and Aging Services, or the Health and Human Services Commission for treatment, payment, or operation of Medicaid or Medicaid clients. If your contract does not include HIPAA covered information, respond "no." If "no," a compliance plan is not required.*
- ***Item #9b.*** *Answer "Yes" if your business has a notice of privacy practices (a document that explains how you protect and use a client/consumer's healthcare information) displayed either on a website (if one exists for your business) or in your place of business (if that location is open to clients/consumers or the public). If your contract does not include HIPAA covered information, respond "N/A."*

Item #10. Subcontractors*. If your business responded "0" to question 4 (number of subcontractors), Answer "N/A" to Items 10a and 10b to indicate not applicable.*

- ***Item #10a.*** *Answer "Yes" if your business requires that all subcontractors sign Attachment 1 of the DUA.*
- ***Item #10b.*** *Answer "Yes" if your business obtains Texas HHS approval before permitting subcontractors to handle Texas HHS Confidential Information on your business's behalf.*

Item #11. Optional Insurance. *Answer "yes" if applicant has optional insurance in place to provide coverage for a Breach or any*

other situations listed in this question. If you are not required to have this optional coverage, answer "N/A" A compliance plan is not required.

SECTION B. PRIVACY RISK ANALYSIS AND ASSESSMENT

Reasonable and appropriate written Privacy and Security policies and procedures are required, even for sole proprietors who are the only employee, to demonstrate how your business will safeguard Texas HHS Confidential Information and respond in the event of a Breach of Texas HHS Confidential Information. To ensure that your business is prepared, all of the items below must be addressed in your written Privacy and Security policies and procedures.

Item #1. Answer "Yes" if you have written policies in place for each of the areas (a-o).

- **Item #1a.** Answer "yes" if your business has written policies and procedures that identify everyone, including subcontractors, who are authorized to use Texas HHS Confidential Information. The policies and procedures should also identify the reason why these Authorized Users need to access the Texas HHS Confidential Information and this reason must align with the Authorized Purpose described in the Scope of Work or description of services in the Base Contract with the Texas HHS agency.
- **Item #1b.** Answer "Yes" if your business has written policies and procedures that require your employees (including yourself), your volunteers, your trainees, and any other persons whose work you direct, to comply with the requirements of HIPAA, if applicable, and other confidentiality laws as they relate to your handling of Texas HHS Confidential Information. Refer to the laws and rules that apply, including those referenced in the DUA and Scope of Work or description of services in the Base Contract.
- **Item #1c.** Answer "Yes" if your business has written policies and procedures that limit the Texas HHS Confidential Information you disclose to the minimum necessary for your workforce and subcontractors (if applicable) to perform the obligations described in the Scope of Work or service description in the Base Contract. (e.g., if a client/consumer's Social Security Number is not required for a workforce member to perform the obligations described in the Scope of Work or service description in the Base Contract, then the Social Security Number will not be given to them.) If you are the only employee for your business, policies and procedures must not include a request for, or use of, Texas HHS Confidential Information that is not required for performance of the services.
- **Item #1d.** Answer "Yes" if your business has written policies and procedures that explain how your business would respond to an actual or suspected breach of Texas HHS Confidential Information. The written policies and procedures, at a minimum, must include the three items below. If any response to the three items below are no, answer "no."
  - **Item #1di.** Answer "Yes" if your business has written policies and procedures that require your business to immediately notify Texas HHS, the Texas HHS Agency, regulatory authorities, or other required Individuals or Authorities of a Breach as described in Article 4, Section 4 of the DUA.
    Refer to Article 4, Section 4.01:

    Initial Notice of Breach *must be provided in accordance with Texas HHS and DUA requirements with as much information as possible about the Event/Breach and a name and contact who will serve as the single point of contact with HHS both on and off business hours. Time frames related to Initial Notice include:*
    - *within one hour of Discovery of an Event or Breach of Federal Tax Information, Social Security Administration Data, or Medicaid Client Information*
    - *within 24 hours of all other types of Texas HHS Confidential Information* ***48-hour Formal Notice*** *must be provided no later than 48 hours after Discovery for protected health information, sensitive personal information or other non-public information and must include applicable information as referenced in Section 4.01 (C) 2. of the DUA.*
  - **Item #1dii.** Answer "Yes" if your business has written policies and procedures require you to have and follow a written breach response plan as described in Article 4 Section 4.02 of the DUA.
  - **Item #1diii.** Answer "Yes" if your business has written policies and procedures require you to notify Reporting Authorities and Individuals whose Texas HHS Confidential Information has been breached as described in Article 4 Section 4.03 of the DUA.
- **Item #1e.** Answer "Yes" if your business has written policies and procedures requiring annual training of your entire workforce on matters related to confidentiality, privacy, and security, stressing the importance of promptly reporting any Event or Breach, outlines the process that you will use to require attendance and track completion for employees who failed to complete annual training.

- **Item #1f.** Answer "Yes" if your business has written policies and procedures requiring you to allow individuals (clients/consumers) to access their individual record of Texas HHS Confidential Information, and allow them to amend or correct that information, if applicable.
- **Item #1g.** Answer "Yes" if your business has written policies and procedures restricting access to Texas HHS Confidential Information to only persons who have been authorized and trained on how to handle Texas HHS Confidential Information
- **Item #1h.** Answer "Yes" if your business has written policies and procedures requiring sanctioning of any subcontractor, employee, trainee, volunteer, or anyone whose work you direct when they have accessed Texas HHS Confidential Information but are not authorized to do so, and that you have a method of proving that you have sanctioned such an individuals. If you are the only employee, you must demonstrate how you will document the noncompliance, update policies and procedures if needed, and seek additional training or education to prevent future occurrences.
- **Item #1i.** Answer "Yes" if your business has written policies and procedures requiring you to update your policies within 60 days after you have made changes to how you use or disclose Texas HHS Confidential Information.
- **Item #1j.** Answer "Yes" if your business has written policies and procedures requiring you to restrict attempts to take de-identified data and re-identify it or restrict any subcontractor, employee, trainee, volunteer, or anyone whose work you direct, from contacting any individuals for whom you have Texas HHS Confidential Information except to perform obligations under the contract, or with written permission from Texas HHS.
- **Item #1k.** Answer "Yes" if your business has written policies and procedures prohibiting you from using, disclosing, creating, maintaining, storing or transmitting Texas HHS Confidential Information outside of the United States.
- **Item #1l.** Answer "Yes" if your business has written policies and procedures requiring your business to cooperate with HHS agencies or federal regulatory entities for inspections, audits, or investigations related to compliance with the DUA or applicable law.
- **Item #1m.** Answer "Yes" if your business has written policies and procedures requiring your business to use appropriate standards and methods to destroy or dispose of Texas HHS Confidential Information. Policies and procedures should comply with Texas HHS requirements for retention of records and methods of disposal.
- **Item #1n.** Answer "Yes" if your business has written policies and procedures prohibiting the publication of the work you created or performed on behalf of Texas HHS pursuant to the DUA, or other Texas HHS Confidential Information, without express prior written approval of the HHS agency.

Item #2. Answer "Yes" if your business has a current training program that meets the requirements specified in the SPI for you, your employees, your subcontractors, your volunteers, your trainees, and any other persons under you direct supervision.

Item #3. Answer "Yes" if your business has privacy safeguards to protect Texas HHS Confidential Information as described in the SPI.

Item #4. Answer "Yes" if your business maintains current lists of persons in your workforce, including subcontractors (if applicable), who are authorized to access Texas HHS Confidential Information. If you are the only person with access to Texas HHS Confidential Information, please answer "yes."

Item #5. Answer "Yes" if your business and subcontractors (if applicable) monitor for and remove from the list of Authorized Users, members of the workforce who are terminated or are no longer authorized to handle Texas HHS Confidential Information. If you are the only one with access to Texas HHS Confidential Information, please answer "Yes."

SECTION C. SECURITY RISK ANALYSIS AND ASSESSMENT

This section is about your electronic systems. If you DO NOT store Texas HHS Confidential Information in electronic systems (e.g., laptop, personal computer, mobile device, database, server, etc.), select the "No Electronic Systems" box and respond "Yes" for all questions in this section.

Item #1. Answer "Yes" if your business does not "offshore" or use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information outside of the United States. If you are not certain, contact your provider of technology services (application, cloud, data center, network, etc.) and request confirmation that they do not off-shore their data.

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Item #2. Answer "Yes" if your business uses a person or company who is knowledgeable in IT security to maintain or oversee the configurations of your business's computing systems and devices. You may be that person, or you may hire someone who can provide that service for you.

Item #3. Answer "Yes" if your business monitors and manages access to Texas HHS Confidential Information (i.e., reviews systems to ensure that access is limited to Authorized Users; has formal processes for granting, validating, and reviews the need for remote access to Authorized Users to Texas HHS Confidential Information, etc.). If you are the only employee, answer "Yes" if you have implemented a process to periodically evaluate the need for accessing Texas HHS Confidential Information to fulfill your Authorized Purposes.

Item #4. Answer "Yes" if your business has implemented a system for changing the password a system initially assigns to the user (also known as the default password), and requires users to change their passwords at least every 90 days, and prohibits the creation of weak passwords for all computer systems that access or store Texas HHS Confidential Information (e.g., a strong password has a minimum of 8 characters with a combination of uppercase, lowercase, special characters, and numbers, where possible). If your business uses a Microsoft Windows system, refer to the Microsoft website on how to do this, see example:
https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/password-policy

Item #5. Answer "Yes" if your business assigns a unique user name and private password to each of your employees, your subcontractors, your volunteers, your trainees and any other persons under your direct control who will use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information.

Item #6. Answer "Yes" if your business locks the access after a certain number of failed attempts to login and after 15 minutes of user inactivity on all computing devices that access or store Texas HHS Confidential Information. If your business uses a Microsoft Windows system, refer to the Microsoft website on how to do this, see example:
https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/account-lockout-policy

Item #7. Answer "Yes" if your business secures, manages, and encrypts remote access, such as: using Virtual Private Network (VPN) software on your home computer to access Texas HHS Confidential Information that resides on a computer system at a business location or, if you use wireless, ensuring that the wireless is secured using a password code. If you do not access systems remotely or over wireless, answer "Yes."

Item #8. Answer "Yes" if your business updates the computer security settings for all your computers and electronic systems that access or store Texas HHS Confidential Information to prevent hacking or breaches (e.g., non-essential features or services have been removed or disabled to reduce the threat of breach and to limit opportunities for hackers or intruders to access your system). For example, Microsoft's Windows security checklist:
https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/how-to-configure-security-policy-settings

Item #9. Answer "Yes" if your business secures physical access to computer, paper, or other systems containing Texas HHS Confidential Information from unauthorized personnel and theft (e.g., door locks, cable locks, laptops are stored in the trunk of the car instead of the passenger area, etc.). If you are the only employee and use these practices for your business, answer "Yes."

Item #10. Answer "Yes" if your business uses encryption products to protect Texas HHS Confidential Information that is transmitted over a public network (e.g., the Internet, WIFI, etc.) or that is stored on a computer system that is physically or electronically accessible to the public (FIPS 140-2 validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.) For more information regarding FIPS 140-2 encryption products, please refer to: *http://csrc.nist.gov/publications/fips*).

Item #11. Answer "Yes" if your business stores Texas HHS Confidential Information on encrypted end-user electronic devices (e.g., laptops, USBs, tablets, smartphones, external hard drives, desktops, etc.) and can produce evidence of the encryption, such as, a screen shot or a system report (FIPS 140-2 encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data). For more information regarding FIPS 140-2 validated encryption products, please refer to: *http://csrc.nist.gov/publications/fips*). If you do not utilize end-user electronic devices for storing Texas HHS Confidential Information, answer "Yes."

Item #12. Answer "Yes" if your business requires employees, volunteers, trainees and other workforce members to sign a document that clearly outlines their responsibilities for protecting Texas HHS Confidential Information and associated systems containing Texas HHS Confidential Information before they can obtain access. If you are the only employee answer "Yes" if you have signed or are willing to sign the DUA, acknowledging your adherence to requirements and responsibilities.

Item #13. Answer "Yes" if your business is willing to perform a criminal background check on employees, subcontractors, volunteers, or trainees who access Texas HHS Confidential Information. If you are the only employee, answer "Yes" if you are willing to submit to a background check.

Item #14. Answer "Yes" if your business prohibits the access, creation, disclosure, reception, transmission, maintenance, and storage of Texas HHS Confidential Information on Cloud Services or social media sites if you use such services or sites, and there is a Texas HHS approved subcontractor agreement that includes compliance and liability clauses with the same requirements as the Applicant/Bidder. If you do not utilize Cloud Services or media sites for storing Texas HHS Confidential Information, answer "Yes."

Item #15. Answer "Yes" if your business keeps current on security updates/patches (including firmware, software and applications) for computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information. If you use a Microsoft Windows system, refer to the Microsoft website on how to ensure your system is automatically updating, see example:
https://portal.msrc.microsoft.com/en-us/

Item #16. Answer "Yes" if your business's computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information contain up-to-date anti-malware and antivirus protection. If you use a Microsoft Windows system, refer to the Microsoft website on how to ensure your system is automatically updating, see example:
https://docs.microsoft.com/en-us/windows/security/threat-protection/

Item #17. Answer "Yes" if your business reviews system security logs on computing systems that access or store Texas HHS Confidential Information for abnormal activity or security concerns on a regular basis. If you use a Microsoft Windows system, refer to the Microsoft website for ensuring your system is logging security events, see example:
https://docs.microsoft.com/en-us/windows/security/threat-protection/auditing/basic-security-audit-policies

Item #18. Answer "Yes" if your business disposal processes for Texas HHS Confidential Information ensures that Texas HHS Confidential Information is destroyed so that it is unreadable or undecipherable. Simply deleting data or formatting the hard drive is not enough; ensure you use products that perform a secure disk wipe. Please see NIST SP 800-88 R1, *Guidelines for Media Sanitization* and the applicable laws and regulations for the information type for further guidance.

Item #19. Answer "Yes" if your business ensures that all public facing websites and mobile applications containing HHS Confidential Information meet security testing standards set forth within the Texas Government Code (TGC), Section 2054.516

SECTION D. SIGNATURE AND SUBMISSION

Click on the signature area to digitally sign the document. Email the form as an attachment to the appropriate Texas HHS Contract Manager.

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ATTACHMENT G

TEXAS
Health and Human Services

Health and Human Services (HHS)
Additional Provisions – Grant Funding
Version 1.0
Effective: February 2021

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ADDITIONAL PROVISIONS

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Grant Agreement. Terms included in these Additional Provisions and not otherwise defined have the meanings assigned to them in **HHS UNIFORM TERMS AND CONDITIONS, ATTACHMENT E**.

1. ELECTRICAL ITEMS

All electrical items purchased under this Grant Agreement or used in the performance of approved and eligible grant-funded activities must meet all applicable Occupational Safety and Health Administration (OSHA) standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

2. DISASTER SERVICES

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster declared by the appropriate federal official, Grantee/Contractor may be called upon to assist the System Agency in providing the following services:

i. Community evacuation;
ii. Health and medical assistance;
iii. Assessment of health and medical needs;
iv. Health surveillance;
v. Medical care personnel;
vi. Health and medical equipment and supplies;
vii. Patient evacuation;
viii. In-hospital care and hospital facility status;
ix. Food, drug and medical device safety;
x. Worker health and safety;
xi. Mental health and substance abuse;
xii. Public health information;
xiii. Vector control and veterinary services; and
xiv. Victim identification and mortuary services.

3. SERVICES AND INFORMATION FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

A. Grantee shall take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities. Meaningful access may entail providing language assistance services, including oral interpretation and written translation, if necessary. More information can be found at https://www.lep.gov/.

B. Grantee shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.

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C. Grantee shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

4. INTERIM EXTENSION AMENDMENT

A. Prior to or on the expiration date of this Grant Agreement, the Parties agree that this Grant Agreement can be extended as provided under this section.
B. The System Agency shall provide written notice of interim extension amendment to the Grantee under one of the following circumstances:
   i. Continue provision of services in response to a disaster declared by the governor; or
   ii. To ensure that services are provided to clients without interruption.
C. The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
D. Grantee will provide and invoice for services in the same manner that is stated in the Grant Agreement.
E. An interim extension under subsection (B)(i) of this section shall extend the term of the Grant Agreement not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
F. An interim extension under subsection (B)(i) of this section shall be a one-time extension for a period of time determined by the System Agency.

5. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

A. Grantee shall immediately report in writing to its assigned System Agency contract manager when Grantee learns of or has any reason to believe it or any person with ownership or controlling interest in Grantee, or their agent, employee, subcontractor or volunteer who is providing services under this Grant Agreement has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
B. Grantee shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

6. NOTICE OF GRANT AGREEMENT/CONTRACT ACTION

Grantee shall notify the assigned System Agency contract manager if Grantee has any grant agreement or contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five business days of becoming aware of the action and include the following:

i. Reason for such action;
ii. Name and contact information of the local, state or federal department or agency or entity;
iii. Effective start date of the grant agreement/contract;

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iv. Date of suspension or termination; and
v. Grant agreement/contract or case reference number.

7. NOTICE OF BANKRUPTCY

Grantee shall notify in writing the assigned System Agency contract manager of its plan to seek bankruptcy protection within five business days of such action by Grantee.

8. NOTICE OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL

The Grantee shall notify in writing the assigned System Agency contract manager within ten business days of any change to the Grantee's Contact Person or Key Personnel.

9. BYRD ANTI-LOBBYING AMENDMENT

Grantee certifies that no federal appropriated funds have been paid or will be paid to any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on its behalf to obtain, extend, or modify this contract or grant. If non-federal funds are used by Grantee to conduct such lobbying activities, Grantee shall promptly file the prescribed disclosure form. In accordance with 31 U.S.C. §1352(b)(5), Grantee acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditures prohibition and the declaration requirement.

10. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Grantee represents and warrants that it will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

11. COMPLIANCE WITH LAWS, RULES, AND REQUIREMENTS

Grantee represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Grantee represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Grantee, the more restrictive requirement applies.

12. DISCLOSURE OF VIOLATIONS OF FEDERAL CRIMINAL LAW

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Grantee represents and warrants its compliance with 2 CFR §200.113 which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity and the reporting of certain civil, criminal, or administrative proceedings to SAM.

13. EXCLUDED PARTIES

Grantee certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*" published by the United States Department of Treasury, Office of Foreign Assets Control.

14. NO CONFLICTS OF INTEREST (FEDERAL)

Grantee represents and warrants its compliance with the Federal awarding agency's conflict of interest policies in accordance with 2 CFR § 200.112.

15. OPEN MEETINGS

If the Grantee is a governmental entity, Grantee represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special, and called meetings of a governmental body to be open to the public, except as otherwise provided by law.

16. RECORDS RETENTION (FEDERAL)

Grantee represents and warrants its compliance with the records retention requirements of 2 CFR §200.333. System Agency reserves the right to direct Grantee to retain documents for a longer period of time or transfer certain records to System Agency's custody when it is determined the records possess longer term retention value. Grantee must include the substance of this clause in all subaward and subcontracts.

17. SUBAWARD MONITORING

Grantee represents and warrants that it will monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with applicable statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

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OMB Number: 4040-0007
Expiration Date: 02/28/2025

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C.§§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U. S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
DocuSigned by: Whitney S. Craig, Dr.PH, MPH 83EBFB35036D49F...	Health Services Manager
APPLICANT ORGANIZATION	DATE SUBMITTED
City of Midland Health Department	April 3, 2023

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CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

* APPLICANT'S ORGANIZATION

City of Midland Health Department

* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix: Dr. * First Name: Whitney Middle Name:

* Last Name: Craig Suffix:

* Title: Health Services Manager

* SIGNATURE: DocuSigned by: Whitney S. Craig, Dr.PH, MPH 83EBFB35036D49F... * DATE: April 3, 2023

DocuSign Envelope ID: 5B5E1A70-6A59-4244-8B65-9A0987747F10

TEXAS Health and Human Services | Texas Department of State Health Services

Fiscal Federal Funding Accountability and Transparency Act (FFATA)

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. ***If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why*.**

Legal Name of Contractor:	**FFATA Contact: (Name, Email and Phone Number):**
City of Midland Health Department	Crystal Garcia crgarcia@midlandtexas.gov 432-681-7218
Primary Address of Contractor:	**Zip Code: 9-digits required www.usps.com**
3303 W. Illinois Ave Sp. 22 Midland, TX 79703	79703-6232
Unique Entity ID (UEI): This number replaces the DUNS www.sam.gov	**State of Texas Comptroller Vendor Identification Number (VIN) – 14 digits:**
CPZ1T3B85A64	17560006086016

Printed Name of Authorized Representative:	**Signature of Authorized Representative**
Whitney S. Craig, DrPH, MPH	DocuSigned by: Whitney S. Craig, DrPH, MPH 83EBFB35036D49F...
Title of Authorized Representative	**Date Signed**
Health Services Manager	April 3, 2023

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Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete, and correct to the best of my knowledge.

Did your organization have a gross income, from all sources, of less than $300,000 in your previous tax year? Yes No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification. If your answer is "No", answer questions "A" and "B".

A. Certification Regarding % of Annual Gross from Federal Awards.
Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year? Yes ☐ No ☐

B. Certification Regarding Amount of Annual Gross from Federal Awards.
Did your organization receive $25 million or more in annual gross revenues from federal awards in the preceding fiscal year? Yes ☐ No ☐

If your answer is "Yes" to both question "A" and "B", you must answer question "C".
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

C. Certification Regarding Public Access to Compensation Information.
Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes ☐ No ☐

If your answer is "Yes" to this question, where can this information be accessed?

If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.

Provide compensation information here:

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Public Health Emergency Preparedness
Work Plan and Vulnerable Populations Plan Template
Budget Period (BP) 5- FY24
Term: 7/1/2023 – 6/30/2024

Due: February 3, 2023

Jurisdiction: City of Midland Health Department

Report Completed by: John Floyd

Email: jfloyd@midlandtexas.gov

Phone: 432-681-7648

Instructions: This template should be used to outline the work plan for Budget Period (BP) 5 – FY24 and provide a general summary of planned activities. Jurisdiction should:

- Select three (3) or more capabilities to work on in BP5– FY24.
- Develop the work plan by identifying jurisdictional needs within a capability, assessing current resources, and developing a plan to address identified gaps. Work Plan tasks and activities may be linked to the ongoing COVID-19 response.
- **Carrying capabilities forward from previous budget periods:** Capabilities for BP5– FY24 may be the same as prior year selections. If the jurisdiction intends to carry work forward from BP4 – FY23 to BP5 – FY24, please mark this on page 3.
- **Changing capabilities:** Capabilities can be changed during the budget period. If there is a change to capabilities, please email a notification to the **PHEP email inbox** (PHEP@dshs.texas.gov).
- **Medical Countermeasures:** If Capabilities 8 and/or 9 (medical countermeasures) are selected, jurisdictions must select at least one (1) additional capability.
- Complete the **Vulnerable Populations Planning Module**.

Please email the completed jurisdictional work plan to the **PHEP email inbox** (PHEP@dshs.texas.gov) by **February 3, 2023**

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Public Health Emergency Preparedness

Work Plan Template

Work Plan Executive Summary:

Please provide a very brief overview of the jurisdiction's goals for BP5 – FY24.

- Increase community resilience and self sufficiency;
- Ensure situational awareness is maintained between Local Health Department (LHD), Regional Health Medical Operations Center (RHMOC), City/ County Emergency Operations Center (EOC) and other response partners during an incident or event of Public Health Concern;
- Improve capability of disseminating timely and accurate messages of Public Health Significance to affected population;
- Improve ability to conduct Medical Countermeasure Dispensing operations;
- Maintain surveillance and epidemiological investigation capability;
- Increase ability to recruit and manage volunteers.

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Capabilities

FY23: Please mark the capabilities that were addressed during BP4– FY23 in the column labeled *FY22*.

FY24: Please mark three (3) capabilities that will be addressed during BP5 – FY24 in the column labeled *FY24*.

COVID-19 Carryover: Please mark if capabilities that will be carried over to FY24 due to COVD-19 response activities in the column labeled *COVID-19 Carryover*.

CAPABILITY	FY23	FY24	COVID-19 Carryover
Community Preparedness	x	x	☐
Community Recovery	☐	☐	☐
Emergency Operations Coordination	x	x	x
Emergency Public Information and Warning	x	x	x
Fatality Management	☐	☐	☐
Information Sharing	☐	☐	☐
Mass Care	☐	☐	☐
Medical Countermeasures Dispensing and Administration	x	x	x
Medical Materiel Management and Distribution	☐	☐	☐
Medical Surge	x	x	x
Nonpharmaceutical Intervention	☐	☐	☐
Public Health Laboratory Testing	☐	☐	☐
Public Health Surveillance and Epidemiological Investigation	x	x	x
Responder Safety and Health	☐	☐	☐
Volunteer Management	☐	x	☐

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Capability	
x Capability 1: Community Preparedness	
Assessment of current relevant resources:	• Energy Sector has well established safety advocacy groups in place that are willing to serve as conduit for information and training, most notably Permian Basin Service, Transmission, Exploration & Production Safety Network (PBSTEPS) and the Damage Prevention Council of Texas (DPC) • The Petroleum Professional Development Center (PPDC) of Midland College offers numerous safety courses to the community • Red Cross provides training • Continue to give Community Health Educator information to push out
Identified needs/gaps:	• No Community Emergency Response Team (CERT) program • Perception / belief that notifying Emergency Management is only action that needs to be taken
Objective(s):	• Increase ability of the City of Midland / Midland County to prepare for, withstand, and recover from a public health incident / disaster • Increase community resilience
Outcome(s):	• Increased collaboration with safety organizations, i.e. Damage Prevention Council of Texas (DPC) and Permian Basin Safety Transmission Exploration & Production Safety Network (PBSTEPS) in regards to training and sharing of information • Increased presence at Health Fairs and other Community Outreach Events • Enhanced development and maintenance of cooperation between public, civic, professional, and voluntary agencies • Implementation and evaluation of health education, clinical training programs, conferences, and other associated activities for individual, group, and/or community needs
Output(s):	• Validation through real world events and / or incidents • Testing capabilities through drills / exercises • Completion of After Action Report (AAR) • Implementation of Improvement Action Plan (IAP)

Supporting Activities

Activity Description	Lead Assigned Personnel	Contributing Partners (if any)	Consultant (if any)	Estimated Date of Completion
Help facilitate Hazard Vulnerability Assessment (HVA)	City of Midland PHEP Coordinator	• PBSTEPS • DPC of Texas • Red Cross • JRAC	N/A	6-30-2024
Promote educational opportunities	City of Midland PHEP Coordinator	• Red Cross • Midland College • DPC • PBSTEPS	N/A	6-30-2024

Capability

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x Capability 3: Emergency Operations Coordination	

Assessment of current relevant resources:	• Public Health Emergency Operation Center (PHEOC) Activation Guidelines updated and disseminated.
	  ○ Public Health Incident Management websites are hyperlinked in these guidelines
	  ○ Templates for completing Situation Reports and ICS Forms are included
	• Access to Incident Management Websites such as the Public Health Information Network, EMResources, Texas Disaster Volunteer Registry and Veoci

Identified needs/gaps:	• Support for the Public Health Information Network (PHIN) ended October 2021. There is a lack of familiarity with the system replacing PHIN • City of Midland Health Department Command Staff has not received ICS 300 and ICS 400 Expanding Incident Training • Majority of staff lack experience using Veoci
Objective(s):	• Ensure situational awareness is maintained between Local Health Department (LHD), Regional Health Medical Operations Center (RHMOC), City/ County Emergency Operations Center (EOC) and other response partners during an incident or event of Public Health Concern
Outcome(s):	• Documentation of City of Midland Health Department Command Staff receiving formal, organized EOC Operations Coordination training. • Documentation of City of Midland Health Department Command Staff receiving formal, organized training on Veoci
Output(s):	• Validation through real world events and / or incidents • Testing capabilities through drills / exercises • Completion After Action Report (AAR) • Implementation Improvement Action Plan (IAP)

Supporting Activities

Activity Description	Lead Assigned Personnel	Contributing Partners (if any)	Consultant (if any)	Estimated Date of Completion
Ensure City of Midland Health Department command staff receive training on Veoci and ICS 300 and 400	City of Midland PHEP Coordinator	Emergency Management Coordinator	N/A	6-30-2024
Become familiar with PHIN replacement	City of Midland PHEP Coordinator	DSHS	N/A	6-30-2024

Capability

x Capability 4: Emergency Public Information and Warning

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Assessment of current relevant resources:	• "Crisis & Emergency Risk Communication Guidelines" have been developed and disseminated. • Shelf Kits with messaging templates for Class A Biologicals are available both electronically and hard copy. • Website which can be used to disseminate information to affected population. • City of Midland Facebook Page • Some personnel have received CERC training from the CDC Crisis and Emergency Risk Communication (CERC) Online Training program
Identified needs/gaps:	• No documentation of City of Midland Health Department Command Staff receiving Crisis & Emergency Risk Communication Training • No documentation of organized, interdisciplinary training with Public Information Officer • City of Midland Health Department lacks independent social media presence • Pool of personnel with technical skill to update and maintain website is very limited.
Objective(s):	• Improve capability of disseminating timely and accurate messages of Public Health Significance to affected population.
Outcome(s):	• Obtain verifiable documentation that City of Midland Health Department command staff have received Crisis & Emergency Risk Communication Training • Obtain verifiable documentation that City of Midland Health Department command staff have participated in interdisciplinary training with Public Information Officer • Increased number of personnel with capability and skill to manage website. • Increased Credible & Legitimate Social Media Presence / Usage
Output(s):	• Validation through real world events and / or incidents • Testing capabilities through drills / exercises • Completion After Action Report (AAR) • Implementation Improvement Action Plan (IAP)

Supporting Activities

Activity Description	Lead Assigned Personnel	Contributing Partners (if any)	Consultant (if any)	Estimated Date of Completion
Collaborating with PIO to ensure City of Midland Health Department Command Staff receive training to maintain Midland Health & Senior Services website.	City of Midland Health Department PHEP Coordinator	• CivicPlus • City of Midland Public information Officer (PIO)	N/A	6-30-2024
Share links to CDC "Principles of Risk Communication" web based training with PIO and City of Midland Health Department Command Staff	City of Midland Health Department PHEP Coordinator	CDC	N/A	6-30-2024

Capability

x Capability 8: Medical Countermeasure Dispensing and Administration

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Assessment of current relevant resources:	• Robust Unified Command Team established • Sufficient trained staff for First Responder POD • Several team members gained real world experience at COVID 19 Mass Vaccine Dispensing Site • Simplified Screening and Just in Time Training (JITT) Forms available
Identified needs/gaps:	• Increasing population in City of Midland / Midland County has led to the need for more POD's in order to meet dispensing time standards • Loss of existing / identified PODS due to building demolition • Lack of trained core personnel / cadre to staff existing PODS • Lack of signs to direct foot traffic inside PODS
Objective(s):	• Dispense more medication to more people at more POD's in less time.
Outcome(s):	• Increased throughput with a corresponding decreased time as measured in drills and exercises • Increased number of Push Sites / Closed PODS in the City of Midland / Midland County • Increased number of trained cadre / core personnel to serve as foundation of POD staff
Output(s):	• Validation through real world events and / or incidents • Testing capabilities through drills / exercises • Completion After Action Report (AAR) • Implementation Improvement Action Plan (IAP)

Supporting Activities

Activity Description	Lead Assigned Personnel	Contributing Partners (if any)	Consultant (if any)	Estimated Date of Completion
Train personnel at Push Site / Closed PODS to conduct POD / Dispensing operations	City of Midland Health Department PHEP Coordinator	• Unified Command	N/A	6-30-2024
Obtain signs to direct traffic at PODS	City of Midland Health Department PHEP Coordinator	N/A	N/A	6-30-2024

Capability

x Capability 13: Public Health Surveillance and Epidemiological Investigation

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Assessment of current relevant resources:	• Funding made available to hire additional staff • Access to Region 9 / 10 Epidemiologist • Access to Electronic Disease Reporting Systems
Identified needs/gaps:	• Reallocation of available Surveillance and Epidemiological Investigation resources to COVID 19 response made it difficult to address other Reportable Conditions and Diseases • Difficulty recruiting and retaining Disease Investigators, e.g, Disease Investigation section is chronically understaffed
Objective(s):	• Sustain ability to conduct investigation of both foodborne and infectious disease outbreaks
Outcome(s):	• Increased ability to provide statistical data and reports to jurisdictional leadership and other community stakeholders / partners • Maintenance of surveillance systems that can identify health problems, threats, and environmental hazards • Increased ability to receive and respond to (or investigate) reports 24/7.
Output(s):	• Validation through real world events and / or incidents • Testing capabilities through drills / exercises • Completion After Action Report (AAR) • Implementation Improvement Action Plan (IAP)

Supporting Activities

Activity Description	Lead Assigned Personnel	Contributing Partners (if any)	Consultant (if any)	Estimated Date of Completion
Hire additional staff	Health Department Manager	N/A	N/A	6-30-2024

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Certificate Of Completion

Envelope Id: 5B5E1A706A5942448B659A0987747F10
Subject: HHS001311200020 City of Midland Base - Hazards
Source Envelope:
Document Pages: 115
Certificate Pages: 5
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Signatures: 7
Initials: 0

Status: Completed

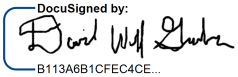
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11493 Sunset Hills Road
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Reston, VA 20190
CMS.InternalRouting@dshs.texas.gov
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Signer Events	Signature	Timestamp
Whitney S. Craig, Dr.PH, MPH wcraig@midlandtexas.gov Health Services Manager City of Midland Health & Senior Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/3/2023 8:55:54 AM ID: 1e768c5a-7088-48c5-aba4-c84985874865	DocuSigned by:  83EBFB35036D49F... Signature Adoption: Pre-selected Style Using IP Address: 65.36.71.2	Sent: 3/31/2023 2:45:00 PM Viewed: 4/3/2023 8:55:54 AM Signed: 4/3/2023 9:43:14 AM
Jonah Wilczynski jonah.wilczynski@dshs.texas.gov Unit Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/3/2023 10:48:40 AM ID: 9d4dfcb8-ef05-490b-99d6-9c2a253cabb9	**Completed** Using IP Address: 167.137.1.10	Sent: 4/3/2023 9:43:29 AM Viewed: 4/3/2023 10:48:40 AM Signed: 4/3/2023 10:48:50 AM
PATTY MELCHIOR Patty.Melchior@dshs.texas.gov Director, DSHS CMS Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 5/5/2022 12:43:08 PM ID: f01589da-43a7-481e-996a-7c50409e5d48	**Completed** Using IP Address: 167.137.1.16	Sent: 4/3/2023 10:49:03 AM Viewed: 4/3/2023 12:57:21 PM Signed: 4/3/2023 12:57:45 PM
Dave Gruber David.Gruber@dshs.texas.gov Associate Commissioner for RLHS Texas Health and Human Services Commission Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/3/2021 4:48:45 PM ID: bd2f4497-b4dc-4c51-9974-71b86780cff4	DocuSigned by:  B113A6B1CFEC4CE... Signature Adoption: Drawn on Device Using IP Address: 167.137.1.8	Sent: 4/3/2023 12:58:00 PM Resent: 4/19/2023 1:39:37 PM Resent: 4/20/2023 9:21:24 AM Viewed: 4/20/2023 9:49:18 AM Signed: 4/20/2023 9:49:23 AM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Beverly Taylor Beverly.Taylor@dshs.texas.gov Contract Manager Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/20/2023 9:49:42 AM Viewed: 4/20/2023 2:12:26 PM
CMS Internal Routing Mailbox cms.internalrouting@dshs.texas.gov DSHS Contract Management Section Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/20/2023 9:49:42 AM Resent: 4/20/2023 9:49:45 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/31/2023 2:45:00 PM
Envelope Updated	Security Checked	4/20/2023 9:21:23 AM
Envelope Updated	Security Checked	4/20/2023 9:21:23 AM
Certified Delivered	Security Checked	4/20/2023 9:49:18 AM
Signing Complete	Security Checked	4/20/2023 9:49:23 AM
Completed	Security Checked	4/20/2023 9:49:42 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, DSHS Contract Management Section (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact DSHS Contract Management Section:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: alison.joffrion@hhsc.state.tx.us

To advise DSHS Contract Management Section of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at alison.joffrion@hhsc.state.tx.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request paper copies from DSHS Contract Management Section

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with DSHS Contract Management Section

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify DSHS Contract Management Section as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by DSHS Contract Management Section during the course of your relationship with DSHS Contract Management Section.

City Council Meeting

Item Number: 12

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: **RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF MIDLAND, AN INSTRUMENT GRANTING TO THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS TRANSPORTATION COMMISSION ("GRANTEE"), AN APPROXIMATE 1.26-ACRE DRAINAGE EASEMENT FOR HIGHWAY PURPOSES OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING THE ACCEPTANCE OF GRANTEE'S PAYMENT FOR SAID EASEMENT IN THE AMOUNT OF $177,004.00 (DISTRICT 2) (ENGINEERING SERVICES)**

Purpose:

This agreement will allow the Texas Department of Transportation (TxDOT), construction, relocation, replacement, repair, improvement, operation, and maintenance of storm drain improvements on the property in relation to a portion of Interstate Highway 20 on a 1,2629 acre (55,013 square feet) portion of a 49.14-acre parcel the City of Midland acquired June 10, 2011, and recorded as instrument 2011-11208 in the Midland County records.
.

Recommended City Council Action:

Approve

Fiscal Impact:

Easement consideration as per TXDOT appraisal: $177,004.00

Discussion:

This property was acquired from The Midland Development Corporation and is currently used as a drainage area to allow for further development in that area. TxDOT initiated the drainage easement acquisition with a project notification letter dated January 24, 2023, with an attached appraisal by CBRE which complies with the guidance set forth in the Texas Property Code, Title 4, Chapter 21 and the TxDOT " ROW Appraisal and Review Manual" and dated September 7, 2022.

Morris William Jr.

City Manager's Office

LJA ENGINEERING

1904 W Grand Parkway N, Suite 100, Katy, Texas 77449
t 713.380.4420 f 713.953.5026 LJA.com TBPELS F-1386

January 24, 2023

County: Midland
Federal Project No.: N/A
Highway: Interstate Highway 20

ROW CSJ: 0005-14-099
Parcel ID: P00056485.001 Easement
From: East of CR 1250
To: East of SH 349

By CERTIFIED MAIL, RETURN RECEIPTREQUESTED NO. 7021 0950 0002 1242 6931

The City of Midland Texas, a Texas Home Rule Municipal Corporation
Attn: City Attorney
300 N Loraine
Midland, TX 79701

Dear Property Owners:

In acquiring property rights for the highway system of Texas, the Texas Department of Transportation (the "Department") follows a definite procedure for appraising property interests needed for highway use and for handling personal negotiations with each fee owner. As explained by the Department's negotiator, Kelly Landry, a ☒ drainage easement / ☐highway easement / ☐ temporary construction easement is to be acquired across a portion of your property for the construction or improvement of the above-referenced highway project. The property is located on northwest line of IH 20, west of Agri Street and east of Schlumberger Drive, in Midland, TX 79706, as described in the enclosed legal description and survey (the "Property").

The Department believes at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the Department is authorized to offer you $177,004.00 for the ☒ drainage easement / ☐ highway easement / ☐ temporary construction easement, which includes $177,004.00 for the easement and $0.00 for damages to your remaining property.

This offer to purchase includes the contributory value of the improvement listed below, which is considered to be part of the Property. Since the improvement must be removed, it is the policy of the Department to permit the owners who convey voluntarily to the Department to thereafter retain the improvement, if they wish to do so. The retention value is the estimated amount the improvement would bring if sold on public bids. If you wish to retain title to the following improvement and remove it from the proposed easement area, the amount of the above offer must be reduced by the appropriate retention amount. This option to retain improvements does NOT apply should it become necessary for the Department to acquire the easement by eminent domain.

Improvement	Amount to be Subtracted if Retained
(none)	$(n/a)

If you wish to accept the offer based upon this appraisal, please contact Kelly Landry, who is an employee of LJA Engineering, Inc., an affiliate that is providing acquisition services on behalf of the Department, as soon as possible at 832-515-4816 or klandry@lja.com, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. *Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the Department within the 30-day time deadline.*

In the event the condition of the property changes for any reason, the Department shall have the right to withdraw or modify this offer.

After the date of payment of purchase price for the easement, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire the easement interest in the Property, you will be reimbursed by the Department for any fair and reasonable incidental expenses necessarily incurred in transferring the easement interest in the Property for use by the Department. Expenses eligible for reimbursement may include recording fees, transfer taxes, and similar expenses incidental to conveying the easement interest in the Property to the Department. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the Department failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the Department's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the Department's Relocation Assistance Program. It is emphasized, however, that any benefits that you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a booklet entitled *"Relocation Assistance"*, which will inform you of eligibility requirements, payments, and services that are available.

You have the right to discuss with others any offer or agreement regarding the Department's acquisition of the Property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply to the Department.

Please see the enclosed copy of the proposed instrument that will convey the easement to the Department. Additionally, please see the enclosed copy of the Texas Landowner Bill of Rights.

Also enclosed is a copy of the Department brochure entitled *"Right of Way Purchase",* which the Department trusts will give you a better understanding of the procedures followed by the Department in purchasing property interests for highway purposes. The Department respectfully requests the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the type of facility to be built or concerning the Department's offer or proposed purchase transaction. Also, please do not hesitate to contact Kelly Landry at the telephone number provided above regarding any question you may have.

Finally, enclosed are copies of all appraisal reports relating to the Property being acquired, which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the Department, including the appraisal that determined this offer. These appraisals were prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103, Occupations Code.

Sincerely,

Kelly Landry
Right of Way Agent

ENCLOSURES:
Appraisal Report
Acknowledgment of Receipt of Appraisal Report
Draft Conveyance Instrument
Draft Possession & Use Agreement
Legal Description and Survey of the Property
Texas Landowner Bill of Rights
Acknowledgment of Receipt of Landowner Bill of Rights
“State Right of Way Purchase” Brochure
Information about Brokerage Services

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
CCSJ: 0005-14-092

Description for Parcel P00056485.001 Easement

A description of a 55,013 square feet (or 1.2629 acre) parcel of land situated in Section 11, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 52 and Section 12, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 651, in the City of Midland, Midland County, Texas, and being a portion of a called 49.14 acre tract of land described in General Warranty Deed recorded on June 10, 2011, conveyed by Midland Development Corporation to City of Midland as recorded in Instrument Number 2011-11208, Deed Records, Midland County, Texas, said 55,013 square feet (or 1.2629 acre) parcel of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch iron rod with 2-inch aluminum disk stamped "City of Midland Survey Control" found (controlling monument and record monument) in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 37.815 acre tract conveyed to the State of Texas, as recorded in Volume 577, Page 647, Deed Records, Midland County, Texas, said point being the southwest corner of said 49.14 acre tract and the southeast corner of a called 127.392 acre tract of land described in Special Warranty Deed recorded on July 26, 2006, conveyed by The City of Midland Texas to Midland Development Corporation as recorded in Volume 2717, Page 565, Deed Records, Midland County, Texas, said 5/8-inch iron rod with 2-inch aluminum disk having a surface coordinate of N: 10,674,828.58, E: 1,730,960.83, and being 150.42 feet right of and at a right angle to approved schematic baseline station 1005+96.05;

THENCE, North 59° 44' 28" East, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 792.30 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for the **POINT OF BEGINNING**, said point being the southwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod having a surface coordinate of N: 10,675,227.83, E: 1,731,645.19, and being 150.00 feet right of and at a right angle to approved schematic baseline station 998+03.75;**

THENCE, departing said common line, over and across said 49.14 acre tract the following three (3) courses and distances:

1. North 30° 15' 12" West, a distance of 275.08 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 425.08 feet right of and at a right angle to approved schematic baseline station 998+03.58;**

2. North 59° 44' 48" East, a distance of 200.00 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northeast corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 424.95 feet right of and at a right angle to approved schematic baseline station 996+03.58, from which a 1/2-inch iron rod with "illegible" cap found for an interior ell corner of said 49.14 acre tract, bears North 15° 53' 39" West, a distance of 1,301.38 feet;**

Description for Parcel P00056485.001 Easement

3. South 30° 15' 12" East, a distance of 275.06 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 71.04 acre tract conveyed to the State of Texas, as recorded in Volume 422, Page 369, Deed Records, Midland County, Texas, said point being 149.90 feet right of and at a right angle to approved schematic baseline station 996+03.75, from which a 1/2-inch iron rod with "SCHUMANN ENG CO INC" cap found (controlling monument and record monument) for the southeast corner of said 49.14 acre tract bears North 59° 44' 28" East, a distance of 528.59 feet;**

4. **THENCE**, South 59° 44' 28" West, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 200.00 to the **POINT OF BEGINNING** and containing 55,013 square feet (or 1.2629 acres) of land.

NOTES:

** The monument described in this call, if destroyed or damaged during construction, may be replaced with a TxDOT Type II Right-of-Way Marker upon the completion of the highway construction on project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

The Basis of Bearings is the Texas Coordinate System of 1983, Central Zone (4203), North American Datum (NAD 83) 2011 Adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TxDOT combined scale factor of 1.0001241617 from a base point having a coordinate of North:10,664,612.851 and East:1,712,283.872. Unit of measure is US Survey Foot.

Station and Offset information refers to the approved schematic baseline station described in the Project Schematic Control Section Number 0005-14-092.

A survey plat of even date herewith accompanies the legal descriptions.

I, Mark E. Keeton, a Registered Professional Land Surveyor in the State of Texas, do hereby certifies that the land description and plat represent an actual survey made on the ground under my supervision.

Mark E. Keeton, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6790
Jacobs
1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
Fax (214)-638-0447
TBPLS Firm # 10152300

July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

NOTES:
1. ABSTRACT DATES: (NA)
2. BEARING BASIS IS TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), NORTH AMERICAN DATUM (NAD83) 2011 ADJUSTMENT, EPOCH 2010.
3. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY TXDOT COMBINED SCALE FACTOR OF 1.0001241617 FROM A BASE POINT HAVING A COORDINATE OF NORTH=10,664,612.851 AND EAST=1,712,283.872.
4. THE UNIT OF MEASURE IS U.S. SURVEY FEET.
5. THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE PROJECT SCHEMATIC.
6. PROJECT CONTROL WAS ESTABLISHED BY OTHERS AND PROVIDED BY TxDOT.
7. FIELD SURVEYS WERE PERFORMED BETWEEN 12-01-2019 AND 6-10-2022.
8. PARCEL REMAINDER AREA IS DERIVED BY SUBTRACTING THE CALCULATED FEE AREA OF THE PARCEL FROM THE CALLED ACREAGE OF THE PARENT TRACT, LESS ANY OTHER CALLED FEE ACREAGE OF PROPERTY CONVEYANCES OF RECORD, FROM THE PARENT TRACT.

LEGEND

EXISTING ROADWAY INTERNAL
EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
PROPERTY LINE
SURVEY LINE
DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

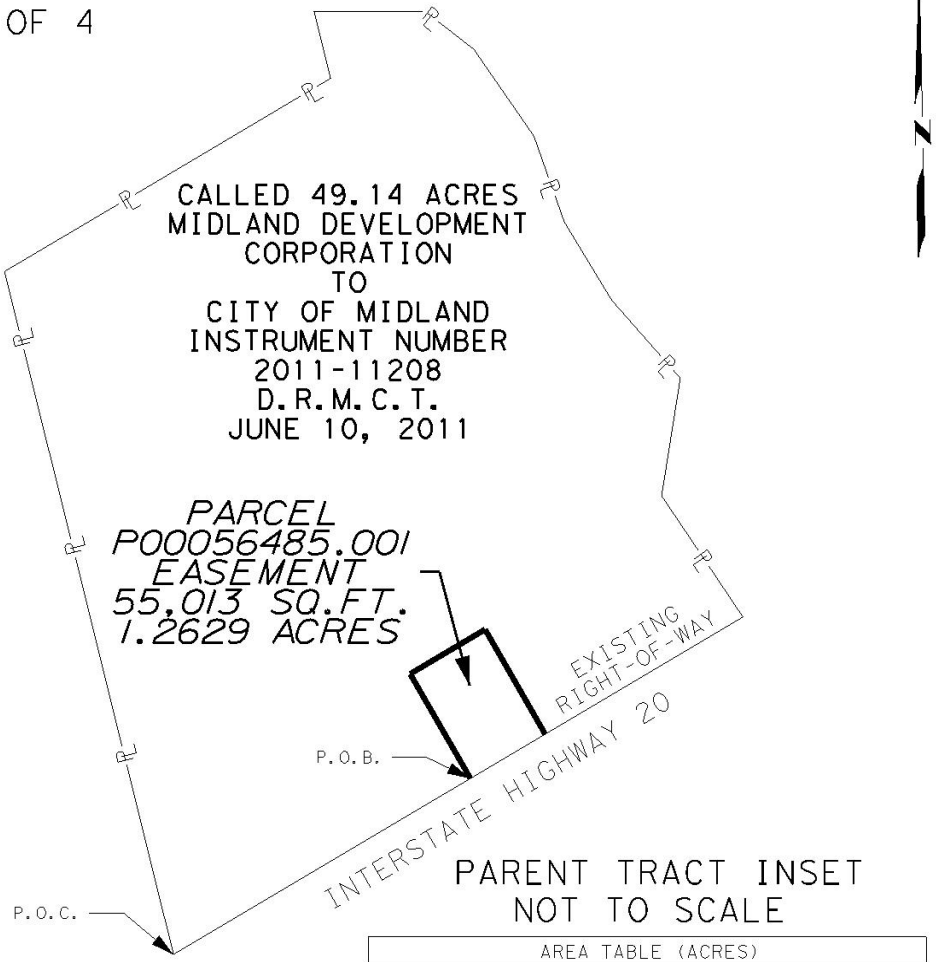
◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.

▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.

■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.

P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
(CM) = CONTROLLING MONUMENT
(RM) = RECORD MONUMENT

✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

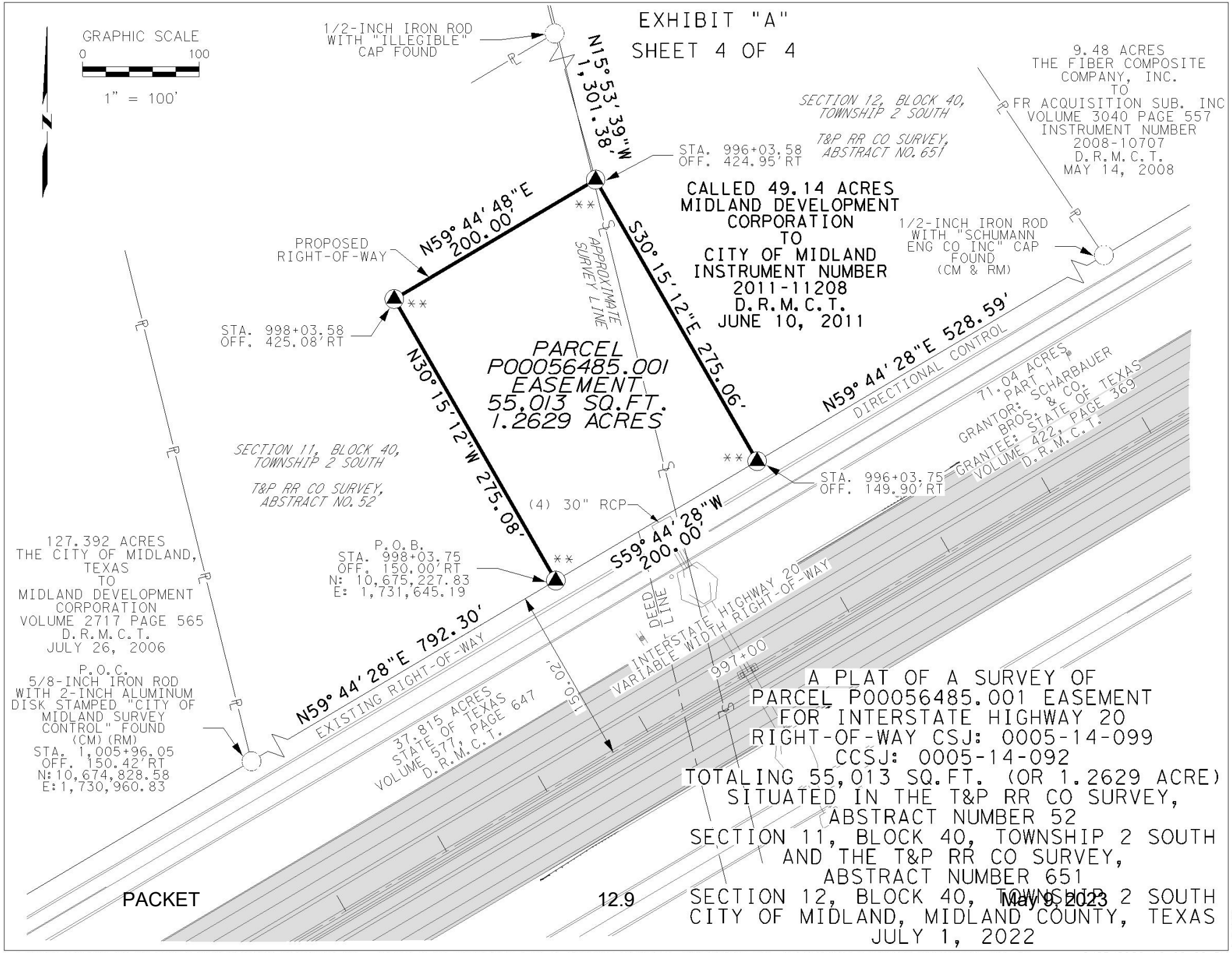
Jacobs
1999 BRYAN STREET, SUITE 1200
DALLAS, TEXAS 75201-3136
PHONE (214)-638-0145
FAX (214)-638-0447
TBPLS FIRM # 10152300

A PLAT OF A SURVEY OF
PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
RIGHT-OF-WAY CSJ: 0005-14-099
CCSJ: 0005-14-092
TOTALING 55,013 SQ.FT. (OR 1.2629 ACRE)
SITUATED IN THE T&P RR CO SURVEY,
ABSTRACT NUMBER 52
SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH
AND THE T&P RR CO SURVEY,
ABSTRACT NUMBER 651
SECTION 12, BLOCK 40, TOWNSHIP 2 SOUTH
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

May 9, 2023

LeeBM

I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/20/2022 9:32:38 AM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM

Form ROW-A-5
(Rev. 08/11)

REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: NW/L of IH 20, W of Agri Street and E of Schlumberger Drive, Midland, TX 79706
ROW CSJ: 0005-14-099

Property Owner: City of Midland
District: Odessa

Address of Property Owner: 300 N Loraine, Midland, TX 79701
Parcel: P00056485.001 Easement

Occupant's Name: Vacant Land
Federal Project No: N/A

Whole: ☐ Partial: ☒ Acquisition
Highway: Interstate Highway 20
County: Midland

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple title to the real property to be acquired, encumbered by any easements not to be extinguished, less oil, gas and sulphur. If this acquisition is of less than the whole property, then any special benefits and/or damages to the remainder property must be included in accordance with the laws of Texas.

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

Certificate of Appraiser

I hereby certify:

That, it is my opinion the total compensation for the acquisition of the herein described property is $177,004 as of September 7, 2022, based upon my independent appraisal and the exercise of my professional judgment;

That on September 7, 2022, and other dates, I personally inspected in the field the property herein appraised; and I afforded City of Midland the opportunity to accompany me at the time of the inspection. The offer to accompany was delivered via USPS Certified and Regular Mail, and a response was received from Gabe McClelland, Transportation Manager, with permission to inspect unaccompanied. As a result, the property was inspected onsite and unaccompanied;

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on June 10, 2022;

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than the proper officials of the Texas Department of Transportation or officials of the Federal Highway Administration until authorized by State officials to do so, or until I am required to do so by due process of law or until I am released from this obligation by having publicly testified to such findings;

That my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82nd Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? No (yes or no)
2. If so, is the denial of direct access material? N/A (yes, no, or not applicable)
3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of $0.

I certify to the best of my knowledge and belief that:

That the statements of fact contained in this report are true and correct;

That the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions;

That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved; and,

That my analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State laws, regulations, and policies and procedures applicable to the appraisal of right of way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement other than that due to the physical deterioration within the reasonable control of the owner has been disregarded in estimating the compensation for the property.

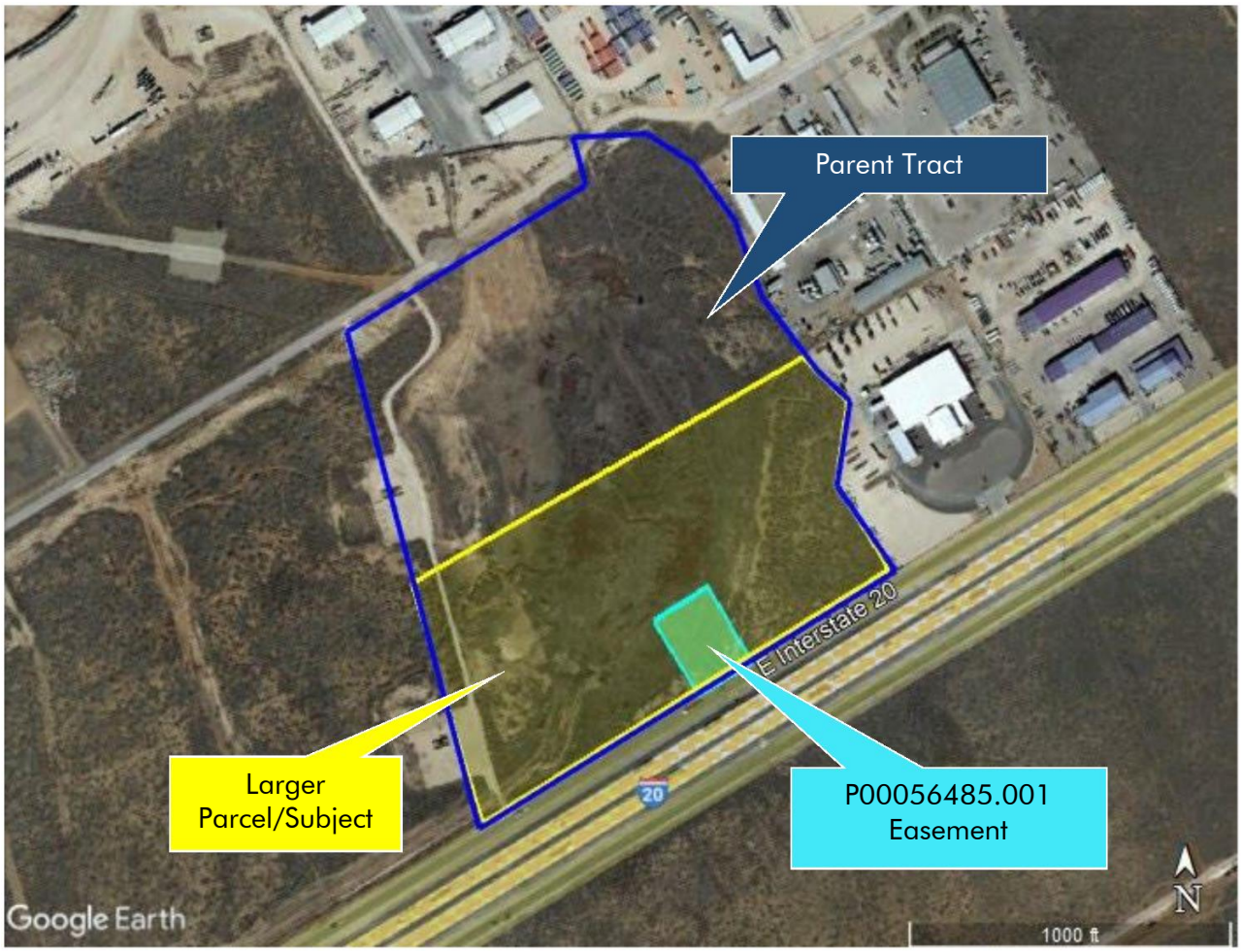
John Little

John Little, MAI, R/W-AC
TX 1334902 G
Certification Number
October 25, 2022
Date

To the best of my knowledge, the value does not include any items which are not compensable under State law.

10/25/2022
Reviewing Appraiser — Date

SUBJECT AERIAL WITH ACQUISITION OVERLAY



Aerial View of Parent Tract, Larger Parcel/Subject and Easement Acquisition

The images and outlines above are presented to merely assist the reader in visualizing the Parent Tract, the Larger Parcel/Subject and the proposed easement acquisition. They are not a legal representation or considered to represent a survey of the Parent Tract, the Larger Parcel/Subject and the proposed easement acquisition.

CERTIFICATION

We certify to the best of our knowledge and belief:

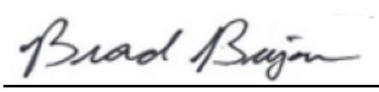
1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the State of Texas.
7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. As of the date of this report, John Little, MAI, R/W-AC and Bradley A. Bujan, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.
10. John Little, MAI, R/W-AC has made a personal inspection of the property that is the subject of this report. James P. Patterson, R/W-AC and Bradley A. Bujan, MAI have not made personal inspections of the property that is the subject of this report.
11. Callie Howard-Braddock, R/W-AC (TX 1380641 G) provided significant real property appraisal assistance to the persons signing this report in the form of collecting and analyzing available area, neighborhood and comparable market data, site description, highest and best use and final reconciliation, as well as contributions to the sales comparison approach to value.
12. Valuation & Advisory Services operates as an independent economic entity within CBRE, Inc. Although employees of other CBRE, Inc. divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy were maintained at all times with regard to this assignment without conflict of interest.
13. John Little, MAI, R/W-AC, James P. Patterson, R/W-AC, and Bradley A. Bujan, MAI have not provided any services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.



John Little, MAI, R/W-AC
TX-1334902-G



James P. Patterson, R/W-AC
TX-1336482-G



Bradley A. Bujan, MAI
TX-1380217-G

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Executive Summary

INTRODUCTION	
CBRE File No.:	CB22US095766-17
Date of the Report	October 25, 2022
Effective Date	September 7, 2022
Valuation Date Type	Current
Client	TxDOT, its employees, agents, and assigns
ROW Provider Name	LJA Engineering
Parcel Number	P00056485.001 Easement
Subject Location	NW/L of IH 20, W of Agri Street and E of Schlumberger Drive Midland, Midland County, TX
Owner	City of Midland
Legal Description - Larger Parcel/Whole Property Only	Being an approximate 25.00 acres of land out Section 11, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 52 and Section 12, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 651, in the City of Midland, Midland County, Texas
Assessor IDs (Impacted Only)	R0000207850
Property Rights Appraised	Fee Simple Estate subject to existing encumbrances
Rights Being Acquired	Easement
Current Use of Subject	Vacant Land
Highest and Best Use	
As Vacant	Industrial
As Improved	N/A
of Acquisition	As part of the Whole Property
Estimated Exposure Time	6 - 12 Months
Buyer Profile	Owner-User or Developer

LAND AREAS		
Parent Tract - Per Survey	49.14 AC	
Whole Property		
Fee Area	25.00 AC	1,089,000 SF
Part Acquired		
P00056485.001 - Easement	1.2629 AC	55,013 SF
Total Acquired in Easement	1.2629 AC	55,013 SF
Remainder Property		
Fee Area Remaining	23.7371 AC	1,033,987 SF
P00056485.001 - Easement	1.2629 AC	55,013 SF
Total Remainder Size	25.0000 AC	1,089,000 SF

CONCLUDED MARKET VALUE		
	Market Value	**Compensation**
Larger Parcel (Land and Affected Improvements)	$3,539,250	
Part(s) Being Acquired		$177,004
Remainder Before Consideration of Damages	$3,362,246	
Remainder After Consideration of Damages	$3,362,246	
Net Damages or Benefits		$0
Net Cost to Cure (Temporary Damages)		$0
Total Compensation		**$177,004**

EXTRAORDINARY ASSUMPTIONS AND HYPOTHETICAL CONDITIONS

An extraordinary assumption is defined as "an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions." [1]

- The survey provided by the client indicates a parent tract size of 49.14 Acres. However, the appraisers have estimated a larger parcel/whole property size of 25.00 Acres and we assume these sizes to be correct.
- It is assumed that any underground improvements or other improvements which are not known to the appraiser will not be impacted by the project. Any impact to such improvements will require modification of this analysis or separate agreement between the property owner and the client.
- A soils analysis for the site has not been provided for the preparation of this appraisal. In the absence of a soils report, it is a specific assumption that the site has adequate soils to support the highest and best use.
- The valuation of subsurface mineral rights is outside the scope of this assignment. The appraiser is aware that some properties in Texas may benefit from the sub-surface shale plays located in the area. These potentially contain oil, natural gas and other resources which, if extracted, could contribute to the value of the property. We suggest the client contact an appropriate geological professional to determine the possible benefits, if any, of the subject's subsurface rights. The value conclusion(s) presented in this report, specifically exclude any subsurface mineral rights. The assumption is made that the comparable sales utilized in this report excluded mineral rights and/or value attributed to mineral rights, unless otherwise stated in the Discussion/Analysis of Sales section(s).

A hypothetical condition is defined as "a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purposes of analysis." [2] The use of extraordinary assumptions and hypothetical conditions may affect assignment results.

- The value of the remainder after the acquisition is subject to the Hypothetical Condition that, as of the effective date of appraisal, the proposed project has been constructed according to project specifications.
- This appraisal is performed under the condition that influence of the project on property values has been disregarded. "The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner."[3]
- Any non-compensable damages have been excluded from analysis, as prescribed by legal instruction, even though the value of the remainder may be impacted by the project.

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[1] The Appraisal Foundation, *USPAP*

[2] The Appraisal Foundation, *USPAP*

[3] Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, 49 C.F.R. § 24.103 (2005)

CURRENT ECONOMIC CONDITIONS

The following is provided by CBRE Research as of July 28, 2022.

- The Consumer Price Index (CPI) rose by 9.1% annually in June (a 40-year high). Core inflation, which excludes food and energy prices, increased 5.9%. Both exceeded economist expectations.
- In response to persistently high inflation, the Federal Reserve raised the federal funds rate another 75 basis points (bps) on July 27th, 2022, to a target range of 2.25% to 2.50%.
- U.S. GDP fell by 0.9% annualized in Q2 vs. consensus expectations of 0.3% growth. The drop was largely driven by decreases in consumer spending on goods and in business and residential investment.
- Slower economic growth likely will cause the Fed to limit any additional rate hikes this year to no more than 50 bps each. The central bank has three more meetings this year in September, November and December.
- Although a second consecutive quarter of negative growth following a 1.6% drop in Q1 GDP is an indicator of recession, CBRE does not believe the U.S. economy is currently in one. However, we expect that a recession will take hold late this year and early next.

The following table summarizes the CBRE Research House View as of mid-July 2022:

	2022	2023	2024 - 2027
Fed Funds Rate	3.25% to 3.5%	3.5% to 3.75%	1.75% to 2.0%
10-Year Treasury	3.3%	2.6%	3.0%
GDP	1.9%	0.1%	2.9%

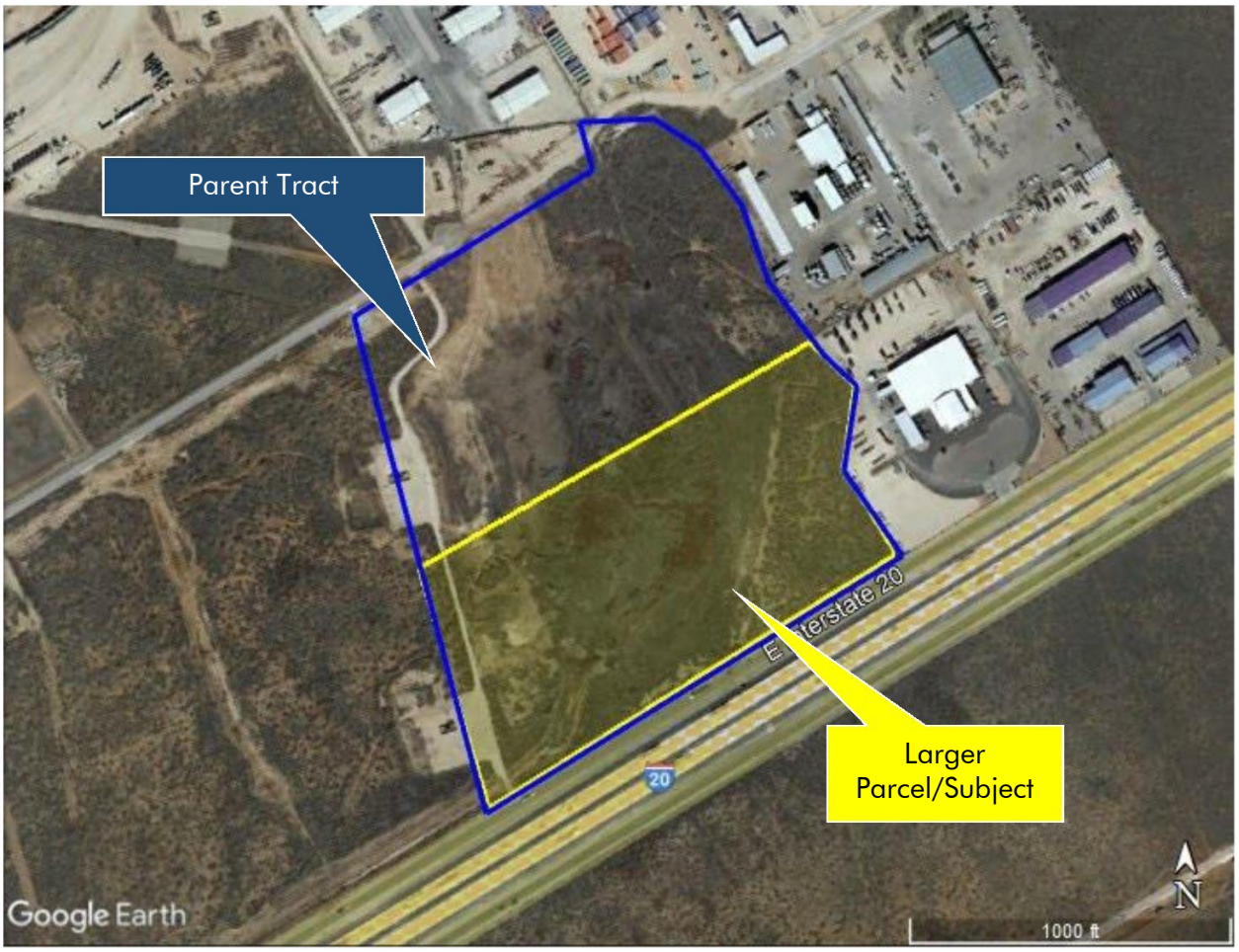
Rapidly increasing interest rates and subdued economic growth will weigh on commercial real estate fundamentals and investment volumes this year and next. Tightening in credit markets will continue to drive adjustment in the commercial real estate investment markets in the near term. Amid this uncertain and dynamic environment, investment market performance will be uneven across property types as investors look to lower risk.

IDENTIFICATION OF THE SUBJECT

Based on the Survey provided by the Client, the Parent Tract is a 49.14 acre tract of land that is located along the north line of Interstate Highway 20 (IH 20) and at the western termination of County Road 112. For the purposes of this report, the Parent Tract will be 49.14 acres in size, in conformity with the Survey. Additionally, the Parent Tract is primarily vacant land with oil/gas production related improvements, which are located a significant distance from the proposed acquisition and will not be impacted nor valued herein. Please see below for an aerial of the Parent Tract:



Based upon market data and the Subject's size and configuration, the appraisers have identified a 25.00 acre Larger Parcel located along the IH 20 frontage. The 25.00 acre Larger Parcel will be referenced as the Subject and/or Whole Property throughout the remainder of this appraisal. The proposed easement acquisition is located entirely within the Larger Parcel and the remaining portion of the Parent Tract is not considered to be impacted by the proposed easement acquisition. The aerial on the following page shows the Parent Tract in blue and the Larger Parcel/Whole Property in yellow.



The Subject is a 25.00 acre tract of land located along the north of Interstate Highway 20 (IH 20), west of Agri Street and east of Schlumberger Drive within the City of Midland and Midland, County, Texas. Similar to the Parent Tract, the Subject is primarily vacant land with oil/gas production related improvements, which are located a significant distance from the proposed acquisition and will not be impacted nor valued herein. Therefore, the Subject will be appraised as a vacant tract of land.

Development trends along IH 20 in the Subject's market area indicate strong demand for smaller tracts (typically 5 to 10 acres) that are developed for owner-user/single tenant industrial uses, as well as platted for industrial parks that are marketed and sold to individual buyers. Based on analysis of the Subject and recent sales in the primary market area, the Subject would likely be sold as individual ±5-acre tracts; however, the appraisers have not delineated the boundaries of the ±5-acre tracts. The land sales in the sales comparison approach (as vacant) have been adjusted as if the Subject size is ±5 acres.

Identification of the Larger Parcel

The value of a property cannot be estimated without a determination of the property to be appraised. In some cases, multiple tax parcels are utilized together in one use, or a larger tract of land may be legally, economically and physically divisible into smaller economic units. "An economic unit may be defined as the smallest, marketable, and sustainable portion of a property."[4]

Economic units valued in partial acquisitions are broadly known as "larger parcels." The three tests to determine the larger parcel are:

- Unity of Title - control by a single entity, individual, or group. Title is largely a legal question.
- Unity of Use - an integrated highest and best use separate from surrounding land. Multiple tracts can have the same use but be separate tracts, such as platted lots. Use is an economic question that is dependent upon supply and demand, availability of substitutes and other economic principles.
- Proximity - contiguous tracts or proximate tracts that are used together. The location of the tracts that are used as a single economic unit is a test that is subordinate to Unity of Use.

The Subject and/or Larger Parcel supported by the market for the valuation purposes of this assignment is 25.00 acres or 1,089,000 square feet, of land. As mentioned on the previous page, the Subject would likely be sold as individual ±5-acre tracts; however, the appraisers have not delineated the boundaries of the ±5-acre tracts. The land sales in the sales comparison approach (as vacant) have been adjusted as if the Subject size is ±5 acres.

[4] ROW Appraisal and Review Manual, Page 3-27. TxDOT 11/2018

OWNERSHIP HISTORY

According to the public records and the Survey provided by the Client, the property is currently owned by City of Midland and was conveyed on June 10, 2011, in excess of five (5) years ago. To the best of our knowledge, there has been no ownership transfer of the property during the previous five (5) years and the property is not listed for sale.

The summary of ownership information is listed in the table below.

OWNERSHIP SUMMARY

	Current
Owner:	City of Midland
Date Purchased:	June 10, 2011
Purchase Price:	Unknown
Legal Reference	2011-11208
County/Locality Name:	Midland
Pending Sale:	No
Change of Ownership - Past 5 Years	No

Compiled by CBRE

OWNER CONTACT

The letter to the property owner was sent via USPS Certified and Regular Mail on August 17, 2022. Gabe McClelland, Transportation Manager for the City of Midland, emailed the appraisers on September 7, 2022, with a signed owner questionnaire allowing the appraisers to inspect the property unaccompanied. As a result, the appraiser inspected the property unaccompanied on September 7, 2022.

OWNER AND CONTACTS

Owner Name	City of Midland
Owner Address	300 N Loraine
Owner City, State, Zip	Midland, TX 79701
Primary Contact	Gabe McClelland, Transportation Manager
Contact Phone	432-685-7983
Contact Email	gmcclelland@midlandtexas.gov
Occupancy	Vacant Land

Compiled by CBRE

Scope of Work

This Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2 of USPAP. It is also intended to comply with guidance set forth in the Texas Property Code, Title 4, Chapter 21, Subchapter A and the TxDOT "ROW Appraisal and Review Manual." The scope of the assignment relates to the extent and manner in which research is conducted, data is gathered and analysis is applied.

Intended Use of Report

This appraisal is to be used for real property acquisition for the Interstate Highway 20 project, based on the rights being acquired, and no other use is permitted. The report is not the appraisal but is the reporting of the appraisal to the named client or named intended user. Anyone else who attempts to rely on an appraisal report that is not a named user may be misled by the report. If you are not the client, you have no way of knowing if a later appraisal was done that replaces this report. Any changes will result in a different report date. Accordingly, this document may no longer contain the appraisers' opinions. Any subsequent reports, with a later report date, voids this document even to the client or intended user.

Client

The client is TxDOT through subcontract with LJA Engineering.

Intended User of Report

This appraisal is to be used by LJA Engineering, TxDOT, its employees, agents, and assigns and no other user may rely on our report unless as specifically indicated in the report.

> Intended Users - the intended user is the person (or entity) who the appraiser intends will use the results of the appraisal. The client may provide the appraiser with information about other potential users of the appraisal, but the appraiser ultimately determines who the appropriate users are given the appraisal problem to be solved. Identifying the intended users is necessary so that the appraiser can report the opinions and conclusions developed in the appraisal in a manner that is clear and understandable to the intended users. Parties who receive or might receive a copy of the appraisal are not necessarily intended users. The appraiser's responsibility is to the intended users identified in the report, not to all readers of the appraisal report. [5]

Purpose of the Appraisal

The purpose of this appraisal is to estimate the total compensation due to the property owner based on the market value of the whole property, acquisition, remainder, and any temporary easements or curative costs.

[5] Appraisal Institute, The Appraisal of Real Estate, 14th ed. (Chicago: Appraisal Institute, 2013), 50.

Definition of Value

The definition of market value, as defined in *City of Austin v. Cannizzo et al.* [6], is stated on Page 1 of this report.

Interest Appraised

INTERESTS APPRAISED	
Fee Simple Estate	Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat. *Dictionary of Real Estate Appraisal, Sixth Edition, 2015, page 90*
Easement	The right to use another's land for a stated purpose. *Dictionary of Real Estate Appraisal, Sixth Edition, 2015, page 71*

The interest appraised includes the value of the rights to the fee owner, considering existing easements, encumbrances, and restrictions. The value of any mineral estate is excluded from this valuation, unless otherwise stated.

Extent to Which the Property is Identified

The property is identified through the following sources:

- postal address
- assessor's records
- legal description

Extent to Which the Property is Inspected

John Little, MAI, R/W-AC personally conducted an on-site inspection on September 07, 2022.

Effective Date

The effective date is September 7, 2022.

Type and Extent of the Data Researched

CBRE reviewed the following:

- applicable tax data
- zoning requirements
- flood zone status
- demographics
- comparable data

[6] *City of Austin v. Cannizzo et al.*, 267 S.W. 2d 808, 815 [Tex. 1954].

Type and Extent of Analysis Applied

CBRE, Inc. analyzed the data gathered through the use of appropriate and accepted appraisal methodology to arrive at a probable value indication via each applicable approach to value. The steps required to complete each approach are discussed in the methodology section.

Data Resources Utilized in the Analysis

DATA SOURCES	
Item:	*Source(s):*
Site Data	
Whole Property and Acquisition Size	Survey provided by the Client
Remainder Size	Survey provided by the Client and/or Appraiser Calculations
Floodplain	Interflood/FEMA
Zoning	City of Midland, when applicable
Site Improvement Sizes	Survey provided by the Client, Appraiser Inspection from Public Right-of-Way and Aerial Measurements
Other	
Demographics	ESRI
Compiled by CBRE	

Form ROW-A-5
(Rev. 8/11)

PHOTOGRAPHS OF SUBJECT PROPERTY
Include Each Major Improvement

Parcel No.: P00056485.001

Local Address: NW/L of IH 20, W of Agri Street and E of Schlumberger Drive, Midland, TX

Date Taken: September 7, 2022
Taken By: John Little, MAI, R/W-AC

1. Point from which taken: IH 20 Existing ROW
Looking: NE towards the S/L of the Subject



2. Point from which taken: IH 20 Existing ROW
Looking: N towards the Proposed Easement Acquisition



Form ROW-A-5
(Rev. 8/11)

PHOTOGRAPHS OF SUBJECT PROPERTY
Include Each Major Improvement

Parcel No.: P00056485.001

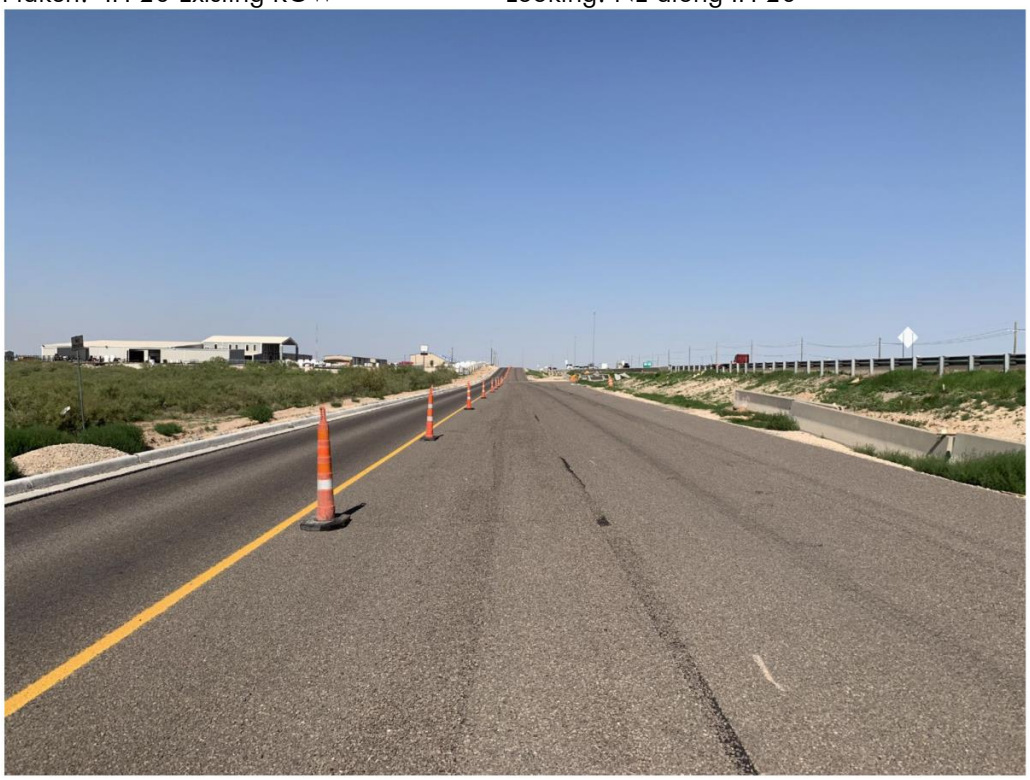
Local Address: NW/L of IH 20, W of Agri Street and E of Schlumberger Drive, Midland, TX

Date Taken: September 7, 2022
Taken By: John Little, MAI, R/W-AC

3. Point from which taken: On S/L of the Subject
Looking: SW at the Proposed Easement Acquisition



4. Point from which taken: IH 20 Existing ROW
Looking: NE along IH 20



NEIGHBORHOOD ANALYSIS



LOCATION

The subject is in Midland County between the cities of Midland and Odessa.

BOUNDARIES

The subject is located within the City of Midland, east of the Odessa city limits/ETJ. The general boundaries of the neighborhood consist of the area within the ETJ of the City of Odessa and the ETJ of the City of Midland.

LAND USE

Land uses within the subject neighborhood consist of a mixture of commercial, industrial, and residential development. The immediate area surrounding the subject is a mix of newer and older development, consisting primarily of residential uses with much of the development being built during the 1970's, 1980's and 1990's. The majority of the single-family residential development within a three-mile radius of the subject may be described as tract homes in the $200,000-$500,000 price range. According to information obtained from ESRI, over 60% of the homes built within a three-mile radius of the subject were constructed between 1980 and 2010.

GROWTH PATTERNS

In the city of Midland, growth patterns have occurred along primary commercial thoroughfares such as Interstate Highway 20, State Loop 250, State Highway 158 and State Highway 191. Major retail/commercial developments are located along these primary thoroughfares. Large homesteads and industrial, specifically oil and gas services related facilities, are the predominant use of land in the immediate area.

ACCESS

Interstate Highway 20, State Loop 250, State Highway 158 and State Highway 191 provide primary access to the subject neighborhood. Interstate Highway 20 and State Highway 191 extend to the east providing direct access to the city of Odessa approximately twenty miles west, as well as direct access to the Midland International Airport approximately 15-miles west. Secondary access within the subject neighborhood includes State Highway 349, County Road 1130, Fairgrounds Road, Wadley Avenue and Golf Course Road.

DEMOGRAPHICS

Selected neighborhood demographics in a 1-, 3-, and 5-mile radii from the subject are shown in the following table:

SELECTED NEIGHBORHOOD DEMOGRAPHICS

NW/L of IH 20, W of Agri Street and E of Schlumberger Drive Midland, TX 79706	1 Mile Radius	3 Mile Radius	5 Mile Radius	Midland County
Population				
2027 Total Population	645	20,704	65,395	189,738
2022 Total Population	571	19,048	60,916	177,977
2010 Total Population	254	11,848	49,519	136,872
2000 Total Population	180	9,911	42,877	116,009
Annual Growth 2022 - 2027	*2.47%*	*1.68%*	*1.43%*	*1.29%*
Annual Growth 2010 - 2022	*49.93%*	*26.80%*	*10.91%*	*14.03%*
Annual Growth 2000 - 2010	*3.50%*	*1.80%*	*1.45%*	*1.67%*
Households				
2027 Total Households	188	6,824	22,836	67,215
2022 Total Households	167	6,318	21,409	63,474
2010 Total Households	84	3,968	17,966	50,845
2000 Total Households	61	3,407	15,749	42,745
Annual Growth 2022 - 2027	*2.40%*	*1.55%*	*1.30%*	*1.15%*
Annual Growth 2010 - 2022	*41.00%*	*26.18%*	*9.16%*	*11.73%*
Annual Growth 2000 - 2010	*3.25%*	*1.54%*	*1.33%*	*1.75%*
Income				
2022 Median Household Income	$96,424	$87,652	$86,140	$94,374
2022 Average Household Income	$125,532	$105,625	$110,898	$126,878
2022 Per Capita Income	$40,284	$35,559	$39,350	$45,290
2022 Pop 25+ College Graduates	118	2,518	10,083	36,072
Age 25+ Percent College Graduates - 2022	30.4%	21.1%	25.9%	30.6%

Source: ESRI

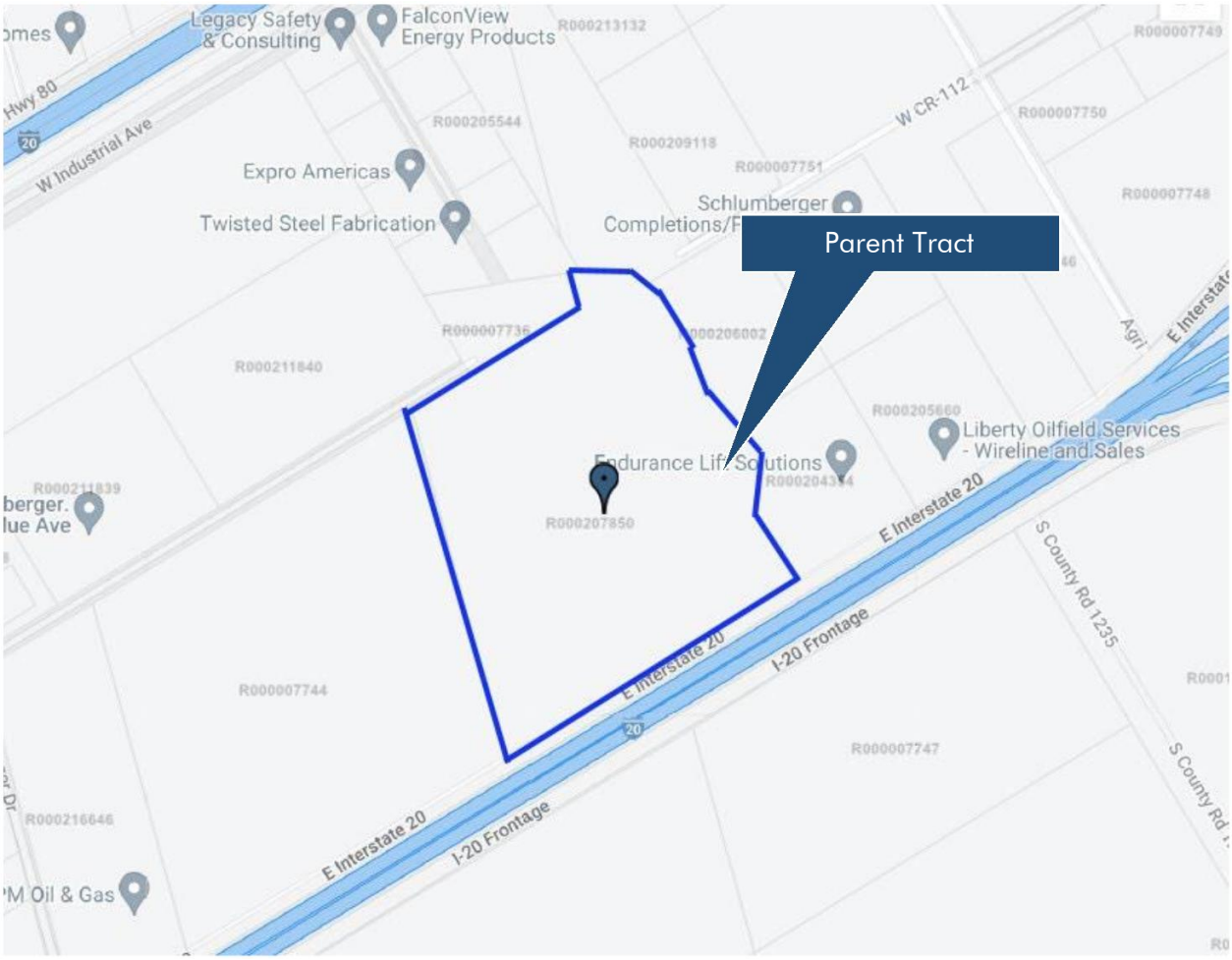
CONCLUSION

The population within the subject's larger neighborhood has shown positive growth since 2000. The immediate neighborhood has an average-income demographic profile. The outlook for the neighborhood is for stable performance with gradual improvement.

The subject property conforms well to surrounding neighborhood infrastructure and support services. Recent growth in the larger neighborhood has primarily been related to light industrial and highway commercial development, which appears to be supported by both neighborhood demographics and the primary traffic carriers within the neighborhood.

TAX MAP

The outline below denotes all of the tax parcel associated with the Parent Tract based upon Midland Central Appraisal District's GIS mapping system.



FLOODPLAIN MAP



SITE ANALYSIS

The following chart summarizes the salient characteristics of the Subject site.

SITE SUMMARY AND ANALYSIS

Physical Description		
Site Area	25.00 Acres	1,089,000 Sq. Ft.
Primary Road Frontage	IH 20	1,480 Feet
Shape	Irregular	
Topography	Generally Level	
Zoning District	BP, I-20 Business Park District	
Flood Map Panel No. & Date	48329C0184F	9/16/2005
Flood Zone	Zone AE & Zone X (Unshaded)	
Flood Notes	95% - Zone AE & 5% Zone X (Unshaded)	
Ingress/Egress Points	IH 20	

Comparative Analysis	**Rating**
Access	Appears adequate
Visibility	Appears adequate
Functional Utility	Appears adequate
Traffic Volume	Appears adequate
Drainage	Assumed adequate

Utilities	**Provider**	**Availability**
Water	City of Midland	Yes
Sewer	City of Midland	Yes
Electricity	Various Providers	Yes
Telephone	Various Providers	Yes

Other	**Yes**	**No**	**Unknown**
Detrimental Easements			X
Encroachments			X
Deed Restrictions			X

Source: Various sources compiled by CBRE

Utilities

The Subject has access to public water and sewer.

Shape and Frontage

The Subject is irregular in shape with adequate frontage and visibility along IH 20.

Ingress/Egress

Ingress/egress is available to the site via the north line of the IH 20 Frontage Road.

Topography and Drainage

The site is generally level and at street grade. The topography of the site is not seen as an impediment to the development of the property. During our inspection of the site, we observed no drainage problems and assume that none exist.

Flood Zone

We are not experts in determining flood zone elevations and we were not provided with a flood zone certificate for the subject. The reader is encouraged to consult with a professional engineer to determine the subject's actual flood zone status. Based on our review of FEMA Flood Panel No. 48329C0184F, the Subject appears to be in Zone AE and Zone X (Unshaded). The appraisers have estimated that approximately 95% of the site is located within Zone AE, which does require mandatory flood insurance and may require additional costs prior to development. Additionally, approximately 5% is located within Zone X (Unshaded), which does not require flood insurance.

Easements and Encroachments

A Title Commitment was provided by the Client for the Parent Tract described earlier in this report. According to Schedule B of the Title Commitment, the Parent Tract is subject to the following items:

- Item d – Portion of the property that may lie within any roadway
- Item f – all leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals
- Items g – i – Various right-of-way easements

Outside of typical utility easements, there are no other known easements or encroachments impacting the sites that are considered to affect the marketability or highest and best use.

Covenants, Conditions and Restrictions

A Title Commitment was provided by the Client and there are no known covenants, conditions or restrictions listed for the Parent Tract. Additionally, there are no other known covenants, conditions or restrictions impacting the Subject that are considered to affect the marketability or highest and best use.

Environmental Issues - Site

The appraiser is not qualified to detect the existence of any potentially hazardous materials. The existence of such substances may affect the value of the property. No hazardous substances which would affect value were noted by the appraiser (see Assumptions and Limiting Conditions).

Conclusion of Site Analysis

The site is suitable for uses commensurate with the surrounding neighborhood. The site is well-located and is afforded good visibility and access from the IH 20 Frontage Road. The size of the Subject is typical for the area, and there are no known detrimental uses in the immediate vicinity. There are no known factors which are considered to prevent the Subject from development to its highest and best use, as vacant.

IMPROVEMENTS ANALYSIS

As mentioned previously, the site is primarily vacant land with oil/gas production related improvements, which are located a significant distance from the proposed acquisition and will not be impacted nor valued herein. Therefore, the Subject will be appraised as a vacant tract of land.

ZONING



The subject is located within the City of Midland and is subject to the following zoning restrictions.

ZONING SUMMARY	
Current Zoning	BP, I-20 Business Park District
Legally Conforming	N/A - Land
Uses Permitted	Various commercial and industrial uses in accordance with the zoning ordinance
Zoning Change	Not likely
Category	**Zoning Requirement**
Minimum Lot Size	40,000 Sq. Ft.
Minimum Lot Width	100 Feet
Maximum Height	70 Feet
Minimum Setbacks	
Front Yard	15 Feet
Street Side Yard	10 Feet
Interior Side Yard	10 Feet
Rear Yard	10 Feet
Parking Requirements	Dependent on use

Source: Planning & Zoning Dept.

ANALYSIS AND CONCLUSION OF LAND USE REGULATIONS

The above information is based upon publicly available data and is not a substitute for a site-specific development plan that has been reviewed and approved by the municipality. Additional information may be obtained from the appropriate governmental authority. For purposes of this appraisal, CBRE has assumed the information obtained is correct.

TAX ASSESSMENT DATA

The size noted below for the Parent Tract previously discussed differs from the size utilized herein. The following table summarizes the local assessor's estimate of market value for the impacted tax parcel.

TAX INFORMATION	
Assessor Account ID(s)	R0000207850
Tax Year	2022
Assessed Land Acres	30.758 AC
Assessed Land SF	1,339,818 SF
Assessor Improvement Value	$0
Assessor Land Value	$922,740
Assessor Total Market Value	$922,740
Assessor Land Value/SF	$0.69
Tax Rate	1.742156
Total Taxes	$16,076
	Based on our analysis, the assessed land value appears to be below market value.

For purposes of this analysis, CBRE, Inc. assumes that all taxes are current.

PROPERTY VALUATION SUMMARY - WHOLE

Whole: ☒ Part to be Acquired: ☐ Remainder After: ☐

HIGHEST AND BEST USE ANALYSIS: (The Highest and Best Use analysis should consider the reasonably probable and legal use of vacant land or improved property considering legally permissible, physically possible, financially feasible, and maximally productive. Use a separate page, numbered accordingly, as necessary.)

See analysis.

VALUATION APPROACHES

Insert value estimate, then describe, analyze, and support each approach as required.

Sales Comparison Approach, (land value) $3,539,250

Cost Approach ..... N/A

Sales Comparison Approach, (as improved) ..... N/A

Income Approach ..... N/A

Reconciliation of Approaches to Value $3,539,250

As mentioned previously, the Subject will be valued as a vacant tract of land. The Sales Comparison Approach - Land Value Only was the only approach utilized herein to value the Subject. Therefore, the Cost Approach, Sales Comparison Approach - As Improved and Income Approach are not considered applicable. Furthermore, surface rights in this area are not purchased based on income production.

Based on the foregoing, the market value of the Subject property before the acquisition has been concluded as follows:

Contributory Value of Improvements (Itemized)			
Total Contributory Value of Improvements			N/A
Contributory Land Value (Itemized)			
Fee Area (1,089,000 SF)	@	$3.25/SF	$3,539,250
Reconciled Final Value			**$3,539,250**

Each approach developed follows this page and is sequenced as shown below.

Land Value,	Cost Approach,	Sales Comparison Approach,	Income Approach,
Pg SCA-3.5	Pg CA-3.9	Pg SCA-3.10	Pg IA-3.11

Highest and Best Use – Whole Property

In appraisal practice, the concept of highest and best use represents the premise upon which value is based. The four criteria the highest and best use must meet are:

- legally permissible;
- physically possible;
- financially feasible; and
- maximally productive.

The highest and best use analysis of the subject is discussed below.

AS VACANT

Legally Permissible

As noted in the Zoning Section, the Subject is located in the BP, I-20 Business Park District. This district is intended to promote development of various commercial and industrial uses in accordance with the zoning ordinance. Additionally, there are no known deed restrictions that limit the property from being developed to a specific use. Therefore, a variety of commercial and/or industrial uses for the Whole Property are legally permissible.

Physically Possible

The Subject has an adequate shape and size, sufficient access, etc., to be a separately developable site. There are no known physical reasons why the site would not support any legally probable development (i.e., it appears adequate for development). Existing structures on similar sites within the subject neighborhood is additional evidence for the physical possibility of development.

Financially Feasible

Consideration to existing land use trends has been given in determining feasible uses. Only those uses that are physically possible and legally permissible are given further consideration. Recent development of surrounding land uses at sites similar to the Subject have been industrial in nature. Based on our analysis of the market, there is currently adequate demand for industrial uses in the Subject's area. A newly developed industrial use on the site would have a value commensurate with its cost. Therefore, industrial use is financially feasible.

Maximally Productive - Conclusion

Based on the information presented above and upon information contained in the neighborhood analysis, we conclude that the highest and best use of the Subject, as if vacant, would be for industrial use.

Highest & Best Use Conclusion – As Vacant

Based on the information presented above and upon information contained in the Area and Neighborhood analysis, the highest and best use of the Whole Property, as vacant, is for Industrial use.

AS IMPROVED

Highest & Best Use Conclusion – As Improved

As mentioned previously, the site is primarily vacant land with oil/gas production related improvements, which are located a significant distance from the proposed acquisition and will not be impacted nor valued herein. Therefore, the Subject will be appraised as a vacant tract of land. Therefore, the highest and best use of the Whole Property, as improved, is not considered applicable.

Appraisal Methodology

In appraisal practice, an approach to value is included or omitted based on its applicability to the property type being valued and the quality and quantity of information available.

Cost Approach

The Cost Approach is based on the proposition that the informed purchaser would pay no more for the subject than the cost to produce a substitute property with equivalent utility. This approach is particularly applicable when the property being appraised involves relatively new improvements that represent the highest and best use of the land, or when it is improved with relatively unique or specialized improvements for which there few sales or leases of comparable properties exist.

Sales Comparison Approach

The Sales Comparison Approach utilizes sales of comparable properties, adjusted for differences, to indicate a value for the subject. Valuation is typically accomplished using physical units of comparison such as price per square foot, price per unit, price per floor, etc., or economic units of comparison such as gross rent multiplier. Adjustments are applied to the physical units of comparison derived from the comparable sale. The unit of comparison chosen for the subject is then used to yield a total value. Economic units of comparison are not adjusted, but rather analyzed as to relevant differences, with the final estimate derived based on the general comparisons.

Income Capitalization Approach

The Income Capitalization Approach reflects the subject's income-producing capabilities. This approach is based on the assumption that value is created by the expectation of benefits to be derived in the future. Specifically estimated is the amount an investor would be willing to pay to receive an income stream plus reversion value from a property over a period of time. The two common valuation techniques associated with the income capitalization approach are direct capitalization and the discounted cash flow (DCF) analysis.

Methodology Applicable to the Subject

• CBRE, Inc. analyzed the data gathered through the use of appropriate and accepted appraisal methodology to arrive at a probable value indication via each applicable approach to value. The sales comparison approach for land is utilized to develop an opinion of land value because market participants rely on this method. The subject is valued as vacant land so the cost approach is not applicable. The subject is valued as vacant land and so the sales comparison approach for improved property is not applicable. Being valued as vacant land, the income approach for improved property is not applicable. Furthermore, surface rights in this area are not purchased based on income production.

• The 'summation method' for valuation of a partial acquisition is utilized, as is required in the State of Texas. Total compensation is estimated as the value of the partial acquisition, plus damages to the remainder (which may be offset by special benefits), plus any necessary costs to cure and temporary easements if they are part of the scope of the assignment.

• We searched public and private databases for sales data in the area.

It is worth noting here that the fee simple interest of the subject property is appraised, and unified fee at that. This means that all interests and title are valued together. In reality, the leased fee valuation of the property may be different from the fee simple value because of the terms of existing leases. This appraisal follows the so-called unit rule which includes the valuation of all rights of any parties who may have an interest (such as tenants, life estate holders, remaindermen, leaseholders, etc.) in the subject as one.

SALES COMPARISON APPROACH

Whole: ☒ Part to be Acquired: ☐ Remainder After: ☐

Land: ☒ Improved: ☐

	Subject	Comp No. 1	Comp No. 2	Comp No. 3	Comp No. 4	Comp No. 5
Grantor		PHX Permian Park 20, LLC	Samuel Gonzalez and Aidee Gonzalez	PHX Permian Park 20, LLC	Landmarks LLC	KJ2 Phoenix Venture LLC
Grantee		JLS Business Properties, Ltd.	City of Midland	Three Diamond Capital Holdings, LLC	JJBB Midland Investments LLC	Altec Industries Inc.
Date of Sale		May-22	Mar-20	Feb-19	Jul-18	Apr-18
Address	NW/L of IH 20, W of Agri Street and E of Schlumberger Drive	SE/L of IH 20, E of CR 1300 and W of FM 1788	3500 FM 307	12501 Interstate 20	9817 West IH 20	13107 IH 20
City, State	Midland, TX	Odessa, TX	Midland, TX	Odessa, TX	Midland, TX	Odessa, TX
Gross Acres	25.00	7.3600	2.5000	5.0060	3.9944	5.1900
Gross Square Feet	1,089,000	320,602	108,900	218,061	173,995	226,076
Actual Sale Price		$1,000,000	$290,000	$547,300	$500,000	$756,501
Unit Price	Per SF	$3.12	$2.66	$2.51	$2.87	$3.35
Property Rights Conveyed						
Financing						
Conditions of Sale						
Market Conditions (Time)	3%	1%	8%	11%	12%	13%
Adjusted $/SF		$3.15	$2.87	$2.79	$3.21	$3.79
Location						
Size						
Shape						
Frontage/Access						
Topography/Floodplain		-5%		-5%	-5%	-5%
Zoning/Use						
Utilities		5%		5%	5%	5%
Net Adjustment		0%	0%	0%	0%	0%
Indicated Unit Value		**$3.15**	**$2.87**	**$2.79**	**$3.21**	**$3.79**
Estimated Unit Value				$3.25		

Estimated Value by Sales Comparison Approach $3,539,250

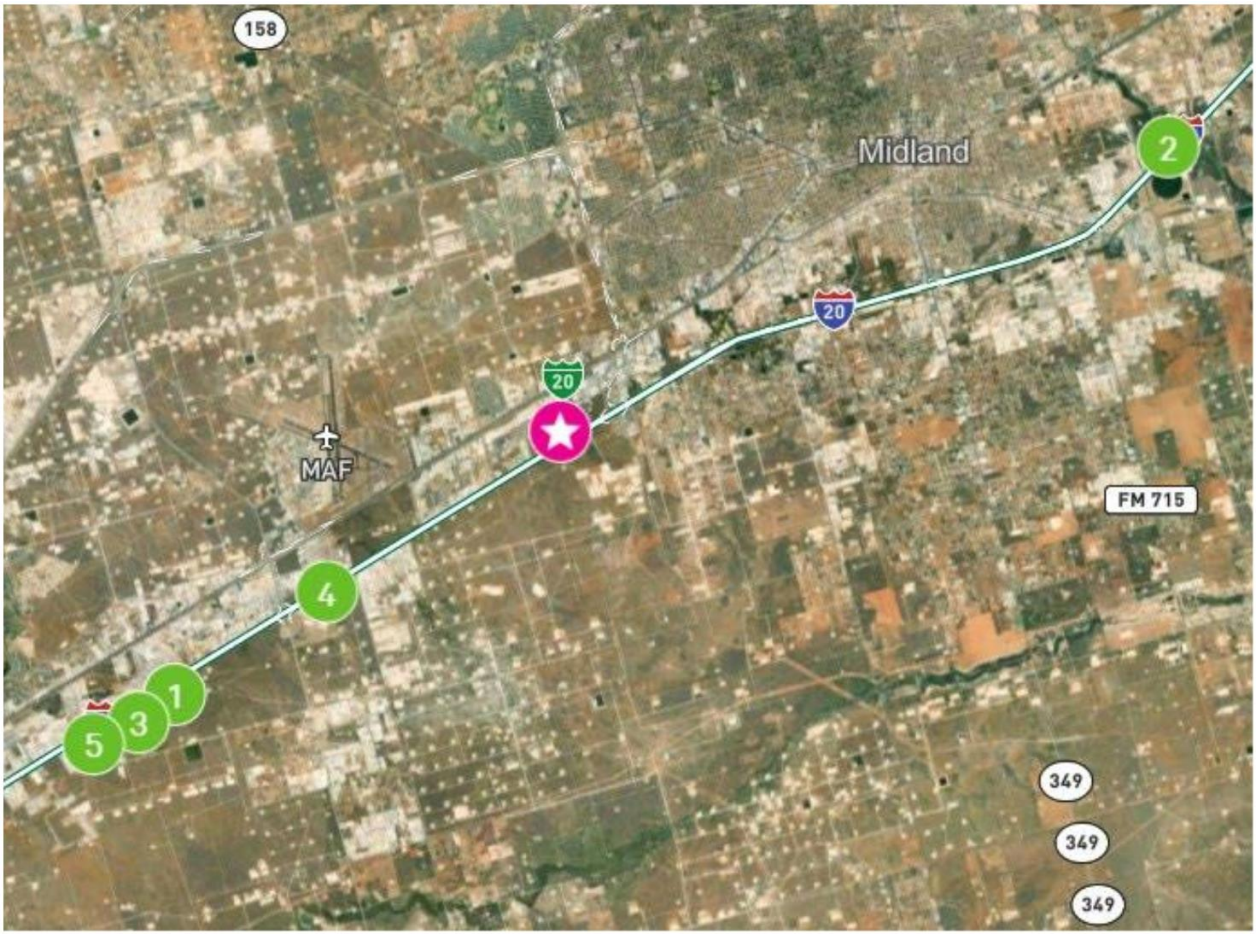
Explanation of Adjustments with Reconciliation (Attach Comparable Data Supplement and Map; use separate page, numbered accordingly, as necessary.):

As previously discussed in the Identification of the Subject section of this report, the Subject would likely be sold as individual ±5-acre tracts. The land sales have been adjusted as if the Subject was ±5 acres.

Please refer to the following pages.

LAND VALUE

The following map and table summarize the comparable data used in the valuation of the subject site.



SUMMARY OF COMPARABLE LAND SALES

No.	Property Location	Transaction Type	Transaction Date	Zoning	Actual Sale Price	Adjusted Sale Price [1]	Size (SF)	Price Per SF
1	SE/L of IH 20, E of CR 1300 and W of FM 1788 Odessa, TX 79766	Sale	May-22	None	$1,000,000	$1,000,000	320,602	$3.12
2	3500 FM 307 Midland, TX 79706	Sale	Mar-20	None	$290,000	$290,000	108,900	$2.66
3	12501 Interstate 20 Odessa, TX 79766	Sale	Feb-19	None	$547,300	$547,300	218,061	$2.51
4	9817 West IH 20 Midland, TX 79706	Sale	Jul-18	None	$500,000	$500,000	173,995	$2.87
5	13107 IH 20 Odessa, TX 79766	Sale	Apr-18	None	$756,501	$756,501	226,076	$3.35
Subject	NW/L of IH 20, W of Agri Street and E of Schlumberger Drive, Midland, Texas	---	---	BP, I-20 Business Park District	---	---	1,089,000	---

[1] Adjusted sale price for cash equivalency and/or development costs (where applicable)

Compiled by CBRE

DISCUSSION OF ADJUSTMENTS

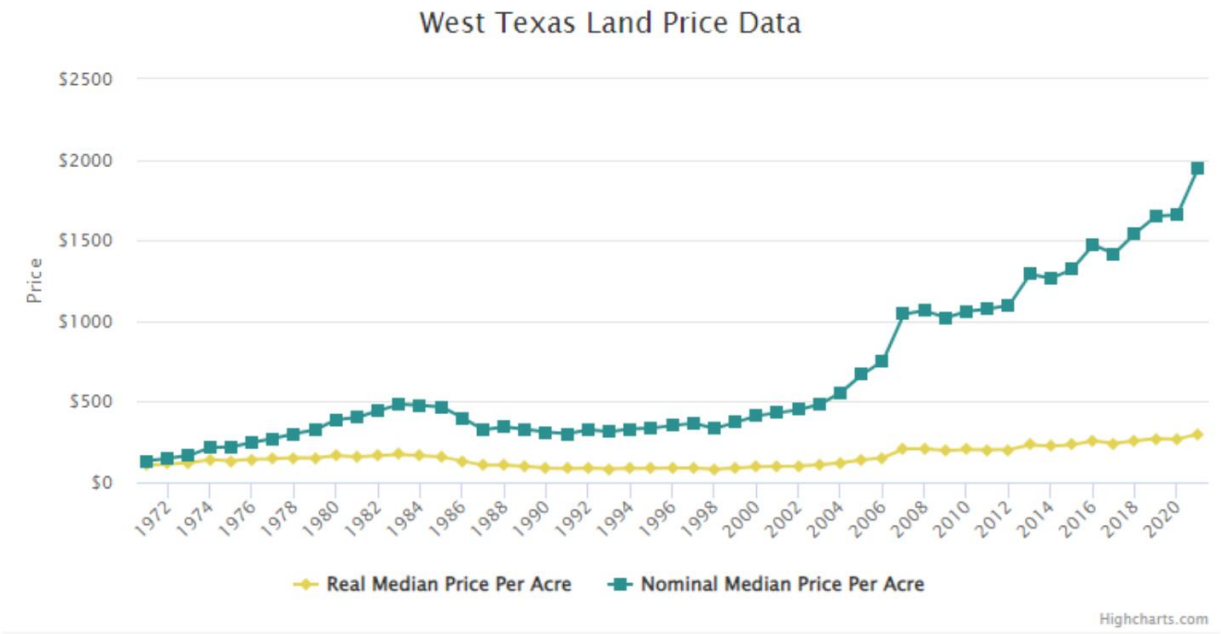
Based on our comparative analysis, the following chart summarizes the adjustments warranted to each comparable.

CONDITIONS OF SALE/FINANCING/PROPERTY RIGHTS CONVEYED

All sales were indicated to be cash-to-seller transactions or financed by a third party at market terms, and none appeared to occur under duress. As such, no adjustments for cash equivalency were necessary. Furthermore, the sales reflected arm's length transactions; therefore, no adjustments for conditions of sale were warranted. The rights conveyed in the transactions are typical for this market and property type, warranting no additional adjustment.

MARKET CONDITIONS

Increases in land sale prices over time have been moderate over the period analyzed according to data compiled by the Texas A&M Real Estate Research Center.



The sale data we collected and analyzed for this assignment confirms similar observations.

An upward adjustment at a rate of generally 3% per year was applied to each comparable as applicable to reflect improving market conditions from the dates of sale to the effective date of value.

PHYSICAL FEATURES

Adjustments were considered for factors such as size, shape, and other physical features; however, the data set indicated a relatively narrow range of value indications. No adjustments for physical features were determined applicable as indicated by the data.

FLOODPLAIN

The location of a site within a specific floodplain could hinder certain types of development, as well as increase development costs for the property owner for site work if located in a floodplain. The Subject appears to be in Zone AE and Zone X (Unshaded). The appraisers have estimated that approximately 95% of the site is located within Zone AE, which does require mandatory flood insurance and may require additional costs prior to development. Additionally, approximately 5% is located within Zone X (Unshaded), which does not require flood insurance. Comparables 1, 3, 4 and 5 have superior floodplain characteristics and received downward adjustments. Comparable 2 is similar to the Subject and received no adjustment.

UTILITIES

The Subject has access to public utilities (water and sewer services). Comparables 1, 3, 4 and 5 lacked public utilities access at the times of sale and are inferior similar to the subject, requiring upward adjustments. Comparable 2 has access to public utilities like the Subject and no adjustment was required.

CONCLUSION

Based on the preceding analysis, the comparables indicate an adjusted range of value from $2.79 to $3.79 per square foot.

Generally greatest weight was given to the most recent comparable sale; however, a conclusion towards the upper end of the adjusted range was considered appropriate due to a recent increase in market activity. A unit value of $3.25 per square foot is reconciled.

The following table presents the valuation conclusion:

CONCLUDED LAND VALUE

	$ PSF		Size (SF)		Total
Fee Area	$3.25	x	1,089,000	=	$3,539,250

Compiled by CBRE

COST APPROACH

Whole: ☒ Part to be Acquired: ☐ Remainder After: ☐

Estimated Replacement Cost					
Improvement	No. of Units	$ per Unit	Cost New	<Depreciation>	Value
Contributory Value of the Buildings					N/A
Accessory Improvements					
Contributory Value of the Accessory Improvements					N/A
Site Improvements					
Contributory Value of the Site Improvements					N/A
Contributory Value of All Improvements					N/A
Fee Area					N/A
Estimated Value by the Cost Approach					**N/A**

Furnish sources of cost data and support for depreciation factors (physical, functional, and economic. Use separate page, numbered accordingly, as

The Subject is a vacant tract of land. Therefore, the Cost Approach is not applicable.

SALES COMPARISON APPROACH

Whole: ☒ Part to be Acquired: ☐ Remainder After: ☐

Land: ☐ Improved: ☒

	Subject	Comp No. 1	Comp No. 2	Comp No. 3	Comp No. 4
Grantor					
Grantee					
Date of Sale					
Unit Price					
Relative Location					
Financing					
Conditions of Sale					
Market Conditions					
Physical Characteristics					
Indicated Unit Value					
Estimated Unit Value					**N/A**

Explanation of Adjustments with Reconciliation (Attach Comparable Data Supplement and Map; use separate page, numbered accordingly, as necessary.)

The Subject is a vacant tract of land. Therefore, the Sales Comparison Approach – As Improved is not applicable.

INCOME APPROACH

Whole: ☒ Part to be Acquired: ☐ Remainder After: ☐

Potential Gross Income						
Vacancy						
Effective Gross Income						
Expenses						
Fixed	Taxes					
	Insurance					
Variable	Management					
Total Expenses						
Net Operating Income						
Income Capitalized @						
Plus: Value of Excess Land (if any)						
Estimated Value by Income Approach						**N/A**

Furnish supporting information/data, justification of gross income estimates, expenses, method of capitalization and capitalization rate (*Attach Comparable Rental Data Supplement and Map.* Use separate page, numbered accordingly, as necessary.):

The Subject is a vacant tract of land. Therefore, the Income Approach is not applicable.

RECONCILIATION OF VALUE – WHOLE PROPERTY

As mentioned previously, the Subject will be valued as a vacant tract of land. The Sales Comparison Approach - Land Value Only was the only approach utilized herein to value the Subject. Therefore, the Cost Approach, Sales Comparison Approach - As Improved and Income Approach are not considered applicable. Furthermore, surface rights in this area are not purchased based on income production.

The value indications from the approaches to value are summarized as follows:

SUMMARY OF VALUE CONCLUSIONS	
Land Value	$3,539,250
Cost Approach	N/A
Sales Comparison Approach	N/A
Income Capitalization Approach	N/A
Reconciled Value	$3,539,250
Compiled by CBRE	

PART TO BE ACQUIRED

Highest and Best Use (Use separate page, numbered accordingly, as necessary): The acquisition does not have sufficient physical characteristics to support independent development. Therefore, its highest and best use is to serve as part of the whole property.

Contributory Value of Improvements (Itemized)		
Total Contributory Value of Improvements		N/A
P00056485.001 - Easement: 55,013 SF @ $3.25/SF x 99%	$177,004	
Total Land		$177,004
TOTAL VALUE AS A UNIT		**$177,004**

REMAINDER BEFORE THE ACQUISITION

Contributory Value of Improvements (Itemized)		
Total Contributory Value of Improvements		N/A
Fee Area Remaining (1,033,987 SF) @ $3.25/SF	$3,360,458	
P00056485.001 - Easement (55,013 SF) @ 1%	$1,788	
Total Land		$3,362,246
TOTAL VALUE AS A UNIT		$3,362,246

Part to be Acquired



Part to be Acquired

The image and outline above are presented to merely assist the reader in visualizing the subject. They are not a legal representation or considered to represent a survey of the subject.

DESCRIPTION AND HIGHEST AND BEST USE – PART TO BE ACQUIRED

ACQUISITION SUMMARY	
Parcel ID/Number	P00056485.001
Acquisition Length	W/L - 275.08 FT & E/L - 275.06 FT
Acquisition Width	N/L & S/L - 200.00 FT
Acquisition Travel	Northwest to Southeast
Highest and Best Use of Acquisition Area	The acquisition does not have sufficient physical characteristics to support independent development. Therefore, its highest and best use is to serve as part of the Whole Property.

ACQUISITION INTEREST	
P00056485.001 - Easement	
Acquisition Type	Drainage Easement
Rights Being Acquired	Surface and Subsurface
Percent of Fee Encumbered	99% (Majority of Rights Acquired)
Balance of Rights Remaining	1%

VALUATION OF THE PARTIAL ACQUISITION

The proposed acquisition consists of a permanent drainage easement. The highest and best use of the partial acquisition area is the same as the Whole Property. Therefore, in determining the fee simple value of the part(s) to be acquired, the identical unit price of the Whole Property land value was utilized. The value of an easement is measured by what the property owner has lost from the bundle of rights, not by what the grantee has gained. The appraiser has concluded that the proposed permanent drainage easement being acquired represents approximately 99% of the fee simple rights as indicated in the table below.

VALUATION OF PARTIAL ACQUISITION - LAND

Partial Acquisition	Area (SF)		$ PSF		Acquired		Total
P00056485.001 - Easement	55,013 SF	x	$3.25	x	99%	=	$177,004
Total							**$177,004**

Compiled by CBRE

The value of the proposed acquisition is as follows:

VALUATION OF PARTIAL ACQUISITION - TOTAL	
Land in Acquisition Area	$177,004
Improvements in Acquisition Area	N/A
Total Acquisition Value	**$177,004**

VALUATION OF THE REMAINDER BEFORE THE ACQUISITION

The value of the Remainder Before the acquisition is a mathematical computation where the value of the acquisition is subtracted from the value of the Whole Property. The Cost, Sales Comparison – As Improved, and Income Capitalization approaches are not analyzed in the appraisal of the Remainder Before the acquisition. The resultant value is the Remainder immediately before the acquisition, as set forth in the following table: it is compared to the value of the Remainder After the taking to determine potential damages or enhancements to the Remainder.

REMAINDER BEFORE VALUATION SUMMARY

Value of Whole Property		Value of Partial Acquisition		Value of Remainder Before the Acquisition
$3,539,250	-	$177,004	=	$3,362,246

PROPERTY VALUATION SUMMARY - REMAINDER

Whole: ☐ Part to be Acquired: ☐ Remainder After: ☒

HIGHEST AND BEST USE ANALYSIS: (The Highest and Best Use analysis should consider the reasonably probable and legal use of vacant land or improved property considering legally permissible, physically possible, financially feasible, and maximally productive. Use a separate page, numbered accordingly, as necessary.)

See analysis to follow.

VALUATION APPROACHES

Insert value estimate, then describe, analyze, and support each approach as required.

Sales Comparison Approach (land value) $3,362,246

Cost Approach .....N/A

Sales Comparison Approach.....N/A

Income Approach.....N/A

Reconciliation of Approaches to Value.....$3,362,246

*The Remainder After will be valued as a vacant tract of land and the Sales Comparison Approach - Land Value Only was the only approach utilized to value the Remainder. Therefore, the Cost Approach, Sales Comparison Approach - As Improved and Income Approach are not considered applicable. Furthermore, surface rights in this area are not purchased based on income production.

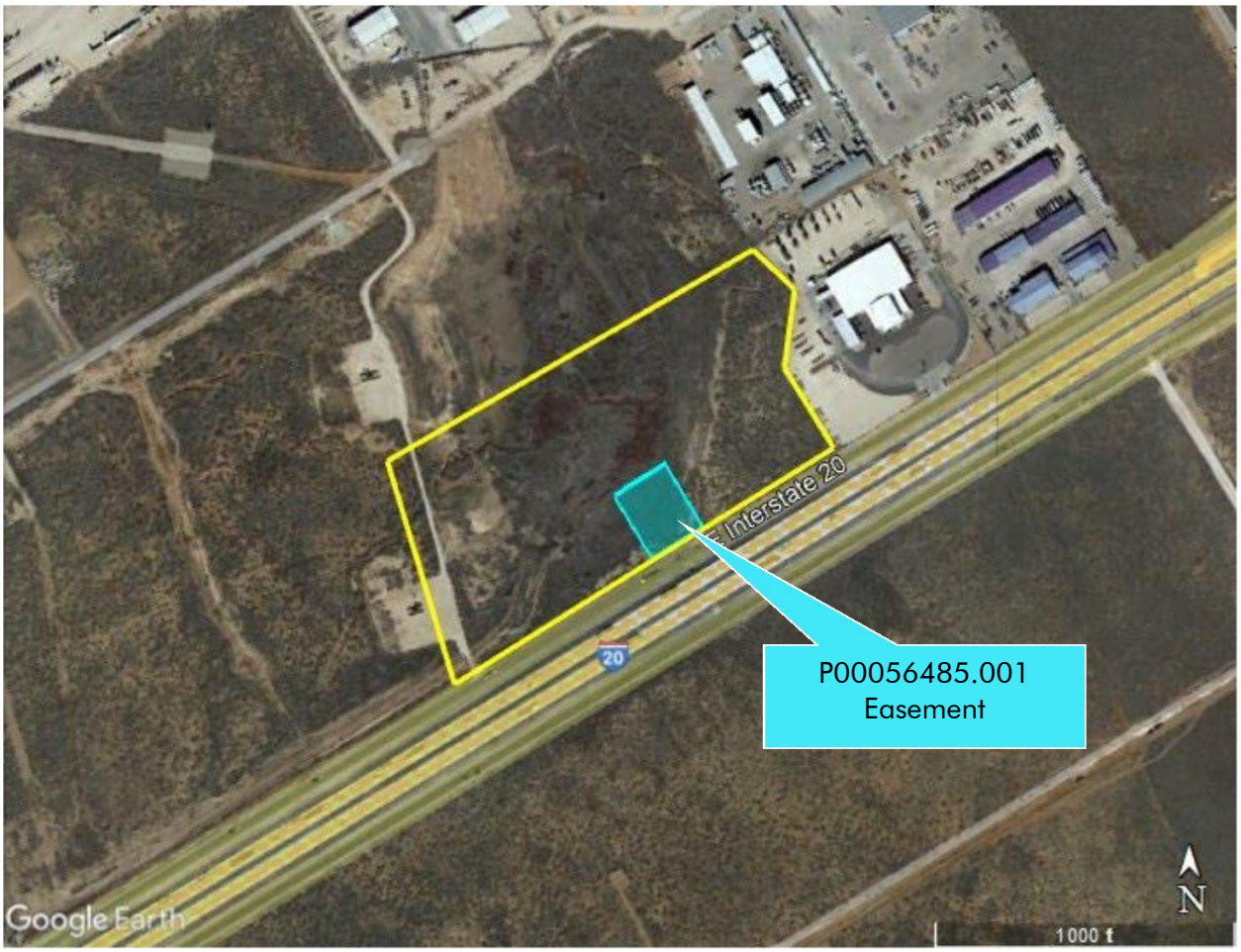
Based on the foregoing, the market value of the Remainder After has been concluded as follows:

Contributory Value of Improvements (Itemized)			
Total Contributory Value of Improvements			N/A
Contributory Land Value (Itemized)			
Fee Area Remaining (1,033,987 SF)	@	$3.25/SF	$3,360,458
P00056485.001 - Easement (55,013 SF) @ 1% of 100%	@	$3.25/SF	$1,788
Reconciled Final Value			**$3,362,246**

Each approach developed follows this page and is sequenced as shown below.

Land Value, Pg SCA-5.4 | Cost Approach, Pg CA-5.5 | Sales Comparison Approach, Pg SCA-5.6 | Income Approach, Pg IA-5.7

DESCRIPTION AND HIGHEST AND BEST USE – REMAINDER AFTER THE ACQUISITION



Remainder After Aerial

The image and outline above are presented to merely assist the reader in visualizing the Remainder After and are not a legal representation or considered to represent a survey of the Remainder property.

The valuation of the Remainder After the acquisition takes into consideration any severance damage accruing to the remainder as a result of the condemnation. Per State law, CBRE has excluded from consideration impacts to the remainder resulting from community damages.[7]

The IH 20 project proposes to develop a program of improvements to IH 20 in the Odessa-Midland corridor. Improvements are primarily intended to maintain drainage and improve the turning radius at a number of intersections.

[7] Texas Property Code, Title 4, Chapter 21. Eminent Domain

The Remainder After will contain the same amount of land as in the Whole Property with 25.00 acres or 1,089,000 square feet. A portion of the Remainder After will now be encumbered with a 1.2629 acre or 55,013 square foot drainage easement. The Remainder will also continue to have similar physical characteristics and will maintain the same highest and best use as in the Whole Property.

Remainder Access

Access to the Remainder will be similar to that before the acquisition from IH 20. No change in access is expected as a result of the acquisition.

Legal Non-Conformance

The Subject was legally conforming before the acquisition, and the project will not change that status.

Market Conformance

The Subject will be functional for its intended use and typical for the neighborhood after the acquisition is complete.

REMAINDER SUMMARY ANALYSIS - REMAINDER COMPARISON

Physical Description	**Whole Property - Before Acquisition**		**Remainder After the Acquisition**	
Gross Site Area (Larger Parcel)	25.00 Acres	1,089,000 Sq. Ft.	25.00 Acres	1,089,000 Sq. Ft.
Primary Road Frontage	IH 20	1,480 Feet	IH 20	1,480 Feet
Shape	Irregular		Irregular	
Topography	Generally Level		Generally Level	
Zoning District	BP, I-20 Business Park District		BP, I-20 Business Park District	
Flood Zone	Zone AE and Zone X (Unshaded)		Zone AE and Zone X (Unshaded)	
Flood Notes	95% - Zone AE & 5% Zone X (Unshaded)		95% - Zone AE & 5% Zone X (Unshaded)	
Comparative Analysis	**Rating**		**Rating**	
Access	Appears adequate		Unchanged	
Visibility	Appears adequate		Unchanged	
Functional Utility	Appears adequate		Unchanged	
Traffic Volume	Appears adequate		Unchanged	
Drainage	Assumed adequate		Unchanged	
Utilities	**Provider**	**Availability**		
Water	City of Midland	Yes	Unchanged	
Sewer	City of Midland	Yes	Unchanged	
Electricity	Various Providers	Yes	Unchanged	
Telephone	Various Providers	Yes	Unchanged	
Other	**Yes** **No**	**Unknown**	**Yes** **No**	**Unknown**
Detrimental Easements		X		X
Encroachments		X		X
Deed Restrictions		X		X

Source: Various sources compiled by CBRE

HIGHEST AND BEST USE – REMAINDER PROPERTY

AS VACANT

Legally Permissible

As noted in the Zoning Section and like the Whole Property, the Remainder After is located in the BP, I-20 Business Park District. This district is intended to promote development of various commercial and industrial uses in accordance with the zoning ordinance. Additionally, there are no known deed restrictions that limit the property from being developed to a specific use. Therefore, like the Whole Property, an Industrial use for the Remainder After are legally permissible.

Physically Possible

The Remainder After will be similarly suited for the legally permissible uses that were achievable in the Whole Property before the acquisition. There are no known physical reasons why the subject site would not support any legally probable development (i.e., it appears adequate for development).

Financially Feasible

Given the Remainder's size, lack of zoning, and its surrounding development, the financially feasible for the Remainder After is like the Whole Property, for Industrial use.

Maximally Productive

Based on the information presented above and upon information contained in the prior analysis, we conclude that the highest and best use of the Remainder After, like the Whole Property, as if vacant, is for industrial use.

Highest & Best Use Conclusion – As Vacant

Given the previously discussed information, the highest and best use of the Remainder after, as vacant, is the same as the Whole Property, which is for Industrial use.

AS IMPROVED

Highest & Best Use Conclusion – As Improved

The Remainder After is a vacant tract of land. Therefore, the highest and best use of the Remainder after, as improved, is not applicable.

SALES COMPARISON APPROACH

Whole: ☐ Part to be Acquired: ☐ Remainder After: ☒

Land: ☒ Improved: ☐

	Subject	Comp No. 1	Comp No. 2	Comp No. 3	Comp No. 4	Comp No. 5
Grantor		PHX Permian Park 20, LLC	Samuel Gonzalez and Aidee Gonzalez	PHX Permian Park 20, LLC	Landmarks LLC	KJ2 Phoenix Venture LLC
Grantee		JLS Business Properties, Ltd.	City of Midland	Three Diamond Capital Holdings, LLC	JJBB Midland Investments LLC	Altec Industries Inc.
Date of Sale		May-22	Mar-20	Feb-19	Jul-18	Apr-18
Address	NW/L of IH 20, W of Agri Street and E of Schlumberger Drive	SE/L of IH 20, E of CR 1300 and W of FM 1788	3500 FM 307	12501 Interstate 20	9817 West IH 20	13107 IH 20
City, State	Midland, TX	Odessa, TX	Midland, TX	Odessa, TX	Midland, TX	Odessa, TX
Gross Acres	25.0000	7.3600	2.5000	5.0060	3.9944	5.1900
Gross Square Feet	1,089,000	320,602	108,900	218,061	173,995	226,076
Actual Sale Price		$1,000,000	$290,000	$547,300	$500,000	$756,501
Unit Price	Per SF	$3.12	$2.66	$2.51	$2.87	$3.35
Property Rights Conveyed						
Financing						
Conditions of Sale						
Market Conditions (Time)	3%	1%	8%	11%	12%	13%
Adjusted $/SF		$3.15	$2.87	$2.79	$3.21	$3.79
Location						
Size						
Shape						
Frontage/Access						
Topography/Floodplain		-5%		-5%	-5%	-5%
Zoning/Use						
Utilities		5%		5%	5%	5%
Net Adjustment		0%	0%	0%	0%	0%
Indicated Unit Value		**$3.15**	**$2.87**	**$2.79**	**$3.21**	**$3.79**
Estimated Unit Value				$3.25		

Explanation of Adjustments with Reconciliation (Attach Comparable Data Supplement and Map; use separate page, numbered accordingly, as necessary.):

Estimated Value by Sales Comparison Approach $3,362,246

The Remainder After analysis is based upon the same sales and adjustments as in the Whole Property in Section 3. While the Remainder will contain the same amount of land as in the Whole Property with 25.00 acres or 1,089,000 square feet, a portion of the Remainder After will now be encumbered with a 1.2629 acre or 55,013 square foot drainage easement.

The valuation conclusion of the Remainder After is calculated below:

CONCLUDED LAND VALUE							
Remainder After	**$ PSF**		**Size (SF)**				**Total**
Fee Area Remaining	$3.25	x	1,033,987			=	$3,360,458
P00056485.001 - Easement	$3.25	x	55,013	x	1%	=	$1,788
Indicated Value:							$3,362,246
Compiled by CBRE							

COST APPROACH

Whole: ☐ Part to be Acquired: ☐ Remainder After: ☒

Estimated Replacement Cost					
Improvement	No. of Units	$ per Unit	Cost New	<Depreciation>	Value
Contributory Value of the Buildings					N/A
Accessory Improvements					
Contributory Value of the Accessory Improvements					N/A
Site Improvements					
Contributory Value of the Site Improvements					N/A
Contributory Value of All Improvements					N/A
Fee Area Remaining					N/A
Estimated Value by the Cost Approach					**N/A**

Furnish sources of cost data and support for depreciation factors (physical, functional, and economic. Use separate page, numbered accordingly, as necessary.)

The Remainder After is a vacant tract of land. Therefore, the Cost Approach is not applicable.

SALES COMPARISON APPROACH

Whole: ☐ Part to be Acquired: ☐ Remainder After: ☒

Land: ☐ Improved: ☒

	Subject	Comp No. 1	Comp No. 2	Comp No. 3	Comp No. 4
Grantor					
Grantee					
Date of Sale					
Unit Price					
Relative Location					
Financing					
Conditions of Sale					
Market Conditions					
Physical Characteristics					
Indicated Unit Value					
Estimated Unit Value					**N/A**

Explanation of Adjustments with Reconciliation (Attach Comparable Data Supplement and Map; use separate page, numbered accordingly, as necessary.)

The Remainder After is a vacant tract of land. Therefore, the Sales Comparison Approach – As Improved is not applicable.

INCOME APPROACH

Whole: ☐ Part to be Acquired: ☐ Remainder After: ☒

ntial Gross Income						
ancy						
ctive Gross Income						
enses						
Fixed	Taxes					
	Insurance					
Variable	Management					
l Expenses						
Operating Income						
me Capitalized @						
: Value of Excess Land (if any)						
mated Value by Income Approach						**N/A**

Furnish supporting information/data, justification of gross income estimates, expenses, method of capitalization and capitalization rate (*Attach Comparable Rental Data Supplement and Map*. Use separate page, numbered accordingly, as necessary.):

The Remainder After is a vacant tract of land. Therefore, the Income Approach is not applicable.

RECONCILIATION OF VALUE – REMAINDER AFTER

The value of the Remainder After the acquisition is based on a new site analysis, improvement analysis, and highest and best use analysis. Reference to the value of the Remainder Before is made only with reference to calculation of any remainder impact, not determination of the value of the remainder after the acquisition.

The Remainder After will be valued as a vacant tract of land and the Sales Comparison Approach - Land Value Only was the only approach utilized to value the Remainder. Therefore, the Cost Approach, Sales Comparison Approach - As Improved and Income Approach are not considered applicable. Furthermore, surface rights in this area are not purchased based on income production.

The value indications from the approaches to value are summarized as follows:

SUMMARY OF VALUE CONCLUSIONS	
Land Value	$3,362,246
Cost Approach	N/A
Sales Comparison Approach	N/A
Income Capitalization Approach	N/A
Reconciled Value	$3,362,246
Compiled by CBRE	

EXPLANATION OF DAMAGES (if any): No permanent damages are anticipated to the remainder.

COMPENSATION SUMMARY

WHOLE PROPERTY:		
The market value of the whole property is.....	$3,539,250	
PART TO BE ACQUIRED:		
Considered as severed land, the fee simple title to the part being acquired for highway purposes (less oil, gas and sulphur and subject to existing easements, if any, which are not to be extinguished) is.....		$177,004
REMAINING PROPERTY		
The value of the remainder immediately before the taking is.....	$3,362,246	
Considering the uses to which the part taken is to be subjected, the market value of the remainder immediately after the acquisition is.....	$3,362,246	
NET DAMAGES OR ENHANCEMENTS, if any.....		$0
ACCESS:		
The lack of any access or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of.....	$0	
COST TO CURE:		$0
TOTAL COMPENSATION:		$177,004

ASSUMPTIONS AND LIMITING CONDITIONS

1. CBRE, Inc. through its appraiser (collectively, "CBRE") has inspected through reasonable observation the subject property. However, it is not possible or reasonably practicable to personally inspect conditions beneath the soil and the entire interior and exterior of the improvements on the subject property. Therefore, no representation is made as to such matters.
2. The report, including its conclusions and any portion of such report (the "Report"), is as of the date set forth in the letter of transmittal and based upon the information, market, economic, and property conditions and projected levels of operation existing as of such date. The dollar amount of any conclusion as to value in the Report is based upon the purchasing power of the U.S. Dollar on such date. The Report is subject to change as a result of fluctuations in any of the foregoing. CBRE has no obligation to revise the Report to reflect any such fluctuations or other events or conditions which occur subsequent to such date.
3. Unless otherwise expressly noted in the Report, CBRE has assumed that:

   (i) Title to the subject property is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. CBRE has not examined title records (including without limitation liens, encumbrances, easements, deed restrictions, and other conditions that may affect the title or use of the subject property) and makes no representations regarding title or its limitations on the use of the subject property. Insurance against financial loss that may arise out of defects in title should be sought from a qualified title insurance company.

   (ii) Existing improvements on the subject property conform to applicable local, state, and federal building codes and ordinances, are structurally sound and seismically safe, and have been built and repaired in a workmanlike manner according to standard practices; all building systems (mechanical/electrical, HVAC, elevator, plumbing, etc.) are in good working order with no major deferred maintenance or repair required; and the roof and exterior are in good condition and free from intrusion by the elements. CBRE has not retained independent structural, mechanical, electrical, or civil engineers in connection with this appraisal and, therefore, makes no representations relative to the condition of improvements. CBRE appraisers are not engineers and are not qualified to judge matters of an engineering nature, and furthermore structural problems or building system problems may not be visible. It is expressly assumed that any purchaser would, as a precondition to closing a sale, obtain a satisfactory engineering report relative to the structural integrity of the property and the integrity of building systems.

   (iii) Any proposed improvements, on or off-site, as well as any alterations or repairs considered will be completed in a workmanlike manner according to standard practices.

   (iv) Hazardous materials are not present on the subject property. CBRE is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater, mold, or other potentially hazardous materials may affect the value of the property.

   (v) No mineral deposit or subsurface rights of value exist with respect to the subject property, whether gas, liquid, or solid, and no air or development rights of value may be transferred. CBRE has not considered any rights associated with extraction or exploration of any resources, unless otherwise expressly noted in the Report.

   (vi) There are no contemplated public initiatives, governmental development controls, rent controls, or changes in the present zoning ordinances or regulations governing use, density, or shape that would significantly affect the value of the subject property.

   (vii) All required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, nor national government or private entity or organization have been or can be readily obtained or renewed for any use on which the Report is based.

   (viii) The subject property is managed and operated in a prudent and competent manner, neither inefficiently or super-efficiently.

   (ix) The subject property and its use, management, and operation are in full compliance with all applicable federal, state, and local regulations, laws, and restrictions, including without limitation environmental laws, seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits, and licenses.

   (x) The subject property is in full compliance with the Americans with Disabilities Act (ADA). CBRE is not qualified to assess the subject property's compliance with the ADA, notwithstanding any discussion of possible readily achievable barrier removal construction items in the Report.

   (xi) All information regarding the areas and dimensions of the subject property furnished to CBRE are correct, and no encroachments exist. CBRE has neither undertaken any survey of the boundaries of the subject property nor reviewed or confirmed the accuracy of any legal description of the subject property.

Unless otherwise expressly noted in the Report, no issues regarding the foregoing were brought to CBRE's attention, and CBRE has no knowledge of any such facts affecting the subject property. If any information inconsistent with any of the foregoing assumptions is discovered, such information could have a substantial negative impact on the Report. Accordingly, if any such information is subsequently made known to CBRE, CBRE reserves the right to amend the Report, which may include the conclusions of the Report. CBRE assumes no responsibility for any conditions regarding the foregoing, or for any expertise or knowledge required to discover them. Any user of the Report is urged to retain an expert in the applicable field(s) for information regarding such conditions.

4. CBRE has assumed that all documents, data and information furnished by or behalf of the client, property owner, or owner's representative are accurate and correct, unless otherwise expressly noted in the Report. Such data and information include, without limitation, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any error in any of the above could have a substantial impact on the Report. Accordingly, if any such errors are subsequently made known to CBRE, CBRE reserves the right to amend the Report, which may include the conclusions of the Report. The client and intended user should carefully review all assumptions, data, relevant calculations, and conclusions of the Report and should immediately notify CBRE of any questions or errors within 30 days after the date of delivery of the Report.
5. CBRE assumes no responsibility (including any obligation to procure the same) for any documents, data or information not provided to CBRE, including without limitation any termite inspection, survey or occupancy permit.
6. All furnishings, equipment and business operations have been disregarded with only real property being considered in the Report, except as otherwise expressly stated and typically considered part of real property.
7. Any cash flows included in the analysis are forecasts of estimated future operating characteristics based upon the information and assumptions contained within the Report. Any projections of income, expenses and economic conditions utilized in the Report, including such cash flows, should be considered as only estimates of the expectations of future income and expenses as of the date of the Report and not predictions of the future. Actual results are affected by a number of factors outside the control of CBRE, including without limitation fluctuating economic, market, and property conditions. Actual results may ultimately differ from these projections, and CBRE does not warrant any such projections.
8. The Report contains professional opinions and is expressly not intended to serve as any warranty, assurance or guarantee of any particular value of the subject property. Other appraisers may reach different conclusions as to the value of the subject property. Furthermore, market value is highly related to exposure time, promotion effort, terms, motivation, and conclusions surrounding the offering of the subject property. The Report is for the sole purpose of providing the intended user with CBRE's independent professional opinion of the value of the subject property as of the date of the Report. Accordingly, CBRE shall not be liable for any losses that arise from any investment or lending decisions based upon the Report that the client, intended user, or any buyer, seller, investor, or lending institution may undertake related to the subject property, and CBRE has not been compensated to assume any of these risks. Nothing contained in the Report shall be construed as any direct or indirect recommendation of CBRE to buy, sell, hold, or finance the subject property.
9. No opinion is expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. Any user of the Report is advised to retain experts in areas that fall outside the scope of the real estate appraisal profession for such matters.
10. CBRE assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.
11. Acceptance or use of the Report constitutes full acceptance of these Assumptions and Limiting Conditions and any special assumptions set forth in the Report. It is the responsibility of the user of the Report to read in full, comprehend and thus become aware of all such assumptions and limiting conditions. CBRE assumes no responsibility for any situation arising out of the user's failure to become familiar with and understand the same.
12. The Report applies to the property as a whole only, and any pro ration or division of the title into fractional interests will invalidate such conclusions, unless the Report expressly assumes such pro ration or division of interests.
13. The allocations of the total value estimate in the Report between land and improvements apply only to the existing use of the subject property. The allocations of values for each of the land and improvements are not intended to be used with any other property or appraisal and are not valid for any such use.

14. The maps, plats, sketches, graphs, photographs, and exhibits included in this Report are for illustration purposes only and shall be utilized only to assist in visualizing matters discussed in the Report. No such items shall be removed, reproduced, or used apart from the Report.
15. The Report shall not be duplicated or provided to any unintended users in whole or in part without the written consent of CBRE, which consent CBRE may withhold in its sole discretion. Exempt from this restriction is duplication for the internal use of the intended user and its attorneys, accountants, or advisors for the sole benefit of the intended user. Also exempt from this restriction is transmission of the Report pursuant to any requirement of any court, governmental authority, or regulatory agency having jurisdiction over the intended user, provided that the Report and its contents shall not be published, in whole or in part, in any public document without the written consent of CBRE, which consent CBRE may withhold in its sole discretion. Finally, the Report shall not be made available to the public or otherwise used in any offering of the property or any security, as defined by applicable law. Any unintended user who may possess the Report is advised that it shall not rely upon the Report or its conclusions and that it should rely on its own appraisers, advisors and other consultants for any decision in connection with the subject property. CBRE shall have no liability or responsibility to any such unintended user.
16. CBRE, Inc. is not qualified to detect the existence of any potentially hazardous materials such as lead paint, asbestos, urea formaldehyde foam insulation, or other potentially hazardous construction materials on or in the land or improvements. The existence of such substances may affect the value of the property. For the purpose of this assignment, we have assumed there are no hazardous materials that would cause a loss in value to the subject.
17. A soils analysis for the site has not been provided for the preparation of this appraisal. In the absence of a soils report, it is a specific assumption that the site has adequate soils to support the highest and best use.

ADDENDA

Addendum A

LAND SALE DATA SHEETS

Form ROW-A-5S
(Rev. 11/11)

COMPARABLE DATA SUPPLEMENT

District:	Odessa	Parcel No.:	P00056485.001 Easement	Highway:	Interstate Highway 20
County:	Midland	ROW CSJ:	0005-14-099		

Land Sale 1 | Improved Sale | Rental Data





Grantor/Lessor:	PHX Permian Park 20, LLC		Grantee/Lessee:	JLS Business Properties, Ltd.	
Date:	5/3/2022	Recording Information:	2022-13371	Lat/Long:	31.895593, -102.243311
Address:	SE/L of IH 20, E of CR 1300 and W of FM 1788, Odessa, TX			Zip Code:	79766
Legal Description:	Being a 7.36 acre tract of land our of Lot 5, Block 2, PHX Permian Park 20, Midland county, Texas and more particularly described by metes and bounds				
Confirmed Price:	$1,000,000 actual	$1,000,000 effective	Verified with:	Listing Broker, Justin Dodd, (214) 534-7976	
Terms and Conditions of Sale:		Cash to Seller			
Rental Data:	N/A				
Land Size Gross:	7.3600 AC.	320,602 Sq. Ft.	Unit Price as Vacant:	$3.12/SF	
Land Size Usable:	7.3600 AC.	320,602 Sq. Ft.	Unit Price Usable:	$3.12/SF	
Type Street:	IH-20		Utilities:	None	
Improvement(s) Description:		N/A			
Improvement(s) Size: (GBA / NRA)		N/A	Unit Price as Improved:	N/A	
Condition and Functional Design:		N/A			
Current Use:	Vacant Land		Highest and Best Use:	Industrial Development	
Date of Inspection:	6/10/2022	Zoning: None		Floodplain:	Area Of Minimal Flood Hazard

The original plat was 10.14 acres; however, it was replatted and a portion of the original site was used for common area detention for the park. The final land area is 7.36 acres. The site fronts the interstate service road and this will be the most likely point of access. All of the lots within the park will be developed using individual well and septic systems, and 3-phase power and fiber optic service is available.

Appraiser:	John Little, MAI, R/W-AC		October 25, 2022
(Typed, not signed)			Date

Form ROW-A-5S
(Rev. 11/11)

COMPARABLE DATA SUPPLEMENT

District:	Odessa	Parcel No.:	P00056485.001 Easement	Highway:	Interstate Highway 20
County:	Midland	ROW CSJ:	0005-14-099		

Land Sale 2 | Improved Sale | Rental Data





Grantor/Lessor:	Samuel Gonzalez and Aidee Gonzalez		Grantee/Lessee:	City of Midland	
Date:	3/6/2020	Recording Information:	2020-6992	Lat/Long:	31.998055, -102.021873
Address:	3500 FM 307, Midland, TX			Zip Code:	79706
Legal Description:	Being the surface estate only in and to a 2.500 acre tract of land recorded in Volume 2711, Page 512, official records of Midland County, Texas and lying in the Northwest Quarter of Section 5, Block 38 T2S, T&P RR Co. Survey, Midland County Texas, and being more particularly described by metes and bounds				
Confirmed Price:	$290,000 actual	$290,000 effective	Verified with:	Listing Broker, Thomas Johnston (432)	
Terms and Conditions of Sale:		Cash to Seller		934-3333	
Rental Data:	N/A				
Land Size Gross:	2.5000 AC.	108,900 Sq. Ft.	Unit Price as Vacant:	$2.66/SF	
Type Street:	IH-20		Utilities:	All Available	
Improvement(s) Description:		N/A			
Improvement(s) Size: (GBA / NRA)		N/A	Unit Price as Improved:	N/A	
Condition and Functional Design:		N/A			
Current Use:	Vacant Land		Highest and Best Use:	Commercial	
Date of Inspection:	6/10/2022	Zoning: None		Floodplain:	100-year Flood Plain

The property was listed for sale as available for various types of development. The property was purchased by the City of Midland due to the fact that they also owned adjacent land and their sewer and water mains run through the property. The broker reported that the sale price was at market value and maybe a little over, but the property owners were not threatened by condemnation.

Appraiser:	John Little, MAI, R/W-AC	October 25, 2022	
(Typed, not signed)		Date	

Form ROW-A-5S
(Rev. 11/11)

COMPARABLE DATA SUPPLEMENT

District:	Odessa	Parcel No.:	P00056485.001 Easement	Highway:	Interstate Highway 20
County:	Midland	ROW CSJ:	0005-14-099		

Land Sale 3 | Improved Sale | Rental Data





Grantor/Lessor:	PHX Permian Park 20, LLC		Grantee/Lessee:	Three Diamond Capital Holdings, LLC	
Date:	2/25/2019	Recording Information:	2019-5456	Lat/Long:	31.89305, -102.248473
Address:	12501 Interstate 20, Odessa, TX			Zip Code:	79766
Legal Description:	The surface estate only in and to a 5.006 acre tract of land our of the T. & P.R.R. Co. Survey, Section No. 23, Block 41, T-2-S, Abstract No. 72, Midland County, Texas and being more particularly described by metes and bounds				
Confirmed Price:	$547,300 actual	$547,300 effective	Verified with:	Seller	
Terms and Conditions of Sale:		Cash to Seller			
Rental Data:	N/A				
Land Size Gross:	5.0060 AC.	218,061 Sq. Ft.	Unit Price as Vacant:	$2.51/SF	
Land Size Usable:	5.0060 AC.	218,061 Sq. Ft.	Unit Price Usable:	$2.51/SF	
Type Street:	IH 20		Utilities:	Electricity, telephone	
Improvement(s) Description:		N/A			
Improvement(s) Size: (GBA / NRA)		N/A	Unit Price as Improved:	N/A	
Condition and Functional Design:		N/A			
Current Use:	Industrial		Highest and Best Use:	Industrial	
Date of Inspection:	6/10/2022	Zoning: None		Floodplain:	Area of minimal flood hazard

This comparable is the sale of a 5.006-acre tract of land located in unincorporated Midland County along IH 20 within the Phoenix Permian Park, a new industrial park. The site is roughly rectangular in shape, has level topography, is not zoned and is located primarily outside the floodplain. At the time of sale, electricity and telephone were available to site; public water and sewer were not available. The site was purchased for the development of an industrial facility. The developer/seller confirmed the sale price, and the buyer stated the sale closed in February 2019.

Appraiser:	John Little, MAI, R/W-AC	October 25, 2022	
(Typed, not signed)		Date	

Form ROW-A-5S
(Rev. 11/11)

COMPARABLE DATA SUPPLEMENT

District:	Odessa	Parcel No.:	P00056485.001 Easement	Highway:	Interstate Highway 20
County:	Midland	ROW CSJ:	0005-14-099		

Land Sale 4 | Improved Sale | Rental Data





Grantor/Lessor:	Landmarks LLC		Grantee/Lessee:	JJBB Midland Investments LLC	
Date:	7/26/2018	Recording Information:	2018-21389	Lat/Long:	31.915214, -102.206104
Address:	9817 West IH 20, Midland, TX			Zip Code:	79706
Legal Description:	Being a 3.994 acre tract of land our of Lot 1, Block 2, Entrada Business Park, Midland county, Texas and more particularly described by metes and bounds				
Confirmed Price:	$500,000 actual	$500,000 effective	Verified with:	Broker	
Terms and Conditions of Sale:		Cash to Seller			
Rental Data:	N/A				
Land Size Gross:	3.9944 AC.	173,995 Sq. Ft.	Unit Price as Vacant:	$2.87/SF	
Land Size Usable:	3.9944 AC.	173,995 Sq. Ft.	Unit Price Usable:	$2.87/SF	
Type Street:	IH 20		Utilities:	Electricity, telephone	
Improvement(s) Description:		N/A			
Improvement(s) Size: (GBA / NRA)		N/A	Unit Price as Improved:	N/A	
Condition and Functional Design:		N/A			
Current Use:	Undeveloped		Highest and Best Use:	Industrial	
Date of Inspection:	6/10/2022	Zoning: None		Floodplain:	Zone X (Unshaded)

This comparable is the sale of a 3.994-acre tract of land located in unincorporated Midland County along IH 20. The site has level topography, is not zoned and is not located in a flood zone. It included approximately 2.5 acres of stabilized base and that portion was fenced. Utilities include electricity and telephone as well as a septic system already on site. A city water tap is in place, but the site would have to be annexed into the city to utilize the tap.

Appraiser:	John Little, MAI, R/W-AC	October 25, 2022	
(Typed, not signed)		Date	

Form ROW-A-5S
(Rev. 11/11)

COMPARABLE DATA SUPPLEMENT

District:	Odessa	Parcel No.:	P00056485.001 Easement	Highway:	Interstate Highway 20
County:	Midland	ROW CSJ:	0005-14-099		

Land Sale 5 | Improved Sale | Rental Data





Grantor/Lessor:	KJ2 Phoenix Venture LLC		Grantee/Lessee:	Altec Industries Inc.	
Date:	4/5/2018	Recording Information:	2018-9544	Lat/Long:	31.889016, -102.256077
Address:	13107 IH 20, Odessa, TX			Zip Code:	79766
Legal Description:	Being all of Lot One (1), Block One (1), Final Plat Phoenix Park 1st Filing, an addition to the City of Midland, Midland County, Texas				
Confirmed Price:	$756,501 actual	$756,501 effective	Verified with:	Broker	
Terms and Conditions of Sale:		Cash to Seller			
Rental Data:	N/A				
Land Size Gross:	5.1900 AC.	226,076 Sq. Ft.	Unit Price as Vacant:	$3.35/SF	
Land Size Usable:	5.1900 AC.	226,076 Sq. Ft.	Unit Price Usable:	$3.35/SF	
Type Street:	IH 20		Utilities:	Electricity, telephone	
Improvement(s) Description:		N/A			
Improvement(s) Size: (GBA / NRA)		N/A	Unit Price as Improved:	N/A	
Condition and Functional Design:		N/A			
Current Use:	Industrial		Highest and Best Use:	Industrial	
Date of Inspection:	6/10/2022	Zoning: None		Floodplain:	Zone X (Unshaded)

This comparable is the sale of a 5.19-acre tract of land along IH 20 within the Phoenix Permian Park, a new industrial park. The site is roughly rectangular in shape, has level topography, is not zoned and is not located in a flood zone. It has electricity and telephone only. It was purchased for the development of an industrial facility. The park is within the Odessa ETJ, and the businesses within the park have Odessa mailing addresses. However, the property is in Midland County and the deed references it being an addition to the City of Midland.

Appraiser:	John Little, MAI, R/W-AC	October 25, 2022	
(Typed, not signed)		Date	

Addendum B

SURVEY AND FIELD NOTES DESCRIPTION & PROPERTY INFORMATION

VALUATION & ADVISORY SERVICES

CBRE

2800 Post Oak Blvd
Suite 500
Houston, TX 77056
www.cbre.com

Jim Patterson, R/W-AC
Director

John Little, MAI, R/W-AC
Senior Appraiser

August 17, 2022

City of Midland
300 N Loraine
Midland, TX 79701

RE: Appraisal for the IH-20 Project, Midland County, Texas
ROW CSJ: 0005-14-099
Parcel ID: Parcel P00056485.001
Midland CAD Parcel IDs: R000207850

To Whom It May Concern:

CBRE has been engaged by the Texas Department of Transportation through a subcontract with LJA Engineering to appraise the above referenced property on the IH-20 Project in Midland County, Texas. Enclosed is the field notes and survey for your reference.

According to information provided by the Client, you are the owner or representative of the above referenced property, which has been identified as part of the proposed right-of-way project. As part of the appraisal process, it is necessary we contact the property owner in conjunction with the appraisal. We would like to extend to you, or your designated representative, the opportunity to accompany us on the inspection and to disclose any information about the property that you consider pertinent. Your presence is not mandatory during the inspection, but it is necessary that we contact you either via email or phone. This will give us the best chance to address all of your property specifics. *We will be touring the properties involved in this project on Wednesday, September 7th, Thursday, September 8th and Friday, September 9th.* Please note special safety accommodations may be necessary to coordinate if you wish to meet the appraiser on the property due to ongoing construction along IH-20.

Please fill-out and return the following CBRE Questionnaire form. In addition, please contact Callie Howard-Braddock, R/W-AC at callie.howard@cbre.com or 979-481-4179 to schedule a specific time to meet.

We greatly appreciate your prompt attention to this matter. We look forward to hearing from you or your representatives, and we appreciate your cooperation during this project.

Best regards,

CBRE, INC.
Valuation & Advisory Services

Jim Patterson, R/W-AC
Director

John Little, MAI, R/W-AC
Senior Appraiser

VALUATION & ADVISORY SERVICES

CBRE

2800 Post Oak Blvd
Suite 500
Houston, TX 77056
www.cbre.com

Please complete and return the following questionnaire to Callie Howard-Braddock, R/W-AC at callie.howard@cbre.com or 979-481-4179.

Midland CAD Parcel IDs: R000207850
Parcel Number: Parcel P00056485.001
Project: IH-20 Project in Midland County, Texas
Owner: City of Midland

Check which boxes applies:

- [x] I am the owner of the referenced property
- [x] You may inspect unaccompanied
- [ ] Please contact before inspection
- [ ] I would like to be present at the inspection
- [ ] The property is currently listed for sale for $_____

Who are your utility providers?

Electricity:

Water:

Sewer:

Gas:

Are there any water wells on-site? If so, how many?

Is there a septic system on-site?

Permission Granted by: Gabe McClelland

Phone Number: 432-685-7983

Email: gmcclelland@midlandtexas.gov

Point of Contact for Entry (if different from above): _____

Contact information for Point of Contact: _____

_____

Signature _____ Date September 7, 2022

MIDLAND CENTRAL APPRAISAL DISTRICT

Home Return to Search Print

Property Year 2022 Tax Summary Map/Gis

Information Updated 8/31/2022

Property ID: R000207850 Geo ID: 00004020.011.5020

Property Details

Ownership

MIDLAND CITY OF

300 N LORAINE
MIDLAND, TX 79701

Ownership Interest: 1.0000000

K34

Available Actions

Qualified Exemptions

Const Exempt

* For property owner confidentiality reasons not all exemption details are available online.

Legal Information

Legal: Acres: 30.758, E/2, SEC: 11, BLK: 40-T2S

Situs: HWY 00080 0 W

Property Valuation History

Values by Year		2022	2021	2020	2019	2018	n/a
Improvements	+	$0	$0	$0	$0	$0	$0
Land	+	$922,740	$922,740	$922,740	$922,740	$922,740	$0
Production Market	+	$0	$0	$0	$0	$0	$0
Personal	+	$0	$0	$0	$0	$0	$0
Mineral	+	$0	$0	$0	$0	$0	$0
Total Market	=	$922,740	$922,740	$922,740	$922,740	$922,740	$0
Agricultural Loss	-	$0	$0	$0	$0	$0	$0
Homestead Cap Loss	-	$0	$0	$0	$0	$0	$0
Total Assessed	=	$922,740	$922,740	$922,740	$922,740	$922,740	$0

Improvement / Buildings *Improvement Value: $0*

Group Sequence	Code	Building Description	Year Built	Square Footage	Perimeter Footage

Land Details *Market Value: $922,740* *Production Market Value: $0* *Production Value: $0*

Land Code	Acres	Sq. Ft.	Front Ft.	Rear Ft.	Depth	Mkt. Value	Prd. Value
NHY20	30.758	1,339,818	0	0		922,740	0

Deed History

Sold By	Volume	Page	Deed Date	Instrument
MIDLAND DEVELOPMENT CORP			6/10/2011	2011-11208

Property Tax Estimation by Entity / Jurisdiction

Code	Description	Taxable Value	Tax Rate per $100	Tax Factor applied to Taxable Value	Estimated Tax
165	MIDLAND COUNTY	0	$0.141635	0.00141635	$0.00
CTM	CITY OF MIDLAND	0	$0.367189	0.00367189	$0.00
HOS	MIDLAND HOSPITAL	0	$0.108581	0.00108581	$0.00
RDC	MIDLAND COLLEGE	0	$0.101151	0.00101151	$0.00
SCM	MIDLAND ISD	0	$1.0236	0.010236	$0.00
	Total Estimation		**$1.742156**	**0.01742156**	**$0.00**

The above property tax estimation is not a tax bill. Do not pay.
Click here to view actual Property Tax Bill.

Southwest Data Solutions provides this information "as is" without warranty of any kind.
Southwest Data Solutions is not responsible for any errors or omissions.

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
CCSJ: 0005-14-092

Description for Parcel P00056485.001 Easement

A description of a 55,013 square feet (or 1.2629 acre) parcel of land situated in Section 11, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 52 and Section 12, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 651, in the City of Midland, Midland County, Texas, and being a portion of a called 49.14 acre tract of land described in General Warranty Deed recorded on June 10, 2011, conveyed by Midland Development Corporation to City of Midland as recorded in Instrument Number 2011-11208, Deed Records, Midland County, Texas, said 55,013 square feet (or 1.2629 acre) parcel of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch iron rod with 2-inch aluminum disk stamped "City of Midland Survey Control" found (controlling monument and record monument) in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 37.815 acre tract conveyed to the State of Texas, as recorded in Volume 577, Page 647, Deed Records, Midland County, Texas, said point being the southwest corner of said 49.14 acre tract and the southeast corner of a called 127.392 acre tract of land described in Special Warranty Deed recorded on July 26, 2006, conveyed by The City of Midland Texas to Midland Development Corporation as recorded in Volume 2717, Page 565, Deed Records, Midland County, Texas, said 5/8-inch iron rod with 2-inch aluminum disk having a surface coordinate of N: 10,674,828.58, E: 1,730,960.83, and being 150.42 feet right of and at a right angle to approved schematic baseline station 1005+96.05;

THENCE, North 59° 44' 28" East, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 792.30 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for the **POINT OF BEGINNING**, said point being the southwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod having a surface coordinate of N: 10,675,227.83, E: 1,731,645.19, and being 150.00 feet right of and at a right angle to approved schematic baseline station 998+03.75;**

THENCE, departing said common line, over and across said 49.14 acre tract the following three (3) courses and distances:

1. North 30° 15' 12" West, a distance of 275.08 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 425.08 feet right of and at a right angle to approved schematic baseline station 998+03.58;**

2. North 59° 44' 48" East, a distance of 200.00 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northeast corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 424.95 feet right of and at a right angle to approved schematic baseline station 996+03.58, from which a 1/2-inch iron rod with "illegible" cap found for an interior ell corner of said 49.14 acre tract, bears North 15° 53' 39" West, a distance of 1,301.38 feet;**

Description for Parcel P00056485.001 Easement

3. South 30° 15' 12" East, a distance of 275.06 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 71.04 acre tract conveyed to the State of Texas, as recorded in Volume 422, Page 369, Deed Records, Midland County, Texas, said point being 149.90 feet right of and at a right angle to approved schematic baseline station 996+03.75, from which a 1/2-inch iron rod with "SCHUMANN ENG CO INC" cap found (controlling monument and record monument) for the southeast corner of said 49.14 acre tract bears North 59° 44' 28" East, a distance of 528.59 feet;**

4. **THENCE**, South 59° 44' 28" West, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 200.00 to the **POINT OF BEGINNING** and containing 55,013 square feet (or 1.2629 acres) of land.

NOTES:

** The monument described in this call, if destroyed or damaged during construction, may be replaced with a TxDOT Type II Right-of-Way Marker upon the completion of the highway construction on project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

The Basis of Bearings is the Texas Coordinate System of 1983, Central Zone (4203), North American Datum (NAD 83) 2011 Adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TxDOT combined scale factor of 1.0001241617 from a base point having a coordinate of North:10,664,612.851 and East:1,712,283.872. Unit of measure is US Survey Foot.

Station and Offset information refers to the approved schematic baseline station described in the Project Schematic Control Section Number 0005-14-092.

A survey plat of even date herewith accompanies the legal descriptions.

I, Mark E. Keeton, a Registered Professional Land Surveyor in the State of Texas, do hereby certifies that the land description and plat represent an actual survey made on the ground under my supervision.

Mark E. Keeton, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6790
Jacobs
1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
Fax (214)-638-0447
TBPLS Firm # 10152300

July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

NOTES:
1. ABSTRACT DATES: (NA)
2. BEARING BASIS IS TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), NORTH AMERICAN DATUM (NAD83) 2011 ADJUSTMENT, EPOCH 2010.
3. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY TXDOT COMBINED SCALE FACTOR OF 1.0001241617 FROM A BASE POINT HAVING A COORDINATE OF NORTH=10,664,612.851 AND EAST=1,712,283.872.
4. THE UNIT OF MEASURE IS U.S. SURVEY FEET.
5. THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE PROJECT SCHEMATIC.
6. PROJECT CONTROL WAS ESTABLISHED BY OTHERS AND PROVIDED BY TxDOT.
7. FIELD SURVEYS WERE PERFORMED BETWEEN 12-01-2019 AND 6-10-2022.
8. PARCEL REMAINDER AREA IS DERIVED BY SUBTRACTING THE CALCULATED FEE AREA OF THE PARCEL FROM THE CALLED ACREAGE OF THE PARENT TRACT, LESS ANY OTHER CALLED FEE ACREAGE OF PROPERTY CONVEYANCES OF RECORD, FROM THE PARENT TRACT.

LEGEND

EXISTING ROADWAY INTERNAL
EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
PROPERTY LINE
SURVEY LINE
DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

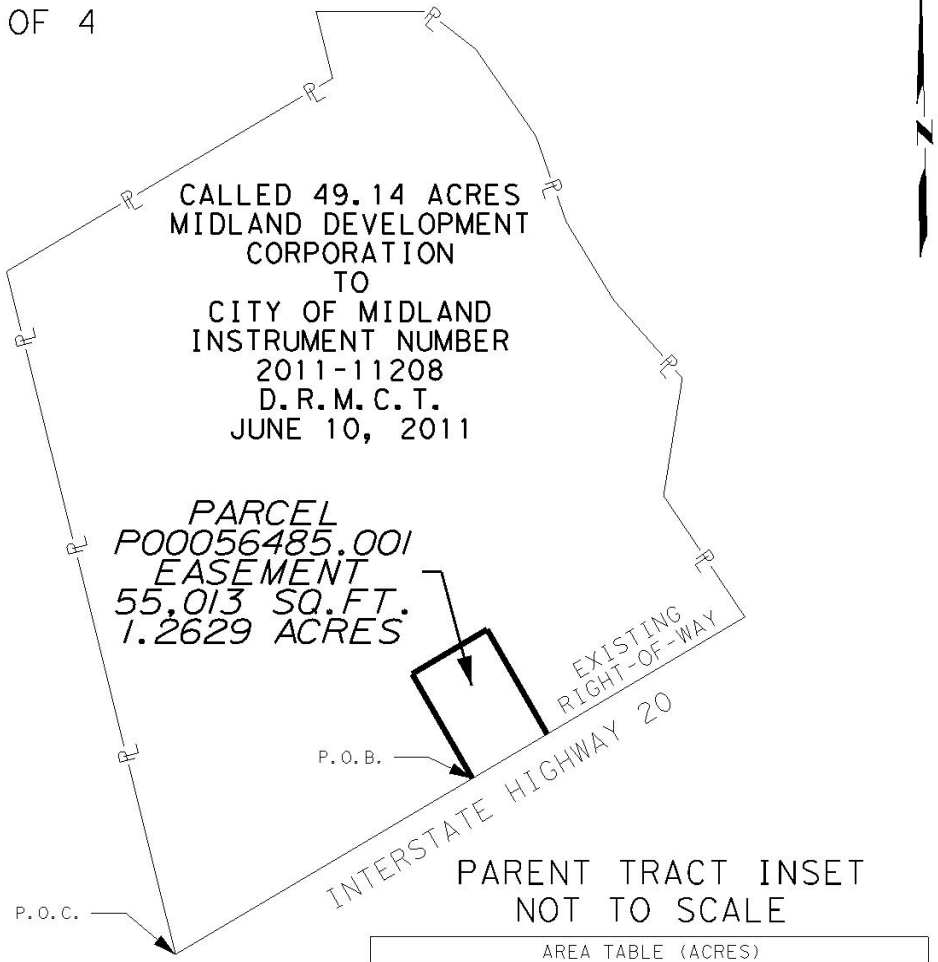
◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.

▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.

■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.

P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
(CM) = CONTROLLING MONUMENT
(RM) = RECORD MONUMENT

✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

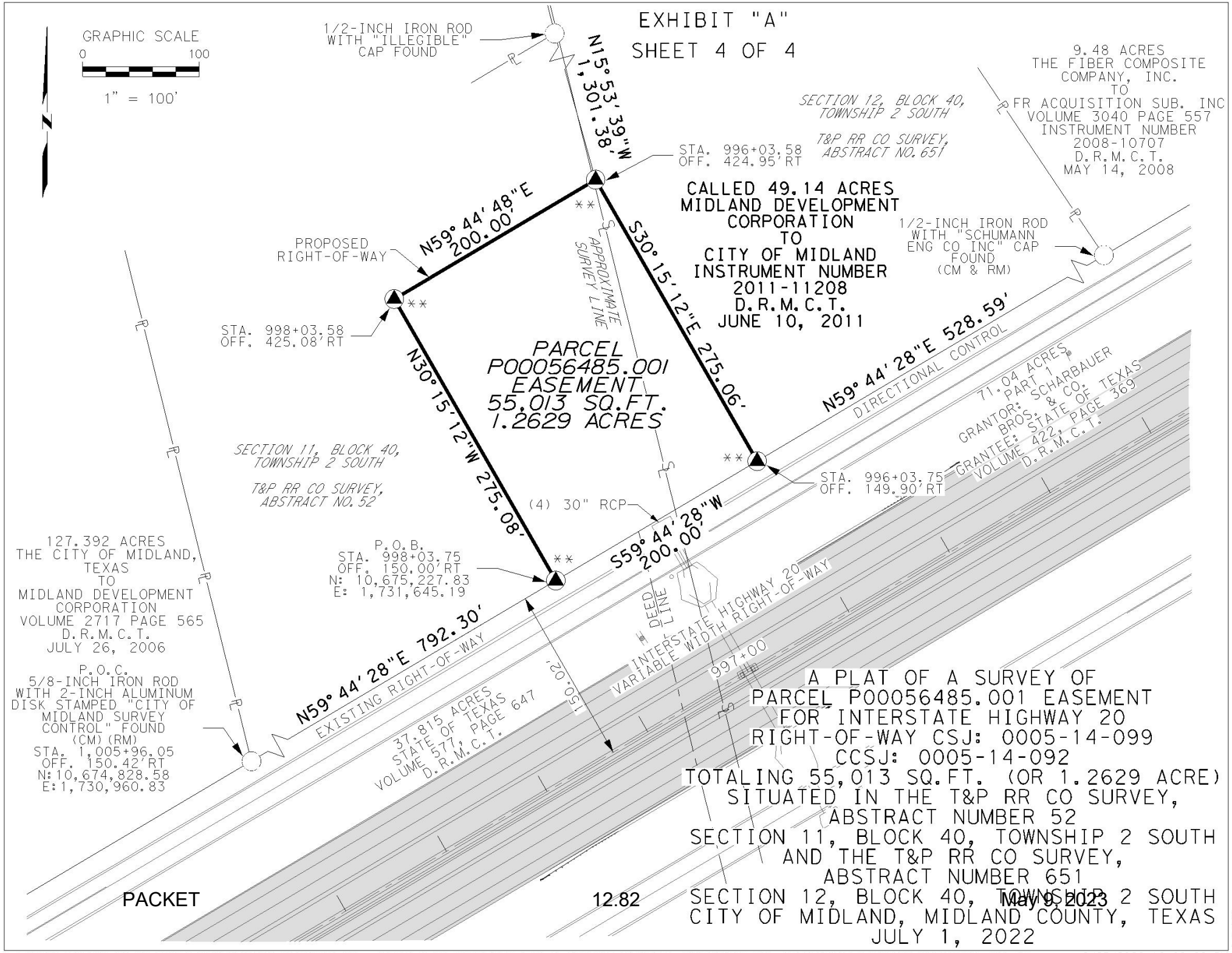
Jacobs
1999 BRYAN STREET, SUITE 1200
DALLAS, TEXAS 75201-3136
PHONE (214)-638-0145
FAX (214)-638-0447
TBPLS FIRM # 10152300

A PLAT OF A SURVEY OF
PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
RIGHT-OF-WAY CSJ: 0005-14-099
CCSJ: 0005-14-092
TOTALING 55,013 SQ.FT. (OR 1.2629 ACRE)
SITUATED IN THE T&P RR CO SURVEY,
ABSTRACT NUMBER 52
SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH
AND THE T&P RR CO SURVEY,
ABSTRACT NUMBER 651
SECTION 12, BLOCK 40, TOWNSHIP 2 SOUTH
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

May 9, 2023

I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/20/2022 9:32:38 AM

LeeBM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM

TITLE RESOURCES

COMMITMENT FOR TITLE INSURANCE (Form T-7)

Issued by

TITLE RESOURCES GUARANTY COMPANY

We, Title Resources Guaranty Company, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

An Authorized Signature

Title Resources Guaranty Company

By Paul McNulty

Executive Vice President

Michael P. Gaydan

Secretary

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

TITLE RESOURCES GUARANTY COMPANY

SCHEDULE A

Effective Date: **September 30, 2022, 12:00AM** GF No. **310179**

Commitment No. _____, issued **October 18, 2022, 8:35AM**

1. The policy or policies to be issued are:

   a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
   (Not applicable for improved one-to-four family residential real estate)
   Policy Amount:
   PROPOSED INSURED: **The State of Texas, acting by and through the Texas Transportation Commission**

   b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
   ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
   Policy Amount:
   PROPOSED INSURED:

   c. LOAN POLICY OF TITLE INSURANCE (Form T-2)
   Policy Amount:
   PROPOSED INSURED:
   Proposed Borrower:

   d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
   Policy Amount:
   PROPOSED INSURED:
   Proposed Borrower:

   e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
   Binder Amount:
   PROPOSED INSURED:
   Proposed Borrower:

   f. OTHER
   Policy Amount:
   PROPOSED INSURED:

2. The interest in the land covered by this Commitment is: **Easement Estate**

3. Record title to the land on the Effective Date appears to be vested in:
   The City of Midland Texas, a Texas Home Rule Municipal Corporation

4. Legal description of land:
   See Exhibit "A"

Countersigned
Lone Star Abstract & Title Co., Inc.

By_____
Authorized Counter Signature

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

TITLE RESOURCES GUARANTY COMPANY

SCHEDULE B

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. ~~The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):~~

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. **Upon Company's receipt, review and approval of a current land title survey, and payment of any promulgated premium, this item can be amended to read in its entirety 'shortages in area'."**

3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)

4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,

   a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
   b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
   c. to filled-in lands, or artificial islands, or
   d. to statutory water rights, including riparian rights, or
   e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.

   (Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year **2023**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2023 and subsequent years.")

6. The terms and conditions of the documents creating your interest in the land.

7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)

9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

a. All visible and apparent easements and all underground easements, the existence of which may arise by unrecorded grant or by use. (Owner's Title Policy)

b. Rights of parties in possession. (Owner's Title Policy)

c. Any and all unrecorded leaseholds, rights of vendors and holders of security interests on personal property installed upon the property by tenants, and rights of tenants to remove trade fixtures at the expiration of the term of leases.

d. Portion of the property that may lie within any roadway.

e. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.

f. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.

g. Right of Way executed by John Scharbauer and Clarence Scharbauer to Magnolia Pipe Line Company, dated February 19, 1929, and recorded in Volume 44, Page 138, Deed Records of Midland County, Texas.

h. Right of Way Grant executed by Ruth Cowden Scharbauer and Clarence Scharbauer, Jr. to The Texas Pipe Line Company, dated July 17, 1947, and recorded in Volume 98, Page 9; and subsequently assigned from The Texas Pipe Line Company et al to Shell Pipe Line Corporation et al, by Assignment dated August 10, 1951, and recorded in Volume 149, Page 584, all in Deed Records of Midland County, Texas; and further assigned to Basin Pipeline Holdings, L.P. by Assignment of Rights-of-Way and Easements dated August 1, 2002, and recorded in Volume 2027, Page 210, Official Records of Midland County, Texas.

i. The terms, conditions, and stipulations of the Memorandum of Easement Agreement to be created by and between The City of Midland, Texas, a Texas Home Rule Municipal Corporation and The State of Texas, acting by and through the Texas Transportation Commission and filed for record in the Official Records of Midland County, Texas.

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

TITLE RESOURCES GUARANTY COMPANY

SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.

2. Satisfactory evidence must be provided that:

   a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,

   b. all standby fees, taxes, assessments and charges against the property have been paid,

   c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,

   d. there is legal right of access to and from the land,

   e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.

3. You must pay the seller or borrower the agreed amount for your property or interest.

4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.

5. **NOTE to all Buyers, Sellers, Borrowers, Lenders and all parties interested in the transaction covered by this commitment. The following constitutes a major change in the procedures and requirements for disbursement of funds by the Title Agent pursuant to this transaction:**
Effective September 26, 1988 the State Board of Insurance (k/n/a Texas Department of Insurance) adopted procedural Rule P-27 (as amended) which requires that "Good Funds" be received and deposited before a Title Agent may disburse from its trust (escrow) fund account.
"Good Funds" mean:
i. Cash or wire transfers;
ii. Cashier's check. For purposes of this Rule, a cashier's check is defined to mean a check that is (1) drawn on a financial institution; (2) signed by an officer or employee of the financial institution on behalf of the financial institution as drawer; (3) a direct obligation of the financial institution; and (4) provided to a customer of the financial institution or acquired from the financial institution for remittance purposes.
iii. Certified check. For purposes of this Rule, a certified check is defined to mean a check with respect to which the drawee financial institution certifies by signature on the check of an officer or other authorized employee of the financial institution that: (1) the signature of the drawer on the check is genuine; (2) the financial institution has set aside funds that are equal to the amount of the check and will be used to pay the check; or (3) the financial institution will pay the check upon presentment.
iv. Teller's check. For purposes of this Rule, a teller's check is defined to mean a check (1) provided to a customer of a financial institution or acquired from a financial institution for remittance purposes, (2) that is drawn by the financial institution, and (3) is drawn on another financial institution or payable through or at a financial institution.
v. Any other instrument that has been determined by the Board of Governors of the Federal Reserve System to be the functional equivalent of a cashier's, certified or teller's check.
vi. Uncertified funds in amounts less than $1,500, including checks, traveler's checks, money orders, and negotiable orders of withdrawal; provided multiple items shall not be used to avoid the $1,500 limitation;
vii. Uncertified funds in amounts of $1,500 or more, drafts, and any other items when collected by the financial institution;
viii. State of Texas Warrants;

ix. United States Treasury Checks;
x. Checks drawn on an insured financial institution and for which a transaction code has been issued pursuant to, and in compliance with, a fully executed Immediately Available Funds Procedure Agreement (Form T-37) with such financial institution;
xi. Checks by city and county governments located in the State of Texas.

6. The tax certificate furnished by the taxing authorities is on real estate only; it does not include mineral or personal property. Therefore, no liability is assumed herein for the payment of said mineral and/or personal property taxes.

7. If Lone Star Abstract is asked to issue an Owner's Title Policy, we will require a properly executed Waiver of Inspection as to Title Insuring Issues signed by the Purchasers of this transaction.

8. We will require a properly executed and notarized Affidavit as to Debts and Liens signed by the party(ies) in title.

9. Secure a Resolution executed by the City Council of the City of Midland, Texas, a Texas Home Rule Municipal Corporation, authorizing the City to grant the easement covering the subject property. A copy of the Resolution must be submitted for examination purposes; after which Lone Star Abstract & Title Co., Inc. reserves the right to make further requirements and/or exceptions.

10. Secure and file for record a Memorandum of Easement Agreement by and between The City of Midland, Texas, a Texas Home Rule Municipal Corporation and The State of Texas, acting by and through the Texas Transportation Commission.

11. The subject property either: (a) Does not lie in the city limits of Midland, Texas; or (2) May not comply with the "City of Midland Ordinance No. 8498", which was adopted on February 13, 2007 and "City of Midland Ordinance No. 8769", which was adopted November 10, 2009, as property exempt from drilling. Therefore, Company will have to delete Item No. 4d from the T-19 and T-19.1 Endorsements, if requested, on any Policy to be issued.

12. Company requires that notary seals contained in any document executed on or after January 1, 2016, must include the notary's identification number as required by Texas Government Code Section 406.013 when the notary public is either (1) a new notary appointee or (2) an existing notary appointee whose appointment has been renewed on or after January 1, 2016.

13. FOR INFORMATION PURPOSES ONLY: Company has performed a twenty-four (24) month deed search on the subject property and finds the following conveyances of record: (a) General Warranty Deed executed by Midland Development Corporation, a Texas corporation to The City of Midland Texas, a Texas Home Rule Municipal Corporation, dated June 09, 2011, and recorded on June 10, 2011, in Document Number 2011-11208, Official Records of Midland County, Texas.

Countersigned
Lone Star Abstract & Title Co., Inc.

By_____
Authorized Counter Signature

COMMITMENT FOR TITLE INSURANCE T-7

SCHEDULE D

GF No. **310179** Effective Date: **September 30, 2022, 12:00AM**

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment

The issuing Title Insurance Company, Title Resources Guaranty Company, is a corporation whose shareholders owning or controlling, directly or indirectly, 10% or more of said corporation, directors, and officers are listed below:

Shareholders:
Realogy Title Group LLC
Directors:
Donald J. Casey; Michael P. Gozdan; Sriram Someshwara; J. Scott McCall; Thomas N. Rispoli; Donald W. Evans, Jr.; Marilyn J. Wasser
Officers:
J. Scott McCall-President/CEO, E. Paul McNutt, Jr-EVP, Michael P. Gozdan- Secretary, Jeffrey A. Gueiss, Chief Financial Officer

2. OFFICERS AND DIRECTORS OF LONE STAR ABSTRACT & TITLE CO., INC.

President & Director	Jack Wayne Campbell	100% Shareholder
Corporate Secretary & Director	Troy R. Campbell	
Executive Vice President & Treasurer	Joseph W. Campbell, Jr.	
Vice President & Plant Manager	Troy L. McKay	
Vice President & Escrow Officer	Debora Kay Blackaller	
Vice President & Escrow Officer	Rachel S. Evans	

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owner's Policy	**$0.00**
Loan Policy	**$0.00**
Endorsement Charges	**$0.00**
Other	
Total	**$0.00**

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company: 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

Amount	To Whom	For Services

" *The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

COMMITMENT FOR TITLE INSURANCE (Form T-7)

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Titulo es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment of Title insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 432-683-1818 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is $2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

> "Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

_____ _____

SIGNATURE DATE

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title. The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.	El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad. El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

Minerals and Mineral Rights may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-800-526-8018 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.

2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations.

TITLE RESOURCES

IMPORTANT NOTICE

To obtain information or make a complaint

You may call Title Resources Guaranty Company's toll-free telephone number for information or to make a complaint at:

1-800-526-8018

You may also write to Title Resources Guaranty Company at

Attention: Claims Department
8111 LBJ Freeway, Suite 1200
Dallas, TX 75251

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document

AVISO IMPORTANTE

Para obtener información o para presentar una queja

Usted puede llamar al número de teléfono gratuito de Title Resources Guaranty Company's para obtener información o para presentar una queja al:

1-800-526-8018

Usted también puede escribir a Title Resources Guaranty Company

Attention: Claims Department
8111 LBJ Freeway, Suite 1200
Dallas, TX 75251

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, usted debe comunicarse con la compañía primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas

ADJUNTE ESTE AVISO A SU PÓLIZA:

Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto

TITLE RESOURCES GROUP

Rev. 09/07/2022

FACTS	WHAT DOES TITLE RESOURCES GUARANTY COMPANY DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and account balances • Payment history and credit card or other debt • Checking account information and wire transfer instructions When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons TITLE RESOURCES GUARANTY COMPANY chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	**Does TITLE RESOURCES GUARANTY COMPANY share?**	**Can you limit this sharing?**
For our everyday business purposes – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes- to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes- information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes- information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share

Questions?	Go to https://www.titleresources.com/privacypolicy

Who we are	
Who is providing this notice?	TITLE RESOURCES GUARANTY COMPANY
What we do	
How does TITLE RESOURCES GUARANTY COMPANY protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does TITLE RESOURCES GUARANTY COMPANY collect my personal information?	We collect your personal information, for example, when you • Apply for insurance or pay insurance premiums • Provide your mortgage information or show your driver's license • Give us your contact information We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes –information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • *Our affiliates include companies that are owned in whole or in part by Anywhere Real Estate, Inc. (https://www.anywhere.re); Anywhere Integrated Services, LLC (https://www.anywhereis.re);and HomeServices of America, Inc. (https://www.homeservices.com).*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. • ***TITLE RESOURCES GUARANTY COMPANY** does not share with nonaffiliates so they can market to you.*
Joint Marketing	A formal agreement between nonaffiliated financial companies that together market financial products or service to you. • ***TITLE RESOURCES GUARANTY COMPANY** does not share with nonaffiliated financial companies for joint marketing purposes.*
Other Important Information	
For European Union Customers **For our California Customers**	Please see our Privacy Policy located at https://www.titleresources.com/privacypolicy Please see our notice about the California Consumer Protection Act located at https://www.titleresources.com/privacypolicy

Lone Star Abstract & Title Co., Inc.

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer-reporting agency.

Use of Information

We request information from you for our legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested for us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Confidentiality and Security

Even if you are no longer our customer, our Privacy Policy will continue to apply to you. We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical and/or electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

AFFILIATED BUSINESS ARRANGEMENTS DISCLOSURE STATEMENT

NOTICE

GF# 310179SLN

To: Customer of Lone Star Abstract & Title Co., Inc.

Property: W. Hwy. 80 ,Midland, TX 79706

From: Lone Star Abstract & Title Co., Inc. Date:

This is to give you notice that Lone Star Abstract & Title Co., Inc. has a business relationship with Advanced Tax Management, Inc. Advanced Tax Management, Inc. supplies tax certificates for Lone Star Abstract & Title Co., Inc. and may be considered an Affiliated Business Arrangement in accordance with Title 12 USC 2602 (7).

Set forth below is the estimated charge or range of charges by Advanced Tax Management, Inc. for the following settlement services:

Tax Certificates $25 plus tax per tax account

You are NOT required to use Advanced Tax Management, Inc. as a condition for purchase, sale, or refinance of the subject property, THERE ARE OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Document Preparation:

You are NOT required to use our in-house attorney, Pinson Law Firm, as a condition for the settlement of your loan, purchase/sale or refinance of the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

I HAVE RECEIVED A COPY OF THIS NOTICE.

The City of Midland Texas, a Texas Home Rule Municipal Corporation

By: _____

The State of Texas, acting by and through the Texas Transportation Commission

_____

By

Addendum C

QUALIFICATIONS

John P. Little, MAI, R/W-AC

Senior Appraiser – Right of Way Specialist

CBRE



T + 1 713 577 1864
M +1 281 686 8900
John.Little1@cbre.com

2800 Post Oak Blvd
Suite 500
Houston, TX 77056

Partial List of Clients

- Mercantile Bank
- RBC
- Sunstone Mortgage Capital
- ANICO
- Geary Porter and Donovan, P.C.
- Barron, Adler, Clough & Oddo, LLP
- Blackwell & Duncan, PLLC
- Ikard Wynne LLP
- Popp, Gray & Hutcheson, PLLC
- Pinchal & Company
- Randall Davis Company
- TxDOT
- TDHCA
- Cities of Houston, Galveston, Richmond, and other municipalities

Experience

John P. Little, MAI, R/W-AC is a Senior Appraiser in the Houston Office of CBRE Valuation & Advisory Services specializing in right of way appraisal. Mr. Little has been engaged in various phases of real estate appraisal and consultation including: commercial, office, industrial, retail, restaurant, special purpose, vacant land, subdivision development, single and multi- family residential, business personal property, Low-income Housing Tax Credit properties, ad valorem property tax consulting, litigation support and other appraisal services including marketability studies and land planning. He has worked in the appraisal industry since 2002. Since that time, he has analyzed commercial real estate in Texas, Oklahoma, Louisiana, Indiana, Ohio, Kentucky, Tennessee, Florida, Georgia, and California. He has performed appraisal services for city and state governments, law firms, REITs, lending institutions as well as private investors.

Professional Affiliations / Accreditations

- Member – Appraisal Institute
  - MAI Designation
  - LDAC Representative
  - Eight consecutive years as FACT Representative and/or Government Relations Committee Chairman
  - Two-time recipient of the Key Man Award and a Certificate of Appreciation from the Houston Chapter of the Appraisal Institute
- Member – International Right of Way Association
  - R/W-AC Designation
- State of Texas Certified General Appraiser: TX 1334902 G
- State of Oklahoma Certified General Appraiser: OK 13428CGA

Education

- Advanced Land Valuation: Sound Solutions to Perplexing Problems
- The Valuation of Partial Acquisitions
- Problems in the Valuation of Partial Acquisitions
- Advanced Appraisal Concepts, Cost, Sales and Income Capitalization
- Advanced Spreadsheet Modeling
- Market Analysis and Highest and Best Use
- Advanced Spreadsheet Modeling for Valuation Applications
- USPAP
- Business Practices and Ethics
- Ethics in the Right of Way Profession
- Appraising the Appraisal: Appraisal Review– General
- Complex Litigation Appraisal Case Studies
- Bachelor of Science – Texas State University

JOHN PAUL LITTLE
17102 LEON COURT
SPLENDORA, TX 77372

TALCB
TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

Certified General Real Estate Appraiser

Appraiser: **John Paul Little**
License #: **TX 1334902 G** License Expires: **05/31/2023**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title: Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.

Chelsea Buchholtz
Commissioner



Right of Way Appraisal Team Lead / Texas

James P. Patterson, R/W-AC

Director, Houston, TX
T +1 713 577 1596
C +1 713 882 5103
E jim.patterson@cbre.com
Lic. TX 1336482

Pro Affiliations / Accreditations

– Certified General Appraiser, States of Texas, Louisiana, Oklahoma, New Mexico and Kansas.

– International Right of Way Association-Right of Way Appraisal Certification (R/W-AC)

Education

– Baylor University, Waco, Texas

– Bachelor of Business Administration Degree; Public Administration

Professional Experience

James Patterson, R/W-AC, is a Director of CBRE's Valuation and Advisory Services (VAS) group and has over 20 years of experience focusing on right-of-way appraisal and consulting assignments. Mr. Patterson obtained a Bachelor of Business Administration Degree in Public Administration from Baylor University.

Before joining CBRE, Mr. Patterson was a Senior Vice President at Jones Lang Lasalle and the Director of Right-of-Way at Integra Realty Resources. He managed large-scale infrastructure projects, including proposed petroleum pipelines, electrical transmission lines, water lines, and public roadways. Mr. Patterson's services on projects include valuation, consultations, reviews, and market studies.

In addition to providing appraisal and consulting services for infrastructure projects in multiple states across the U.S., Mr. Patterson has provided litigation support and expert witness testimony.

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JAMES PATRICK PATTERSON
1111 WILDWOOD LANE
KATY, TX 77494

TALCB
TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

Certified General Real Estate Appraiser

Appraiser: **James Patrick Patterson**
License #: **TX 1336482 G** License Expires: **10/31/2022**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title: Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.

Chelsea Buchholtz
Commissioner



RIGHT OF WAY APPRAISAL TEAM LEAD - TEXAS

Bradley A. Bujan, MAI

Director, San Antonio, TX
T +1 210 253 6010
M +1 512 563 3966
E brad.bujan@cbre.com
Lic. TX 1380217

Professional Experience

Brad Bujan, MAI is a Director tasked with co-managing the Texas Right of Way Appraisal Team and has been located in the CBRE San Antonio office since 2016. Mr. Bujan has over a decade of real estate appraisal and consulting experience throughout the State of Texas and other states, with primary experience in right-of-way valuations and expert witness testimony support across Texas.

Mr. Bujan is a designated member of the Appraisal Institute, an International Right of Way Association (IRWA) Chapter 39 Member and is licensed as a Certified General Real Estate Appraiser in Texas and other states.

As a Director, Mr. Bujan co-leads the Texas Right-of-Way Appraisal Team that provides exceptional quality appraisal work and client service in the State of Texas and others. He also assists in coordinating activities for the CBRE Right-of-Way Team, including overseeing new business development, client relations and appraisal quality control.

Awards

- IRWA, Chapter 39 Young Professional of the Year (2015 & 2019)
- IRWA, Chapter 39 Young Professionals Chair (2016 to 2019)

Pro Affiliations / Accreditations

- Certified General Appraiser, States of Texas, New Mexico, Oklahoma, Louisiana, Kansas, Colorado, Wyoming
- Designated Member of the Appraisal institute
- International Right of Way Association, Chapter 39 Member
- IRWA, Chapter 39 Young Professionals Chair (2016 to 2019)
- IRWA, Chapter 39 Young Professional of the Year (2015 & 2019)

Education

- Texas A&M University, College Station, Texas
- Bachelor of Science, Agricultural Economics with Emphasis in Finance & Real Estate (2009)
- Minor in Business

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BRADLEY A BUJAN
200 CONCORD PLAZA DRIVE, SUITE 800
SAN ANTONIO, TX 78216

TALCB
TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

Certified General Real Estate Appraiser

Appraiser: **BRADLEY A BUJAN**
License #: **TX 1380217 G** License Expires: **03/31/2023**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title: Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.

Chelsea Buchholtz
Commissioner



VALUATION & ADVISORY SERVICES / HOUSTON

Callie Howard-Braddock, R/W-AC

Vice President | Right-of-Way Specialist, Houston, Texas
M +1 979 481 4179
E callie.howard@cbre.com

Clients Represented

- Brazoria County
- Brazosport Water Authority (BWA)
- City of Houston
- City of League City
- City of Pearland
- Clean Line Energy/Plains and Eastern Clean Line
- CobbFendley
- DCP Midstream
- East Aldine Management District
- Energy Transfer
- Enterprise Products
- EPIC Pipeline
- Fort Bend County
- Harris County
- HDR
- Heidaker Land Services
- Montgomery County
- Overland, Pacific & Cutler (OPC)
- Phillips 66
- Percheron
- Pinnacle Consulting Management
- Plains All American Pipeline
- Property Acquisition Services
- Texas A&M University System
- Texas Attorney General
- TxDOT
- Webb County

Education

- Texas A&M University, College Station, Texas
  - Mays Business School - Masters of Real Estate
  - College of Agriculture and Life Science-Bachelors of Science, Agriculture Science

Professional Experience

Callie Howard-Braddock, R/W-AC is a Vice President within CBRE Valuation & Advisory Services and the Right-of-Way specialty practice following more than 9 years of valuation experience throughout the States of Arkansas, Oklahoma and Texas. Mrs. Braddock has worked extensively with large scale right-of-way infrastructure projects which include the valuation of fee simple and easement estates for pipelines, electrical transmission line projects, roadway expansions and public utility lines. Notable right-of-way projects include:

Brazoria County – CR 58 & 59 Expansion Project – Manvel, Pearland & Rosharon, Texas
BWA FM 521 Water Line Project – Brazoria & Fort Bend Counties, Texas
City of Pearland – Hughes Ranch Road expansion – Pearland, Texas
Clean Line Energy Transmission Line project – States of Arkansas and Oklahoma
Diamond Pipeline project by Plains All American – States of Arkansas and Oklahoma
Enterprise Crude Pipeline, LLC – Midland to Sealy Pipeline Project
EPIC Pipeline project – Texas
Fort Bend County – FM 1093 – Phase II roadway expansion – Fulshear, Texas
Lonestar Express Pipeline project for Energy Transfer Express – Texas
Montgomery County – Rayford Road expansion – Spring, Texas
Phillips 66 –Various Pipeline Projects in Brazoria & Galveston Counties, Texas
TxDOT

- FM 1960 roadway expansion – Humble, Texas
- FM 1463 roadway expansion – Katy, Texas
- IH 10 roadway expansion – Austin County, Texas
- IH 20 roadway expansion & drainage easements – Midland County, Texas
- Loop 20 roadway expansion – Laredo, Texas
- US 60 roadway expansion – Hereford, Texas
- US 190/SH 21 roadway expansion – Madison County, Texas
- SH 42 roadway expansion – Gregg County, Texas
- SH 105 roadway expansion – Conroe, Texas
- SH 146 roadway expansion – Seabrook, Texas

Webb County – Easement & Fee Acquisitions – Laredo, Texas

Pro Affiliations / Accreditations

General Certified Real Estate Appraiser – Oklahoma & Texas
IRWA

- July 2022 – Current – Right of Way International Education Foundation (RWIEF) Young Professional Trustee
- July 2018 – Current – Region 2 Young Professional's Co-Chair & Chapter 8 Committeeman
- 2022 – Region 2 Young Professional of the Year
- 2021 – Alan D. Wurtz SR/WA Scholarship Recipient
- 2018 – Chapter 8 Young Professional of the Year

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TALCB

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

Certified General Real Estate Appraiser

Appraiser: **Callie Elizabeth Howard**

License #: **TX 1380641 G** License Expires: **09/30/2024**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103, authorization is granted to use this title: Certified General Real Estate Appraiser

For additional information or to file a complaint please contact TALCB at www.talcb.texas.gov.

Chelsea Buchholtz
Commissioner

ACKNOWLEDGMENT OF RECEIPT OF APPRAISAL REPORT

County: Midland

District: Odessa

Federal Project No.: N/A

Parcel No.: P00056485.001 Easement

ROW CSJ No.: 0005-14-099

Highway: Interstate Highway 20

I, _____ hereby acknowledge receipt on _____ of a copy of an appraisal report prepared by John Little, MAI, R/W-AC dated October 25, 2022, related to the above parcel. I acknowledge that this appraisal report is subject to the copyright laws of the United States and that any republication or redisclosure is prohibited without the express written consent of the Texas Department of Transportation.

_____ _____
Signature of Owner(s) Date

_____ _____
Signature of Owner(s) Date

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

Texas Department of Transportation
Form ROW-N-31
(Rev. 07/11)

DRAINAGE EASEMENT FOR HIGHWAY PURPOSES

THE STATE OF TEXAS § **ROW CSJ:** 0005-14-099
§ **TxDOT Property ID No.:** P00056485.001 Easement
COUNTY OF MIDLAND § **KNOW ALL MEN BY THESE PRESENTS:**

That, **The City of Midland Texas, a Texas Home Rule Municipal Corporation** of the County of Midland, State of Texas, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of ONE HUNDRED SEVENTY-SEVEN THOUSAND FOUR and no/100ths Dollars ($177,004.00) to Grantors in hand paid by the State of Texas, acting by and through the Texas Transportation Commission, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, do by these presents Grant, Bargain, Sell and Convey unto the State of Texas an easement in, along, upon and across the property which is situated in the County of Midland, State of Texas, which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein for any and all purposes.

This easement conveyed herein is for the purpose of opening, constructing and maintaining a permanent channel or drainage easement in, along, upon and across said premises described in Exhibit "A" together with the right and privilege at all times of the Grantee herein, its agents, employees and representatives of ingress and egress to and from said premises for the purpose of making any improvements, modifications or repairs which the State deems necessary.

And for the same consideration described above and upon the same conditions, the Grantors have this day granted and conveyed and by these presents do grant and convey unto the State of Texas any and all improvements presently existing upon the property described in said Exhibit "A"; SAVE and EXCEPT,

(None.)

HOWEVER, it is expressly understood and agreed that Grantors are retaining title to the following improvements located on the aforesaid property, to wit: (None).

Grantors covenant and agree to remove the above-described improvements from said land by the (N/A) day of (N/A), (N/A), subject, however, to such extensions of time as may be granted by the State in writing; and if, for any reason, Grantors fail or refuse to remove same within said period of time prescribed, then, without any further consideration, the title to all or any part of such improvements not so removed shall pass to and vest in the State of Texas forever.

As a part of the grant hereby made it is agreed between the parties hereto that any stone, earth, gravel or caliche which may be excavated in the opening, construction or maintenance of said channel or drainage easement may be removed from said premises by the State.

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TO HAVE AND TO HOLD the premises described in Exhibit "A" for said purposes together with all and singular the rights, privileges and appurtenances thereto in any manner belonging, unto the State of Texas forever; and Grantor hereby binds itself, its heirs, successors or assigns, to Warrant and Forever Defend, all and singular, the said easement herein conveyed unto the State of Texas, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of_____, 2023.

The City of Midland Texas, a Texas Home Rule Municipal Corporation

By:_____

Name:_____

Title:_____

Corporate Acknowledgement

State of Texas §
§
County of _____ §

This instrument was acknowledged before me on ,_____ 2023

by _____,acting as_____ of The City of Midland Texas, a Texas Home Rule Municipal Corporation, on behalf of said entity in the capacity herein stated.

_____
Notary Public's Signature

The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C

DRAFT

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
CCSJ: 0005-14-092

Description for Parcel P00056485.001 Easement

A description of a 55,013 square feet (or 1.2629 acre) parcel of land situated in Section 11, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 52 and Section 12, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 651, in the City of Midland, Midland County, Texas, and being a portion of a called 49.14 acre tract of land described in General Warranty Deed recorded on June 10, 2011, conveyed by Midland Development Corporation to City of Midland as recorded in Instrument Number 2011-11208, Deed Records, Midland County, Texas, said 55,013 square feet (or 1.2629 acre) parcel of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch iron rod with 2-inch aluminum disk stamped "City of Midland Survey Control" found (controlling monument and record monument) in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 37.815 acre tract conveyed to the State of Texas, as recorded in Volume 577, Page 647, Deed Records, Midland County, Texas, said point being the southwest corner of said 49.14 acre tract and the southeast corner of a called 127.392 acre tract of land described in Special Warranty Deed recorded on July 26, 2006, conveyed by The City of Midland Texas to Midland Development Corporation as recorded in Volume 2717, Page 565, Deed Records, Midland County, Texas, said 5/8-inch iron rod with 2-inch aluminum disk having a surface coordinate of N: 10,674,828.58, E: 1,730,960.83, and being 150.42 feet right of and at a right angle to approved schematic baseline station 1005+96.05;

THENCE, North 59° 44' 28" East, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 792.30 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for the **POINT OF BEGINNING**, said point being the southwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod having a surface coordinate of N: 10,675,227.83, E: 1,731,645.19, and being 150.00 feet right of and at a right angle to approved schematic baseline station 998+03.75;**

THENCE, departing said common line, over and across said 49.14 acre tract the following three (3) courses and distances:

1. North 30° 15' 12" West, a distance of 275.08 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 425.08 feet right of and at a right angle to approved schematic baseline station 998+03.58;**

2. North 59° 44' 48" East, a distance of 200.00 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northeast corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 424.95 feet right of and at a right angle to approved schematic baseline station 996+03.58, from which a 1/2-inch iron rod with "illegible" cap found for an interior ell corner of said 49.14 acre tract, bears North 15° 53' 39" West, a distance of 1,301.38 feet;**

Description for Parcel P00056485.001 Easement

3. South 30° 15' 12" East, a distance of 275.06 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 71.04 acre tract conveyed to the State of Texas, as recorded in Volume 422, Page 369, Deed Records, Midland County, Texas, said point being 149.90 feet right of and at a right angle to approved schematic baseline station 996+03.75, from which a 1/2-inch iron rod with "SCHUMANN ENG CO INC" cap found (controlling monument and record monument) for the southeast corner of said 49.14 acre tract bears North 59° 44' 28" East, a distance of 528.59 feet;**

4. **THENCE**, South 59° 44' 28" West, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 200.00 to the **POINT OF BEGINNING** and containing 55,013 square feet (or 1.2629 acres) of land.

NOTES:

** The monument described in this call, if destroyed or damaged during construction, may be replaced with a TxDOT Type II Right-of-Way Marker upon the completion of the highway construction on project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

The Basis of Bearings is the Texas Coordinate System of 1983, Central Zone (4203), North American Datum (NAD 83) 2011 Adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TxDOT combined scale factor of 1.0001241617 from a base point having a coordinate of North:10,664,612.851 and East:1,712,283.872. Unit of measure is US Survey Foot.

Station and Offset information refers to the approved schematic baseline station described in the Project Schematic Control Section Number 0005-14-092.

A survey plat of even date herewith accompanies the legal descriptions.

I, Mark E. Keeton, a Registered Professional Land Surveyor in the State of Texas, do hereby certifies that the land description and plat represent an actual survey made on the ground under my supervision.

Mark E. Keeton, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6790

Jacobs
1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
Fax (214)-638-0447
TBPLS Firm # 10152300

July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

NOTES:
1. ABSTRACT DATES: (NA)
2. BEARING BASIS IS TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), NORTH AMERICAN DATUM (NAD83) 2011 ADJUSTMENT, EPOCH 2010.
3. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY TXDOT COMBINED SCALE FACTOR OF 1.0001241617 FROM A BASE POINT HAVING A COORDINATE OF NORTH=10,664,612.851 AND EAST=1,712,283.872.
4. THE UNIT OF MEASURE IS U.S. SURVEY FEET.
5. THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE PROJECT SCHEMATIC.
6. PROJECT CONTROL WAS ESTABLISHED BY OTHERS AND PROVIDED BY TxDOT.
7. FIELD SURVEYS WERE PERFORMED BETWEEN 12-01-2019 AND 6-10-2022.
8. PARCEL REMAINDER AREA IS DERIVED BY SUBTRACTING THE CALCULATED FEE AREA OF THE PARCEL FROM THE CALLED ACREAGE OF THE PARENT TRACT, LESS ANY OTHER CALLED FEE ACREAGE OF PROPERTY CONVEYANCES OF RECORD, FROM THE PARENT TRACT.

LEGEND

EXISTING ROADWAY INTERNAL
EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
PROPERTY LINE
SURVEY LINE
DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

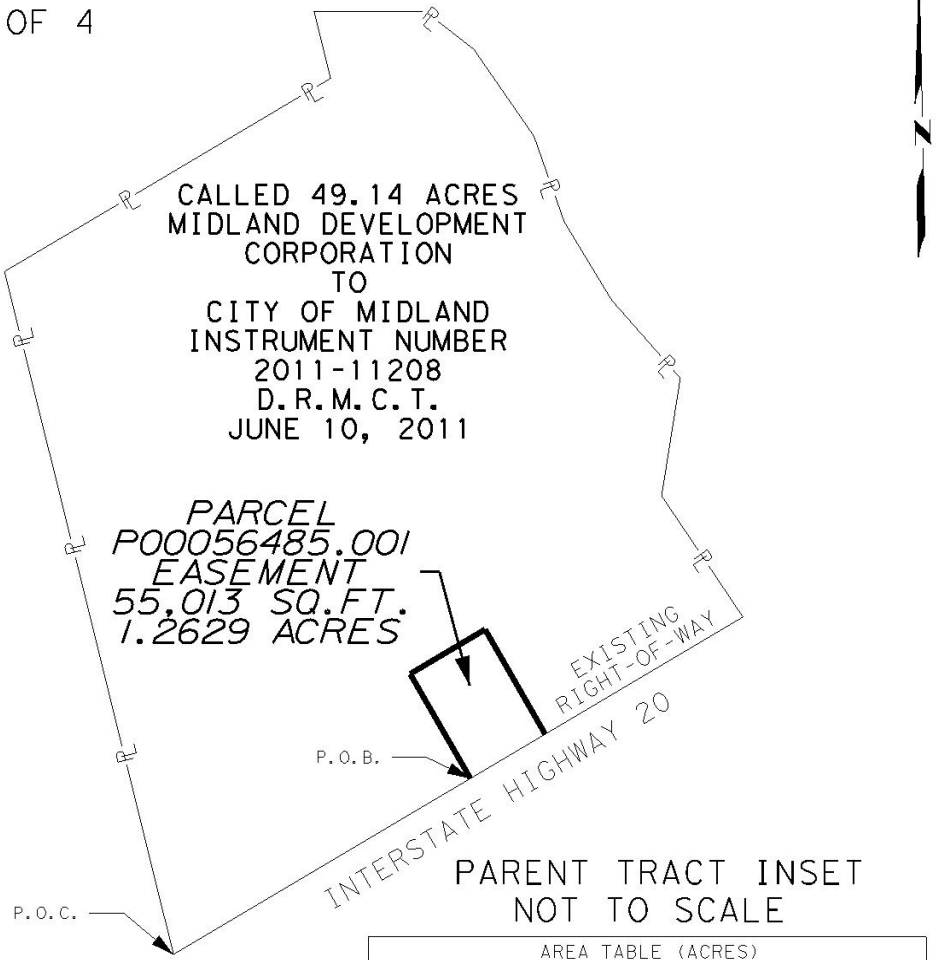
◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.

▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.

■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.

P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
(CM) = CONTROLLING MONUMENT
(RM) = RECORD MONUMENT

✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

Jacobs
1999 BRYAN STREET, SUITE 1200
DALLAS, TEXAS 75201-3136
PHONE (214)-638-0145
FAX (214)-638-0447
TBPLS FIRM # 10152300

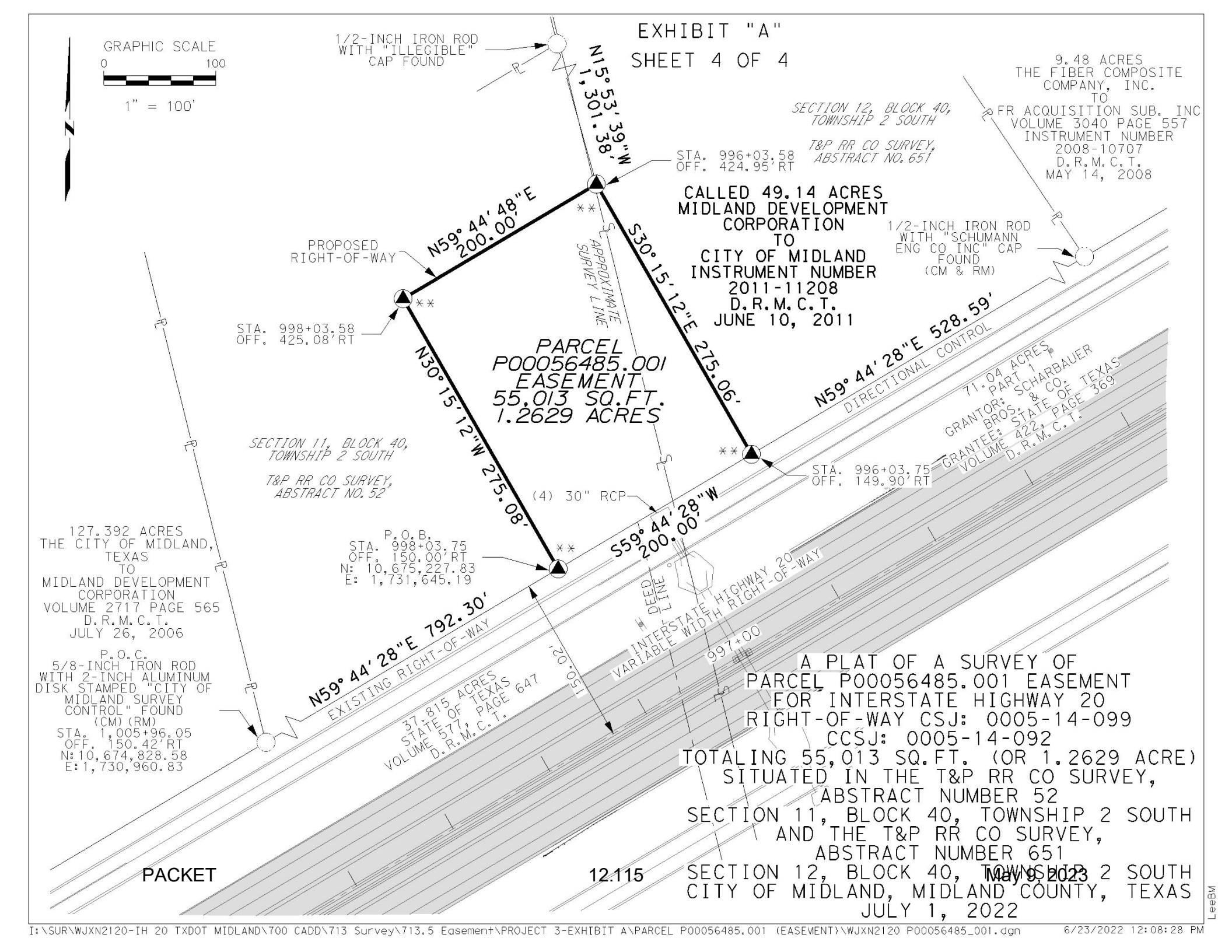
A PLAT OF A SURVEY OF
PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
RIGHT-OF-WAY CSJ: 0005-14-099
CCSJ: 0005-14-092
TOTALING 55,013 SQ.FT. (OR 1.2629 ACRE)
SITUATED IN THE T&P RR CO SURVEY,
ABSTRACT NUMBER 52
SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH
AND THE T&P RR CO SURVEY,
ABSTRACT NUMBER 651
SECTION 12, BLOCK 40, TOWNSHIP 2 SOUTH
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

May 9, 2023

PACKET

LeeBM

I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/20/2022 9:32:38 AM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION

STATE OF TEXAS	§	ROW CSJ: 0005-14-099
	§	Parcel ID: P00056485.001 Easement
COUNTY OF MIDLAND	§	Project No.: N.A.

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between the State of Texas, acting by and through the Texas Department of Transportation (the "State") , and **The City of Midland Texas, a Texas Home Rule Municipal Corporation** (the "Grantor" whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of Interstate Highway 20 (the "Highway Construction Project"). The property subject to this Agreement is described more fully in field notes and plat map (attached as "Exhibit A") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.

2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of **Zero Dollars ($0.00)**. The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents **0** percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.

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3. As additional consideration, the State will tender to the Grantor the sum of **Seventeen Thousand Seven Hundred and 40/100's Dollars ($17,700.40)**, the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:

   (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
   (ii) will not be refunded to the State upon any acquisition of the Property by the State.

4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").

5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.

7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.

8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.

9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for public use.

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10. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.

11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes possession under this agreement.

12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.

13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.

14. It is agreed the State will record this document.

15. Other conditions:

    (None)

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

[Signatures on following pages]

DRAFT

EXECUTED on the date(s) of acknowledgment indicated below.

GRANTOR:

The City of Midland Texas, a Texas Home Rule Municipal Corporation

By: _____

Name: _____

Title: _____

Acknowledgment

THE STATE OF TEXAS §
§
COUNTY OF_____ §

This instrument was acknowledged before me on the _____ day of _____, 2023 by

_____,in his/her capacity as_____, of The City of Midland Texas, a Texas Home Rule Municipal Corporation in the capacity therein stated.

_____
Notary Public's Signature

The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

DRAFT

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Crystal Damron, Manager,
West ROW Project Delivery

Date: _____

DRAFT

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
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THENCE, North 59° 44' 28" East, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 792.30 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for the **POINT OF BEGINNING**, said point being the southwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod having a surface coordinate of N: 10,675,227.83, E: 1,731,645.19, and being 150.00 feet right of and at a right angle to approved schematic baseline station 998+03.75;**

THENCE, departing said common line, over and across said 49.14 acre tract the following three (3) courses and distances:

1. North 30° 15' 12" West, a distance of 275.08 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 425.08 feet right of and at a right angle to approved schematic baseline station 998+03.58;**

2. North 59° 44' 48" East, a distance of 200.00 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northeast corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 424.95 feet right of and at a right angle to approved schematic baseline station 996+03.58, from which a 1/2-inch iron rod with "illegible" cap found for an interior ell corner of said 49.14 acre tract, bears North 15° 53' 39" West, a distance of 1,301.38 feet;**

Description for Parcel P00056485.001 Easement

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4. **THENCE**, South 59° 44' 28" West, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 200.00 to the **POINT OF BEGINNING** and containing 55,013 square feet (or 1.2629 acres) of land.

NOTES:

** The monument described in this call, if destroyed or damaged during construction, may be replaced with a TxDOT Type II Right-of-Way Marker upon the completion of the highway construction on project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

The Basis of Bearings is the Texas Coordinate System of 1983, Central Zone (4203), North American Datum (NAD 83) 2011 Adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TxDOT combined scale factor of 1.0001241617 from a base point having a coordinate of North:10,664,612.851 and East:1,712,283.872. Unit of measure is US Survey Foot.

Station and Offset information refers to the approved schematic baseline station described in the Project Schematic Control Section Number 0005-14-092.

A survey plat of even date herewith accompanies the legal descriptions.

I, Mark E. Keeton, a Registered Professional Land Surveyor in the State of Texas, do hereby certifies that the land description and plat represent an actual survey made on the ground under my supervision.

Mark E. Keeton, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6790
Jacobs
1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
Fax (214)-638-0447
TBPLS Firm # 10152300

July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

NOTES:
1. ABSTRACT DATES: (NA)
2. BEARING BASIS IS TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), NORTH AMERICAN DATUM (NAD83) 2011 ADJUSTMENT, EPOCH 2010.
3. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY TXDOT COMBINED SCALE FACTOR OF 1.0001241617 FROM A BASE POINT HAVING A COORDINATE OF NORTH=10,664,612.851 AND EAST=1,712,283.872.
4. THE UNIT OF MEASURE IS U.S. SURVEY FEET.
5. THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE PROJECT SCHEMATIC.
6. PROJECT CONTROL WAS ESTABLISHED BY OTHERS AND PROVIDED BY TxDOT.
7. FIELD SURVEYS WERE PERFORMED BETWEEN 12-01-2019 AND 6-10-2022.
8. PARCEL REMAINDER AREA IS DERIVED BY SUBTRACTING THE CALCULATED FEE AREA OF THE PARCEL FROM THE CALLED ACREAGE OF THE PARENT TRACT, LESS ANY OTHER CALLED FEE ACREAGE OF PROPERTY CONVEYANCES OF RECORD, FROM THE PARENT TRACT.

LEGEND

EXISTING ROADWAY INTERNAL
EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
PROPERTY LINE
SURVEY LINE
DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

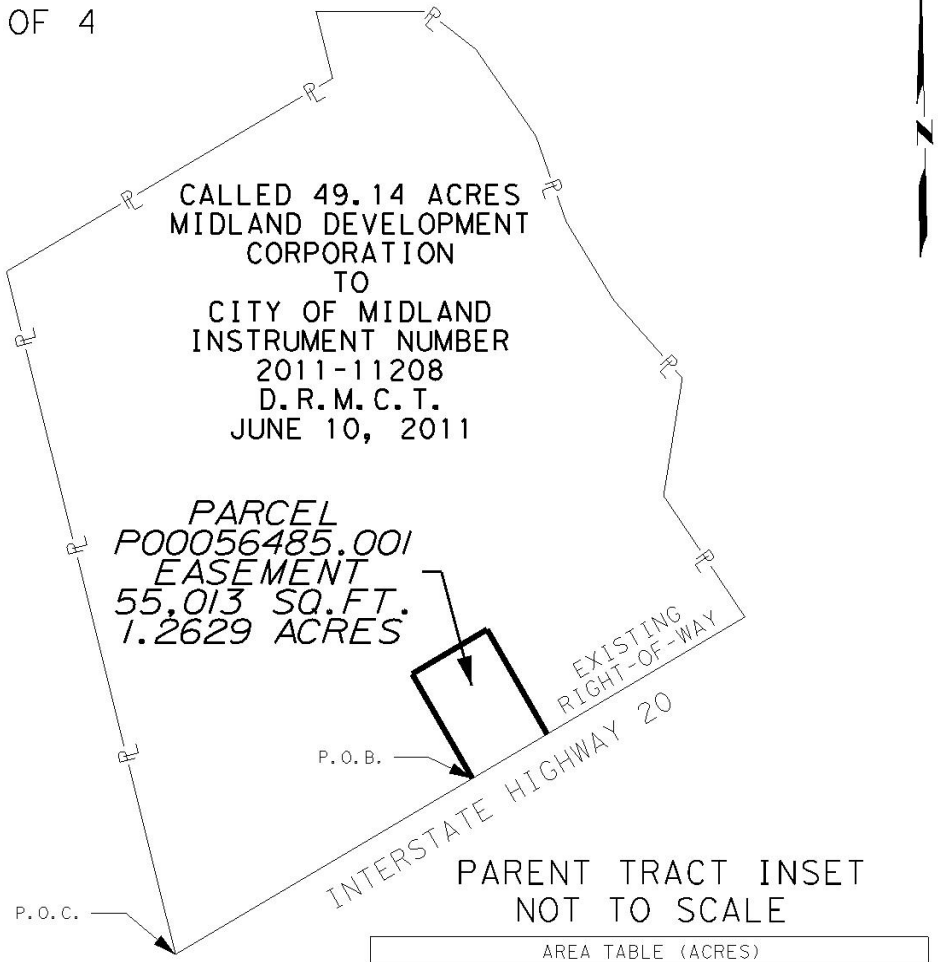
◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.

▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.

■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.

P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
(CM) = CONTROLLING MONUMENT
(RM) = RECORD MONUMENT

✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

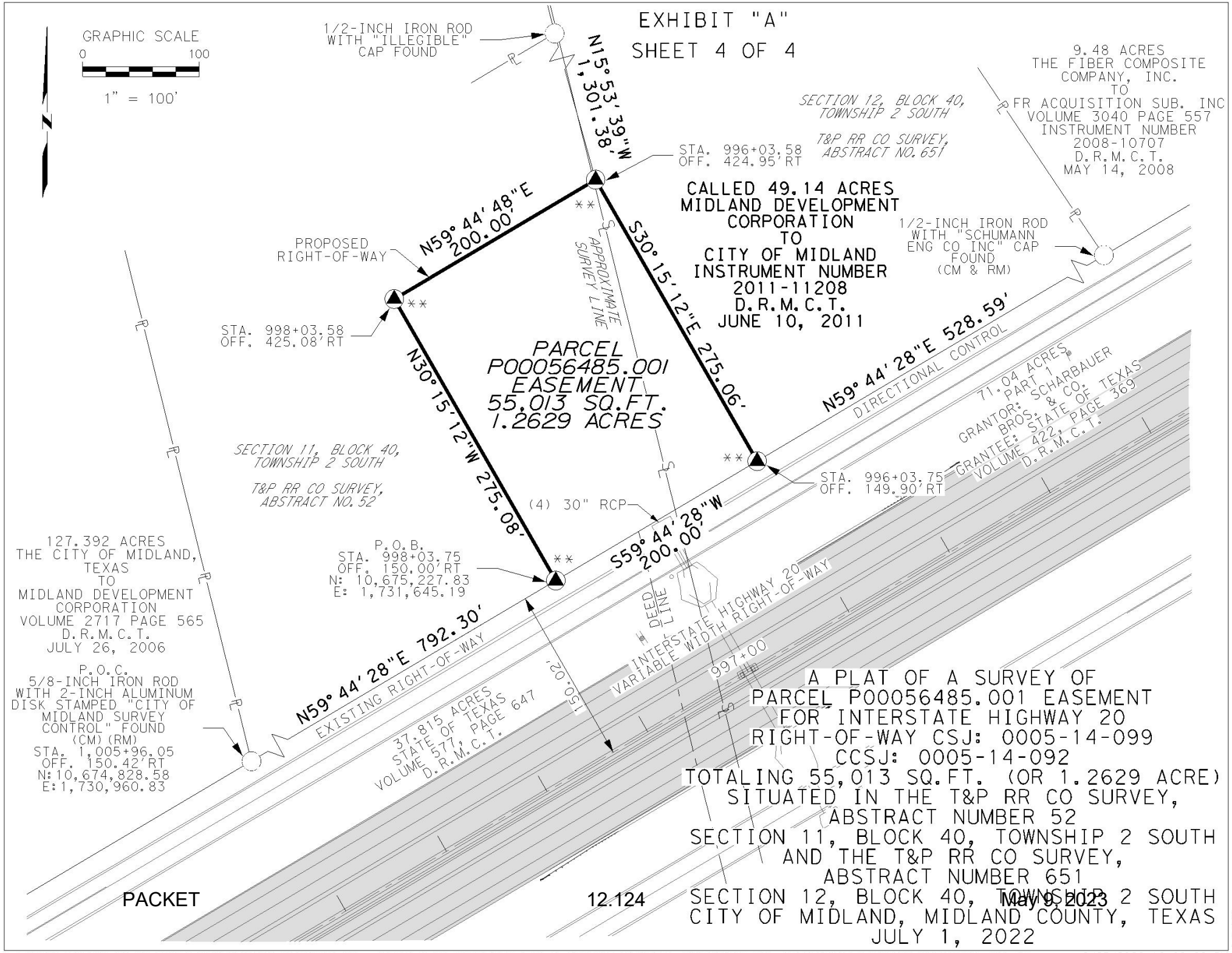
Jacobs
1999 BRYAN STREET, SUITE 1200
DALLAS, TEXAS 75201-3136
PHONE (214)-638-0145
FAX (214)-638-0447
TBPLS FIRM # 10152300

A PLAT OF A SURVEY OF
PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
RIGHT-OF-WAY CSJ: 0005-14-099
CCSJ: 0005-14-092
TOTALING 55,013 SQ.FT. (OR 1.2629 ACRE)
SITUATED IN THE T&P RR CO SURVEY,
ABSTRACT NUMBER 52
SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH
AND THE T&P RR CO SURVEY,
ABSTRACT NUMBER 651
SECTION 12, BLOCK 40, TOWNSHIP 2 SOUTH
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

May 9, 2023

LeeBM

I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/20/2022 9:32:38 AM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM



THE STATE OF TEXAS

LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt to condemn your property. The contents of this Bill of Rights are set out by the Texas Legislature in Texas Government Code section 402.031 and chapter 21 of the Texas Property Code. Any entity exercising eminent domain authority must provide a copy of this Bill of Rights to you.

1. You are entitled to receive adequate compensation if your property is condemned.
2. Your property can only be condemned for a public use.
3. Your property can only be condemned by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to acquire your property must notify you that it intends to condemn your property.
5. The entity proposing to acquire your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. If you believe that a registered easement or right-of-way agent acting on behalf of the entity that wants to acquire your property has engaged in misconduct, you may file a written complaint with the Texas Real Estate Commission (TREC) under section 1101.205 of the Texas Occupations Code. The complaint should be signed and may include any supporting evidence.
7. The condemning entity must make a bona fide offer to buy the property before it files a lawsuit to condemn the property—meaning the condemning entity must make a good faith offer that conforms with chapter 21 of the Texas Property Code.
8. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
9. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
10. Before your property is condemned, you are entitled to a hearing before a court-appointed panel of three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for condemning your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
11. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the condemnation of your property was proper, you have the right to a trial by a judge or jury. You may also appeal the trial court's judgment if you are unsatisfied with the result.

PREPARED BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS · JANUARY 2022

CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain governmental and private entities have to condemn private property for public use in exchange for adequate compensation. Only entities authorized by law to do so may condemn private property. Private property can include land and certain improvements that are on that property.

WHO CAN I HIRE TO HELP ME?

You can hire an appraiser or real estate professional to help you determine the value of your property as well as an attorney to negotiate with a condemning entity or to represent you during condemnation proceedings.

WHAT QUALIFIES AS A PUBLIC PURPOSE OR USE?

Your property may be condemned only for a purpose or use that serves the general public. This could include building or expanding roadways, public utilities, parks, universities, and other infrastructure serving the public. Texas law does not allow condemning authorities to exercise eminent domain for tax revenue or economic development.

WHAT IS ADEQUATE COMPENSATION?

Adequate compensation typically means the market value of the property being condemned. It could also include certain damages if your remaining property's market value is diminished by the condemnation or the public purpose for which it is being condemned.

OTHER THAN ADEQUATE COMPENSATION, WHAT OTHER COMPENSATION COULD I BE OWED?

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving to a new site. However, reimbursement costs may not be available if those expenses are recoverable under another law. Also, reimbursement costs are capped at the market value of the property.

WHAT DOES A CONDEMNOR HAVE TO DO BEFORE CONDEMNING MY PROPERTY?

- Provide you a copy of this Landowner's Bill of Rights before, or at the same time as, the entity first represents that it possesses eminent domain authority. It is also required to send this Landowner's Bill of Rights to the last known address of the person listed as the property owner on the most recent tax roll at least seven days before making its final offer to acquire the property.
  - If the condemnor seeks to condemn a right-of-way easement for a pipeline or electric transmission line and is a private entity, the condemnor must also provide you a copy of the Landowner's Bill of Right's addendum.
  - The addendum describes the standard terms required in an instrument conveying property rights (such as a deed transferring title or an easement spelling out the easement rights) and what terms you can negotiate.
- Make a bona fide offer to purchase the property. This process is described more fully in chapter 21 of the Texas Property Code. A "bona fide offer" involves both an initial written offer as well as a final written offer.
  - The initial written offer must include:
    - a copy of the Landowner's Bill of Rights and addendum (if applicable);
    - either a large-font, bold-print statement saying whether the offered compensation includes damages to the remainder of your remaining property or a formal appraisal of the property that identifies any damages to the remaining property (if any);
    - the conveyance instrument (such as an easement or deed); and
    - the name and telephone number of an employee, affiliate, or legal representative of the condemning entity.
  - The final written offer must be made at least 30 days after the initial written offer and must include, if not previously provided:
    - compensation equal to or more than the amount listed in a written, certified appraisal that is provided to you;
    - copies of the conveyance instrument; and
    - the Landowner's Bill of Rights.
- Disclose any appraisal reports. When making its initial offer, the condemning entity must share its appraisal reports that relate to the property from the past 10 years. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.

WHAT IF I DO NOT ACCEPT AN OFFER BY THE CONDEMNING AUTHORITY?

The condemnor must give you at least 14 days to consider the final offer before filing a lawsuit to condemn your property, which begins the legal condemnation process.

HOW DOES THE LEGAL CONDEMNATION PROCESS START?

The condemnor can start the legal condemnation process by filing a lawsuit to acquire your property in the appropriate court of the county where the property is located. When filing the petition, the condemnor must send you a copy of the petition by certified mail, return receipt requested, and first class mail. It must also send a copy to your attorney if you are represented by counsel.

WHAT DOES THE CONDEMNOR HAVE TO INCLUDE IN THE LAWSUIT FILED WITH THE COURT?

The lawsuit must describe the property being condemned and state the following: the public use; your name; that you and the condemning entity were unable to agree on the value of the property; that the condemning entity gave you the Landowner's Bill of Rights; and that the condemning entity made a bona fide offer to voluntarily purchase the property from you.

SPECIAL COMMISSIONERS' HEARING AND AWARD

No later than 30 days after the condemning entity files a condemnation lawsuit in court, the judge will appoint three local landowners to serve as special commissioners and two alternates. The judge will promptly give the condemnor a signed order appointing the special commissioners and the condemnor must give you, your lawyer, and other parties a copy of the order by certified mail, return receipt requested. The special commissioners will then schedule a condemnation hearing at the earliest practical time and place and to give you written notice of the hearing.



WHAT DO THE SPECIAL COMMISSIONERS DO?

The special commissioners' job is to decide what amount of money is adequate to compensate you for your property. The special commissioners will hold a hearing where you and other interested parties may introduce evidence. Then the special commissioners will determine the amount of money that is adequate compensation and file their written decision, known as an "Award," in the court with notice to all parties. Once the Award is filed, the condemning entity may take possession and start using the property being condemned, even if one or more parties object to the Award of the special commissioners.

ARE THERE LIMITATIONS ON WHAT THE SPECIAL COMMISSIONERS CAN DO?

Yes. The special commissioners are tasked only with determining monetary compensation for the value of the property condemned and the value of any damages to the remaining property. They do not decide whether the condemnation is necessary or if the public use is proper. Further, the special commissioners do not have the power to alter the terms of an easement, reduce the size of the land acquired, or say what access will be allowed to the property during or after the condemnation. The special commissioners also cannot determine who should receive what portion of the compensation they award. Essentially, the special commissioners are empowered only to say how much money the condemnor should pay for the land or rights being acquired.

WHO CAN BE A SPECIAL COMMISSIONER?

Special commissioners must be landowners and residents in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law.

WHAT IF I WANT TO OBJECT TO A SPECIAL COMMISSIONER?

The judge must provide to the parties the names and contact information of the special commissioners and alternates. Each party will have up to 10 days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed, whichever is later, to strike one of the three special commissioners. If a commissioner is struck, an alternate will serve as a replacement. Another party may strike a special commissioner from the resulting panel within three days after the date the initial strike was filed or the date of the initial strike deadline, whichever is later.

WHAT WILL HAPPEN AT THE SPECIAL COMMISSIONERS' HEARING?

The special commissioners will consider any evidence (such as appraisal reports and witness testimony) on the value of your condemned property, the damages or value added to remaining property that is not being condemned, and the condemning entity's proposed use of the property.

WHAT ARE MY RIGHTS AT THE SPECIAL COMMISSIONERS' HEARING?

You have the right to appear or not appear at the hearing. If you do appear, you can question witnesses or offer your own evidence on the value of the property. The condemning entity must give you all existing appraisal reports regarding your property used to determine an opinion of value at least three days before the hearing. If you intend to use appraisal reports to support your claim about adequate compensation, you must provide them to the condemning entity 10 days after you receive them or three business days before the hearing, whichever is earlier.

DO I HAVE TO PAY FOR THE SPECIAL COMMISSIONERS' HEARING?

If the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. But, if the award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs.

WHAT DOES THE CONDEMNOR NEED TO DO TO TAKE POSSESSION OF THE PROPERTY?

Once the condemning entity either pays the amount of the award to you or deposits it into the court's registry, the entity may take possession of the property and put the property to public use. Non-governmental condemning authorities may also be required to post bonds in addition to the award amount. You have the right to withdraw funds that are deposited into the registry of the court, but when you withdraw the money, you can no longer challenge whether the eminent domain action is valid—only whether the amount of compensation is adequate.

OBJECTING TO THE SPECIAL COMMISSIONERS' AWARD

If you, the condemning entity, or any other party is unsatisfied with the amount of the award, that party can formally object. The objection must be filed in writing with the court and is due by the first Monday following the 20th day after the clerk gives notice that the commissioners have filed their award with the court. If no party timely objects to the special commissioners' award, the court will adopt the award amount as the final compensation due and issue a final judgment in absence of objection.

WHAT HAPPENS AFTER I OBJECT TO THE SPECIAL COMMISSIONERS' AWARD?

If a party timely objects, the court will hear the case just like other civil lawsuits. Any party who objects to the award has the right to a trial and can elect whether to have the case decided by a judge or jury.

WHO PAYS FOR TRIAL?

If the verdict amount at trial is greater than the amount of the special commissioners' award, the condemnor may be ordered to pay costs. If the verdict at trial is equal to or less than the amount the condemnor originally offered, you may be ordered to pay costs.

IS THE TRIAL VERDICT THE FINAL DECISION?

Not necessarily. After trial any party may appeal the judgment entered by the court.



DISMISSAL OF THE CONDEMNATION ACTION

A condemnation action may be dismissed by either the condemning authority itself or on a motion by the landowner.

WHAT HAPPENS IF THE CONDEMNING AUTHORITY NO LONGER WANTS TO CONDEMN MY PROPERTY?

If a condemning entity decides it no longer needs your condemned property, it can file a motion to dismiss the condemnation proceeding. If the court grants the motion to dismiss, the case is over, and you can recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses up to that date.

WHAT IF I DO NOT THINK THE CONDEMNING ENTITY HAS THE RIGHT TO CONDEMN MY PROPERTY?

You can challenge the right to condemn your property by filing a motion to dismiss the condemnation proceeding. For example, a landowner could challenge the condemning entity's claim that it seeks to condemn the property for a public use. If the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees and expenses incurred to that date.

CAN I GET MY PROPERTY BACK IF IT IS CONDEMNED BUT NEVER PUT TO A PUBLIC USE?

You may have the right to repurchase your property if your property is acquired through eminent domain and:

- the public use for which the property was acquired is canceled before that property is put to that use,
- no actual progress is made toward the public use within 10 years, or
- the property becomes unnecessary for public use within 10 years.

The repurchase price is the price you were paid at the time of the condemnation.

ADDITIONAL RESOURCES AND ADDENDA

For more information about the procedures, timelines, and requirements outlined in this document, see chapter 21 of the Texas Property Code. An addenda discussing the terms required for an instrument of conveyance under Property Code section 21.0114(c), and the conveyance terms that a property owner may negotiate under Property Code section 21.0114(d), is attached to this statement.

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session, and HB 2730, enacted by the 87th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

ADDENDUM A:

Required Terms for an Instrument Conveying a Pipeline Right-of-Way Easement or an Easement Related to Pipeline Appurtenances[1]

(1) The maximum number of pipelines that may be installed in the right-of-way acquired through this instrument is _____.

(2) The types of pipeline appurtenances that are authorized to be installed under this instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline, are described as follows: _____.

(3) The maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under this instrument for a pipeline right-of-way is _____.

(4) For each pipeline to be installed under this instrument, the type or category of substances permitted to be transported through each pipeline is _____.

(5) Any aboveground equipment or facility that Grantee[2] intends to install, maintain, or operate under this instrument on the surface of the pipeline easement is described as follows: _____.

(6) A description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit _____.

(7) The maximum width of the easement under this instrument is _____.

(8) For each pipeline to be installed under this instrument, the minimum depth at which the pipeline will initially be installed is _____.

(9) The entity installing pipeline(s) under this instrument: (check one)

- ☐ intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.
- ☐ does not intend to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.

(10) Grantee shall provide written notice to Grantor[3], at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property, if and when Grantee assigns any interest conveyed under this instrument to another entity, provided that this provision does not require notice by Grantee for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses.

(11) The easement rights conveyed by this instrument are: (check one)

- ☐ exclusive.
- ☐ nonexclusive.

---

1 The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

2 "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the pipeline easement.

3 "Grantor" is the property owner from whom the Grantee is acquiring the pipeline easement.

(12) Grantee may not grant to a third party access to the easement area for a purpose that is not related to one of the following: the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument or of pipeline appurtenances to be installed under this instrument.

(13) Grantor: (check one)

- ☐ may recover from Grantee actual monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.

(14) After initial construction and installation of each pipeline installed under this instrument, Grantor: (check one)

- ☐ may recover from Grantee actual monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.

(15) Grantor: (check one)

- ☐ and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: _____.
- ☐ may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

(16) With regard to restoring the pipeline easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable and maintaining the easement in a manner consistent with the purposes for which the easement is to be used under this instrument: (check one)

- ☐ Grantee will be responsible for the restoration.
- ☐ Grantee will reimburse Grantor for monetary damages that arise from damage to the pipeline easement area or the Grantor's remaining property, if any, caused by the Grantee and not restored or paid for as part of the consideration for the instrument.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the pipeline easement area or the Grantor's remaining property.

(17) Grantee's rights of ingress, egress, entry, and access on, to, over, and across Grantor's property under this instrument are described as follows: _____.

(18) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(19) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

ADDENDUM B:

Required Terms for an Instrument Conveying
an Electric Transmission Line Right-of-Way Easement[4]

(1) The uses of the surface of the property to be encumbered by the electric transmission line right-of-way easement acquired by Grantee[5] under this instrument are generally described as follows: _____.

(2) A description or illustration of the location of the electric transmission line right-of-way easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit _____.

(3) The maximum width of the electric transmission line right-of-way easement acquired by this instrument is _____.

(4) Grantee will access the electric transmission line right-of-way easement acquired under this instrument in the following manner: _____.

(5) Grantee may not grant to a third party access to the electric transmission line right-of-way easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under this instrument.

(6) Grantor[6]: (check one)

- ☐ may recover from Grantee actual monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement.

(7) Grantor: (check one)

- ☐ and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: _____
- ☐ may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- ☐ acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

4 The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

5 "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the electric transmission line right-of-way easement.

6 "Grantor" is the property owner from whom the Grantee is acquiring the electric transmission line right-of-way easement.

(8) Grantee shall restore the easement area and Grantor's remaining property to their original contours and grades, to the extent reasonably practicable, unless Grantee's safety or operational needs and the electric facilities located on the easement would be impaired. With regard to restoring the electric transmission line right-of-way easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable following future damages, if any, directly attributed to Grantee's use of the easement: (check one)

- ☐ Grantee will be responsible for the restoration, unless the safety or operational needs of Grantee and the electric facilities would be impaired.
- ☐ Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes future damages, if any, caused by Grantee to the easement area or the Grantor's remaining property.

(9) The easement rights acquired under this instrument are: (check one)

- ☐ exclusive.
- ☐ nonexclusive.
- ☐ otherwise limited under the terms of the instrument as follows: _____.

(10) Grantee may not assign Grantee's interest in the property rights acquired under this instrument to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to Grantor at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property.

(11) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(12) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

ADDENDUM C:

Optional Terms for an Instrument Conveying a Pipeline Right-of-Way Easement, an Easement Related to Pipeline Appurtenances, or an Electric Transmission Line Right-of-Way Easement[7]

(1) With regard to the specific vegetation described as follows: _____, Grantor[8]: (check one):

- ☐ may recover from Grantee[9] payment for monetary damages, if any, caused by Grantee to the vegetation.
- ☐ Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the vegetation.

(2) With regard to income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments caused by Grantee's use of the easement acquired under this instrument, Grantor: (check one)

- ☐ may recover from Grantee payment for monetary damages, if any, caused by Grantee to Grantor's income.
- ☐ Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to Grantor's income.

(3) Grantee shall maintain commercial liability insurance or self-insurance at all times, including during Grantee's construction and operations on the easement, while Grantee uses the easement acquired under this instrument. The insurance must insure Grantor against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of Grantee or Grantee's agents or contractors and to the extent allowed by law. If Grantee maintains commercial liability insurance, it must be issued by an insurer authorized to issue liability insurance in the State of Texas.

(4) If Grantee is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least $25 million, Grantee shall maintain commercial liability insurance or self-insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

7 Pursuant to Section 21.0114(d) of the Texas Property Code, in addition to the terms set forth in Addenda A and B, a property owner may negotiate for the inclusion of the terms in this Addendum in any instrument conveying an easement to a private entity, as defined by Section 21.0114(a) of the Texas Property Code. The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

8 "Grantor" is the property owner from whom the Grantee is acquiring the pipeline or electric transmission line right-of-way easement.

9 "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the easement.

ACKNOWLEDGMENT OF RECEIPT OF ATTORNEY GENERAL'S PUBLICATION OF THE TEXAS LANDOWNER'S BILL OF RIGHTS

I hereby acknowledge receipt of the following publication for Parcel P00056485.001 Easement on TxDOT's Interstate Highway 20 Road Improvement project:

❑ House Bill 1495, the Landowner's Bill of Rights Act, *LANDOWNER'S BILL OF RIGHTS* as published by the Attorney General's Office.

_____ _____

Signature Date

_____

Print Name

_____

Mailing Address

_____

City, State Zip Code

_____

Phone Number

_____

Email Address

Please return this form to:

LJA Engineering, Inc.
c/o Kelly Landry
480 Wildwood Forest Dr., Suite 250
Spring, Texas 77380
klandry@LJA.com

STATE PURCHASE OF RIGHT OF WAY



Right of Way Division

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INTRODUCTION

The Texas Department of Transportation is the organization that is responsible to you and millions of other Texans for planning,building and maintaining the state highway system and certain other public transportation facilities. In order to carry out these responsibilities, it is sometimes necessary for us to acquire right of way on new or existing locations. Since at least a portion of your property is required for right of way to improve the public transportation system in your community, we are providing you with this booklet to explain briefly your rights as a citizen as well as the procedure which will be followed in purchasing your property and to answer some of the questions that you probably have.

All of your questions regarding right of way matters will not likely be answered in this booklet, but perhaps the answers to a few of them will enable you to have a better understanding of the overall process. This booklet is offered for general information purposes only; it is not a document of law, rule or regulation. You will have an opportunity at a later date to discuss your individual case with a representative of our department and to ask any questions you may have. On the last page of this booklet you will find the name, telephone number and address of our representative.

This booklet applies only to those rights of way that are acquired for the state of Texas directly by the Texas Department of Transportation. Cities and counties also acquire rights of way for transportation projects.

PUBLIC NEED FOR PRIVATE PROPERTY

Perhaps the first questions that should be answered is "Why does the government have the right to acquire private property?" Our successful existence in a democracy requires the development of public services to improve our way of life. We would be handicapped greatly without lands upon which to carry out the activities of government. For example, there would be no lands for public schools, highways, public hospitals or other facilities necessary to our society. In short, a government cannot provide services to its citizens without the right to acquire land.

WHY YOUR PROPERTY IS NEEDED

More particularly, of course, you are concerned about the reasons why your property is needed. You may have attended a meeting or public hearing where the need and methods of project development were discussed. If so, you are already aware that the department uses a systematic approach to assess engineering conditions, beneficial and adverse social, economic, environmental and other effects of any project that is proposed. Projects are not selected arbitrarily. They are the result of cooperative efforts with proper local agencies, the study of alternatives and a balanced consideration of the need for safe and efficient public transportation. You may be sure that this process was followed on the particular project that involves your property.

Under our form of government, the rights of the individual are of paramount importance. Our laws guarantee these individual rights for all of us. However, our laws also recognize another principle, namely, the public good, which sometimes makes it necessary to resolve a difficult matter such as public acquisition of private property in favor of the majority for the good of all.

Every effort is made to reach a fair and equitable agreement in the purchase of all right of way needed for public transportation pur-

poses. It is hoped sincerely that when a highway project route and design have finally been determined, all citizens will agree that fair and equitable consideration has been given to the property owners involved and that the selected route is in the best interest of the general public.

CONTACT BY THE DEPARTMENT

"When will I know something definite?" This surely is one of the questions you will have. You will be contacted personally by one of our authorized representatives. However, this contact must be delayed until all preliminary requirements for highway project development have been met. In some instances, the time between that date you may have heard of a proposed project and the time you are actually contacted may seem unreasonable, but every effort is made to expedite the various planning, engineering, environmental, public hearing and approval steps so that purchase of right of way can begin at the earliest possible date.

COMPENSATION

You will, of course, want to know how much you will receive for your property. As a property owner, you have the constitutionally guaranteed right to receive just compensation for the property that will be purchased from you. Even though you have the right to receive such compensation, you may make a gift or donation of all or part of the property if you wish to do so. Where payment is to be made, the real property will be appraised to determine just compensation.

Our representative will contact you before any appraisal is made. A thorough investigation of your property will be made to determine its value in accordance with state law. You or your designated representative will be given an opportunity to accompany the appraiser who is evaluating the real estate during the inspection

of the property. Your cooperation and input will aid greatly in ensuring that nothing is overlooked which ought to be included in the appraisal of your property. All appraisals are carefully reviewed by the department to assure that proper appraisal principles and methods have been used to arrive at the value to be offered for your property.

As soon as the appraisal and appraisal review work can be completed, you will be provided a written offer in the amount of the total approved value. You will be provided a copy of the state's appraisal report and you should note that if you already have an appraisal report you are required to provide a copy of it to the state. If you decide to have a separate appraisal done, you are required to provide a copy of it to the state in accordance with the Texas Attorney General's Landowner's Bill of Rights, a copy of which will be provided to you. You will also be advised in the written offer concerning the possible option of retaining any building or other improvements located on the land needed for right of way. Where appropriate, the just compensation for the real property to be acquired and for compensable damages to remaining real property will be stated separately.

Your decision regarding the state's offer for your property needs to be made at the earliest possible time so that the completion of the acquisition process is not delayed. You can appreciate the fact that there is a definite time frame required for every aspect of the highway or transportation project that involves your property.

ADMINISTRATIVE SETTLEMENTS

An administrative settlement is any settlement which is in excess of the agency's approved value. If an agreement on the approved value cannot be reached, the owner may request an administrative settlement. The administrative settlement process is:

1) A timely written counteroffer is required and must include a property owner's signed proposal for full settlement setting forth a specific dollar amount with information to support the proposal.
2) The counteroffer will be reviewed by an evaluation team.
3) The property owner will be notified of the team's decision.
4) If an administrative settlement is not approved or if the property owner decides to reject an approved administrative settlement, a final offer letter will be issued at the original approved value.

If improvements are retained, the retention value will be subtracted from the total settlement amount.

DONATION OF RIGHT OF WAY

The donation or gift of all or a portion of your property that is needed for right of way is an option that you have. Obviously, the state funds that are saved if property is donated can be utilized for construction and/or other highway purposes. Donations can also help to expedite the letting of construction contracts and lead to an earlier completion of the project.

In situations where remaining property will be increased greatly in value by the construction of the highway or other transportation facility, the donation of right of way may be to your advantage as a property owner by making your property more suitable for timely development. There are undoubtedly other good and valid reasons for consideration to be given to the possibility of donation or the acceptance of reduced compensation. If you elect to donate your property, an appraisal will be made unless you elect to waive this option.

DAMAGES TO REMAINING PROPERTY

If you have a question about damages, you should know that in many cases highway construction will enhance rather than damage

remaining property. When only a portion of your property is needed, you will be offered an amount for damages only if the appraisal process indicates that your remaining property will have a lesser value after the highway is constructed. The amount established for damages, if any, will be stated separately and will also be included in the total offer made to you by the department.

RELOCATION OF IMPROVEMENTS

Many property owners would like to know if their house or buildings can be moved. If the state's offer for your property is acceptable, arrangements usually can be made for you to keep your house or buildings and move them to another location. Removal of such improvements is the owner's responsibility. Since each case is different, it is best that you discuss this with our authorized representative when you are contacted.

TIME ALLOWED FOR RELOCATION

"Will I have time to look for another home?" is another question that often arises. If your home is purchased, you will be paid the full consideration. Before you are required to move you will be given adequate time to find and buy another home using the proceeds from our purchase. You are not required to move until you receive a written notice and a date to vacate. To the greatest extent practicable you will be given at least 90 days written notice of the date by which you must move. This applies not only to homes but also to all properties where a property owner relocates to a new property or moves retained buildings, fences or other improvements to remaining property.

PROPERTY ADJUSTMENT WORK

Some property owners ask "Will I have time to fence or do other work on my remaining property?" Every effort will be made to make the offer of purchase sufficiently in advance of construction to allow

time for necessary property adjustment work. Examples of property adjustment work are the building of fences along the right of way lines, the construction of new watering facilities for livestock, the removal of any buildings or other improvements which an owner desires to keep from the right of way area being purchased and their reestablishment elsewhere and the adjustment of water lines and similar facilities which are necessary to continued best use of the remaining property.

FARMING OF CROPS

If crops have been planted, the offer to purchase will usually be based on your retaining a right to harvest crops in the ground, with the understanding that after closing the transaction no new crops will be planted. An exception to this procedure is when construction is so imminent that it is not possible to allow time for the harvesting of existing crops. In that case our offer to you will include payment for the existing crops based on the value of such crops at the time of the offer.

MORTGAGES

ABOUT YOUR MORTGAGE

As is the case in the handling of any other real estate transaction, payments must be made to satisfy outstanding mortgages or liens. If only a portion of your property is being acquired, agreement must be reached with the mortgage or lien agency concerning payment requirements. If you were selling your property in a private real estate transaction and part or all of an outstanding mortgage had to be paid, many lending agencies would require a prepayment penalty. Since this sale is being made to the public, most lending agencies, including the Federal Housing Administration, waive this requirement. However, some do not, and you should investigate this matter to determine whether or not such a penalty will have to be paid.

THE VA LOAN

The Veterans Administration recognizes that the sale of your property is not of your choosing. Under these circumstances, your loan privileges may be restored and made available for coverage of another property. The veteran must initiate this action.

SMALL BUSINESS LOAN

The Small Business Administration administers funds for loans for small businesses. You may wish to contact one of their offices to determine how to qualify for a loan.

INCOME TAXES

If your property is worth more today than when you bought it, you may be wondering about paying income tax on the difference when you sell to the public. The sale of property for public purposes comes under a class which the Internal Revenue Service designates as "involuntary conversion." It may not be necessary to pay income tax or capital gains tax depending on how you reinvest your profit from the sale to the state. Any payment received for damages also may not be taxable. You are, therefore, urged to contact the Internal Revenue Service Office which serves your area or seek legal advice on these matters.

EMINENT DOMAIN PROCEEDINGS

Although a sincere and comprehensive effort is made to determine just compensation for the right of way required, including improvements and damages to any of your remaining property and the utilization of the administrative process, you may still not be satisfied and may refuse to sell. In other instances, the title to the land needed for right of way may be clouded to the extent that legal proceedings are necessary to effect transfer of clear title. In these and a few other cases, eminent domain proceedings have to be initiated by the state.

In eminent domain proceedings, the court will appoint three disinterested landowners to serve as Special Commissioners and a hearing will be held to determine the value of the property being acquired. The property owner will be notified of the time and place of the hearing. At this hearing, the Special Commissioners will listen to the evidence of value and arrive at an award that will be filed with the court. A deposit in the amount of the award may be made with the court at which time the state will be entitled to take possession of the property involved. After the deposit is made, the court must authorize withdrawal of the award. If either the property owner or the state is dissatisfied with the amount of the award, objections to the award may be filed within the time limits prescribed by law and the case subsequently tried in the same manner as other civil cases. The basic issue decided in eminent domain cases is the amount of just compensation for the property being acquired and, in the case of a partial acquisition, any damages to the value of your remaining property. For additional information on eminent domain procedures consult the Texas Attorney General's Landowner's Bill of Rights.

If any improvements are included in the property being acquired, they may not be retained by the property owner in eminent domain proceedings.

RELOCATION ASSISTANCE AND BENEFITS

In addition to payment for your property, you may be entitled to additional benefits. If you must move, you may be entitled to assistance in locating another home or business and financial assistance in the form of moving and related expenses. Such benefits, if any, are in addition to the state's offer for your property and are handled separately from the purchase of your real property. It is beyond the scope of this booklet to detail specific benefits; however, if you are eligible, your rights and benefits will be fully explained in detail. A separate relocation assistance booklet is available and you will be furnished with one if you have to move and/or your personal property has to be moved. If the needed right of way is occupied

by a home, business or any personal property, DO NOT MOVE UNTIL YOU HAVE BEEN CONTACTED BY A RELOCATION ASSISTANCE COUNSELOR AND HAVE ESTABLISHED ELIGIBILITY FOR POSSIBLE RELOCATION BENEFITS. MOVING PREMATURELY MAY RESULT IN FORFEITURE OF THESE BENEFITS.

INCIDENTAL EXPENSES

After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable expenses necessarily incurred in transferring title to the property for use by the Texas Department of Transportation. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the department and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. The Texas Department of Transportation will reimburse eligible incidental expenses upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the department failed to properly determine the eligibility for or the amount of incidental expenses to be reimbursed. There is no standard form on which to request review of a claim; however, it must be filed with the department's district office for your area within three months after you are notified of the department's determination on any claim for reimbursement.

YOUR CIVIL RIGHTS

In accordance with Title VI of the Civil Rights Act of 1964 and related statutes, it is the policy of the department to ensure that no person in the United States of America shall, on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment. 42 U.S.C. §2000d-3), color, national origin, sex, age, retaliation or disability be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any of our programs or activities.

If you believe you have been discriminated against or your rights have been violated under any program or activity of the department, you may file a Title VI Discrimination Complaint.

The Title VI Discrimination Complaint Form can be obtained by:

- Visiting TxDOT's website at http://www.txdot.gov and entering keywords "civil rights."
- Contacting the Office of Civil Rights 1-866-480-2518.
- Visiting, in person, the Office of Civil Rights located at 125 E. 11th Street, Austin, TX 78701.

If you have any questions regarding the completion of the form, you may contact the Office of Civil Rights at the number listed above. Upon request, assistance will be provided if you are limited English proficient or disabled. Complaints may be filed using an alternative format, e.g., computer disk, audio tape or in Braille. If you have a speech or hearing impairment, dial Texas Relay at 1-800/735-2988 or 711 for assistance.

The department's Office of Civil Rights will notify you when it receives your complaint.

CONCLUSION

Your Texas Department of Transportation sincerely hopes that the purchase of your property can be accomplished to your satisfaction with an absolute minimum of inconvenience to you. We will be more than happy to assist you in any way we can.

Name, address and telephone number of our representative:

_____

_____

_____

_____

Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH - INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - that the owner will accept a price less than the written asking price;
  - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

LJA Engineering, Inc.	9008650	dbaylor@lja.com	512-439-4709
Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
David Lowell Baylor	0384050	dbaylor@lja.com	512.439.4709
Designated Broker of Firm	License No.	Email	Phone
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Sales Agent/Associate's Name	License No.	Email	Phone

_____ _____ _____

Buyer/Tenant/Seller/Landlord Initials Date

EQUAL HOUSING OPPORTUNITY

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- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

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AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

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- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - that the owner will accept a price less than the written asking price;
  - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

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- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

eXp Realty LLC	**603392**	**TXBROKER@EXPREALTY.COM**	**(888)519-7431**
Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
Sheila Dunagan	**617831**	**TXBROKER@EXPREALTY.COM**	**(888)519-7431**
Designated Broker of Firm	License No.	Email	Phone
Sarah Atchison	**552291**	**sarah.atchison@exprealty.com**	**(888)519-7431**
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Kelly Landry	**619038**	**KLandry@thelandrygroup.com**	**(832) 515-4816**
Sales Agent/Associate's Name	License No.	Email	Phone

_____ _____ _____

Buyer/Tenant/Seller/Landlord Initials Date

Regulated by the Texas Real Estate Commission **Information available at www.trec.texas.gov**

IABS 1-0 Date

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

Texas Department of Transportation
Form ROW-N-31
(Rev. 07/11)

DRAINAGE EASEMENT FOR HIGHWAY PURPOSES

THE STATE OF TEXAS § **ROW CSJ:** 0005-14-099
§ **TxDOT Property ID No.:** P00056485.001 Easement
COUNTY OF MIDLAND § **KNOW ALL MEN BY THESE PRESENTS:**

That, **The City of Midland Texas, a Texas Home Rule Municipal Corporation** of the County of Midland, State of Texas, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of ONE HUNDRED SEVENTY SEVEN THOUSAND FOUR and no/100ths Dollars ($177,004.00) to Grantors in hand paid by the State of Texas, acting by and through the Texas Transportation Commission, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, do by these presents Grant, Bargain, Sell and Convey unto the State of Texas an easement in, along, upon and across the property which is situated in the County of Midland, State of Texas, which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein for any and all purposes.

This easement conveyed herein is for the purpose of opening, constructing and maintaining a permanent channel or drainage easement in, along, upon and across said premises described in Exhibit "A" together with the right and privilege at all times of the Grantee herein, its agents, employees and representatives of ingress and egress to and from said premises for the purpose of making any improvements, modifications or repairs which the State deems necessary.

And for the same consideration described above and upon the same conditions, the Grantors have this day granted and conveyed and by these presents do grant and convey unto the State of Texas any and all improvements presently existing upon the property described in said Exhibit "A"; SAVE and EXCEPT,

(None.)

HOWEVER, it is expressly understood and agreed that Grantors are retaining title to the following improvements located on the aforesaid property, to wit: (None).

Grantors covenant and agree to remove the above-described improvements from said land by the (N/A) day of (N/A), (N/A), subject, however, to such extensions of time as may be granted by the State in writing; and if, for any reason, Grantors fail or refuse to remove same within said period of time prescribed, then, without any further consideration, the title to all or any part of such improvements not so removed shall pass to and vest in the State of Texas forever.

As a part of the grant hereby made it is agreed between the parties hereto that any stone, earth, gravel or caliche which may be excavated in the opening, construction or maintenance of said channel or drainage easement may be removed from said premises by the State.

TO HAVE AND TO HOLD the premises described in Exhibit "A" for said purposes together with all and singular the rights, privileges and appurtenances thereto in any manner belonging, unto the State of Texas forever; and Grantor hereby binds itself, its heirs, successors or assigns, to Warrant and Forever Defend, all and singular, the said easement herein conveyed unto the State of Texas, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of_____, 2023.

The City of Midland Texas, a Texas Home Rule Municipal Corporation

By:_____

Name:_____

Title:_____

Corporate Acknowledgement

State of Texas §
§
County of Midland §

This instrument was acknowledged before me on ,_____ 2023 by _____,acting as_____ of The City of Midland Texas, a Texas Home Rule Municipal Corporation, on behalf of said entity in the capacity herein stated.

_____
Notary Public's Signature

The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C

AFTER RECORDING, RETURN TO:
Lone Star Abstract & Title Co., Inc.
Attn: Sherry Nock
600 N. Loraine
Midland, Texas 79701

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
CCSJ: 0005-14-092

Description for Parcel P00056485.001 Easement

A description of a 55,013 square feet (or 1.2629 acre) parcel of land situated in Section 11, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 52 and Section 12, Block 40, Township 2 South in T&P RR Company Survey, Abstract No. 651, in the City of Midland, Midland County, Texas, and being a portion of a called 49.14 acre tract of land described in General Warranty Deed recorded on June 10, 2011, conveyed by Midland Development Corporation to City of Midland as recorded in Instrument Number 2011-11208, Deed Records, Midland County, Texas, said 55,013 square feet (or 1.2629 acre) parcel of land being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch iron rod with 2-inch aluminum disk stamped "City of Midland Survey Control" found (controlling monument and record monument) in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 37.815 acre tract conveyed to the State of Texas, as recorded in Volume 577, Page 647, Deed Records, Midland County, Texas, said point being the southwest corner of said 49.14 acre tract and the southeast corner of a called 127.392 acre tract of land described in Special Warranty Deed recorded on July 26, 2006, conveyed by The City of Midland Texas to Midland Development Corporation as recorded in Volume 2717, Page 565, Deed Records, Midland County, Texas, said 5/8-inch iron rod with 2-inch aluminum disk having a surface coordinate of N: 10,674,828.58, E: 1,730,960.83, and being 150.42 feet right of and at a right angle to approved schematic baseline station 1005+96.05;

THENCE, North 59° 44' 28" East, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 792.30 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for the **POINT OF BEGINNING**, said point being the southwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod having a surface coordinate of N: 10,675,227.83, E: 1,731,645.19, and being 150.00 feet right of and at a right angle to approved schematic baseline station 998+03.75;**

THENCE, departing said common line, over and across said 49.14 acre tract the following three (3) courses and distances:

1. North 30° 15' 12" West, a distance of 275.08 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northwest corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 425.08 feet right of and at a right angle to approved schematic baseline station 998+03.58;**

2. North 59° 44' 48" East, a distance of 200.00 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set for corner, said point being the northeast corner of herein described Parcel P00056485.001, said 5/8-inch iron rod being 424.95 feet right of and at a right angle to approved schematic baseline station 996+03.58, from which a 1/2-inch iron rod with "illegible" cap found for an interior ell corner of said 49.14 acre tract, bears North 15° 53' 39" West, a distance of 1,301.38 feet;**

Description for Parcel P00056485.001 Easement

3. South 30° 15' 12" East, a distance of 275.06 feet to a 5/8-inch iron rod with 2-inch aluminum cap stamped "TXDOT ROW MONUMENT" set in the existing north right-of-way line of Interstate Highway 20 (a variable width right-of-way), as described in a called 71.04 acre tract conveyed to the State of Texas, as recorded in Volume 422, Page 369, Deed Records, Midland County, Texas, said point being 149.90 feet right of and at a right angle to approved schematic baseline station 996+03.75, from which a 1/2-inch iron rod with "SCHUMANN ENG CO INC" cap found (controlling monument and record monument) for the southeast corner of said 49.14 acre tract bears North 59° 44' 28" East, a distance of 528.59 feet;**

4. **THENCE**, South 59° 44' 28" West, coincident with the common line of said 49.14 acre tract and said existing north right-of-way line of Interstate Highway 20, a distance of 200.00 to the **POINT OF BEGINNING** and containing 55,013 square feet (or 1.2629 acres) of land.

NOTES:

** The monument described in this call, if destroyed or damaged during construction, may be replaced with a TxDOT Type II Right-of-Way Marker upon the completion of the highway construction on project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

The Basis of Bearings is the Texas Coordinate System of 1983, Central Zone (4203), North American Datum (NAD 83) 2011 Adjustment, EPOCH 2010. All distances and coordinates shown are surface, unless otherwise noted, and may be converted to grid by dividing by the TxDOT combined scale factor of 1.0001241617 from a base point having a coordinate of North:10,664,612.851 and East:1,712,283.872. Unit of measure is US Survey Foot.

Station and Offset information refers to the approved schematic baseline station described in the Project Schematic Control Section Number 0005-14-092.

A survey plat of even date herewith accompanies the legal descriptions.

I, Mark E. Keeton, a Registered Professional Land Surveyor in the State of Texas, do hereby certifies that the land description and plat represent an actual survey made on the ground under my supervision.

Mark E. Keeton, R.P.L.S.
Registered Professional Land Surveyor
Texas Registration No. 6790

Jacobs
1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
Fax (214)-638-0447
TBPLS Firm # 10152300

July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

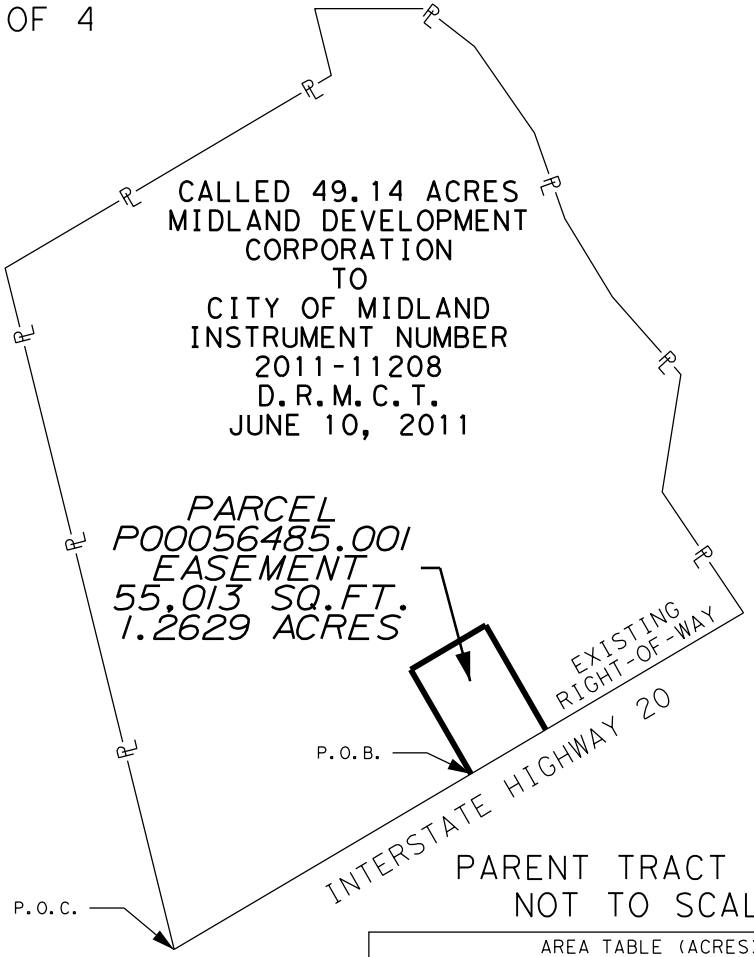
NOTES:
1. ABSTRACT DATES: (NA)
2. BEARING BASIS IS TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), NORTH AMERICAN DATUM (NAD83) 2011 ADJUSTMENT, EPOCH 2010.
3. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY TXDOT COMBINED SCALE FACTOR OF 1.0001241617 FROM A BASE POINT HAVING A COORDINATE OF NORTH=10,664,612.851 AND EAST=1,712,283.872.
4. THE UNIT OF MEASURE IS U.S. SURVEY FEET.
5. THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE PROJECT SCHEMATIC.
6. PROJECT CONTROL WAS ESTABLISHED BY OTHERS AND PROVIDED BY TxDOT.
7. FIELD SURVEYS WERE PERFORMED BETWEEN 12-01-2019 AND 6-10-2022.
8. PARCEL REMAINDER AREA IS DERIVED BY SUBTRACTING THE CALCULATED FEE AREA OF THE PARCEL FROM THE CALLED ACREAGE OF THE PARENT TRACT, LESS ANY OTHER CALLED FEE ACREAGE OF PROPERTY CONVEYANCES OF RECORD, FROM THE PARENT TRACT.

LEGEND

EXISTING ROADWAY INTERNAL
EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
EXISTING EASEMENT LINE
NEW EASEMENT LINE
PROPERTY LINE
SURVEY LINE
DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.
▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.
■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
(CM) = CONTROLLING MONUMENT
(RM) = RECORD MONUMENT
✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

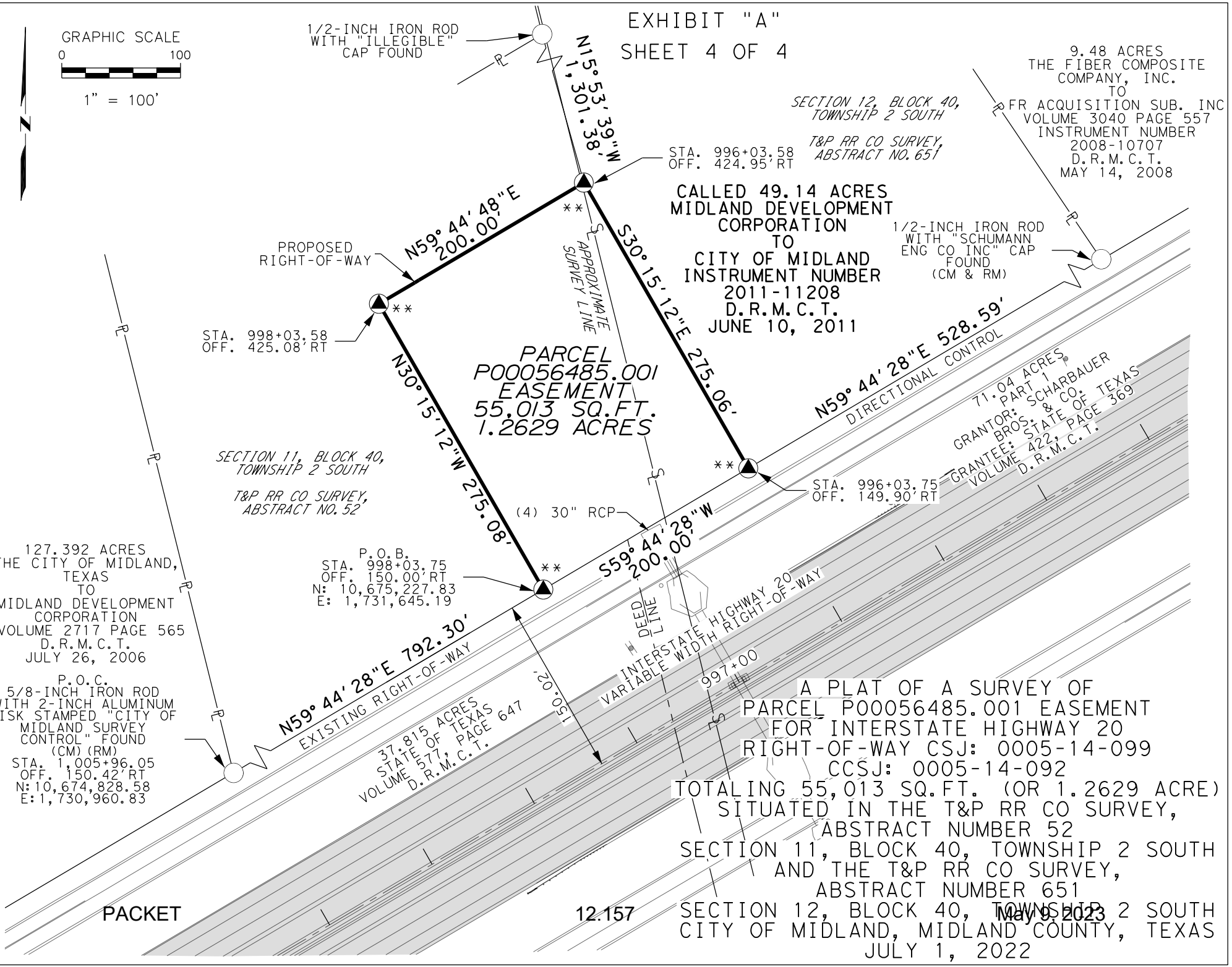
Jacobs
1999 BRYAN STREET, SUITE 1200
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PHONE (214)-638-0145
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TBPLS FIRM # 10152300

A PLAT OF A SURVEY OF
PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
RIGHT-OF-WAY CSJ: 0005-14-099
CCSJ: 0005-14-092
TOTALING 55,013 SQ.FT. (OR 1.2629 ACRE)
SITUATED IN THE T&P RR CO SURVEY,
ABSTRACT NUMBER 52
SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH
AND THE T&P RR CO SURVEY,
ABSTRACT NUMBER 651
SECTION 12, BLOCK 40, TOWNSHIP 2 SOUTH
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

PACKET 12.156

May 9, 2023

LeeBM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF MIDLAND, AN INSTRUMENT GRANTING TO THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS TRANSPORTATION COMMISSION ("GRANTEE"), AN APPROXIMATE 1.26-ACRE DRAINAGE EASEMENT FOR HIGHWAY PURPOSES OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; AND AUTHORIZING THE ACCEPTANCE OF GRANTEE'S PAYMENT FOR SAID EASEMENT IN THE AMOUNT OF $177,004.00

WHEREAS, the City of Midland owns a tract of land located in Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas; and

WHEREAS, the State of Texas, acting by and through the Texas Transportation Commission ("Grantee"), has requested that the City grant to Grantee an approximate 1.26-acre drainage easement for highway purposes (the "Easement") out of the above-referenced City-owned tract of land; and

WHEREAS, Grantee has offered to pay the City the sum of $177,004.00 ("Grantee's Payment") for the Easement; and

WHEREAS, the City Council finds it to be in the public interest to grant the Easement to Grantee and accept Grantee's Payment;

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

SECTION ONE. That the Interim City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, an instrument granting the Easement to Grantee and to deliver said instrument to Grantee. Said instrument shall be in a form substantially similar to that attached hereto as Exhibit "A".

SECTION TWO. That the Interim City Manager is hereby authorized and directed to accept Grantee's Payment for the Easement.

SECTION THREE. That the Interim City Manager is hereby authorized and directed

to execute all other documents and take all other actions necessary to effect said granting of the Easement and said acceptance of Grantee's Payment.

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

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Morris Williams, Jr., Interim City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

Texas Department of Transportation
Form ROW-N-31
(Rev. 07/11)

DRAINAGE EASEMENT FOR HIGHWAY PURPOSES

THE STATE OF TEXAS § **ROW CSJ:** 0005-14-099
§ **TxDOT Property ID No.:** P00056485.001 Easement
COUNTY OF MIDLAND § **KNOW ALL MEN BY THESE PRESENTS:**

That, **The City of Midland Texas, a Texas Home Rule Municipal Corporation** of the County of Midland, State of Texas, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of ONE HUNDRED SEVENTY SEVEN THOUSAND FOUR and no/100ths Dollars ($177,004.00) to Grantors in hand paid by the State of Texas, acting by and through the Texas Transportation Commission, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, do by these presents Grant, Bargain, Sell and Convey unto the State of Texas an easement in, along, upon and across the property which is situated in the County of Midland, State of Texas, which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein for any and all purposes.

This easement conveyed herein is for the purpose of opening, constructing and maintaining a permanent channel or drainage easement in, along, upon and across said premises described in Exhibit "A" together with the right and privilege at all times of the Grantee herein, its agents, employees and representatives of ingress and egress to and from said premises for the purpose of making any improvements, modifications or repairs which the State deems necessary.

And for the same consideration described above and upon the same conditions, the Grantors have this day granted and conveyed and by these presents do grant and convey unto the State of Texas any and all improvements presently existing upon the property described in said Exhibit "A"; SAVE and EXCEPT,

(None.)

HOWEVER, it is expressly understood and agreed that Grantors are retaining title to the following improvements located on the aforesaid property, to wit: (None).

Grantors covenant and agree to remove the above-described improvements from said land by the (N/A) day of (N/A), (N/A), subject, however, to such extensions of time as may be granted by the State in writing; and if, for any reason, Grantors fail or refuse to remove same within said period of time prescribed, then, without any further consideration, the title to all or any part of such improvements not so removed shall pass to and vest in the State of Texas forever.

As a part of the grant hereby made it is agreed between the parties hereto that any stone, earth, gravel or caliche which may be excavated in the opening, construction or maintenance of said channel or drainage easement may be removed from said premises by the State.

TO HAVE AND TO HOLD the premises described in Exhibit "A" for said purposes together with all and singular the rights, privileges and appurtenances thereto in any manner belonging, unto the State of Texas forever; and Grantor hereby binds itself, its heirs, successors or assigns, to Warrant and Forever Defend, all and singular, the said easement herein conveyed unto the State of Texas, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of_____, 2023.

The City of Midland Texas, a Texas Home Rule Municipal Corporation

By:_____

Name:_____

Title:_____

Corporate Acknowledgement

State of Texas §
§
County of Midland §

This instrument was acknowledged before me on ,_____ 2023 by _____,acting as_____ of The City of Midland Texas, a Texas Home Rule Municipal Corporation, on behalf of said entity in the capacity herein stated.

_____
Notary Public's Signature

The acknowledging person personally appeared by:

☐ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C

AFTER RECORDING, RETURN TO:
Lone Star Abstract & Title Co., Inc.
Attn: Sherry Nock
600 N. Loraine
Midland, Texas 79701

EXHIBIT "A"

County: Midland
Highway: Interstate Highway 20
Parcel P00056485.001 Easement July 1, 2022
STA. 996+03.58 TO STA. 998+03.75
R.O.W. CSJ: 0005-14-099
CCSJ: 0005-14-092

Description for Parcel P00056485.001 Easement

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Mark E. Keeton, R.P.L.S.
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1999 Bryan Street, Suite 1200
Dallas, Texas 75201-3136
Phone (214)-638-0145
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July 1, 2022



EXHIBIT "A"

SHEET 3 OF 4

NOTES:
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EXISTING RIGHT-OF-WAY LINE
NEW RIGHT-OF-WAY LINE
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DENIAL OF ACCESS LINE

ACCESS IS PROHIBITED ACROSS THE "DENIAL OF ACCESS LINE TO THE HIGHWAY FACILITY FROM THE ADJACENT PROPERTY

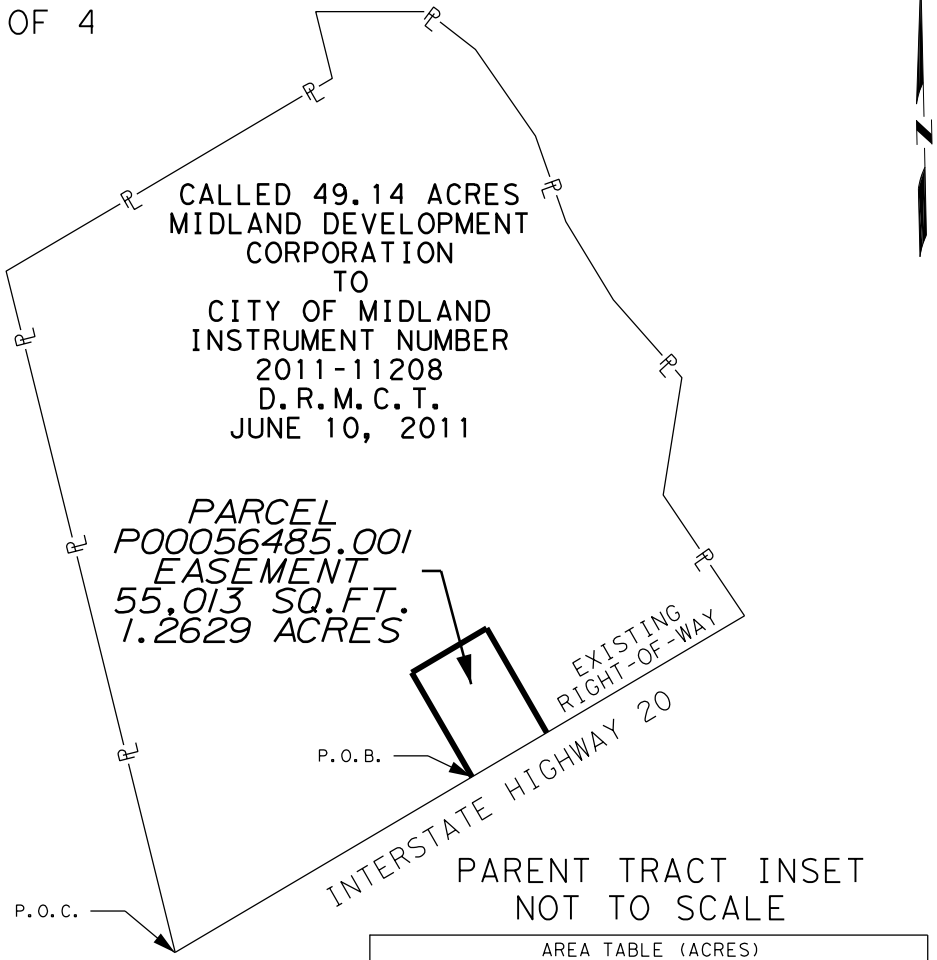
◯ = IRON ROD FOUND, UNLESS OTHERWISE NOTED.

▲ = 5/8-INCH IRON ROD WITH 2-INCH ALUMINUM CAP STAMPED "TXDOT ROW MONUMENT" SET.

■ = 5/8-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "JACOBS ESMT" SET.

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(CM) = CONTROLLING MONUMENT
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✳ ✳ = THE MONUMENT DESCRIBED IN THIS CALL, IF DESTROYED OR DAMAGED DURING CONSTRUCTION MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON THE COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR EITHER EMPLOYED OR RETAINED BY TxDOT.



PARENT TRACT INSET
NOT TO SCALE

AREA TABLE (ACRES)			
EXISTING	ACQUISITION	REMAINDER (CALCULATED)	
		LEFT	RIGHT
49.1400	1.2629		47.8771

STATE OF TEXAS
REGISTERED
MARK E. KEETON
6790
PROFESSIONAL
LAND SURVEYOR

7/1/2022

MARK E. KEETON
REGISTERED PROFESSIONAL
LAND SURVEYOR
TEXAS NO. 6790

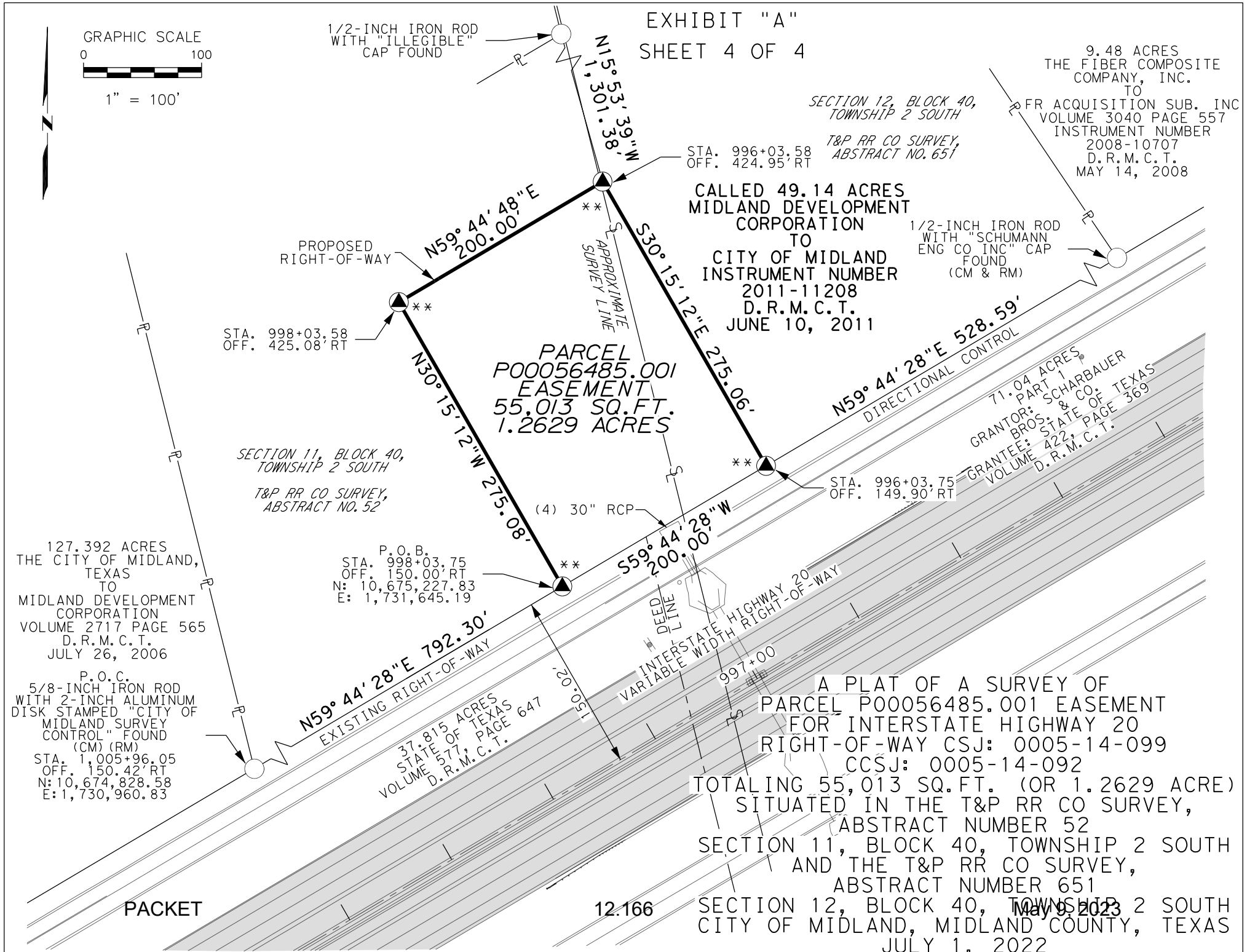
Jacobs
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DALLAS, TEXAS 75201-3136
PHONE (214)-638-0145
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PARCEL P00056485.001 EASEMENT
FOR INTERSTATE HIGHWAY 20
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CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
JULY 1, 2022

PACKET 12.165

May 9, 2023

LeeBM



I:\SUR\WJXN2120-IH 20 TXDOT MIDLAND\700 CADD\713 Survey\713.5 Easement\PROJECT 3-EXHIBIT A\PARCEL P00056485.001 (EASEMENT)\WJXN2120 P00056485_001.dgn 6/23/2022 12:08:28 PM LeeBM

City Council Meeting

Item Number: 13

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Seth Herman, Police Chief

Subject: **RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $109,000.00 FROM THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM PROVIDED BY THE OFFICE OF THE GOVERNOR; SAID GRANT FUNDS SHALL BE USED TO PURCHASE A LEICA RTC 360 LASER SCANNER KIT FOR THE POLICE DEPARTMENT'S CRIME SCENE TECHNOLOGY PROJECT; DESIGNATING AN AUTHORIZED OFFICIAL FOR THE ADMINISTRATION OF SAID GRANT FUNDS AND ASSOCIATED OBLIGATIONS; AUTHORIZING AND DIRECTING; DIRECTING SAID AUTHORIZED OFFICIAL TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS; AND APPROPRIATING SAID GRANT FUNDS (DISTRICT: NONE) (POLICE)**

Purpose:

RESOLUTION AUTHORIZING ACCEPTANCE OF $109,000 IN GRANT FUNDING AWARDED FROM THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION FOR THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT TO BE USED TOWARDS THE PURCHASE OF CRIME SCENE TECHNOLOGY.

Recommended City Council Action:

Approve

Fiscal Impact:

NONE

Discussion:

In order to effectively investigate, document and reproduce extensive crime scenes, the Midland Police Department's Crime Scene Investigations Unit requires the purchase of one Leica RTC 360 Laser Scanner Kit - this equipment providing detailed schematics used by both investigators and prosecutors.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $109,000.00 FROM THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM PROVIDED BY THE OFFICE OF THE GOVERNOR; SAID GRANT FUNDS SHALL BE USED TO PURCHASE A LEICA RTC 360 LASER SCANNER KIT FOR THE POLICE DEPARTMENT'S CRIME SCENE TECHNOLOGY PROJECT; DESIGNATING AN AUTHORIZED OFFICIAL FOR THE ADMINISTRATION OF SAID GRANT FUNDS AND ASSOCIATED OBLIGATIONS; AUTHORIZING AND DIRECTING; DIRECTING SAID AUTHORIZED OFFICIAL TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS; AND APPROPRIATING SAID GRANT FUNDS

WHEREAS, the City of Midland, Texas, Police Department has received notice that it has been awarded $109,000.00 through the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant Program; and

WHEREAS, said grant funds will be used to purchase a Leica RTC 360 Laser Scanner Kit for the Police Department's Crime Scene Technology Project; and

WHEREAS, the City Council finds it to be in the best interest of the citizens of the City of Midland that the Crime Scene Technology Project be operated for the Fiscal Year 2023; and

WHEREAS, the City of Midland agrees to provide applicable matching funds for the Crime Scene Technology Project as required by the Office of the Governor grant application; and

WHEREAS, the City of Midland agrees that, in the event of loss or misuse of the grant funds, the City of Midland assures that said funds will be returned to the Office of the Governor; and

WHEREAS, the City of Midland finds it to be in the public interest to designate Comptroller Crystal Garcia as the City of Midland's authorized official and is hereby granted the power to apply for, reject, alter, or terminate the grant on behalf of the City of Midland;

and

WHEREAS, the City Council finds it to be in the public interest to accept the grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland hereby accepts the grant award of $109,000.00 awarded by the Governor's Office through the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant Program. Said grant funds shall be used to purchase a Leica RTC 360 Laser Scanner Kit for the Police Department's Crime Scene Technology Project.

SECTION TWO. That Comptroller Crystal Garcia is hereby designated as the City of Midland's authorized official and is hereby granted the power to apply for, reject, alter, or terminate the grant on behalf of the City of Midland.

SECTION THREE. That Comptroller Crystal Garcia is hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION FOUR. That the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant Program grant in the amount of $109,000.00 is hereby accepted and directed to be deposited into the Police Justice Grant fund, upon which said funds shall be appropriated for purposes consistent with this Resolution.

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

_____
Morris Williams, Jr., Interim City Manager

_____
Christy Weakland, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Seth Herman, Police Chief

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

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

8. 072-2022 – MOTION APPROPRIATING $39,950.05 FROM THE AIRPORT UNAPPROPRIATED FUND BALANCE TO THE AQUEOUS FILM FORMING FOAM (AFFF) TEST CART PROJECT IN FUND 505 (DISTRICT 4) (AIRPORTS)

Dan Corrales moved to approve the Consent Agenda items 3-12, excluding item(s) 4, 6, 12; seconded by John Norman.

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

9. 2022-087 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS (DISTRICT: ALL) (POLICE)

Dan Corrales moved to approve the Consent Agenda items 3-12, excluding item(s) 4, 6, 12; seconded by John Norman.

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

10. 073-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-025) WITH ENTERPRISE NAVITAS MIDSTREAM MIDLAND BASIN, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 19, BLOCK 36 AND SECTION 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

Dan Corrales moved to approve the Consent Agenda items 3-12, excluding item(s) 4, 6, 12; seconded by John Norman.

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

Statement of Grant Award (SOGA)

The Statement of Grant Award is the official notice of award from the Office of the Governor (OOG). This Grant Agreement and all terms, conditions, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and all other State of Texas agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties hereto.

The approved project narrative and budget for this award are reflected in eGrants on the 'Narrative' and 'Budget/Details' tabs. By accepting the Grant Award in eGrants, the Grantee agrees to strictly comply with the requirements and obligations of this Grant Agreement including any and all applicable federal and state statutes, regulations, policies, guidelines and requirements. In instances where conflicting requirements apply to a Grantee, the more restrictive requirement applies.

The Grant Agreement includes the Statement of Grant Award; the OOG Grantee Conditions and Responsibilities; the Grant Application in eGrants; and the other identified documents in the Grant Application and Grant Award, including but not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Chapter 783 of the Texas Government Code, Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code, and the Uniform Grant Management Standards (UGMS) developed by the Comptroller of Public Accounts; the state Funding Announcement or Solicitation under which the grant application was made, and for federal funding, the Funding Announcement or Solicitation under which the OOG was awarded funds; and any applicable documents referenced in the documents listed above. For grants awarded from the U.S. Department of Justice, the current applicable version of the Department of Justice Grants Financial Guide and any applicable provisions in Title 28 of the CFR apply. For grants awarded from the Federal Emergency Management Agency (FEMA), all Information Bulletins and Policies published by the FEMA Grants Program Directorate apply. The OOG reserves the right to add additional responsibilities and requirements, with or without advance notice to the Grantee.

By clicking on the 'Accept' button within the 'Accept Award' tab, the Grantee accepts the responsibility for the grant project, agrees and certifies compliance with the requirements outlined in the Grant Agreement, including all provisions incorporated herein, and agrees with the following conditions of grant funding. The grantee's funds will not be released until the grantee has satisfied the requirements of the following Condition(s) of Funding and Other Fund-Specific Requirement(s), if any, cited below:

Grant Number:	4482101	**Award Amount:**	$109,000.00
Date Awarded:	11/22/2022	**Grantee Cash Match:**	$0.00
Grant Period:	10/01/2022 - 06/30/2023	**Grantee In Kind Match:**	$0.00
Liquidation Date:	09/28/2023	**Grantee GPI:**	$0.00
Program Fund:	DJ-Edward Byrne Memorial Justice Assistance Grant Program	**Total Project Cost:**	$109,000.00
Grantee Name:	Midland, City of		
Project Title:	Crime Scene Technology Project		
Grant Manager:	Marvin Alcorn		
Unique Entity Identifier (UEI):	CPZ1T3B85A64		

CFDA:	16.738 - Edward Byrne Memorial Justice Assistance Grant Program
Federal Awarding Agency:	U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance
Federal Award Date:	9/17/2020
Federal/State Award ID Number:	2020-DJ-BX-0034
Total Federal Award/State Funds Appropriated:	$12,503,443.00
Pass Thru Entity Name:	Texas Office of the Governor – Criminal Justice Division (CJD)
Is the Award R&D:	No
Federal/State Award Description:	The purpose of this program is to reduce crime and improve the criminal

Whereas, The City of Midland finds it in the best interest of the citizens of Midland that the Crime Scene Technology Project be operated for the 2023 and

Whereas, The City of Midland agrees to provide applicable matching funds for the said project as required by the Office of Governor grant application; and

Whereas, The City of Midland agrees that in the event of loss or misuse of the Office of the Governor Funds, The City of Midland assures that the funds will be returned to the Office of the Governor in full.

Whereas, The City of Midland designates Crystal Garcia, Comptroller as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that The City of Midland approves submission of the grant application for the Crime Scene Technology Project to the Office of the Governor.

Signed by:

Passed and Approved this _____ of _____

Grant Number: 4482101

COLLISION & CRIME FORENSIC SOLUTIONS

Forensic Reconstruction / Investigations / Certified Training

Leica Geosystems

Customer

Company: Midland Police Dept.
Contact: CSI Rhiannon Fry
Email: rfry@midlandtexas.gov
Phone: 432-685-7164
Fax:

Address: 601 N. Loraine Street
City: Midland
State: TX
Zip: 79701
Account:

Dates

Quote Issued: 26-Jan-22
7-Dec-22

Midland Police (1) Unit RTC360, Software, and 1 Year CCP - Permanent Software Licensing

Part Number	*Product Description*		*List Price*	*Price*	*TOTAL*
6012673 6013561 817063 838300 799191 799187 842065 636767	**Leica RTC360 Laser Scanner Kit** 1 yr RTC360 Laser Scanner CCP Basic GVP730, Transport Container for RTC360 Laser Scanner and Accessories RTC360 Scan Head GEB361 Lithium Ion Battery GKL341, Charger Prof 5000. Charges up to 4 batteries, including power cable. RTC360 Flash Drive - 256GB RTC360 Rain Cover	1	$ 85,501.65	$ 76,951.49	$ 76,951.49
6013573	**1 yr RTC360 Laser Scanner CCP Silver upgrade** Provides individual instrument error and uncertainty of measurement and adds scanner cleaning and calibration service.	1	$ 2,170.00	$ 2,061.50	$ 2,061.50
CFS GT5543XLS	**Gitzo 78" Systematic Series 5 Tripod**	1	$ 1,700.00	$ 1,700.00	$ 1,700.00
CFS E-ZLOK 335-6	**E-Z LOK Thread Reducer for GAD122**	1	$ 25.00	$ 25.00	$ 25.00
870985	**GAD122 Adapter with 5/8" threading for use with Survey Tripods**	1	$ 115.00	$ 103.50	$ 103.50
CFS	**IPad ProWifi 256 GB + Rugged Case** For remote wireless control of RTC360 to protect investigators from HAZMAT and minimize evidence disturbance at the crime scene.	1	$ 980.00	$ 980.00	$ 980.00
864515	**Cyclone REGISTER 360 Permanent**	1	$ 5,550.00	$ 4,995.00	$ 4,995.00
6012199	**1 yr Cyclone REGISTER 360 CCP**	1	$ 980.00	$ 931.00	$ 931.00
914470	**Cyclone PUBLISHER Permanent**	1	$ 4,350.00	$ 3,915.00	$ 3,915.00
6015916	**1 yr Cyclone PUBLISHER CCP**	1	$ 770.00	$ 731.50	$ 731.50
916318	**Map360 Pro Permanent**	1	$ 6,400.00	$ 5,760.00	$ 5,760.00
6015993	**1 yr Map360 Pro CCP**	1	$ 1,520.00	$ 1,368.00	$ 1,368.00
CFS	**4 Days IAI and ACTAR Certified On-site Training in RTC360 Operation and Registration Software with** Includes: - Tuition for up to 7 students at a customer's facility - Travel costs for trainer	1	$ 10,000.00	$ 9,000.00	$ 9,000.00
CFS	**3 Days IAI and ACTAR Certified On-site Training in Map360** Includes: - Tuition for up to 7 students at a customer's facility - Travel costs for trainer	1	$ 7,500.00	$ 7,000.00	$ 7,000.00

COLLISION & CRIME
FORENSIC SOLUTIONS LLC
Forensic Reconstruction / Investigations / Certified Training

Leica Geosystems

CFS	**LIFETIME, 24-hour, technical and operational support from Certified CFS Staff.** Includes: - Phone and Email support at all hours - Consultation and multi-sensor integration support from Public Safety experts on staff	1	NO CHARGE	NO CHARGE	NO CHARGE
OPTION #1	**Up to seven (7) training computers are available to lease for the duration of the training week.**	2	$ 1,000.00	$ 250.00	OPTION
OPTION #2	**CFS can provide NO COST consulting on appropriate computer(s) and forensically sound data storage solutions**	1	NO CHARGE	NO CHARGE	NO CHARGE
OPTION #3	**NIST Calibrated PS Traceable Artifact Bundle**	1	$ 2,535.00	$ 2,281.50	OPTION
OPTION #4	**Enhanced HDS Data Collector--Notebook PC 32GB RAM or better** Custom Point Cloud Enhanced Notebook Computer with Lifetime Tech support - NVIDIA Dedicated Graphics - Standard 3 YearLimited Warranty for Notebooks		$ 4,025.00	$ 4,025.00	OPTION
OPTION #5	**Enhanced HDS Data Collector--Desktop PC 32GB RAM or better** Custom Point Cloud Enhanced Desktop Computer with LIFETIME Hardware Warranty - NVIDIA Dedicated Graphics - Standard 1 YearLimited Warranty for Desktop		$ 3,800.00	$ 3,800.00	OPTION

NOTE: Payments with credit card will incur a 5% surcharge
NOTE: Hardware and Software will be invoiced separately upon delivery.

Sub Total:	$ 115,521.99
Freight:	
Sales Tax:	
TOTAL:	$ 115,521.99

Signature: _____ *Date:* 12/7/2022

Order Information

Collision Forensic Solutions
300 S. Fillmore St
Papillion, Nebraska 68046

Attn: Michael Selves
Tel: 402-339-1518
Fax: 402-339-4811
Email: Mike@CollisionFS.com

Quote Prepared by: WRH

Terms & Conditions

Local Sales Tax & Delivery Costs will be added to final invoice as applicable.

Quotation Valid for 60 days.

Maximum discounts applied to eligible items.

Ad-Hoc Equipment (iPad Pro / PC) sold at cost.

NOT FOR DISTRIBUTION TO OTHER VENDORS.

Not to be disseminated / Midland Police only.

City Council Meeting

Item Number: 14

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (23-329-027) between the City of Midland and Targa Pipeline Mid-Continent West-Tex LLC regarding City-owned property described as sections 4, 9, 16, and 21, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 10-year renewal of a 30’ wide right of way for an existing Eight inch (8”) Gas Utility, poly construction, pipeline on City of Midland-owned Sprayberry Farm real property. Current Right of Way License 2013-183, dated June 26, 2013, with Atlas Pipeline Mid-Continent Westtex is paid up to date with the “as-built” pipeline survey provided.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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

Full ten-year term paid in advance 6” pipeline ($170.00 per rod x 1,351.77 rods) $229,800.90

Total Collected: $230,800.90

Discussion:

This is the 10-year renewal of the ROW License recorded as Instrument number 2013-24354 in the Midland County Hall of Records.

It is a poly construction, private gas line Eight inches (8”) in diameter and buried forty-eight inches (48) deep. This motion will allow the operator to continue safe operations and does not interfere with the City Sprayberry Farm operations in this area.

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

City Secretary to record completed License Agreement

Morris Williams Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	**Targa Pipeline Mid-Continent WestTex LLC**
Licensee's Representative:	**Norman L. Winter**
Licensee's Mailing Address:	811 Louisiana St., Suite 2100 Houston, Texas 77002
Property:	As described in Article III below
License Number:	**23-329-027**

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.

W I T N E S S E T H:

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 TWO HUNDRED TWENTY-NINE THOUSAND EIGHT HUNDRED and 90/100 Dollars ($229,800.90) ("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 thirty (30) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a poly construction pipeline, not to exceed eight (8) inches in diameter, for the transportation of natural gas and to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities 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 pipeline(s) and facilities 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. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than forty-eight (48) inches in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, 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 PIPELINE 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 any pipeline 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 by promptly removed from the Property.

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

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

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace 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 any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor 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 PIPELINE 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 PIPELINE 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:_____
Morris Williams, Jr, Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
TARGA PIPELINE MID-CONTINENT WESTTEX LLC

By: _____
Printed Name: Norman L. Winter
Title: Vice President of Land and ROW

THE STATE OF Texas §
§
COUNTY OF Harris §

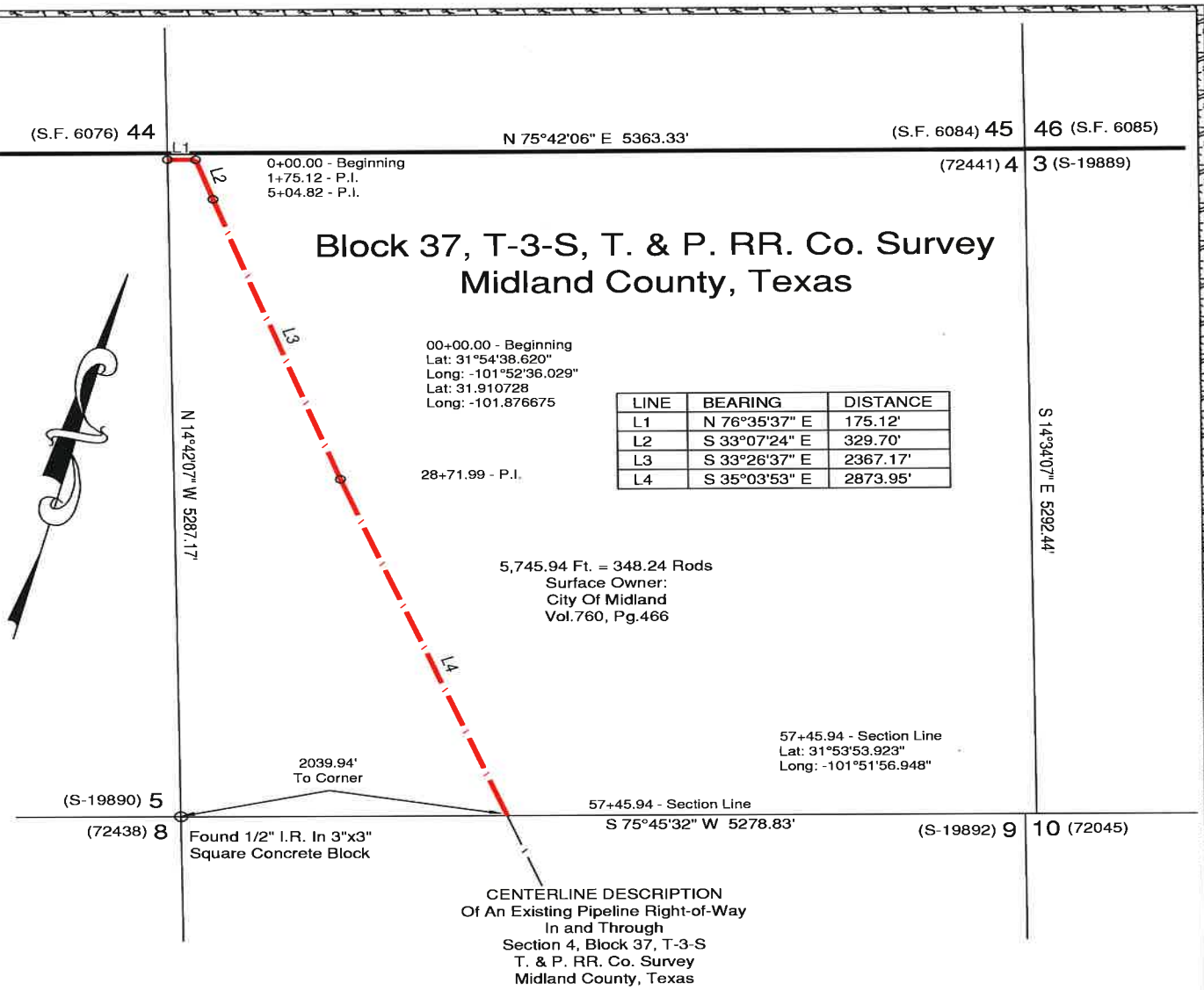
BEFORE ME, the undersigned authority, on this 18th day of April, 2023 personally appeared Norman L. Winter an officer of Targa Pipeline Mid-Continent WestTex LLC known to me to be the person and official whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of April, 2023.

_____
Notary Public, State of Texas

KIMBERLY NICHOLE NIETO
Notary ID #131475624
My Commission Expires
March 5, 2026

PACKET 14.18 May 9, 2023



LINE	BEARING	DISTANCE
L1	N 76°35'37" E	175.12'
L2	S 33°07'24" E	329.70'
L3	S 33°26'37" E	2367.17'
L4	S 35°03'53" E	2873.95'

CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 4, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 0+00.00 for the beginning of this existing pipeline right-of-way from which a found 1/2" iron rod in 3" x 3" square concrete block for the Southwest corner of Section 4, Block 37, T-3-S bears S 14°42'07" E, 5236.37 feet.
Thence N 76°35'37"E, a distance of 175.12 feet to pipeline station P.I. 1+75.12;
Thence S 33°07'24"E, a distance of 329.70 feet to pipeline station P.I. 5+04.82;
Thence S 33°26'37"E, a distance of 2367.17 feet to pipeline station P.I. 28+71.99;
Thence S 35°03'53"E, a distance of 2873.95 feet to pipeline station 57+45.94 being a point in the South line of Section 4 and North line of Section 9 of this portion of this existing pipeline right-of-way from which a found 1/2" iron rod in 3" x 3" square concrete block for the Southwest corner of Section 4, Block 37, T-3-S bears S 75°45'32" W, 2039.94 feet.

GRAPHIC SCALE
1000 0 500 1000 2000
1" = 1000' *U.S. FEET*

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9998749 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.

USGS Quadrangle Sheet: Sprayberry , Texas
USGS Quadrangle Sheet: Stephenson Lake, Texas
USGS Quadrangle Sheet: Pecks Lake , Texas

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL
LAND SURVEYOR

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

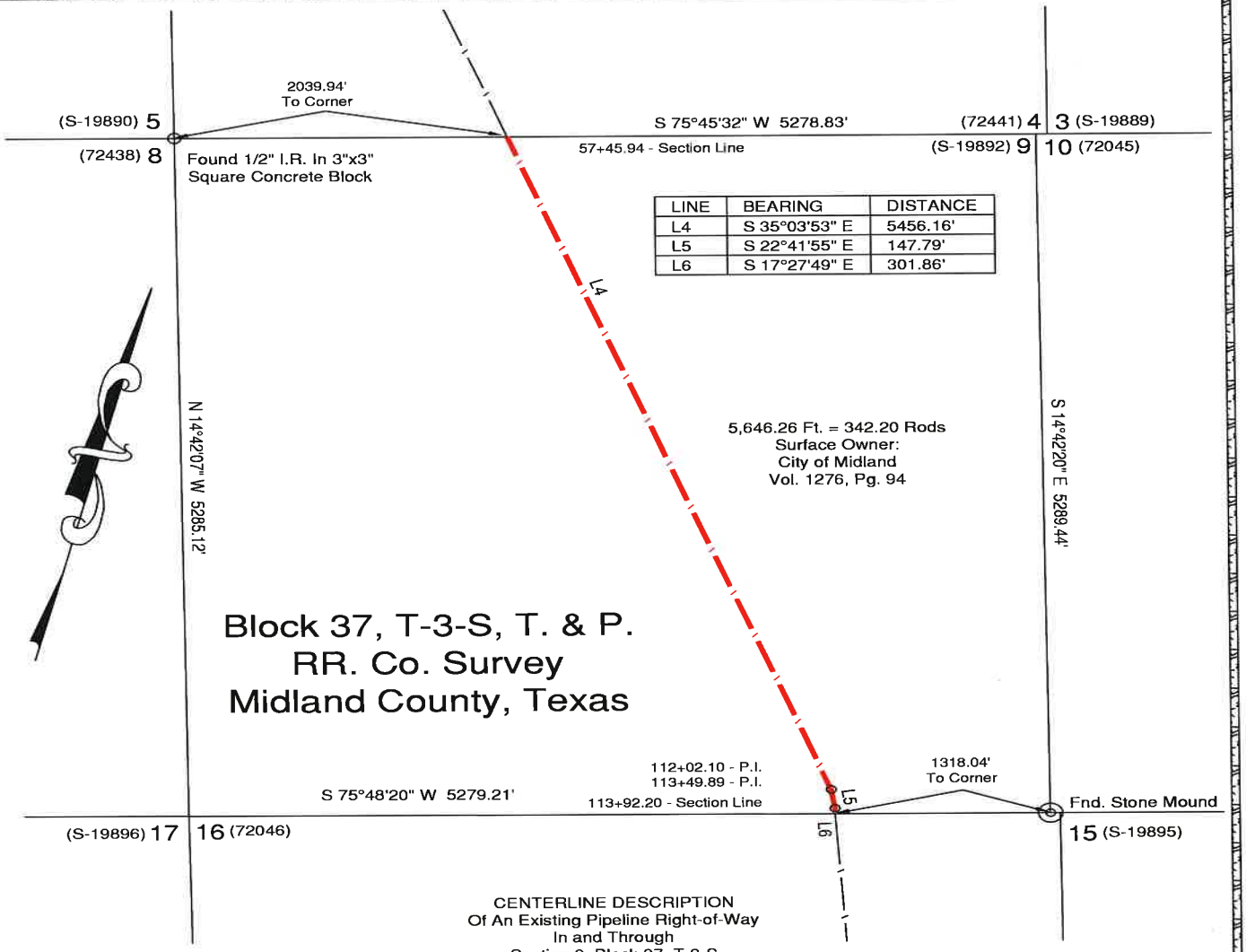
April 5, 2023
230405S1-BCL

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

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
City of Midland 2013-185 Renewal
PO: TAR183729
Existing Pipeline Survey
In and Through
Sections 4, 9, 16, & 21, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'



CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 9, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 57+45.94 being a point in the South line of Section 4 and the North line of Section 9 for the beginning of this existing pipeline right-of-way from which a found 1/2" iron rod in 3" x 3" square concrete block for the Southwest corner of Section 4, Block 37, T-3-S bears S 75°45'32" W, 2039.94 feet.

Thence S 35°03'53"E, a distance of 5456.16 feet to pipeline station P.I. 112+02.10;

Thence S 22°41'55"E, a distance of 147.79 feet to pipeline station P.I. 113+49.89;

Thence S 17°27'49"E, a distance of 42.31 feet to pipeline station 113+92.20 being a point in the South line of Section 9 and the North line of Section 16 for the end of this portion of this existing pipeline right-of-way from which a found stone mound for the Southeast corner of Section 4, Block 37, T-3-S bears N 75°48'20" E, 1318.04 feet.

GRAPHIC SCALE
1000 0 500 1000 2000
1" = 1000' *U.S. FEET*

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9998749 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.

USGS Quadrangle Sheet: Sprayberry , Texas
USGS Quadrangle Sheet: Stephenson Lake, Texas
USGS Quadrangle Sheet: Pecks Lake , Texas

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL
LAND SURVEYOR

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

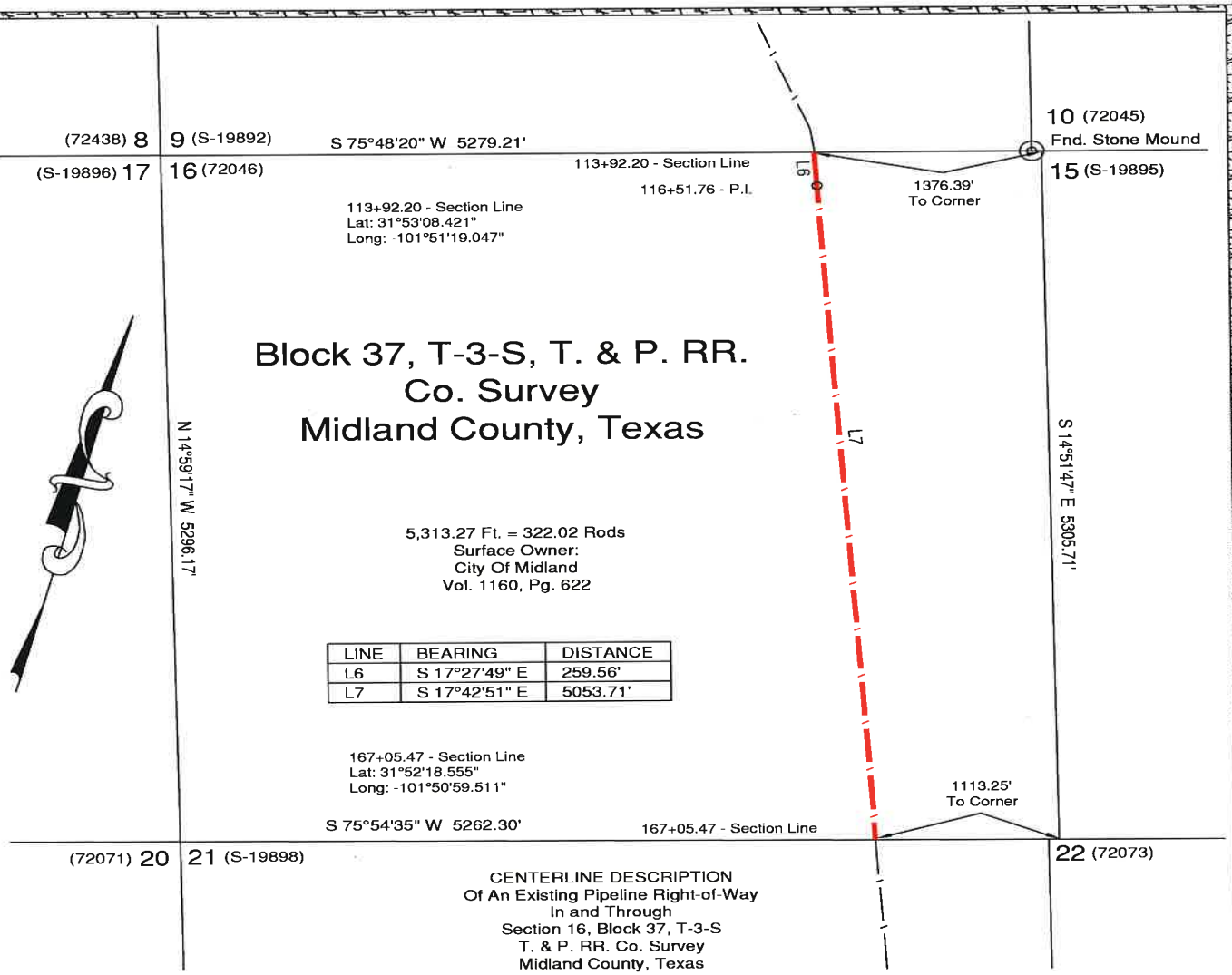
April 5, 2023
230405S2-BCL

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

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
City of Midland 2013-185 Renewal
P.O. TAR183729
Existing Pipeline Survey
In and Through
Sections 4, 9, 16, & 21, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'



LINE	BEARING	DISTANCE
L6	S 17°27'49" E	259.56'
L7	S 17°42'51" E	5053.71'

CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 16, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 113+92.20 being a point in the South line of Section 9 and the North line of Section 16 for the beginning of this portion of this existing pipeline right-of-way from which a found stone mound for the Southeast corner of Section 4, Block 37, T-3-S bears N 75°48'20" E, 1318.04 feet.

Thence S 17°27'49" E, a distance of 259.56 feet to pipeline station P.I. 116+51.76;

Thence S 17°42'51" E, a distance of 5053.71 feet to pipeline station 167+05.47 being a point in the South line of Section 16 and the North line of Section 21 for the end of this portion of this existing pipeline right-of-way from which a found stone mound for the Southeast corner of Section 4, Block 37, T-3-S bears N 03°35'22" W, 5395.48 feet.

GRAPHIC SCALE
1000 0 500 1000 2000
1" = 1000' *U.S. FEET*

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9998749 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.

USGS Quadrangle Sheet: Sprayberry , Texas
USGS Quadrangle Sheet: Stephenson Lake, Texas
USGS Quadrangle Sheet: Pecks Lake , Texas

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL
LAND SURVEYOR

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

April 5, 2023
230405S3-BCL

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

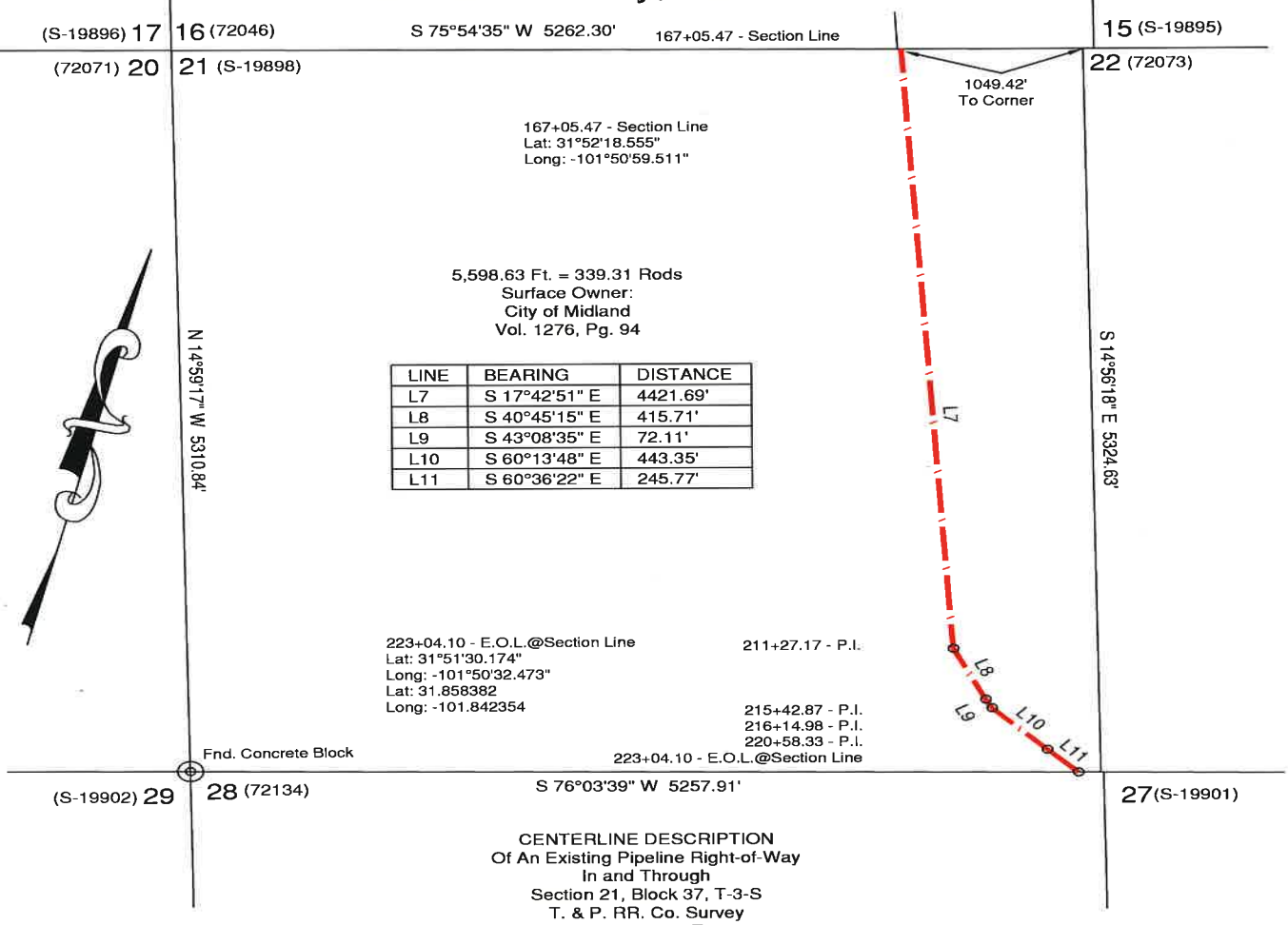
Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
City of Midland 2013-185 Renewal
P.O. TAR183729
Existing Pipeline Survey
In and Through
Sections 4, 9, 16, & 21, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'

PACKET 14.21 May 9, 2023

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



LINE	BEARING	DISTANCE
L7	S 17°42'51" E	4421.69'
L8	S 40°45'15" E	415.71'
L9	S 43°08'35" E	72.11'
L10	S 60°13'48" E	443.35'
L11	S 60°36'22" E	245.77'

CENTERLINE DESCRIPTION
Of An Existing Pipeline Right-of-Way
In and Through
Section 21, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Beginning at pipeline station 167+05.47 being a point in the South line of Section 16 and the North line of Section 21 for the beginning of this existing pipeline right-of-way from which a found concrete block for the Southwest corner of Section 21, Block 37, T-3-S bears S 23°46'53" W, 6726.97 feet.

Thence S 17°42'51"E, a distance of 4421.69 feet to pipeline station P.I. 211+27.17;
Thence S 40°45'15"E, a distance of 415.71 feet to pipeline station P.I. 215+42.87;
Thence S 43°08'35"E, a distance of 72.11 feet to pipeline station P.I. 216+14.98;
Thence S 60°13'48"E, a distance of 443.35 feet to pipeline station P.I. 220+58.33;
Thence S 60°36'22"E, a distance of 245.77 feet to pipeline station 223+04.10 being the E.O.L. (End of Line) of this existing pipeline right-of-way from which a found concrete block for the Southwest corner of Section 21, Block 37, T-3-S bears S 76°03'39" W, 5128.71 feet.

GRAPHIC SCALE
1000 0 500 1000 2000
1" = 1000' *U.S. FEET*

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9998749 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.

USGS Quadrangle Sheet: Sprayberry , Texas
USGS Quadrangle Sheet: Stephenson Lake, Texas
USGS Quadrangle Sheet: Pecks Lake , Texas

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL LAND SURVEYOR

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

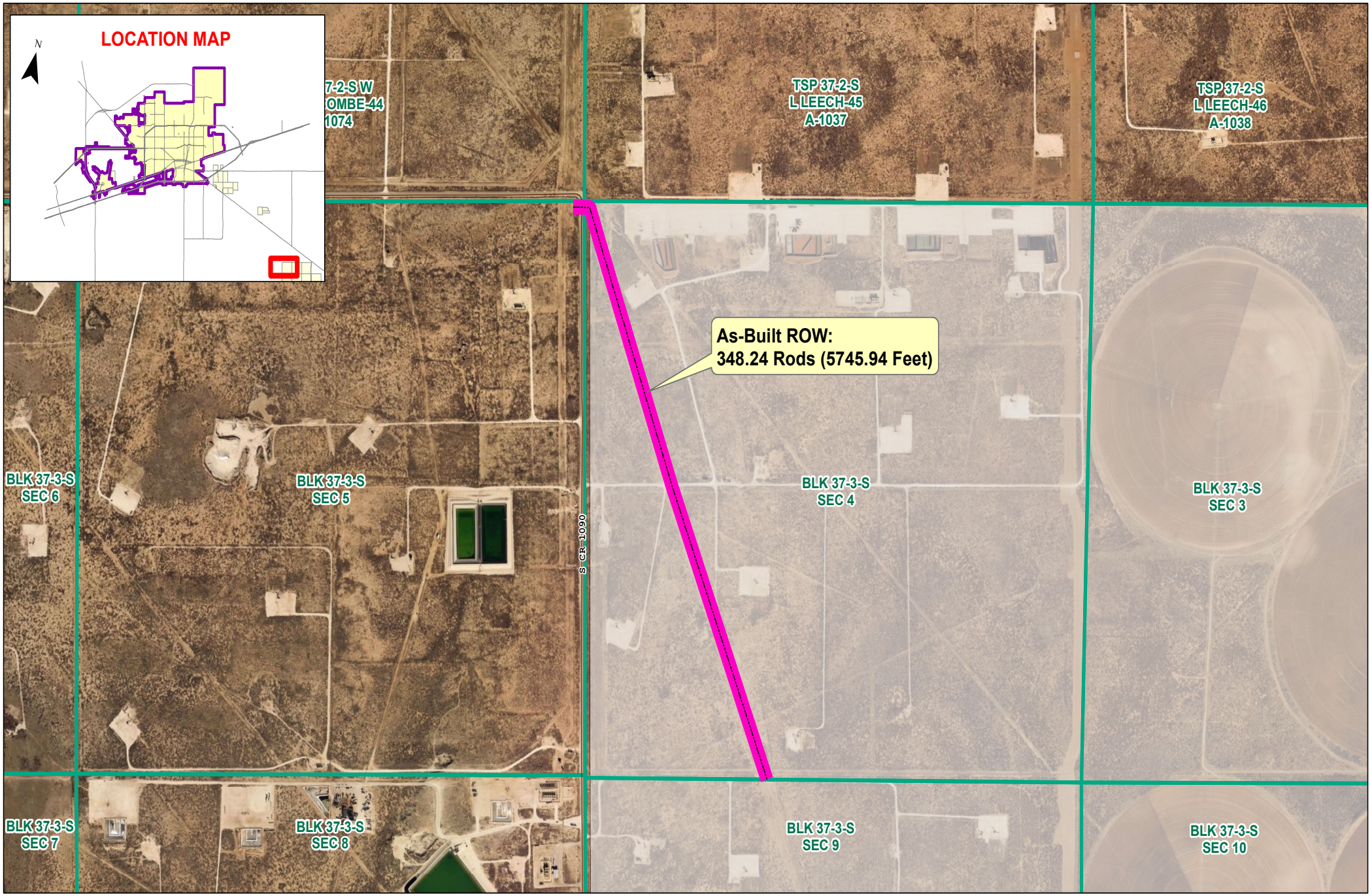
April 5, 2023
230405S4-BCL

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

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
City of Midland 2013-185 Renewal
P.O. TAR183729
Existing Pipeline Survey
In and Through
Sections 4, 9, 16, & 21, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'



Date: 4/11/2023

As-Built ROW

Street

City Owned Parcel

Survey Section

PACKET

14.22

Targa As-built Pipeline ROW

May 9, 2023

N W E S

0 500 1,000 Feet

©THE CITY OF MIDLAND - 2023

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

THE FACE OF THIS DOCUMENT HAS A MULTIPLE COLORED BACKGROUND

TARGA RESOURCES, LLC
811 LOUISIANA STREET, SUITE 2100
HOUSTON, TX 77002

JPMorgan Chase Bank, N.A.
CHICAGO, IL
2-1/710

0032728

DATE: April 24, 2023

AMOUNT: $229,800.90

PAY Two Hundred Twenty-Nine Thousand Eight Hundred Dollars & 90/100********** DOLLARS

Security Features Included. Details On Back

TO THE ORDER OF City of Midland
P.O. Box 1152
Midland, TX 79702

SIGNATURE

JUSTIN WENGER
PRINTED NAME

⑈0032728⑈ ⑆071000013⑆ 632558805⑈

TAXPAYER ID/SSN NO. 0032728

IN FULL FOR Consideration for a pipeline easement and all damages associated with said easement located in Section 4, 9, 16, and 21, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.

1,351.77 Rods

Total License Fee = $229,800.90

COM License 2013-185/ 23-329-027

Targa Resources, LLC

DEPT APPROVAL _____ DATE: _____

TARGA RESOURCES, LLC.

GL COMPANY 35041 GL ACCOUNT 552004 RC 535502 LOC 20001

PROJECT NO _____ TASK 1004 - Land-ROW/Easement

PROJECT NAME COM renewal 2013-185 14.23 May 9, 2023

PACKET

ENTERED THE ONE NET _____ DATE April 24, 2023

THE FACE OF THIS DOCUMENT HAS A MULTIPLE COLORED BACKGROUND

TARGA RESOURCES, LLC
811 LOUISIANA STREET, SUITE 2100
HOUSTON, TX 77002

JPMorgan Chase Bank, N.A.
CHICAGO, IL
2-17710

0032714

DATE: April 6, 2023

$1,000.00

AMOUNT: _____

PAY ONE THOUSAND DOLLARS & 00/100********** DOLLARS

Security Features Included. Details On Back

TO THE ORDER OF
CITY OF MIDLAND
P.O. BOX 1152
MIDLAND, TX 79702

SIGNATURE

Justin Wenger
PRINTED NAME

⑈0032714⑈ ⑆071000013⑆ 632558805⑈

TAXPAYER ID/SSN NO. 75-600608

0032714

IN FULL FOR Consideration for a pipeline license application located in:

Sections 4, 9,16 & 21, Block 37, T3S,
T. & P. R.R. Co. Survey, Midland County, Texas

Application Fee: $1,000.00

4300300
49000

Total Consideration: **$1,000.00**

Targa Resources, LLC

COM renewal 2013-185

DEPT APPROVAL _____ DATE: _____

TARGA RESOURCES, LLC.

GL COMPANY 35041 GL ACCOUNT 532004 RC 535502 LOC 20001

1004 – Easement/Damages

PROJECT NO _____ TASK _____

PROJECT NAME COM renewal 2013-185

PACKET 14.24 May 9, 2023

ENTERED THE ONE NET _____ DATE April 6, 2023

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/30/2023

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

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

PRODUCER MARSH USA LLC. 2929 Allen Parkway, Suite 2500 Houston, TX 77019 CN101831123-WT-JV-23-24	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Arch Insurance Company — 11150 **INSURER B :** ACE American Insurance Company — 22667 **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** HOU-003723083-15 **REVISION NUMBER:** 3

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X SIR: $500,000 GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			81REG5046700	03/31/2023	03/31/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			ISA H10753223	10/31/2022	10/31/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			81REU5046700 Excess of GL	03/31/2023	03/31/2024	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WLR C50722995	10/31/2022	10/31/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

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

RE: Right of Way

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

CERTIFICATE HOLDER

City of Midland, Texas
Attn: Robert Patrick, Asst. City Manager
P.O. Box 1152
Midland, TX 79702

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Marsh USA LLC

PACKET 14.25 May 9, 2023

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City Council Meeting

Item Number: 15

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (23-329-028) between the City of Midland and Targa Pipeline Mid-Continent West-Tex LLC regarding City-owned property described as Section 3, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 10-year renewal of a 30' wide right of way for an existing Three inch (3") private, poly construction, pipeline on City of Midland-owned Sprayberry Farm real property. Current Right of Way License 2013-186, dated July 6, 2013, with Atlas Pipeline Mid-Continent Westtex is paid up to date with the "as-built" pipeline survey provided.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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

ten-year term paid in advance

3" pipeline ($90.00 per rod x 179.39 rods) $16,145.10

Total Collected: $17,145.10

Discussion:

This is the 10-year renewal of the ROW License recorded as Instrument number 2013-24354 in the Midland County Hall of Records.

It is a poly construction, private gas line Three inches (3”) in diameter and buried thirty-six inches (36) deep. This motion will allow the operator to continue safe operations and does not interfere with the City Sprayberry Farm operations in this area.

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

City Secretary to record completed License Agreement

Morris William Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	**Targa Pipeline Mid-Continent WestTex LLC**
Licensee's Representative:	**Norman L. Winter**
Licensee's Mailing Address:	811 Louisiana St., Suite 2100 Houston, Texas 77002
Property:	As described in Article III below
License Number:	**23-329-028**

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.

W I T N E S S E T H:

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 SIXTEEN THOUSAND ONE HUNDRED FORTY-FIVE and 10/100 Dollars ($16,145.10) ("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 thirty (30) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a poly construction pipeline, not to exceed three (3) inches in diameter, for the transportation of natural gas and to have the right of ingress and egress at convenient points for such purpose (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities 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 pipeline(s) and facilities 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. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, 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 PIPELINE 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 any pipeline 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 by promptly removed from the Property.

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

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

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace 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 any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor 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 PIPELINE 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 PIPELINE 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:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
TARGA PIPELINE MID-CONTINENT WESTTEX LLC

By: _____
Printed Name: Norman L. Winter
Title: Vice President of Land and Right-of-Way

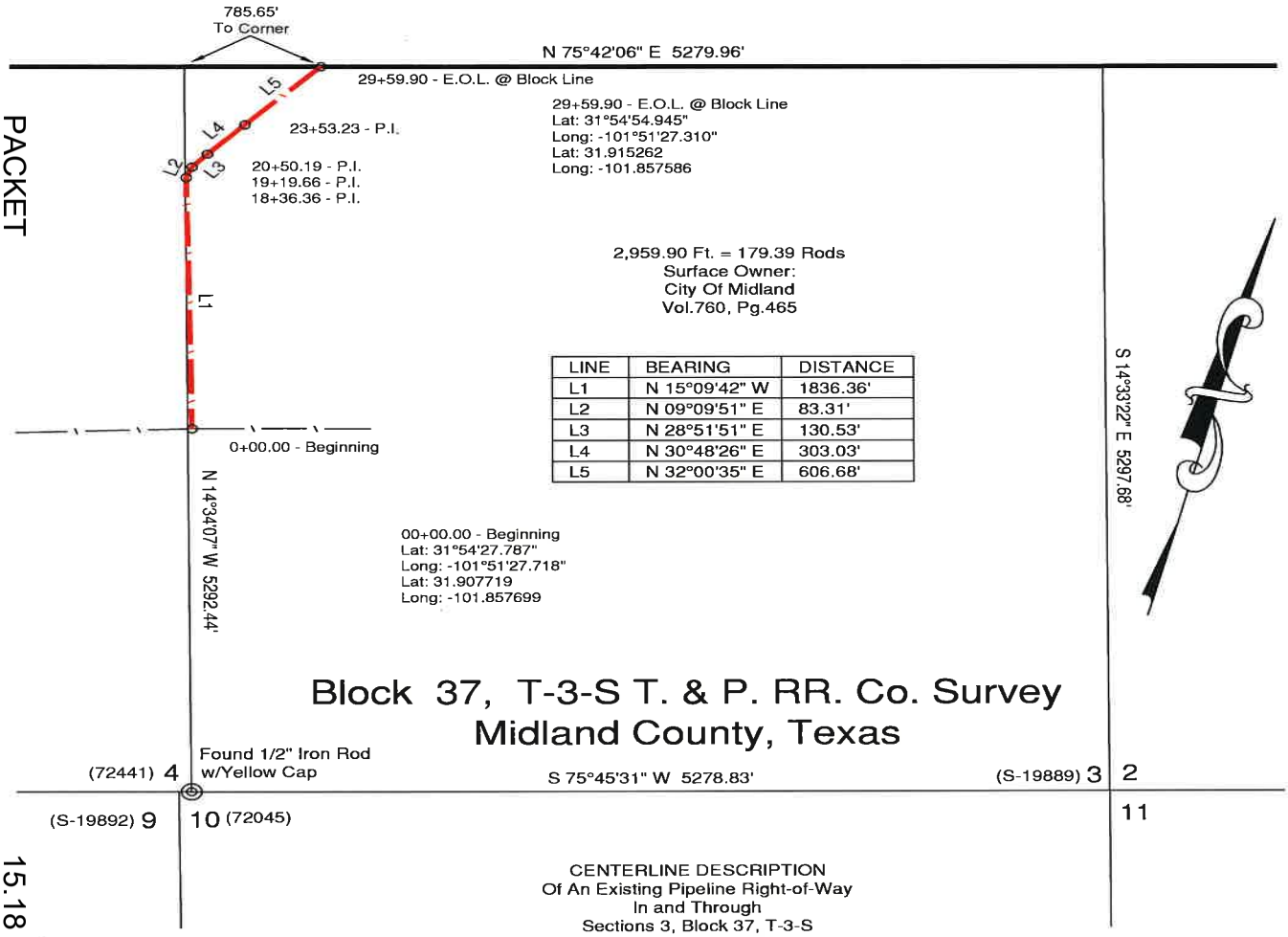
THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 19th day of April, 2023 personally appeared Norman L. Winter an officer of Targa Pipeline Mid-Continent WestTex LLC known to me to be the person and official whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 19th day of April, 2023.

_____
Notary Public, State of Texas

KIMBERLY NICHOLE NIETO
Notary ID #131475624
My Commission Expires
March 5, 2026



LINE	BEARING	DISTANCE
L1	N 15°09'42" W	1836.36'
L2	N 09°09'51" E	83.31'
L3	N 28°51'51" E	130.53'
L4	N 30°48'26" E	303.03'
L5	N 32°00'35" E	606.68'

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

PACKET

15.18

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

Beginning at pipeline station 0+00.00 for the beginning of this existing pipeline right-of-way from which a found 1/2" iron rod with yellow cap for the Southwest corner of Section 3, Block 37, T-3-S bears S 14°01'38" E, 2651.67 feet.
Thence N 15°09'42"W, a distance of 1836.36 feet to pipeline station P.I. 18+36.36;
Thence N 09°09'51"E, a distance of 83.31 feet to pipeline station P.I. 19+19.66;
Thence N 28°51'51"E, a distance of 130.53 feet to pipeline station P.I. 20+50.19;
Thence N 30°48'26"E, a distance of 303.03 feet to pipeline station P.I. 23+53.23;
Thence N 32°00'35"E, a distance of 606.68 feet to pipeline station 29+59.90 being the E.O.L. (End of Line) of this existing pipeline right-of-wayfrom which a found 1/2" iron rod with yellow cap for the Southwest corner of Section 3, Block 37, T-3-S bears S 06°07'09" E, 5346.77 feet.

GRAPHIC SCALE
1000 0 500 1000 2000
1" = 1000' *U.S. FEET*

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Latitudes and Longitudes shown are on NAD'83 Datum.
Note: Bearings and distances are based on The Texas Coordinate System of 1927, Central Zone.
Note: A combined grid factor of 0.9998826 must be divided into all distances to obtain surface distances.
Note: Example: (S-99999) indicates General Land Office file number.
Note: Surface ownership provided by Targa Pipeline Mid-Continent Westtex LLC.

May 9, 2023

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL LAND SURVEYOR

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

April 8, 2023
230408JR-BCL

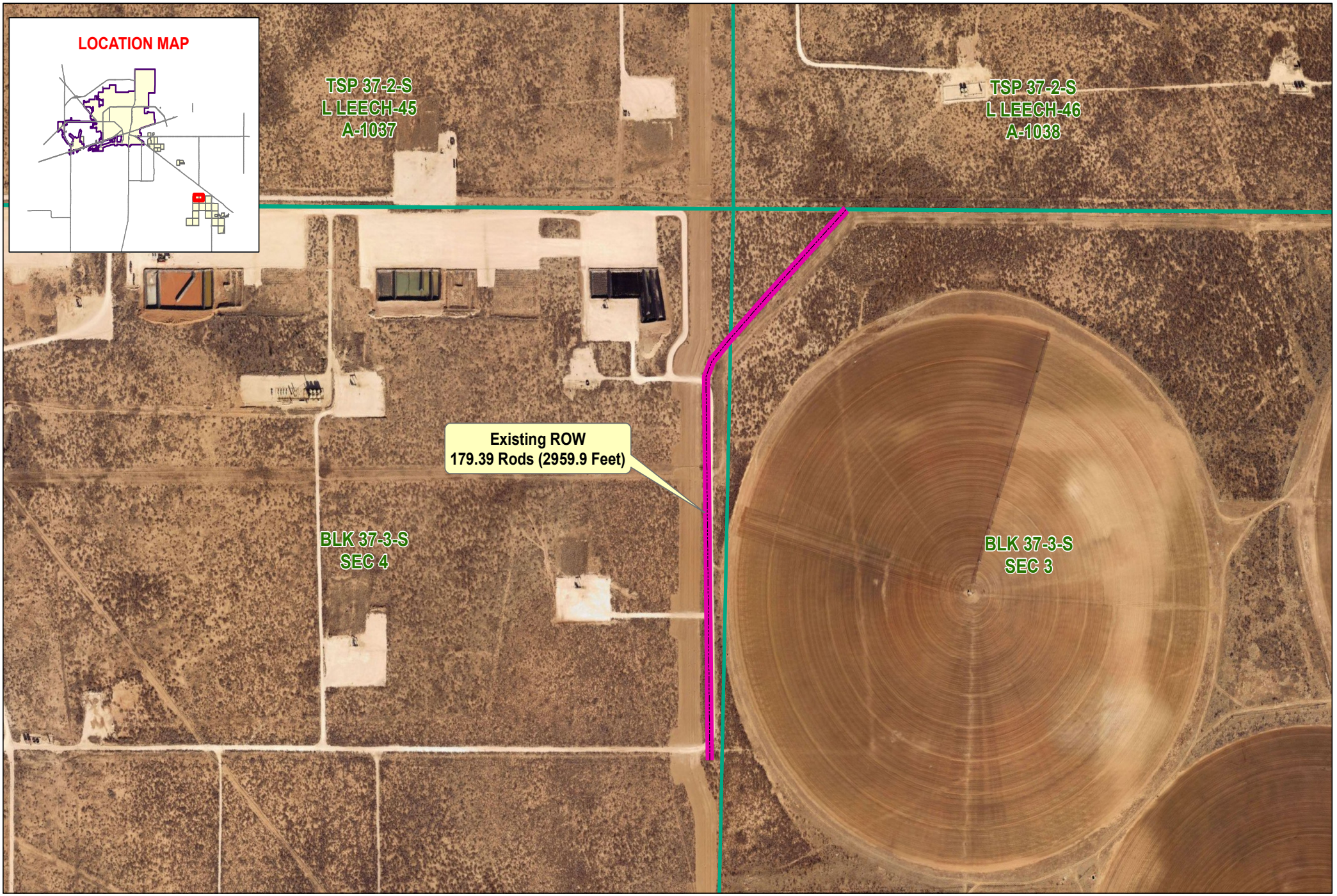
P.O. Box 51887, Midland, Texas 79710 (432) 262-0901 Fax (432) 262-0679 Firm #100201-00

USGS Quadrangle Sheet: Sprayberry , Texas

Existing Pipeline Survey Plat

TARGA PIPELINE
MID-CONTINENT WESTTEX LLC
City of Midland 2013-186 Renewal
P.O. TAR183729
Existing Pipeline Survey
In and Through
Sections 3, Block 37, T-3-S
T. & P. RR. Co. Survey
Midland County, Texas

Scale: 1" = 1000'



Date: 4/18/2023

Existing ROW
Survey Section

PACKET

15.19

Targa Existing Pipeline ROW

May 9, 2023

0 250 500 Feet

N W E S

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/30/2023

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

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

PRODUCER MARSH USA LLC. 2929 Allen Parkway, Suite 2500 Houston, TX 77019 CN101831123-WT-JV-23-24	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED Targa Pipeline Mid-Continent WestTex LLC 110 W. 7th Street, Suite 2300 Tulsa, OK 74119	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Arch Insurance Company — 11150 **INSURER B :** ACE American Insurance Company — 22667 **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** HOU-003723083-15 **REVISION NUMBER:** 3

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X SIR: $500,000 GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			81REG5046700	03/31/2023	03/31/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	1,000,000 100,000 5,000 1,000,000 2,000,000 2,000,000
B	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			ISA H10753223	10/31/2022	10/31/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	1,000,000
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			81REU5046700 Excess of GL	03/31/2023	03/31/2024	EACH OCCURRENCE AGGREGATE	$ $	10,000,000 10,000,000
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WLR C50722995	10/31/2022	10/31/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	1,000,000 1,000,000 1,000,000

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

RE: Right of Way

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

CERTIFICATE HOLDER

City of Midland, Texas
Attn: Robert Patrick, Asst. City Manager
P.O. Box 1152
Midland, TX 79702

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Marsh USA LLC

PACKET 15.20 May 9, 2023

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THE FACE OF THIS DOCUMENT HAS A MULTIPLE COLORED BACKGROUND

TARGA RESOURCES, LLC
811 LOUISIANA STREET, SUITE 2100
HOUSTON, TX 77002

JPMorgan Chase Bank, N.A.
CHICAGO, IL
2-1/710

0032724

DATE: April 21, 2023

AMOUNT: $16,145.10

PAY Sixteen Thousand One Hundred Forty-Five Dollars & 10/100********** DOLLARS

Security Features Included. Details On Back

TO THE ORDER OF City of Midland
P.O. Box 1152
Midland, TX 79702

SIGNATURE

JUSTIN WENGER

PRINTED NAME

⑈0032724⑈ ⑆071000013⑆ 632558805⑈

TAXPAYER ID/SSN NO. 0032724

IN FULL FOR Consideration for a pipeline easement and all damages associated with said easement located in Section 3, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.

179.39 Rods

Total License Fee = $16,145.10

~~COM License 2013-186/ 23-329-028~~

Targa Resources, LLC

DEPT APPROVAL _____ DATE: _____

TARGA RESOURCES, LLC.

GL COMPANY 35041 GL ACCOUNT 552004 RC 535502 LOC 20001

PROJECT NO _____ TASK 1004 - Land-ROW/Easement

PROJECT NAME COM renewal 2013-186

PACKET 15.21 May 9, 2023

ENTERED THE ONE NET _____ DATE April 21, 2023

THE FACE OF THIS DOCUMENT HAS A MULTIPLE COLORED BACKGROUND

TARGA RESOURCES, LLC
811 LOUISIANA STREET, SUITE 2100
HOUSTON, TX 77002

JPMorgan Chase Bank, N.A.
CHICAGO, IL
2-1/710

0032723

DATE: April 13, 2023

AMOUNT: $1,000.00

PAY One Thousand Dollars & 00/100********** DOLLARS

Security Features Included. Details On Back

TO THE ORDER OF
City of Midland
P.O. Box 1152
Midland, TX 79702

SIGNATURE

JUSTIN WENGER
PRINTED NAME

⑈0032723⑈ ⑆071000013⑆ 632558805⑈

TAXPAYER ID/SSN NO. 0032723

IN FULL FOR Consideration for a application fee for the renewal of a pipeline easement and all damages associated with said easement located in Section 3, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.

Application Fee = $1,000.00

COM License 2013-~~185~~ 186 renewal

Targa Resources, LLC

DEPT APPROVAL _____ DATE: _____

TARGA RESOURCES, LLC.

GL COMPANY 35041 GL ACCOUNT 552004 RC 535502 LOC 20001
1004 - Land-ROW/Easement

PROJECT NO _____ TASK _____

PROJECT NAME COM renewal 2013-~~185~~ 186

PACKET 15.22 May 9, 2023 ~~April 13~~, 2023

ENTERED THE ONE NET _____ DATE _____

City Council Meeting

Item Number: 16

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (23-329-029) with NuStar Permian Transportation & Storage, LLC, regarding City-owned property described as Section 4, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way for NuStar Permian Transportation & Storage, L.LC., to build a 431.62 foot, steel construction, common carrier, six inches (6") crude oil pipeline. ROW will include a 2,507 square foot surface area for the valve tie-in into the Crownquest Operating facility in the Northwest Quarter of Section 4 at Sprayberry Farms. This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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
10-Years Paid In advance:
pipeline (26.16 rods x $260/rod): $6,801.60
surface (2,507 sq. ft. x $0.24 per sq. ft.): $601.68
Surface Damages: included in the new annual rate
Total Collected: $8,403.28

Discussion:

This is a common carrier crude oil pipeline that ties in the Crownquest Operating pipeline into another NuStar Permian pipeline in the area. ROW will include a temporary construction width of an additional 40’ which will void at the end of construction. The pipeline will be buried a minimum of 36” deep.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris William Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

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

Date: May 10, 2023

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

Licensor's Representative: Morris Williams, Jr., Interim City Manager

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

Licensee: **NuStar Permian Transportation and Storage, LLC**

Licensee's Representative: **R. Heath Reininger**

Licensee's Mailing Address: 19003 IH 10 West
San Antonio, Texas 78257

Property: As described in Article III below

License Number: **23-329-029**

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.

W I T N E S S E T H:

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 SEVEN THOUSAND FOUR HUNDRED THREE and 28/100 Dollars ($7,403.28) ("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 seventy (70) feet in width of the locations as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a steel construction pipeline, not to exceed six (6) inches in diameter, for the transportation of crude oil and a two thousand five hundred seven (2,507) square foot surface site for a valve tie in. Licensee shall 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 pipeline and surface site are completed (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline and surface site 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 pipeline and surface site 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. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, 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 PIPELINE OR SURFACE SITE 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 any pipeline or surface site 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 by promptly removed from the Property.

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

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

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace 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 any pipeline, surface site, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor 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 PIPELINE, SURFACE SITE 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 PIPELINE, SURFACE SITE 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:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
NUSTAR PERMIAN TRANSPORTATION AND STORAGE, LLC

By: _____
Printed Name: R. Heath Reininger
Title: Executive Director of Real Estate

THE STATE OF Texas §
§
COUNTY OF Bexar §

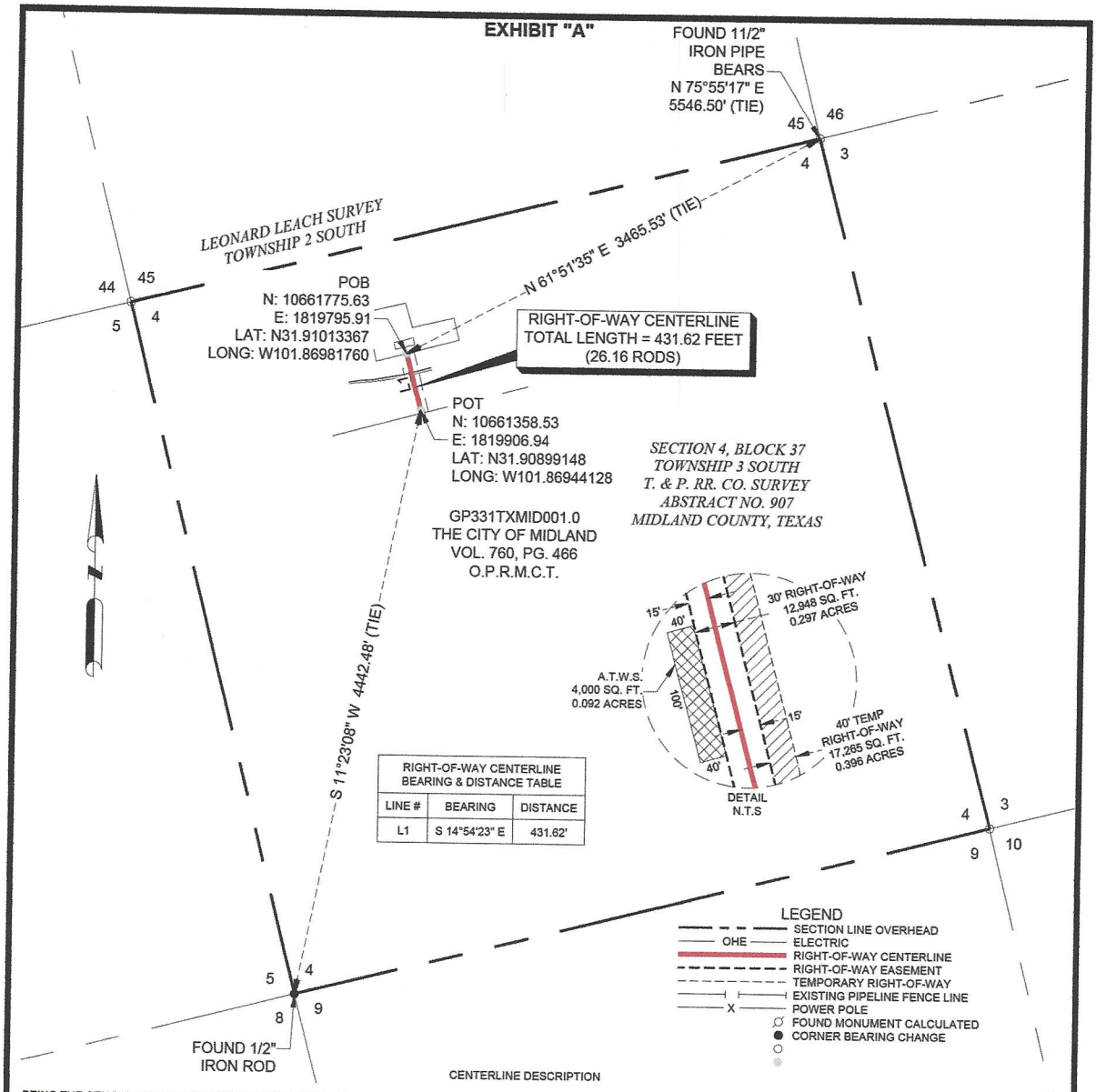
BEFORE ME, the undersigned authority, on this 24th day of April, 2023 personally appeared R. Heath Reininger an officer of NuStar Permian Transportation and Storage, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument and acknowledged to me that he executed 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 24th day of April, 2023.

_____
Notary Public, State of Texas

KENDALL CARROL PURGASON II
Notary Public, State of Texas
Comm. Expires 09-10-2025
Notary ID 128036409

EXHIBIT "A"



RIGHT-OF-WAY CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	S 14°54'23" E	431.62'

CENTERLINE DESCRIPTION

BEING THE CENTERLINE OF A PROPOSED PIPELINE RIGHT-OF-WAY SITUATED IN SECTION 4, BLOCK 37, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 907, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10661775.63, E:1819795.91) IN SAID SECTION 4, FROM WHICH THE CALCULATED NORTHEAST CORNER OF SAID SECTION 4 BEARS N 61°51'35" E, A DISTANCE OF 3465.53 FEET (TIE), FROM WHICH A FOUND 1 1/2" IRON PIPE BEARS N 75°55'17" E, A DISTANCE OF 5546.50 FEET (TIE).

THENCE S 14°54'23" E, A DISTANCE OF 431.62 FEET TO THE POINT OF TERMINATION (N:10661358.53, E:1819906.94) OF SAID CENTERLINE, AT A POINT IN SAID SECTION 4, FROM WHICH A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 4 BEARS S 11°23'08" W, A DISTANCE OF 4442.48 FEET (TIE);

SAID CENTERLINE CONTAINING A TOTAL OF 431.62 FEET OR 26.16 RODS IN SAID SECTION 4.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY 14 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'

Scale: 1" = 1000'

STATE OF TEXAS REGISTERED JAMES CURTIS YARGER 5854 PROFESSIONAL LAND SURVEYOR

I HEREBY STATE THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION.

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 DATE 04-13-2023

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 19971

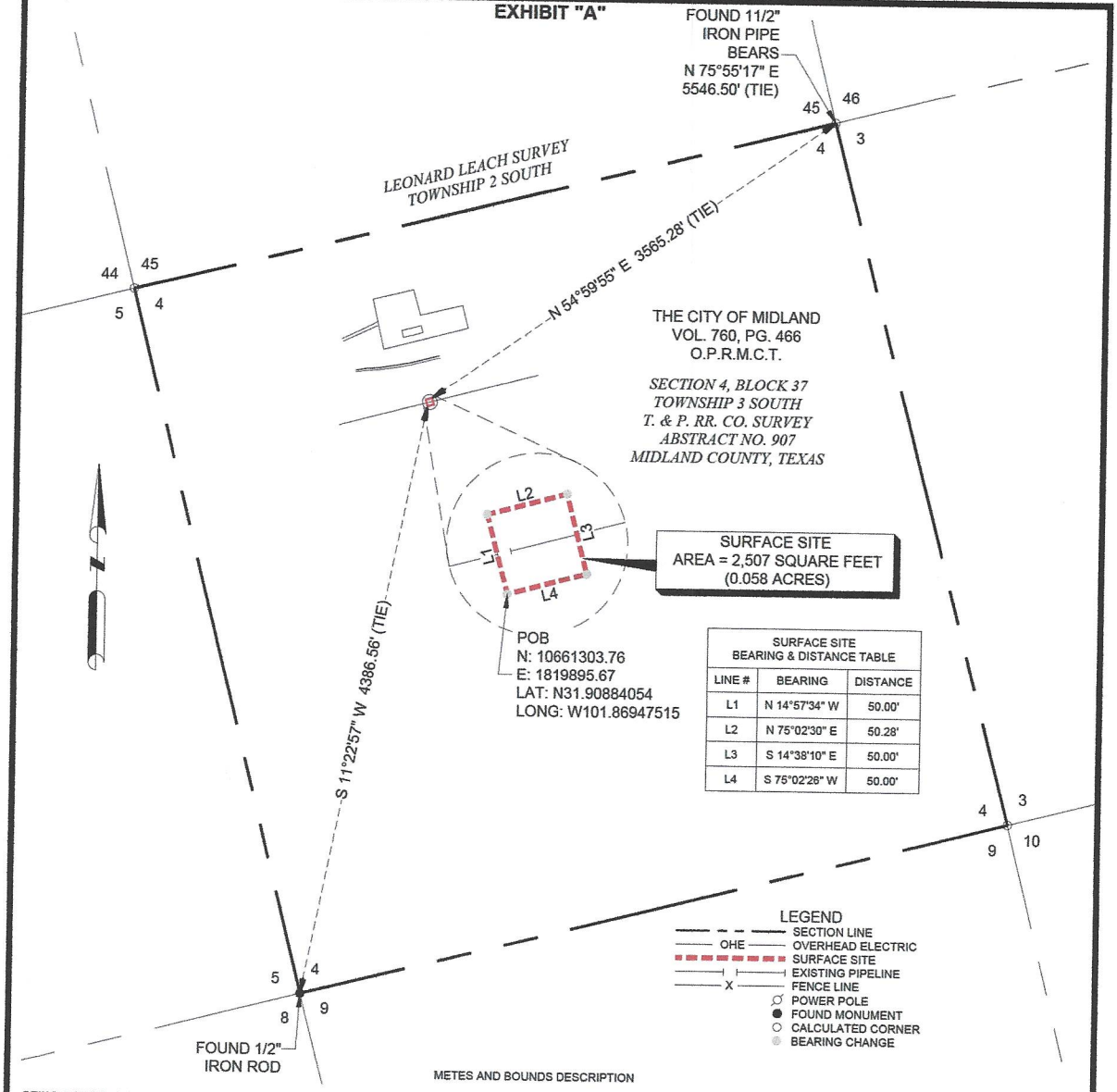
CQ VACT
THE CITY OF MIDLAND
PROPOSED RIGHT-OF-WAY
SITUATED IN
SECTION 4, BLOCK 37
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 907
MIDLAND COUNTY, TEXAS

NuStar

TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

DRAWN BY: JMJ	DATE: 04/04/23	DWG. NO. 19971 CQ VACT SEC 4 BLK 37	REV. 0
CHECKED BY: JCY	DATE: 04/13/23		
SCALE: 1"=1000'	PAGE 1 OF 1		

EXHIBIT "A"



SURFACE SITE BEARING & DISTANCE TABLE

LINE #	BEARING	DISTANCE
L1	N 14°57'34" W	50.00'
L2	N 75°02'30" E	50.28'
L3	S 14°38'10" E	50.00'
L4	S 75°02'26" W	50.00'

METES AND BOUNDS DESCRIPTION

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 4, BLOCK 37, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 907, MIDLAND COUNTY, TEXAS. SAID SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10661303.76, E:1819895.67) IN SAID SECTION 4, FROM WHICH A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 4 BEARS S 11°22'57" W, A DISTANCE OF 4386.56 FEET (TIE);

THENCE N 14°57'34" W, A DISTANCE OF 50.00 FEET TO A POINT;
THENCE N 75°02'30" E, A DISTANCE OF 50.28 FEET A THE POINT, FROM WHICH THE CALCULATED NORTHEAST CORNER OF SAID SECTION 4 BEARS N 54°59'55" E, A DISTANCE OF 3565.28 FEET (TIE), FROM WHICH A FOUND 1 1/2" IRON PIPE BEARS N 75°55'17" E, A DISTANCE OF 5546.50 FEET (TIE).
THENCE S 14°38'10" E, A DISTANCE OF 50.00 FEET TO A POINT;

THENCE S 75°02'26" W, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 2,507 SQUARE FEET OR 0.058 ACRES IN SAID SECTION 4.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY 14 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'

Scale: 1" = 1000'

STATE OF TEXAS REGISTERED JAMES CURTIS YARGER 5854 PROFESSIONAL LAND SURVEYOR

I HEREBY STATE THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION.

04-13-2023

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 DATE

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK

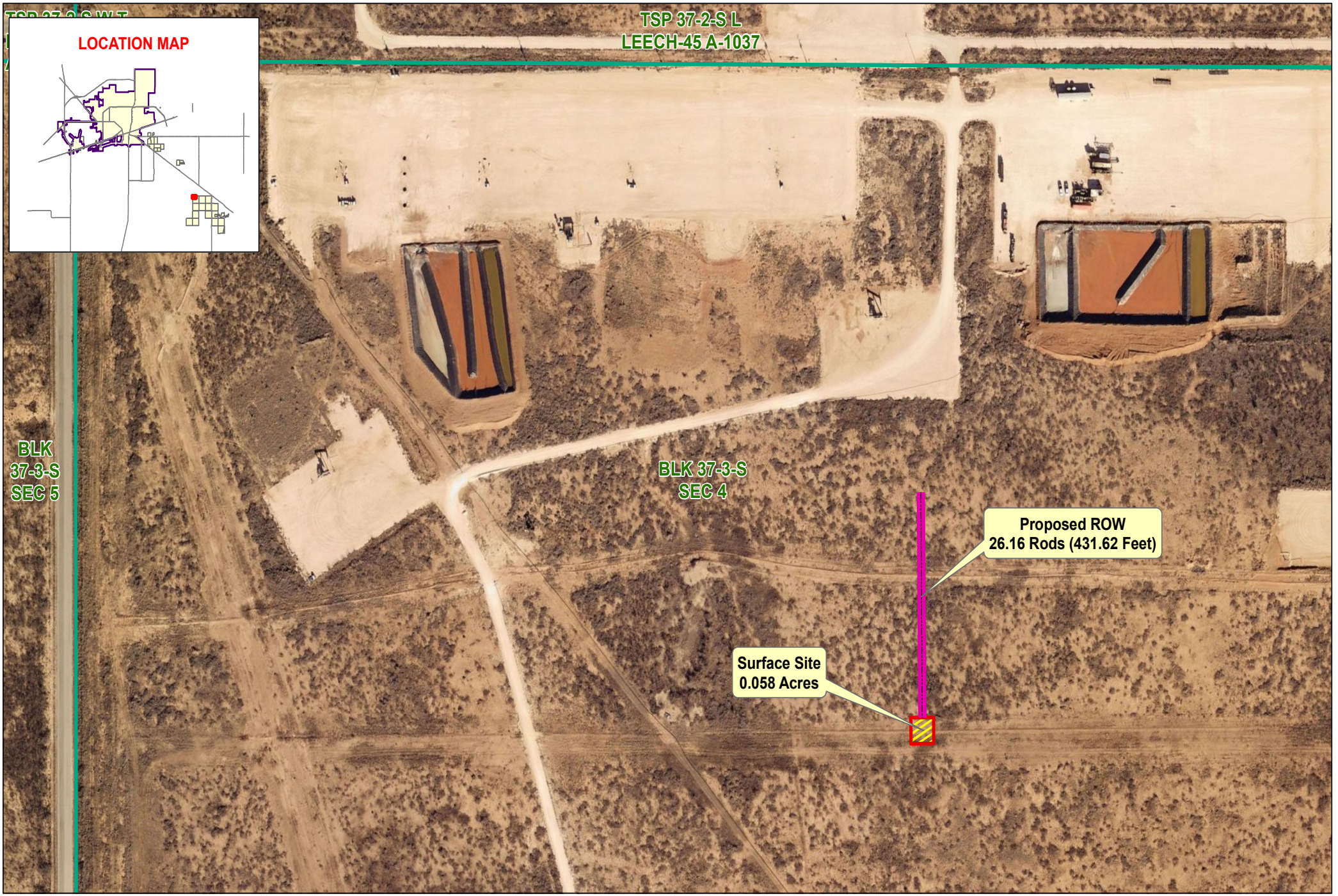
PROJECT NO. 19971

CQ VACT
THE CITY OF MIDLAND
PROPOSED SURFACE SITE
SITUATED IN
SECTION 4, BLOCK 37
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 907
MIDLAND COUNTY, TEXAS

NuStar

TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

DRAWN BY: JMJ	DATE: 04/04/23	DWG. NO. 19971 CQ VACT SEC 4 BLK 37 SS
CHECKED BY: JCY	DATE: 04/13/23	REV. 0
SCALE: 1"=1000'	PAGE 1 OF 1	



Date: 4/18/2023

Proposed ROW
Surface Site
Survey Section

PACKET

16.20

NuStar Proposed ROW & Surface Site

May 9, 2023

0 100 200 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

SECURITYMARK ON BACK OF DOCUMENT. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

NuStar Permian Transportation & Storage,
P.O. Box 781609
San Antonio, TX 78278-1609

24303087
11-24/1210

Date
04/24/2023

PAY*********7,403 DOLLARS 28 CENTS
EXACTLY AND

$**7,403.28**

PAY TO THE ORDER OF

CITY OF MIDLAND
300 N LORAINE ST
MIDLAND TX 79701-4725

NUSTAR A/P DISBURSEMENTS

VOID AFTER SIX MONTHS
Authorized Signature

Wells Fargo Bank, N.A.

⑈24303087⑈ ⑆041203824⑆ 9647482398⑈

"PAYMENT SUBJECT TO VERIFICATION AND RIGHT TO RECOVER IMPROPER CHARGES"

THE ATTACHED CHECK IS IN FULLPAYMENT OF ITEMS STATED. ENDORSEMENT MUST BE IDENTICAL WITH THE PAYEE DESIGNATED.

DETACH AT PERFORATION BEFORE DEPOSITING AND RETAIN FOR YOUR FILES

190685
VENDOR NUMBER

NuStar Permian Transportation & Storage,
P.O. Box 781609 San Antonio TX 78278-1609

Invoice Date	Invoice Number	Voucher Document	Deductions	Gross amount
04/23/2023	CR20230423112823	1900005048	0.00	7,403.28
S-4, B-37, T3S, A-907 TP&RR CQ VACT				
Sum total			0.00	7,403.28

Payment Document	Check Number	Check Date	Currency	Payment Amount
2000869682	24303087	04/24/2023	USD	*********7,403.28*

QR

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/19/2022

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

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

PRODUCER
Marsh USA Inc.
2929 Allen Parkway, Suite 2500
Houston, TX 77019

CN101857056--+XS-22-23 10M

CONTACT NAME:
PHONE (A/C, No, Ext): **FAX (A/C, No):**
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Insurance Co	16535
INSURER B : American Guarantee & Liability Ins Co	26247
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
NuStar Permian Transportation and Storage, LLC
19003 IH 10 West
San Antonio, TX 78257

COVERAGES **CERTIFICATE NUMBER:** HOU-003765286-13 **REVISION NUMBER:** 1

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	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X Marine Terminal Operators Liab GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			GLO 6724286-12	09/01/2022	09/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	5,000,000 100,000 EXCLUDED 5,000,000 6,000,000 6,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BAP 6724287-12	09/01/2022	09/01/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	5,000,000
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			AUC 6724325-12	09/01/2022	09/01/2023	EACH OCCURRENCE AGGREGATE	$ $	10,000,000 10,000,000
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC 6724283-13	09/01/2022	09/01/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	2,000,000 2,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Right of Way License
City of Midland is included as additional insured where required by written contract and allowed by law. Waiver of Subrogation is applicable where required by written contract and allowed by law.

CERTIFICATE HOLDER
City of Midland
300 N. Loraine
Midland, TX 79701

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

AUTHORIZED REPRESENTATIVE
Marsh USA Inc.

PACKET 16.22 May 9, 2023

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City Council Meeting

Item Number: 17

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of Right-of-Way license (23-329-021) with Bangl, LLC, regarding City-owned property described as Section 9, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This Right of Way License will replace the one-year License effective July 26, 2022, granting Bangl, LLC a 20' wide right of way to build an access road to their pipeline access valves on City of Midland-owned Sprayberry Farm real property.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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:

The following fees will be collected:

Application fee (one time): $1,000

Full ten-year term paid in advance ($90 per rod x 25.86 rods) $2327.40

TOTAL PAID: $3,327.40

Discussion:

This is a basic, dirt-construction, oilfield access road that allows access to the existing valve site and associated pipeline facilities.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris Williams Jr.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	BANGL, LLC, a Delaware limited liability company
Licensee's Representative:	Glenn Kellison
Licensee's Mailing Address:	100 Congress Avenue, Suite 2200 Austin, Texas 78701
Property:	As described in Article III below
License Number:	23-329-021

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.

W I T N E S S E T H:

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. Initial 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. The license fee for the Initial Term in the amount of TWO THOUSAND THREE HUNDRED TWENTY-SEVEN and 40/100 Dollars ($2,327.40) 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 twenty feet (20') in width of the road location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, an access road, not to exceed twenty feet (20') in width, together with the right of ingress and egress at convenient points for such purpose (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the access road 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 access road 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 ACCESS ROAD 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 access road 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. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the access road that must be moved. 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 access road 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 not be unreasonably withheld, conditioned or delayed; provided, however, if Licensor does not respond to Licensee within four (4) weeks, such request shall be deemed approved. 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 work day 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 by promptly removed from the Property.

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

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

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 Licensee's access road, 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 for damages against Licensor. The relocation, change or alteration shall be at the sole cost of Licensee. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the access road that must be relocated, changed or altered. 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 include 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 include 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 include 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 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. 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 ACCESS ROAD 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 ACCESS ROAD 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. Notwithstanding the foregoing, Licensee may assign this License, in whole, without the consent of Licensor, to any: (i) entity that, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under the common ownership or control of, Licensee; or (ii) any person, bank, financing institution or other lender, or groups thereof, as security for amounts payable under any financing or other arrangements under which Licensee has borrowed funds. Licensee will remain responsible for any obligations it incurs under this License prior to any assignment and will ensure that its assignee agrees, in writing, to be bound by the terms of this License, including but not limited to, the insurance requirements set forth hereinabove.

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 NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000.00). 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, TO THE EXTENT SUCH IMMUNITY EXISTS.

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 RELATED TO THIS LICENSE, 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 ORDINARY NEGLIGENCE.

H. Governmental Immunity. To the extent governmental immunity exists, 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 SHOULD SUCH IMMUNITY APPLY.**

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, to the extent such immunity exists.

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. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit B**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor.

Q. 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.

R. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

S. 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.

T. 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 to Follow)

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis § §

BEFORE ME, the undersigned authority, on this 25th day of April, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company 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 25th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description: BMC-TX-MID-0090.00000-PA

BEING the centerline of a 20' access road in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586005.25, E:755544.07] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°25'53" E. a distance of 99.05 feet;

THENCE, N 13°13'14" W, a distance of 426.70 feet, to the Point of Terminus, [N:11586420.64, E:755446.49] in said Section, for a total of 426.70 Feet or 25.86 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2652 GARDNER ROAD
BEAUMONT, TX 77651
FIRM LICENSE # 10194071
817-501-3017

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

NGL
Belview Alternative NGL

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

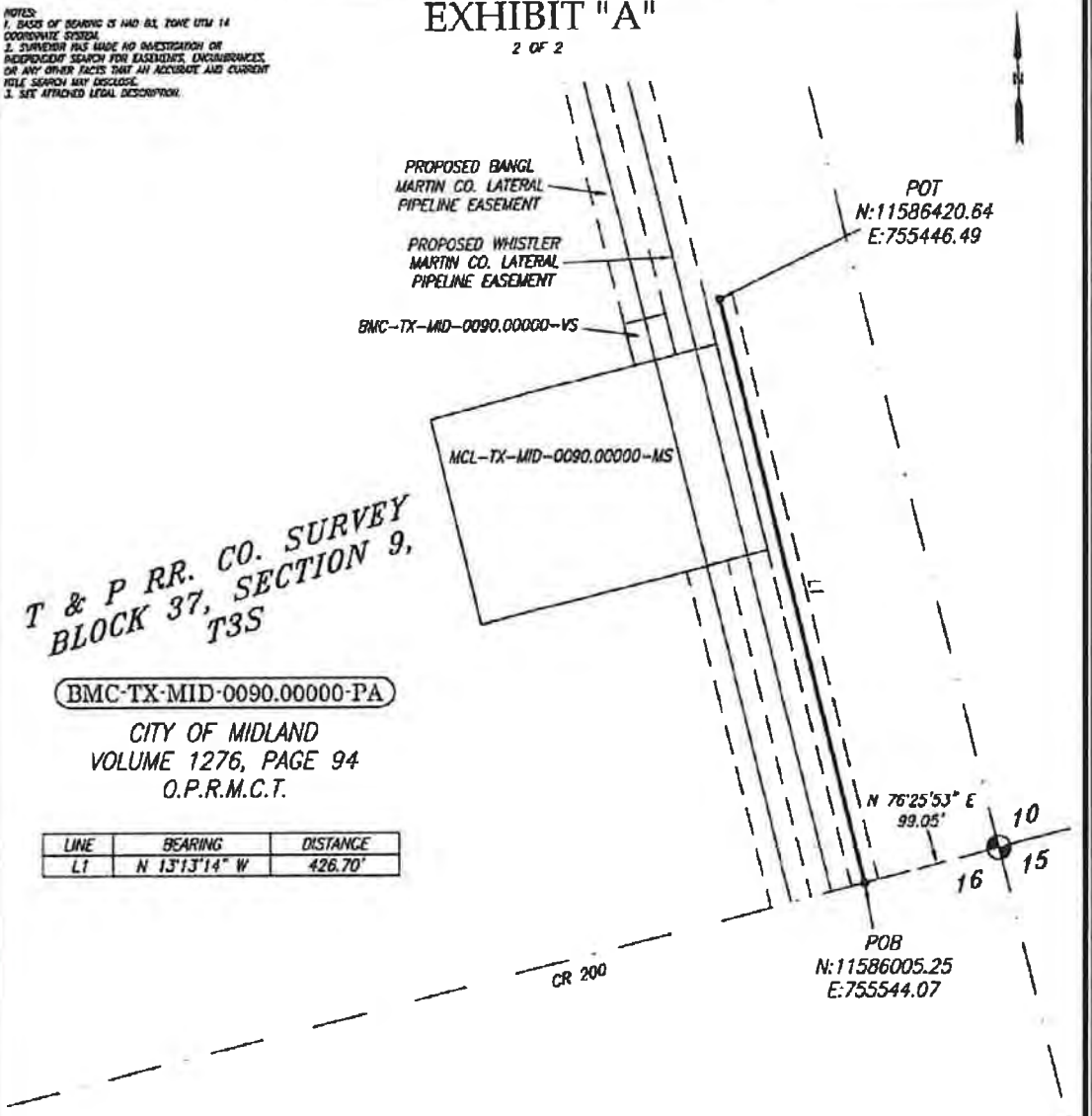
JOB: BANCL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATE: 07/20/2022	REV: JS 07/20/2022

C:\WhiteWater Midstream\Martin County Lateral\Plats\BMC-TX-MID-0090.00000-PA.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9,
T3S

BMC-TX-MID-0090.00000-PA

CITY OF MIDLAND
VOLUME 1276, PAGE 94
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	N 13°13'14" W	426.70'

0 100' 200' 300'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belview Alternative NGL

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2952 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194079
817-501-3847

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DAF
AFE: 21300	DATE: 01/26/2022	REV: (2 07/20/2022

D:\White Water Midstream\Martin County Lateral\Plats\BMC-TX-MID-0090.00000-PA.dwg

EXHIBIT B

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

FORM OF MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and BANGL, LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ __, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being twenty feet (20') in width of the location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a twenty (20) foot wide access road, together with the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ __, 2023.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By:_____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

_____
Notary Public, State of Texas

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and BANGL, LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ ___, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being twenty feet (20') in width of the road location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, an access road, not to exceed twenty feet (20') in width, together with the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ ____, 2023.

LICENSOR:

CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis §

BEFORE ME, the undersigned authority, on this 25th day of April, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company 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 25th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description: BMC-TX-MID-0090.00000-PA

BEING the centerline of a 20' access road in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586005.25, E:755544.07] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°25'53" E. a distance of 99.05 feet;

THENCE, N 13°13'14" W, a distance of 426.70 feet, to the Point of Terminus, [N:11586420.64, E:755446.49] in said Section, for a total of 426.70 Feet or 25.86 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2632 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3047

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

BANGL
Belvieu Alternative NGL

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

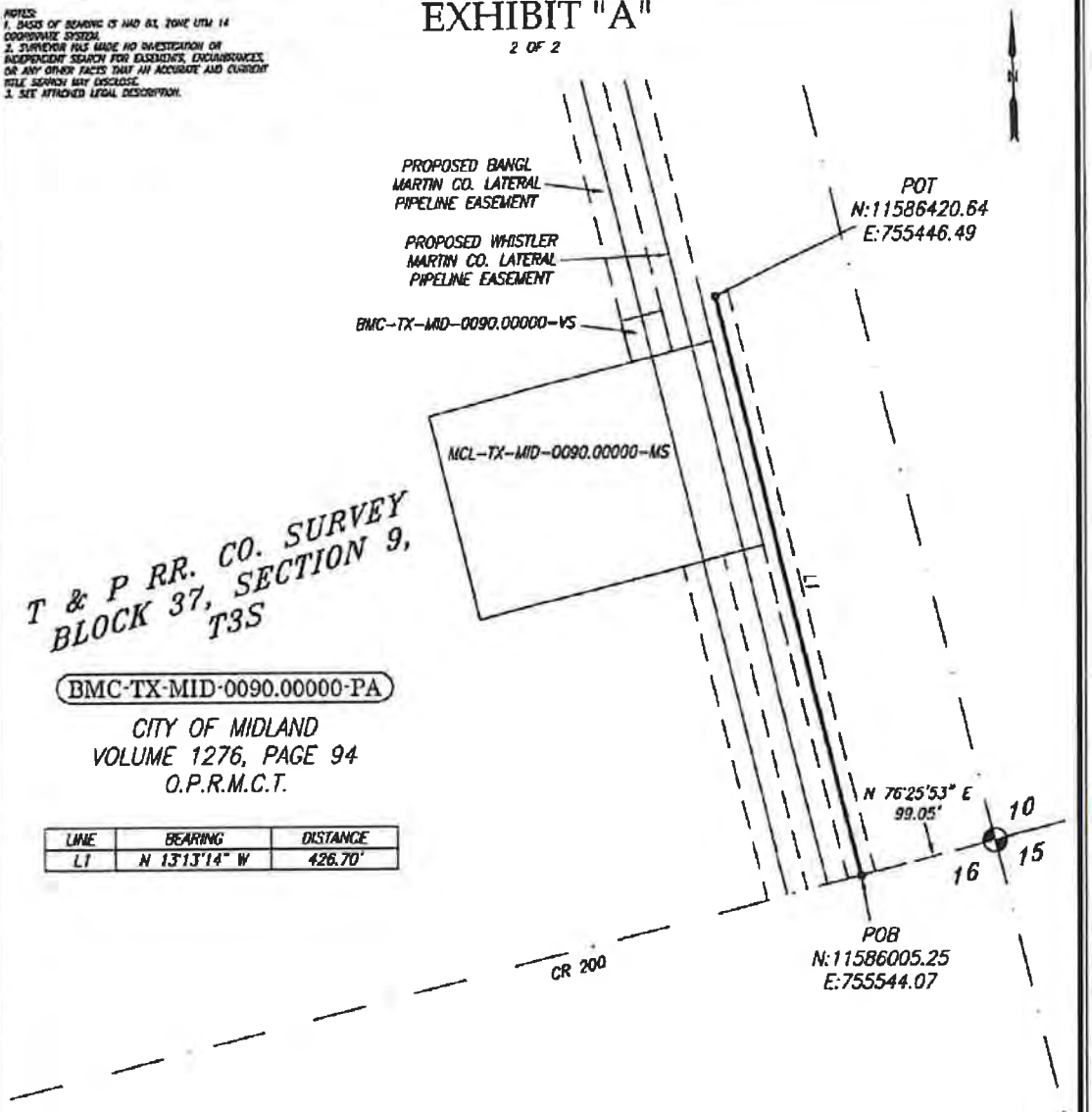
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATE: 07/20/2022	REV: JR 01/30/2023

D:\BWNeiser Matrixone\Martin County Lateral\Plats\BMC-TX-MID-0090.00000-PA.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9,
T3S

BMC-TX-MID-0090.00000-PA

CITY OF MIDLAND
VOLUME 1276, PAGE 94
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	N 13°13'14" W	426.70'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 100' 200' 300'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belview Alternative NGL

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10193879
817-501-3647

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED BY:
AFE: 21300	DATE: 07/20/2022	REV: 07/20/2022

D:\Whistler Midstream\Martin County Laterals\Plats\BMC-TX-MID-0090.00000-PA.dwg

CERTIFICATE OF LIABILITY INSURANCE

5/18/2023

DATE (MM/DD/YYYY) 7/13/2022

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Employers Insurance Company of Wausau	21458
INSURED 1461468	BANGL, LLC 100 Congress, Suite 2200 Austin TX 78701	**INSURER B :** Liberty Insurance Corporation	42404
		INSURER C : Liberty Mutual Fire Insurance Company	23035
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 18712268 **REVISION NUMBER:** XXXXXXX

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	TBC-641-445638-032	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
C	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-445638-022	5/18/2022	5/18/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$ XXXXXXX
							BODILY INJURY (Per accident)	$ XXXXXXX
							PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	TH7-641-445638-042	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$ XXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** Y / N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WCC-641-445638-012	5/18/2022	5/18/2023	[X] 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)

CERTIFICATE HOLDER

18712268

City of Midland, Texas,
a home-rule municipal corporation
PO Box 1152
Midland TX 79702

PACKET

CANCELLATION See Attachment

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

17.31

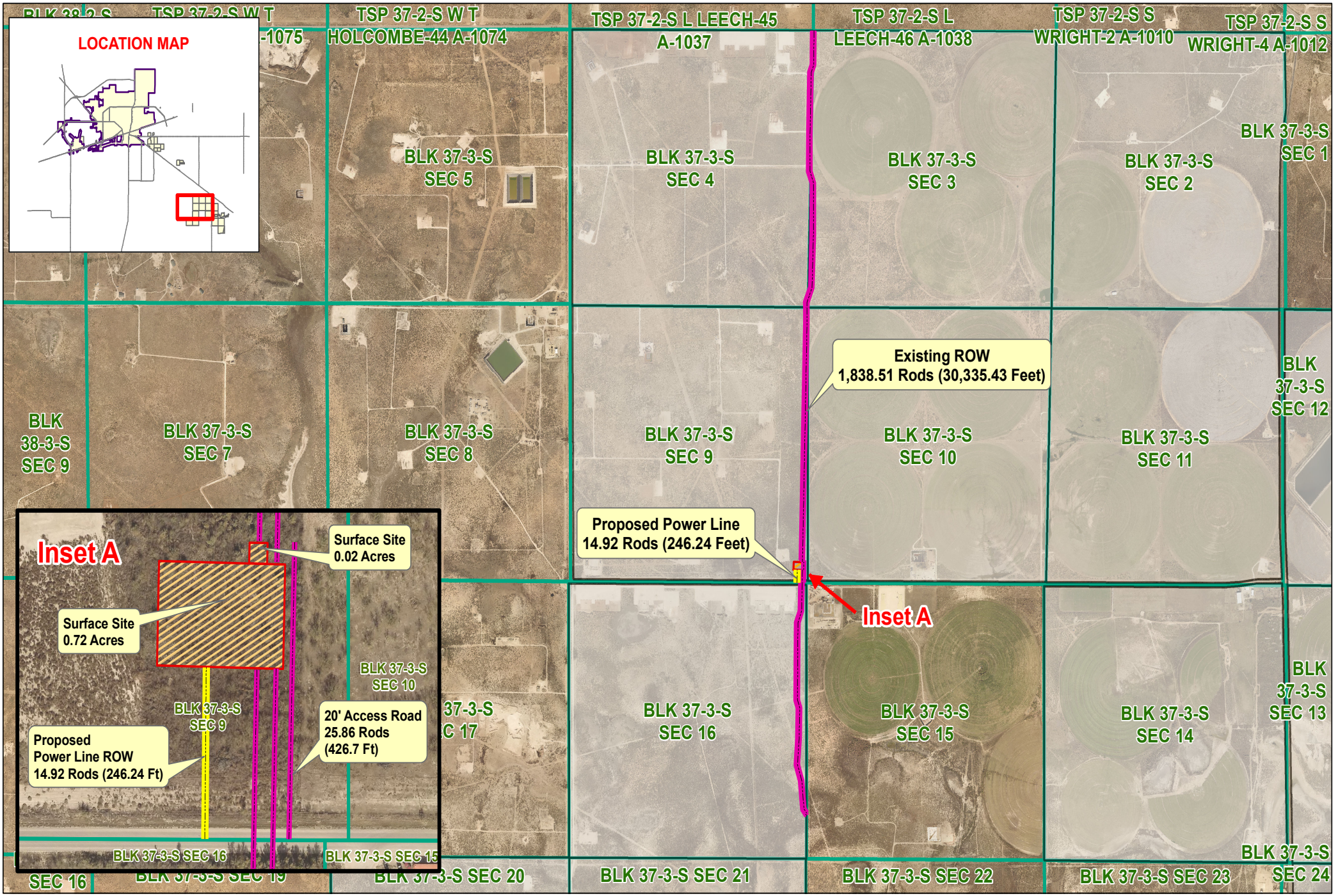
May 9, 2023

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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.



Date: 3/29/2023

Proposed Power Line
Existing ROW
Surface Site
City Owned Property
Survey Section

PACKET

17.33

Bangl and Whistler Proposed Power Line ROW

May 9, 2023

0 1,000 2,000 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 18

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of Right-of-Way license (23-329-022) with Bangl, LLC, regarding City-owned property described as Sections 4, 9 and 16, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES) (DISTRICT: NONE) (UTILITIES)

Purpose:

This Right of Way License will replace the one-year License effective July 26, 2022, granting Bangl, LLC a 30' wide right of way and a 900 square foot surface use area to place a twelve inch (12") common carrier, steel construction, liquid natural gas (LNG) pipeline and above ground valves on City of Midland owned Sprayberry Farm real property.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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
Full ten-year term paid in advance: pipeline ($310.00 per rod x 907.21 rods) $281,235.10
Surface area (900 square feet x $0.24 per sq. ft.) $216.00
TOTAL PAID: $281,236.10

Discussion:

This is a common carrier, steel construction liquid natural gas line (LNG) and is twelve inches (12) in diameter and buried thirty-six inches (36) deep with a 900 square foot surface use area for valves.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris Williams Jr.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	BANGL, LLC, a Delaware limited liability company
Licensee's Representative:	Glenn Kellison
Licensee's Mailing Address:	100 Congress Avenue, Suite 2200 Austin, Texas 78701
Property:	As described in Article III below
License Number:	23-329-022

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.

W I T N E S S E T H:

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. Initial 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. The license fee for the Initial Term in the amount of TWO HUNDRED EIGHTY-ONE THOUSAND FOUR HUNDRED FIFTY-ONE and 10/100 Dollars ($281,451.10) 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 thirty feet (30') in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed twelve inches (12") in diameter, and a 900-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities 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 pipeline(s) and facilities 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. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than thirty-six inches (36") in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, 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 PIPELINE 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. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline or permitted facilities or structures that must be moved. 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. However, Licensor agrees not to grant other easements crossing the surface site, as such surface site is exclusive to Licensee during the term of this License.

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 any pipeline 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 not be unreasonably withheld, conditioned or delayed; provided, however, if Licensor does not respond to Licensee within four (4) weeks, such request shall be deemed approved. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. 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 by promptly removed from the Property.

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

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

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 any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor, without any claim for reimbursement for the cost of the alteration, change or relocation or for damages against Licensor. The relocation, change or alteration shall be at the sole cost of Licensee. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline or permitted facilities or structures that must be relocated, changed or altered.

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.

O. Surface Site. The surface site herein may be used for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing above and below the surface of the ground, pipelines, valves, risers, vents, cables, meters, pigging equipment, alternating current mitigation equipment, solar power facilities, cathodic protection equipment, and other appurtenances to the pipeline. Licensee may fence only the area of the surface site and install and maintain a gate or gates in the fence, and Licensee may lay a caliche base on the surface of the surface site.

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 include 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 include 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 include 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 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. 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 PIPELINE OR OTHER PERMITTED FACILITIES OR STRUCTURES 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 PIPELINE OR PERMITTED FACILITIES OR STRUCTURES 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. Notwithstanding the foregoing, Licensee may assign this License, in whole, without the consent of Licensor, to any: (i) entity that, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under the common ownership or control of, Licensee; or (ii) any person, bank, financing institution or other lender, or groups thereof, as security for amounts payable under any financing or other arrangements under which Licensee has borrowed funds. Licensee will remain responsible for any obligations it incurs under this License prior to any assignment and will ensure that its assignee agrees, in writing, to be bound by the terms of this License, including but not limited to, the insurance requirements set forth hereinabove.

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 NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000.00). 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, TO THE EXTENT SUCH IMMUNITY EXISTS.

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 RELATED TO THIS LICENSE, 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 ORDINARY NEGLIGENCE.

H. Governmental Immunity. To the extent governmental immunity exists, 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 SHOULD SUCH IMMUNITY APPLY.**

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, to the extent such immunity exists.

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. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit B**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor.

Q. 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.

R. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

S. 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.

T. 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 to Follow.)

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis §

BEFORE ME, the undersigned authority, on this 25th day of April, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company 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 25th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

Legal description: BMC-TX-MID-0089.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 4, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 760 Page 466, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11596288.34, E:753100.69] in the north line of said Section, from which a railroad spike found for the northwest corner of said Section bears S 76°42'54" W, a distance of 5,245.13 feet;

THENCE, S 14°00'28" E, a distance of 647.77 feet, to a point for a corner;

THENCE, S 06°42'17" W, a distance of 153.39 feet, to a point for a corner;

THENCE, S 13°17'43" E, a distance of 1,219.65 feet, to a point for a corner;

THENCE, S 14°14'21" E, a distance of 683.19 feet, to a point for a corner;

THENCE, S 34°14'21" E, a distance of 243.14 feet, to a point for a corner;

THENCE, S 14°14'39" E, a distance of 992.17 feet, to a point for a corner;

THENCE, S 12°51'06" E, a distance of 994.93 feet, to a point for a corner;

THENCE, S 07°08'54" W, a distance of 310.96 feet, to a point for a corner;

THENCE, S 14°57'47" E, a distance of 97.41 feet, to the Point of Terminus, [N:11591123.03, E:754276.78] in the south line of said Section, from which a 5" concrete monument with a iron rod found for the southwest corner of said Section bears S 76°41'17" E, a distance of 5,192.75 feet for a total of 5,342.61 Feet or 323.79 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6087

JN SERVICES

JN SERVICES, LTD
2837 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3017

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

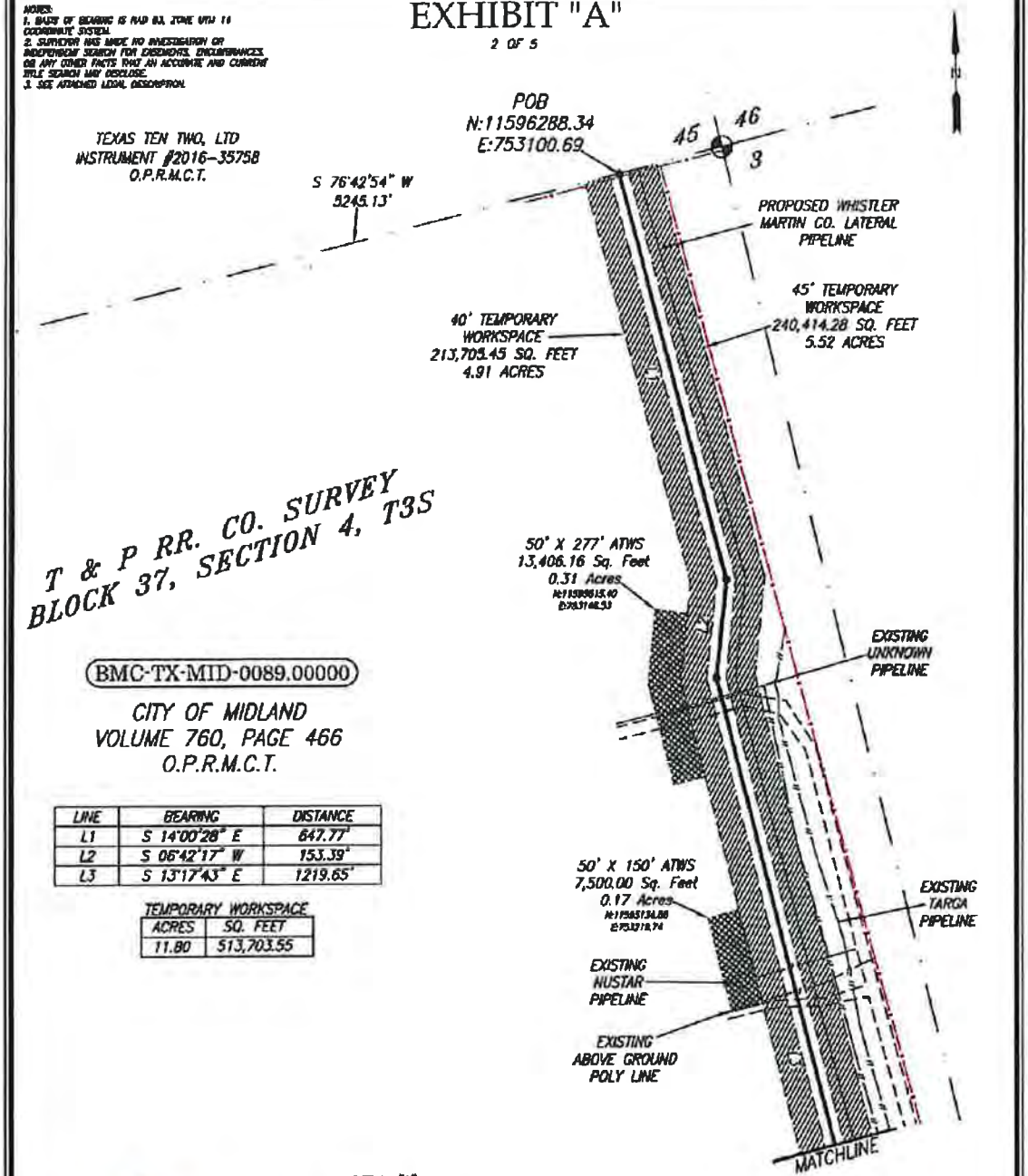
JOB: BANGL MARION COUNTY LATERAL	DRAWN BY: CF	CHECKED: BW
AFE: 21300	DATE: 06/15/2022	REV: 11/07/2022

D:\BlueWater Midstream\Marion County Lateral\Plats\BMC-TX-MID-0089.00000-Rev 1.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5



LINE	BEARING	DISTANCE
L1	S 14°00'28" E	647.77'
L2	S 06°42'17" W	153.39'
L3	S 13°17'43" E	1219.65'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3838 GARDNER ROAD
BROOKSHIRE, TX 77487
FIRM LICENSE # 10194371
817-551-3047

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

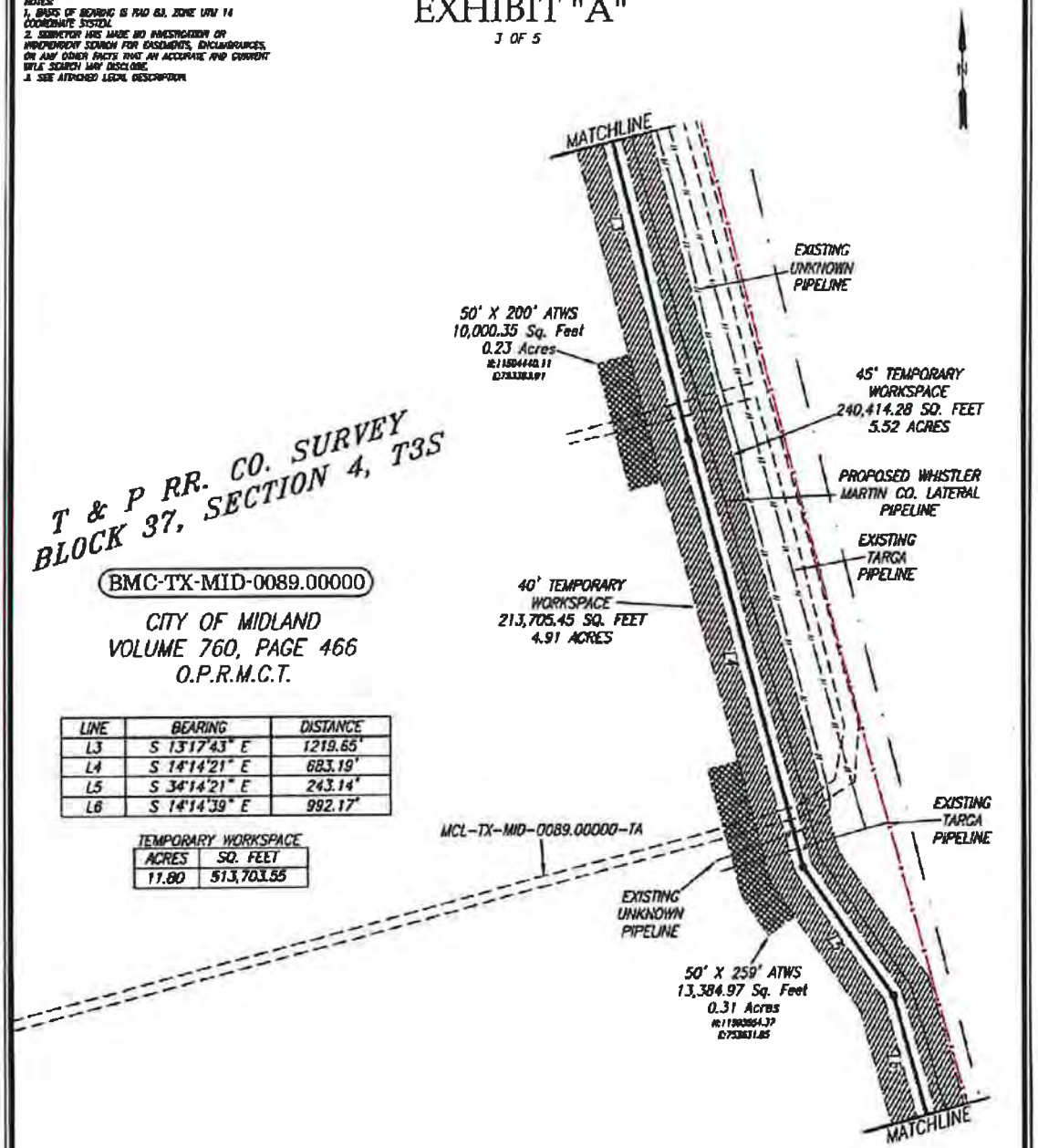
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DW
AFE: 21390	DATE: 07/19/2022	REV: #3 01/14/2023

G:\Whistler Midstream\Martin County Lateral\Plats\BMC-TX-MID-0089.00000-Rev 3.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UNI 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION

EXHIBIT "A"

3 OF 5



LINE	BEARING	DISTANCE
L3	S 13°17'43" E	1219.65'
L4	S 14°14'21" E	683.19'
L5	S 34°14'21" E	243.14'
L6	S 14°14'39" E	992.17'

TEMPORARY WORKSPACE	
ACRES	SQ. FEET
11.80	513,703.55

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2552 GARDNER ROAD
WOODWORTH, TX 79357
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

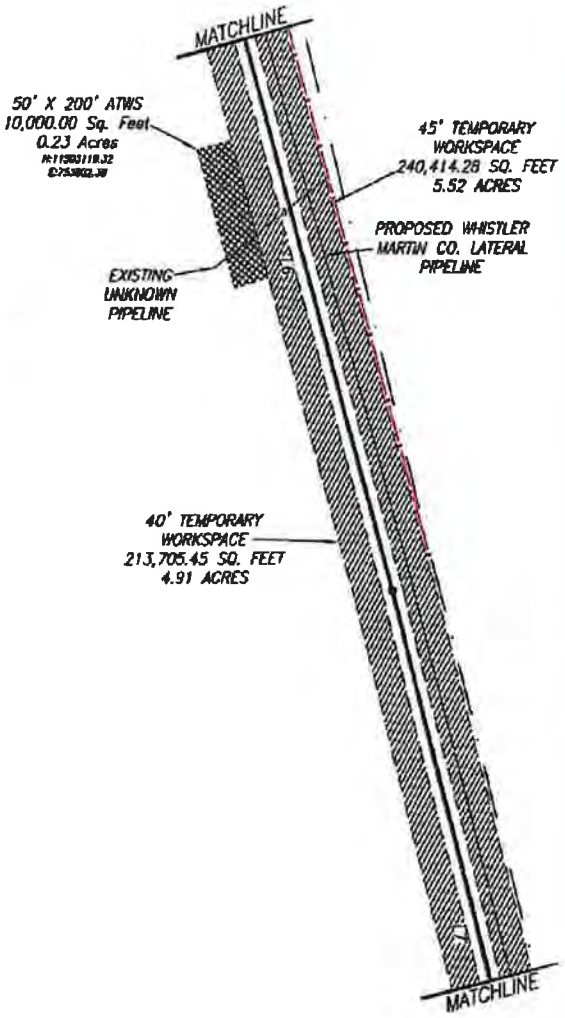
JOB: BMGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED BY:
AFE: 21706	DATE: 05/16/2022	REV: 1 07/19/2022

P:\Whistler Midstream\Martin County Lateral\Plats\BMC-TX-MID-0089.00000-Rev 1.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L6	S 14°14'39" E	992.17'
L7	S 12°51'06" E	994.93'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belview Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3653 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-581-3647

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: GF	CHECKED BY:
AFE: 21300	DATE: 02/16/2022	REV: JD 07/19/2022

P:\White Water Midstream\Martin County Laterals\Plats\BMC-TX-MID-0089.00000-Rev 3.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 5

T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

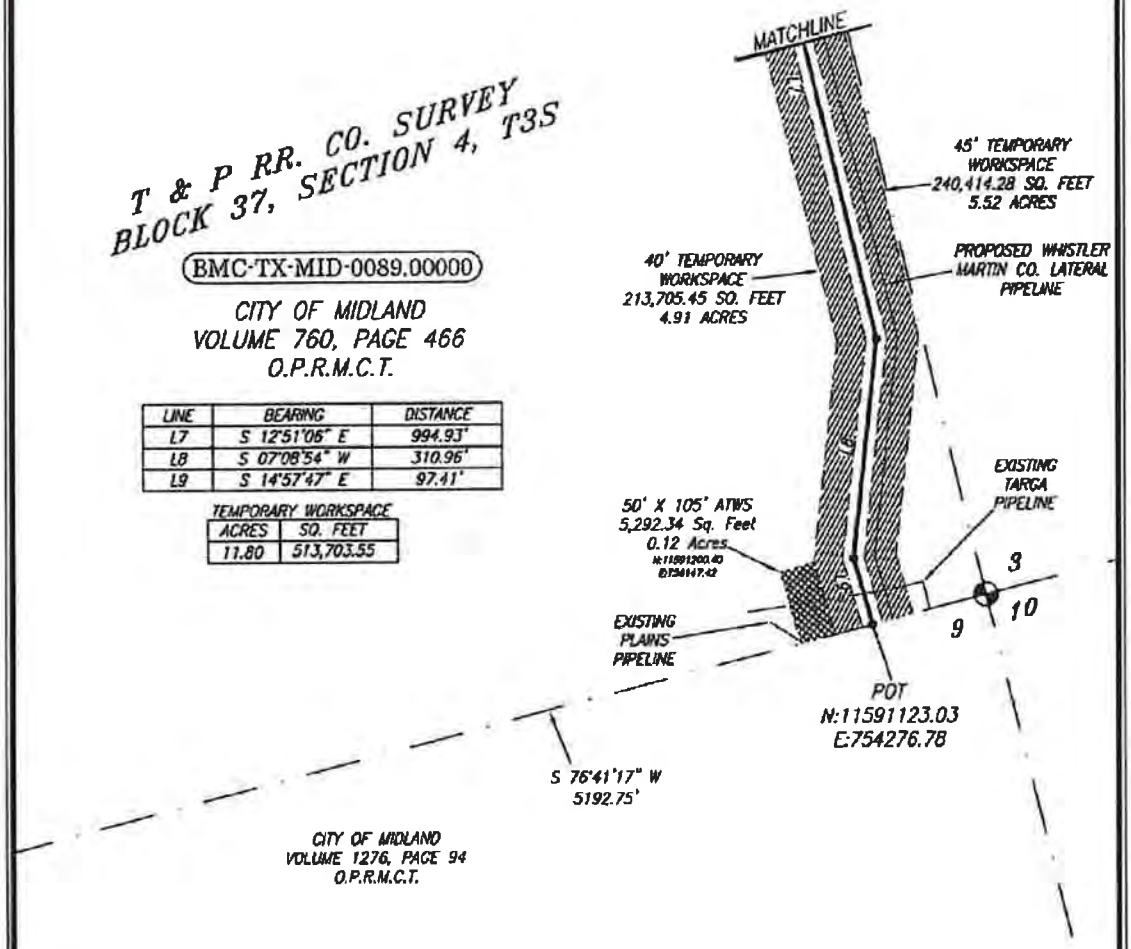
BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L7	S 12°51'06" E	994.93'
L8	S 07°08'54" W	310.96'
L9	S 14°57'47" E	97.41'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55



DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2832 GARDNER ROAD
BROOKFIELD, CT 06804
FIRM LICENSE # 10194071
617-501-3947

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JOB: BMGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21309	DATE: 07/18/2022	REV: #1 07/11/2023

D:\Whistler Midstream\Martin County Laterals\Plats\BMC-TX-MID-0089.00000-Rev 1.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE LCN 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO OBSERVATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 5

Legal description "A": BMC-TX-MID-0090.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 9, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11591123.03, E:754276.78] in the north line of said Section, from which a 5" concrete monument with iron rod found for the northwest corner of said Section bears S 76°41'17" W, a distance of 5,192.46 feet;

THENCE, S 14°57'47" E, a distance of 272.06 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 4,573.34 feet, to the Point of Terminus, [N:11586408.06, E:755392.94] in the north line of of a proposed surface site in said Section, for a total of 4,845.39 Feet or 293.66 Rods

Legal description "B": BMC-TX-MID-0090.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 9, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586232.83, E:755434.11] in the south line of a proposed surface site in said Section;

THENCE, S 13°13'14" E, a distance of 90.12 feet, to a point for a corner;

THENCE, S 13°13'28" E, a distance of 156.55 feet, to the Point of Terminus, [N:11585992.70, E:755490.53] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°30'24" E, a distance of 154.04 feet for a total of 246.67 Feet or 14.95 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
8351 GARDNER ROAD
HEARNSFORD, TX 79083
FIRM LICENSE # 10191021
817-501-3947

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

NGL
Belvieu Alternative NGL

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

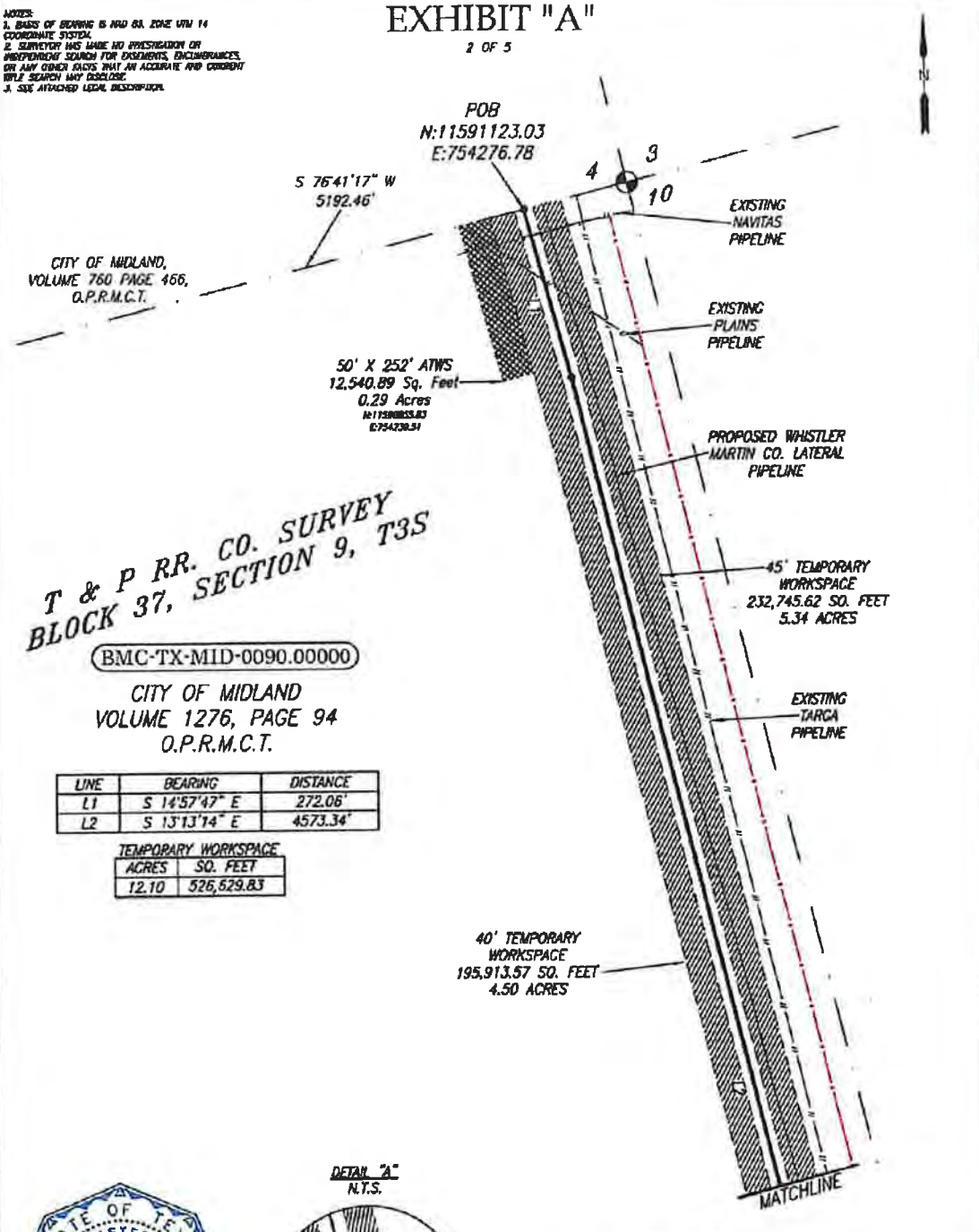
JOB: BMCL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DAV
AFE: 21.700	DATE: 02/15/2022	REV: 0 07/19/2022

D:\WhiteWater Midstream\Martin County Laterals\Plats\BMC-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5



LINE	BEARING	DISTANCE
L1	S 14°57'47" E	272.06'
L2	S 13°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,529.83

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3453 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10124011
817-301-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

JOB: BANCL MARTIN COUNTY LATERAL | DRAWN BY: CF | CHECKED: DAW

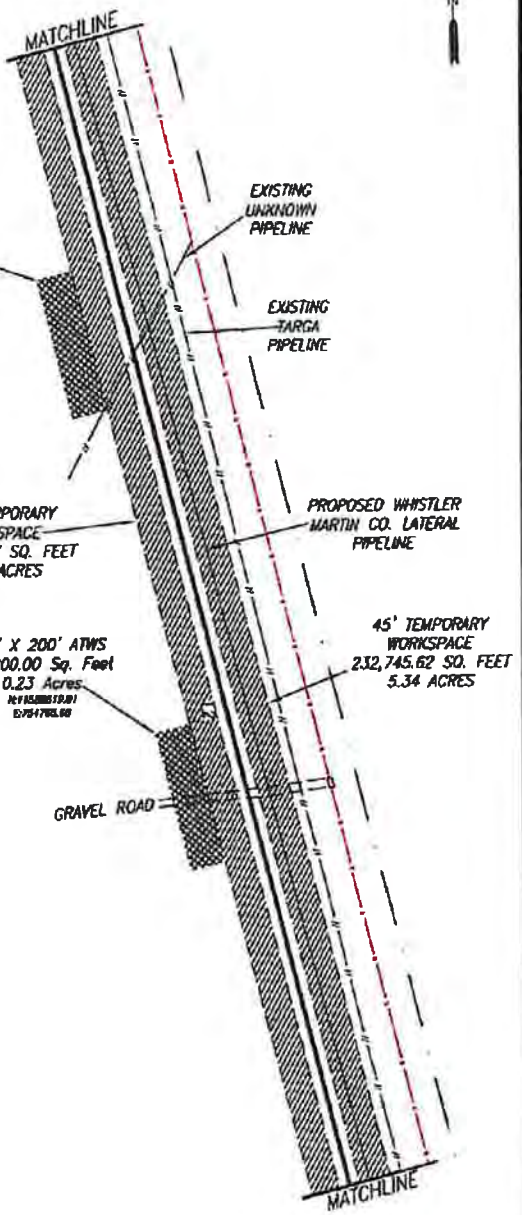
AFE: 21300 | DATE: 07/13/2022 | REV. #2 07/19/2022

D:\WhiteWater Midstream\Martin County Laterals\Plats\BMC-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

NGL
Belview Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

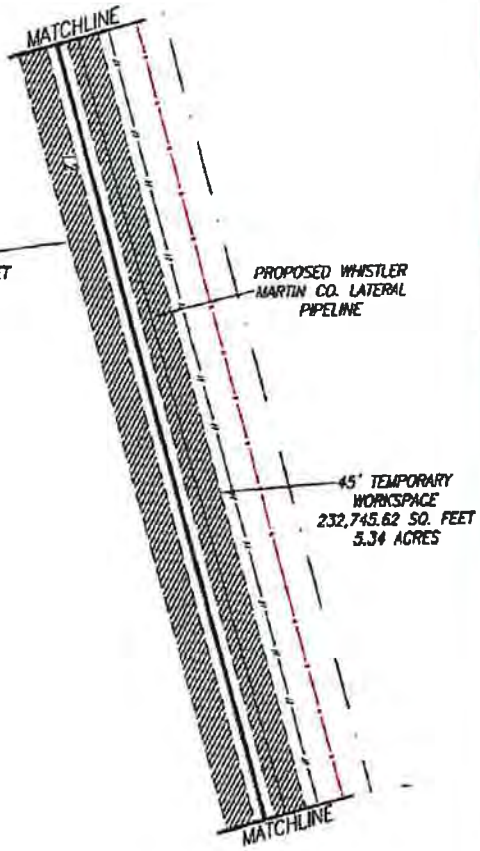
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATE: 02/15/2022	REV: (3 07/18/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 15°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.





0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194077
817-501-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

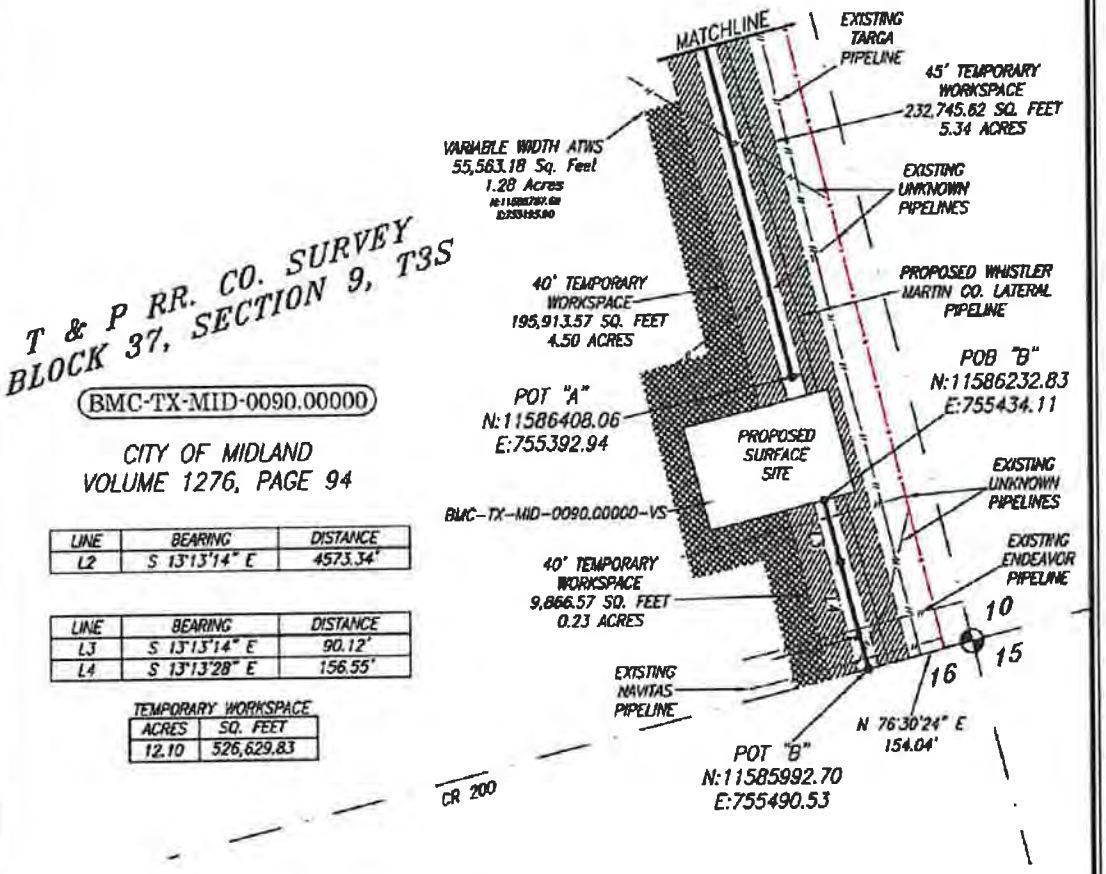
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATE: 02/15/2022	REVS: 2) 07/19/2022

D:\Whistler Midstream\Martin County Lateral\Plats\BMC-TX-MID-0090.00000.dwg

EXHIBIT "A"

5 OF 5

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4573.34'

LINE	BEARING	DISTANCE
L3	S 13°13'14" E	90.12'
L4	S 13°13'28" E	156.55'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

0 200' 400' 600'

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JN SERVICES
JN SERVICES, LTD
2832 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194077
817-501-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED BY:
AFE: 21300	DATE: 06/15/2022	REV:

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description : BMC-TX-MID-0090.00000-VS

BEING a 30' x 30' surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11651056.81, E:742873.73] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 36°19'58" E, a distance of 430.66 feet;

THENCE, N 13°13'15" W, a distance of 30.00 feet, to a point for a corner;

THENCE, N 76°46'45" E, a distance of 30.00 feet, to a point for a corner;

THENCE, S 13°13'15" E, a distance of 30.00 feet, to a point for a corner;

THENCE, S 76°46'45" W, a distance of 30.00 feet, to the Point of Beginning, for a total of 900.00 Square Feet or 0.02 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3853 GARDNER ROAD
HUNTINGTON, TX 75947
FIRM LICENSE # 10194073
817-501-3847

SQUARE FOOTAGE: 900.00

ACRES: 0.02

NGL
Belvieu Alternative NGL

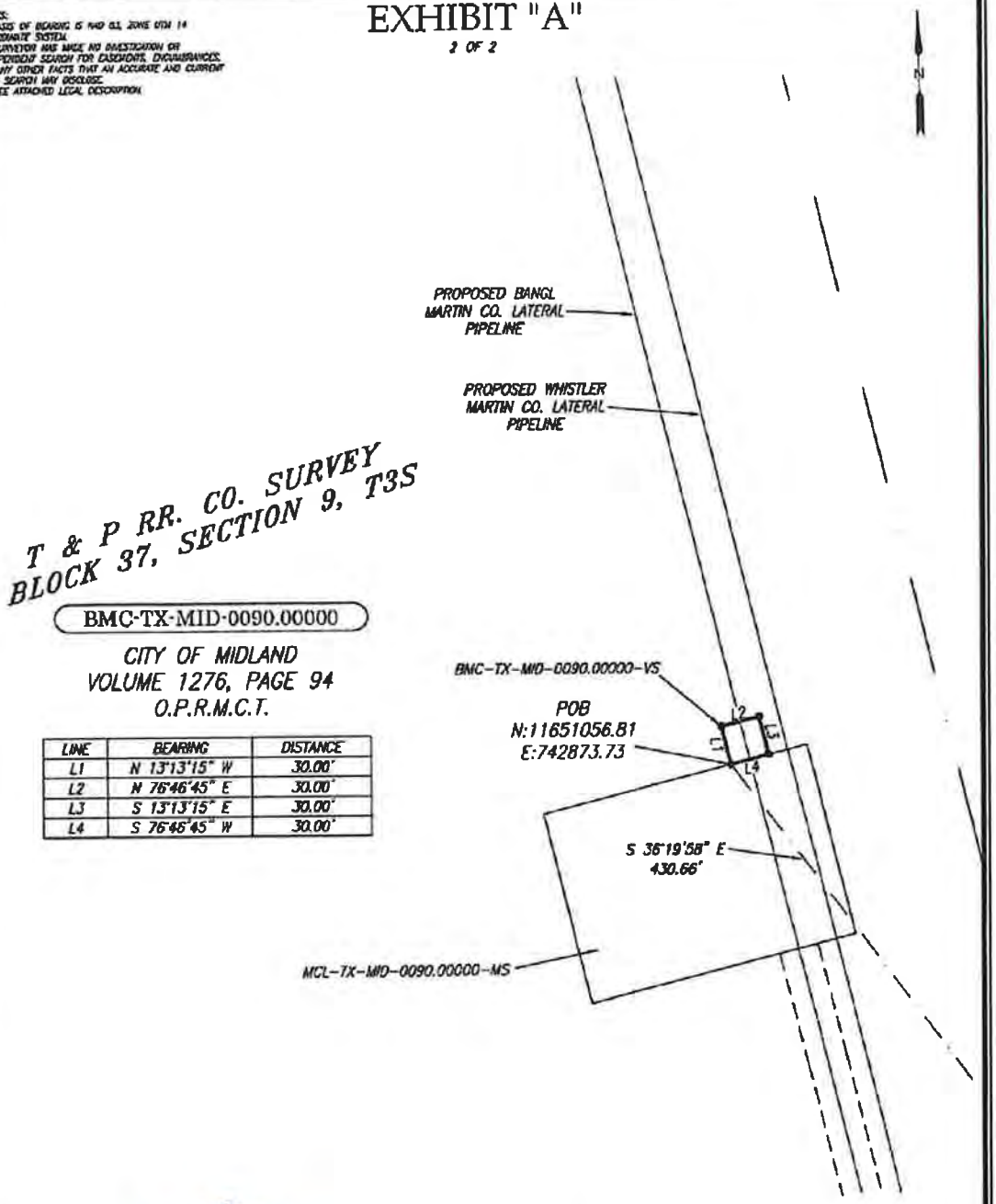
30' X 30'
SURFACE SITE
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JOB: DANIEL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATED: 05/22/2022	REV: #1 07/20/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 6TX 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°13'15" W	30.00'
L2	N 76°46'45" E	30.00'
L3	S 13°13'15" E	30.00'
L4	S 76°46'45" W	30.00'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belview Alternative NGL

30' X 30'
SURFACE SITE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2932 CARPENTER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194371
817-301-3047

SQUARE FOOTAGE: 900.00

ACRES: 0.02

JOB: BANGL MARTIN COUNTY LATERAL | DRAWN BY: GJF | CHECKED: DAW

AFE: 21300 | DATE: 07/22/2022 | REV: # 07/20/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 4

Legal description: BMC–TX–MID–0092.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 16, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1160 Page 622, Deed Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11585924.11, E:755506.65] in the north line of said tract, from which a 3/8" iron rod found for the northeast corner of said Section bears N 52°01'20" E, a distance of 169.62 feet;

THENCE, S 13°13'28" E, a distance of 542.28 feet, to a point for a corner;

THENCE, S 05°52'18" W, a distance of 234.09 feet, to a point for a corner;

THENCE, S 14°07'42" E, a distance of 1,489.76 feet, to a point for a corner;

THENCE, S 33°13'35" E, a distance of 155.30 feet, to a point for a corner;

THENCE, S 13°13'35" E, a distance of 587.65 feet, to a point for a corner;

THENCE, S 10°24'19" E, a distance of 501.56 feet, to a point for a corner;

THENCE, S 31°54'42" E, a distance of 321.65 feet, to a point for a corner;

THENCE, S 19°33'34" E, a distance of 549.58 feet, to a point for a corner;

THENCE, S 51°39'01" E, a distance of 152.49 feet, to the Point of Terminus, [N:11581637.87, E:756754.15] in the east line of said Section, from which a 1" iron pipe found for the southeast corner of said Section bears S 14°14'03" E, a distance of 753.89 feet for a total of 4,534.35 Feet or 274.81 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194871
817-501-3917

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

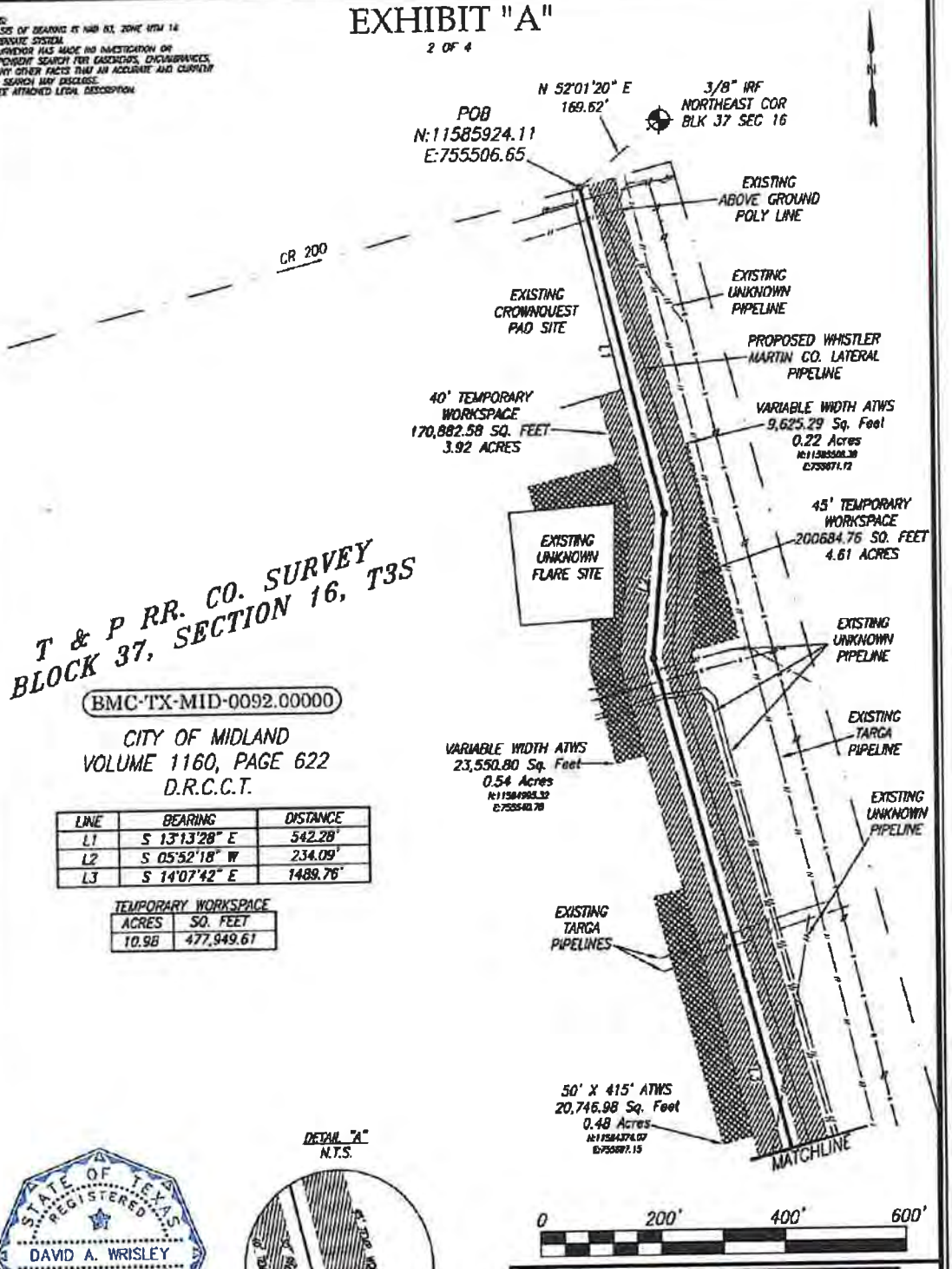
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATED: 02/16/2022	REV: (1) 07/20/2022

G:\WhiteWater Midstream\Martin County Lateral\Plats\Tract 009 BMC City of Midland.dwg

EXHIBIT "A"

2 OF 4

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.



BMC-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L1	S 13°13'28" E	542.28'
L2	S 05°52'18" W	234.09'
L3	S 14°07'42" E	1489.76'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2853 CARDINER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # F019401
817-381-3947

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

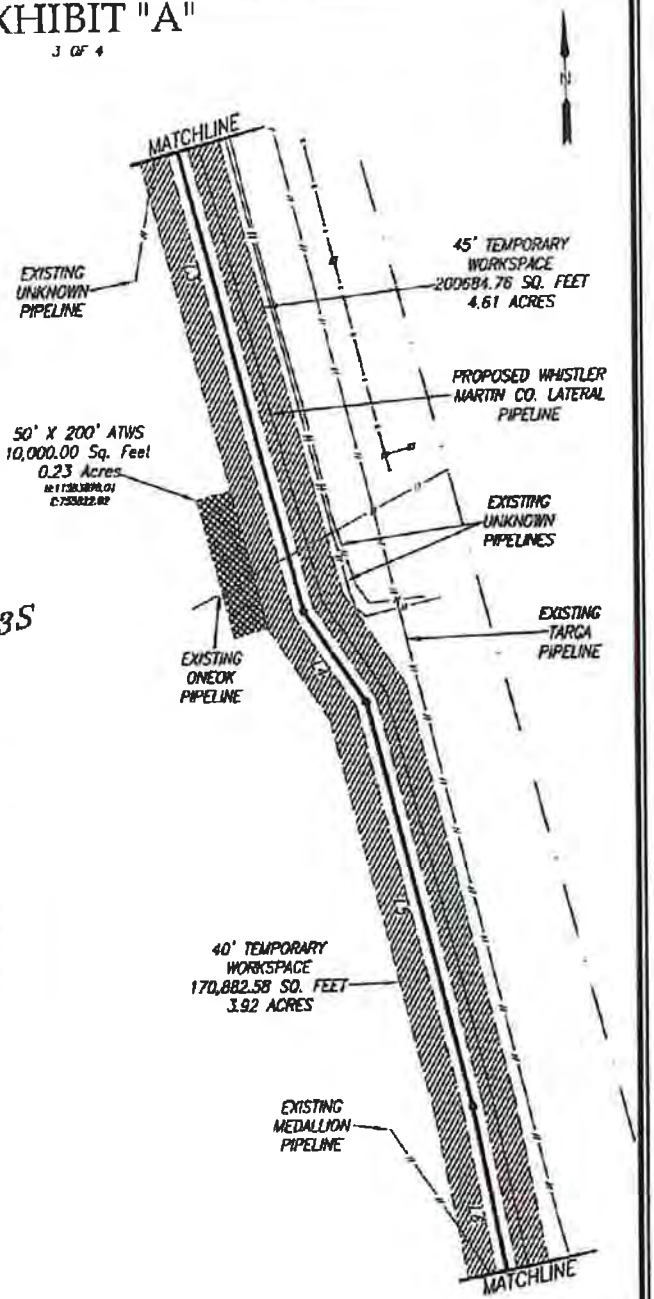
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED BY: DAW
AFE: 21300	DATE: 03/15/2022	REV. #1 07/20/2022

D:\WhiteWater Midstream\Martin County Lateral\Plats\Tract 002 BMC City of Midland.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, 2011 UTU 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO DETERMINATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

BMC-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L3	S 14°07'42" E	1489.78'
L4	S 33°13'35" E	155.30'
L5	S 13°13'35" E	587.65'
L6	S 10°24'19" E	501.56'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
28532 CARDNER ROAD
BOERNE, TX 78015
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

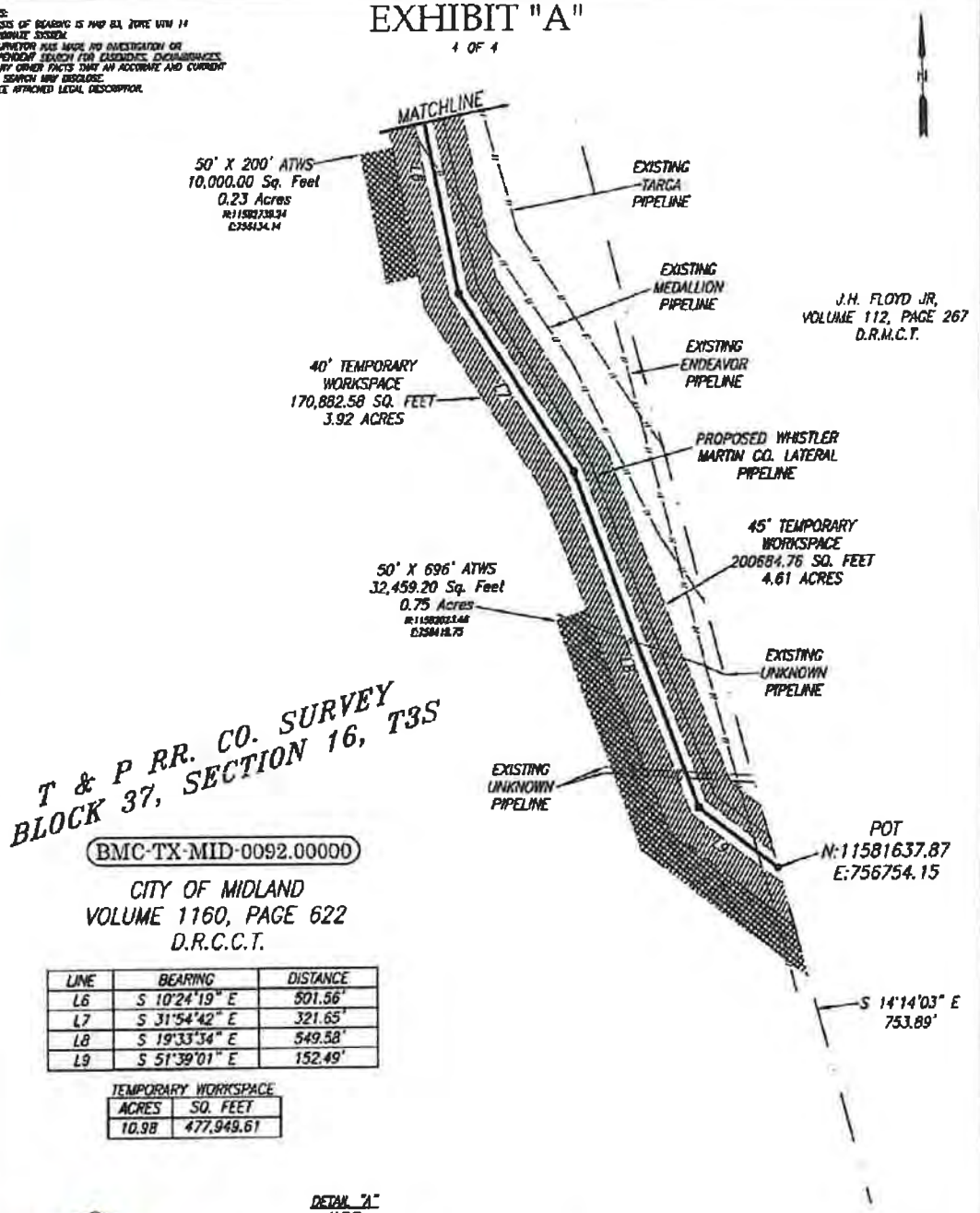
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DW
AFE: 21300	DATE: 07/19/2022	REV: (R 07/20/2022

C:\Projects\Midstream\Martin County Lateral\Plats\Dwg\ 092 BMC City of Midland.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE TEXAS CENTRAL COORDINATE SYSTEM.
2. SURVEYOR WAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

BMC-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L6	S 10°24'19" E	501.56'
L7	S 31°54'42" E	321.65'
L8	S 19°33'34" E	549.58'
L9	S 51°39'01" E	152.49'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belview Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2632 CHONDR ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-201-3847

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

JOB: EAGLE MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DW
AFE: 21300	DATE: 05/13/2022	REV: JS 07/20/2022

EXHIBIT B
Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

FORM OF MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and BANGL, LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ __, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being thirty feet (30') in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed twelve inches (12") in diameter, and a 900-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ __, 2023.

LICENSOR:

CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By:_____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

_____
Notary Public, State of Texas

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and BANGL, LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ ____, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being thirty feet (30') in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed twelve inches (12") in diameter, and a 900-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ ____, 2023

LICENSOR:

CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
BANGL, LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis §

BEFORE ME, the undersigned authority, on this 25th day of April, 2023 personally appeared Glenn Kellison an officer of BANGL, LLC, a Delaware limited liability company 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 25th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
BANGL, LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

Legal description: BMC-TX-MID-0089.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 4, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 760 Page 466, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11596288.34, E:753100.69] in the north line of said Section, from which a railroad spike found for the northwest corner of said Section bears S 76°42'54" W, a distance of 5,245.13 feet;

THENCE, S 14°00'28" E, a distance of 647.77 feet, to a point for a corner;

THENCE, S 06°42'17" W, a distance of 153.39 feet, to a point for a corner;

THENCE, S 13°17'43" E, a distance of 1,219.65 feet, to a point for a corner;

THENCE, S 14°14'21" E, a distance of 683.19 feet, to a point for a corner;

THENCE, S 34°14'21" E, a distance of 243.14 feet, to a point for a corner;

THENCE, S 14°14'39" E, a distance of 992.17 feet, to a point for a corner;

THENCE, S 12°51'06" E, a distance of 994.93 feet, to a point for a corner;

THENCE, S 07°08'54" W, a distance of 310.96 feet, to a point for a corner;

THENCE, S 14°57'47" E, a distance of 97.41 feet, to the Point of Terminus, [N:11591123.03, E:754276.78] in the south line of said Section, from which a 5" concrete monument with a iron rod found for the southwest corner of said Section bears S 76°41'17" E, a distance of 5,192.75 feet for a total of 5,342.61 Feet or 323.79 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6087

JN SERVICES

JN SERVICES, LTD
3532 GARDNER ROAD
BEAUMONT, TX 77707
FIRM LICENSE # 10194071
817-501-3047

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

NGL
Belview Alternative NGL

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: BMW
AFE: 21300	DATE: 06/16/2022	REV: #1 07/19/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 4TH 11 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5

POB
N:11596288.34
E:753100.69

TEXAS TEN TWO, LTD
INSTRUMENT #2016-35758
O.P.R.M.C.T.

S 76°42'54" W
5245.13'

45 46 3

PROPOSED WHISTLER MARTIN CO. LATERAL PIPELINE

45' TEMPORARY WORKSPACE
240,414.28 SQ. FEET
5.52 ACRES

40' TEMPORARY WORKSPACE
213,705.45 SQ. FEET
4.91 ACRES

T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

50' X 277' ATWS
13,406.16 Sq. Feet
0.31 Acres
N:11595815.40
E:753748.53

EXISTING UNKNOWN PIPELINE

BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	S 14°00'28" E	647.77'
L2	S 06°42'17" W	153.39'
L3	S 13°17'43" E	1219.65'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55

50' X 150' ATWS
7,500.00 Sq. Feet
0.17 Acres
N:11595134.88
E:753218.74

EXISTING TARGA PIPELINE

EXISTING NUSTAR PIPELINE

EXISTING ABOVE GROUND POLY LINE

MATCHLINE

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 13194371
817-201-3047

CENTERLINE FOOTAGE: 5,362.61'

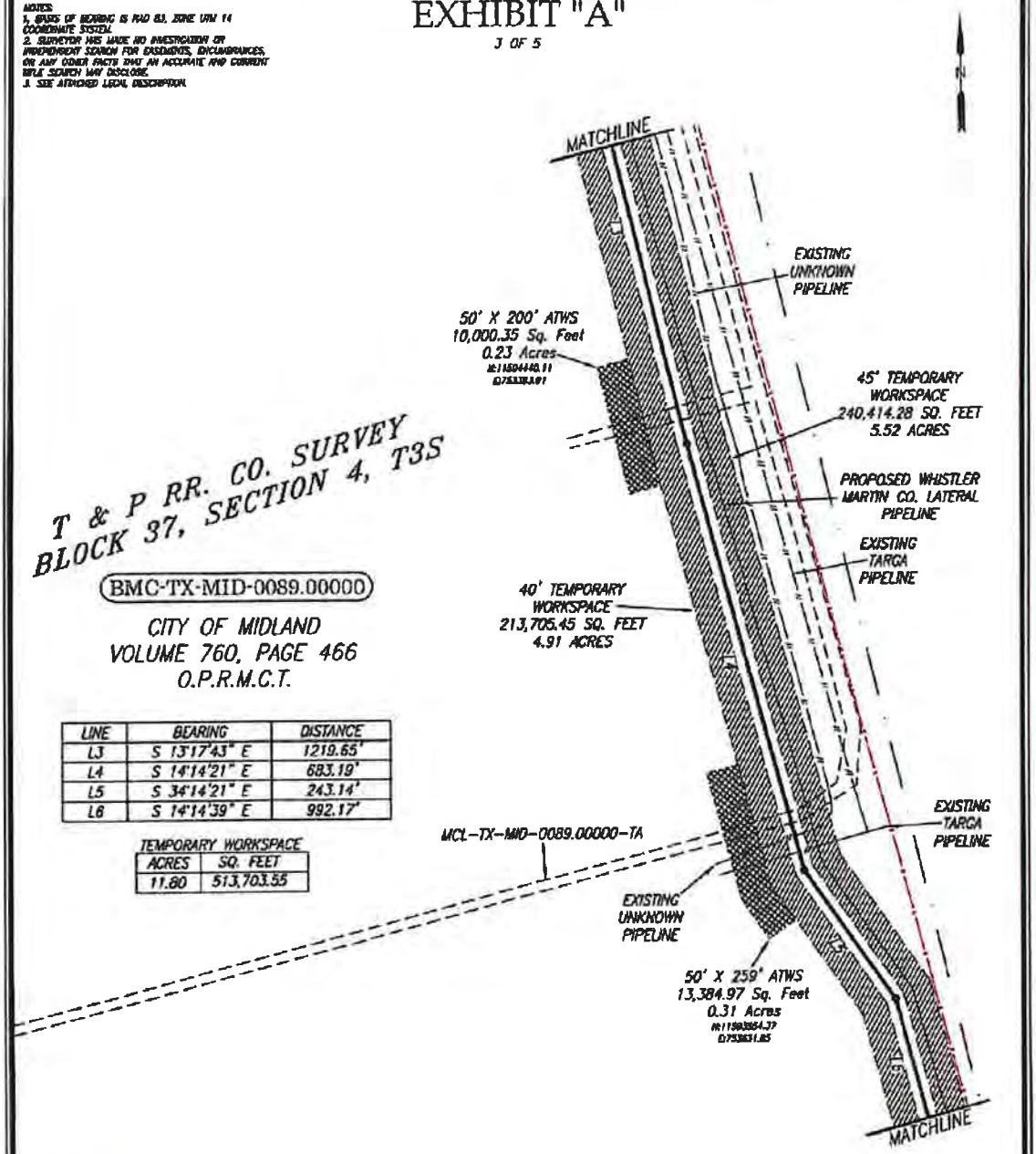
RODS: 323.79

JOB: BMNCL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
APE: 21380	DATE: 07/19/2022	REV: #3 07/19/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L3	S 13°17'43" E	1219.65'
L4	S 14°14'21" E	683.19'
L5	S 34°14'21" E	243.14'
L6	S 14°14'39" E	992.17'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

0 200' 400' 600'

NGL
Belview Alternative NGL

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2232 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194571
817-307-3047

CENTERLINE FOOTAGE: 5,342.61'

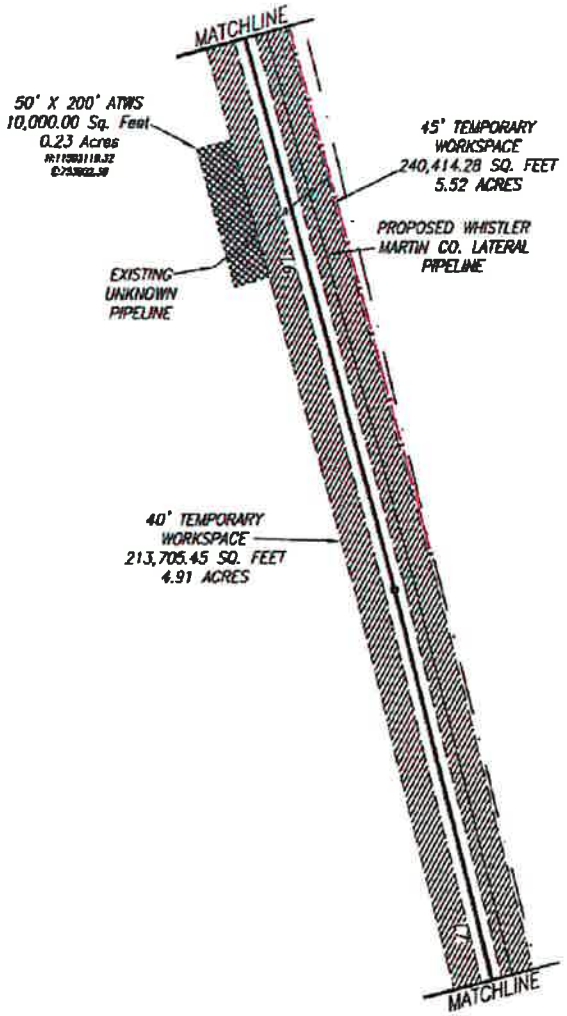
RODS: 323.79

JOB: BMCL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAW
AFE: 21300	DATE: 07/18/2022	REV: [illegible]

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L6	S 14°14'39" E	992.17'
L7	S 12°51'06" E	994.93'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3933 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3947

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: GF	CHECKED BY:
AFE: 21300	DATE: 06/14/2022	REV: 1) 07/19/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 5

T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

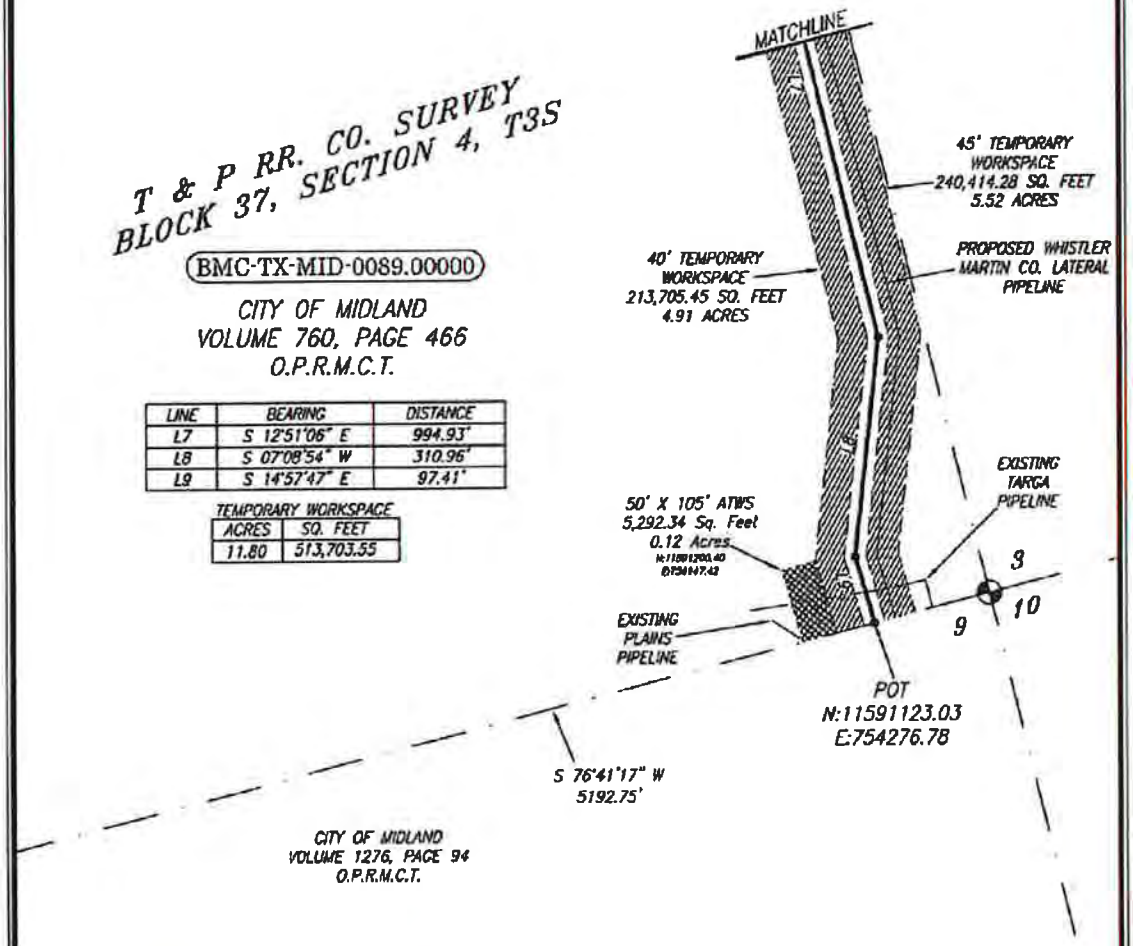
BMC-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L7	S 12°51'06" E	994.93'
L8	S 07°08'54" W	310.96'
L9	S 14°57'47" E	97.41'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,703.55



CITY OF MIDLAND
VOLUME 1276, PAGE 94
O.P.R.M.C.T.

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2832 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10154071
817-501-3847

CENTERLINE FOOTAGE: 5,342.61'

RODS: 323.79

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JOB: BMCL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED BY:
AFE: 21300	DATE: 02/10/2022	REV: (1) 07/11/2022

NOTES:
1. BASES OF BEARING IS NAD 83, ZONE USN 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 5

Legal description "A": BMC-TX-MID-0090.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 9, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11591123.03, E:754276.78] in the north line of said Section, from which a 5" concrete monument with iron rod found for the northwest corner of said Section bears S 76°41'17" W, a distance of 5,192.46 feet;

THENCE, S 14°57'47" E, a distance of 272.06 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 4,573.34 feet, to the Point of Terminus, [N:11586408.06, E:755392.94] in the north line of of a proposed surface site in said Section, for a total of 4,845.39 Feet or 293.66 Rods

Legal description "B": BMC-TX-MID-0090.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 9, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586232.83, E:755434.11] in the south line of a proposed surface site in said Section;

THENCE, S 13°13'14" E, a distance of 90.12 feet, to a point for a corner;

THENCE, S 13°13'28" E, a distance of 156.55 feet, to the Point of Terminus, [N:11585992.70, E:755490.53] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°30'24" E, a distance of 154.04 feet for a total of 246.67 Feet or 14.95 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David G. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3047

CENTERLINE FOOTAGE: 5,092.06'

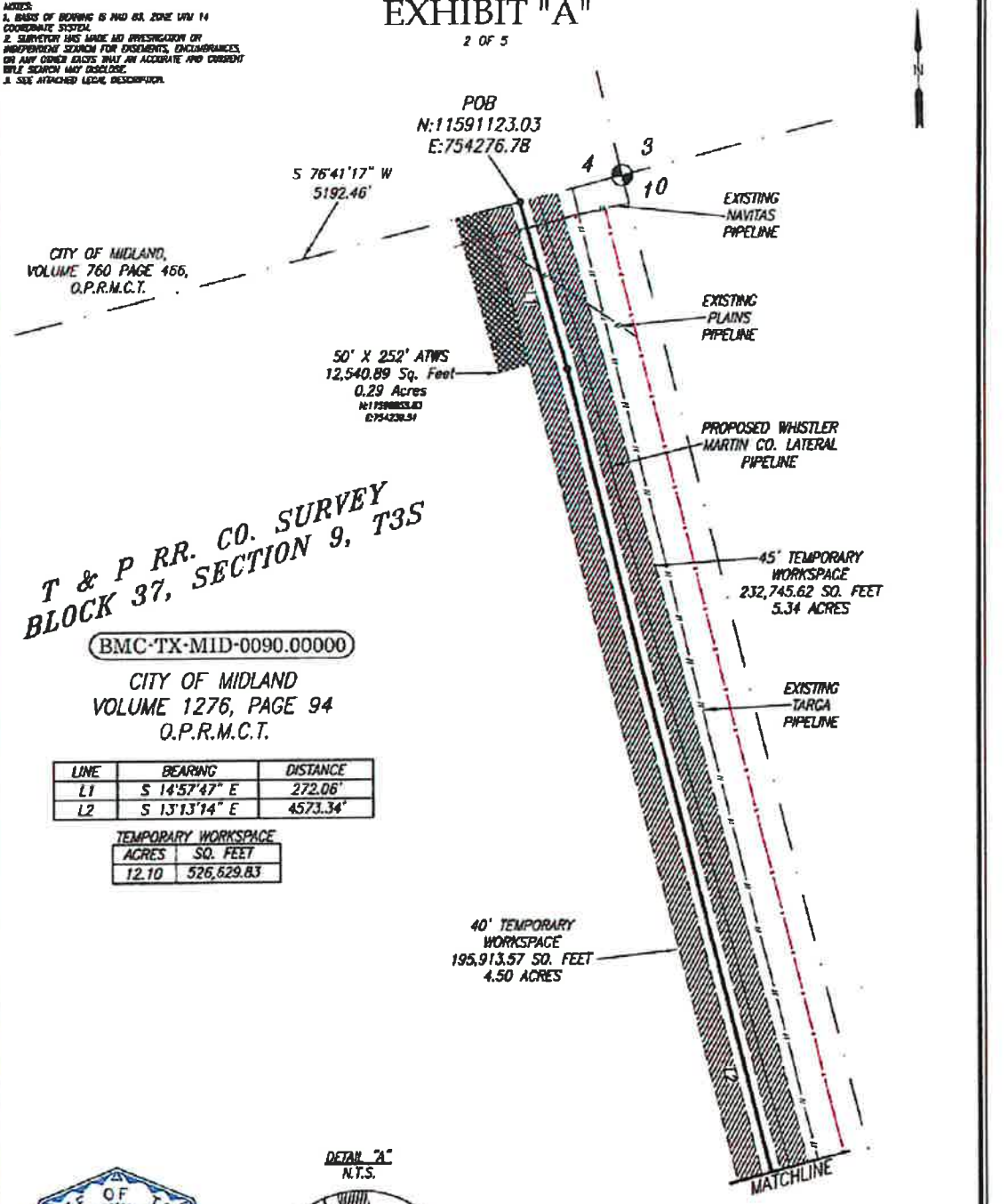
RODS: 308.61

JOB: BMCL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DGF
AFE: 21300	DATE: 06/15/2022	REV: #1 07/19/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE TEXAS CENTRAL 4205 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	S 14°57'47" E	272.06'
L2	S 13°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2632 CARCKER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-301-3647

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

BANGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

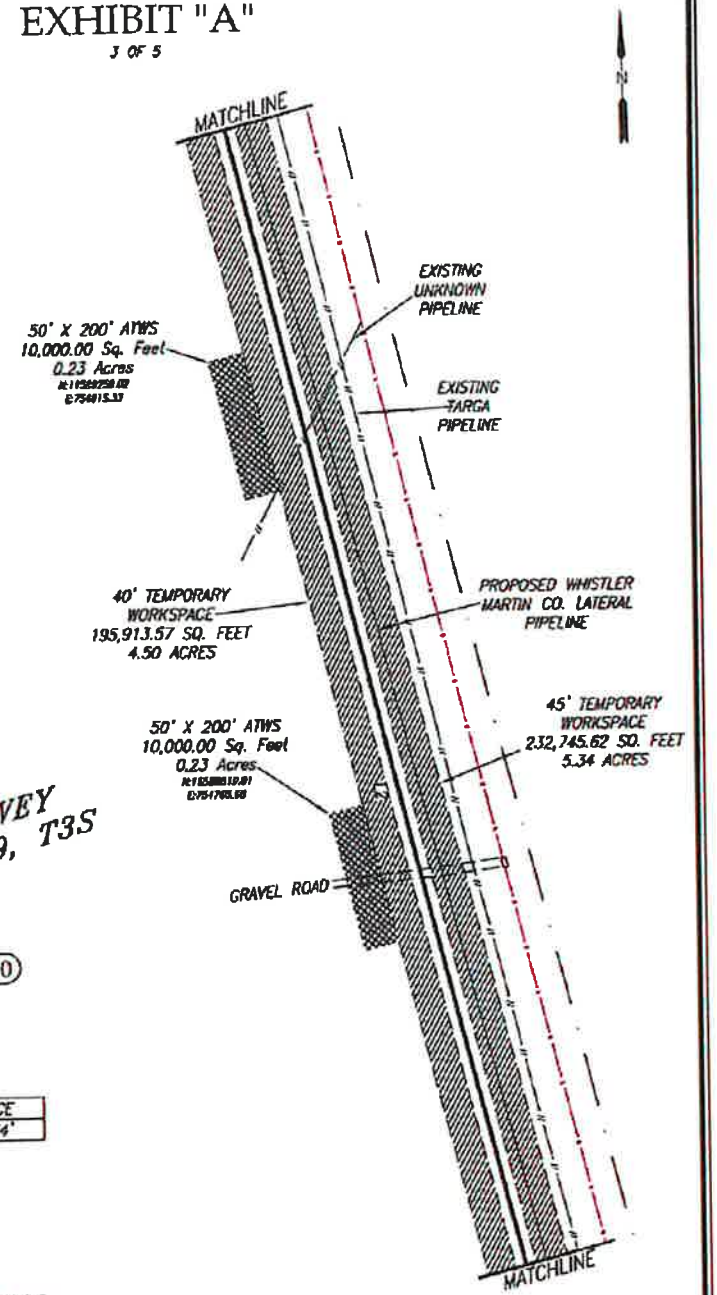
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: SLF	CHECKED: BMP
AFE: 21300	DATE: 02/15/2022	REV: #1 07/19/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.





0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

NGL
Belview Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

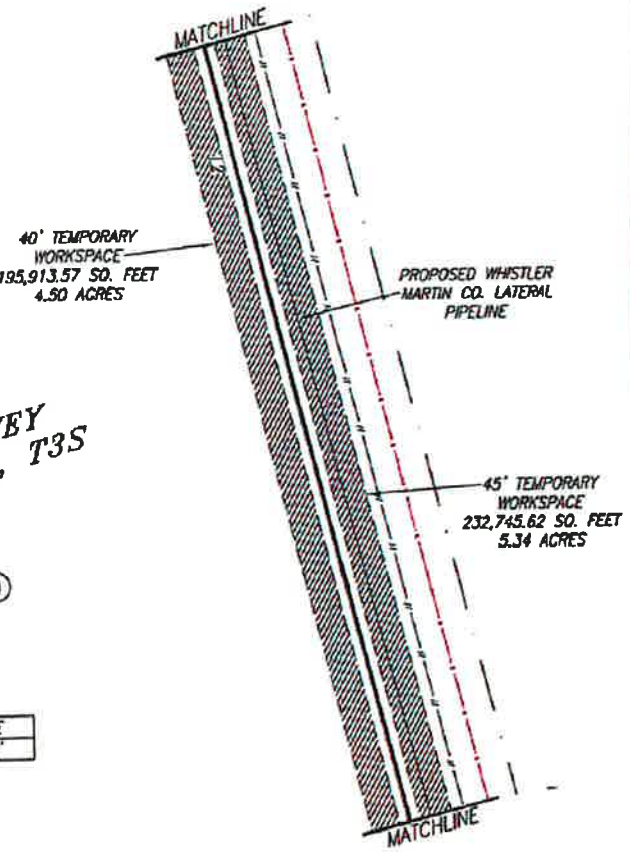
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DW
AFE: 21300	DATE: 07/19/2022	REV: (0 07/19/2022

D:\JN\Whistler Midstream\Martin County Lateral\Plats\BMC-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4573.34'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

BANGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3947

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

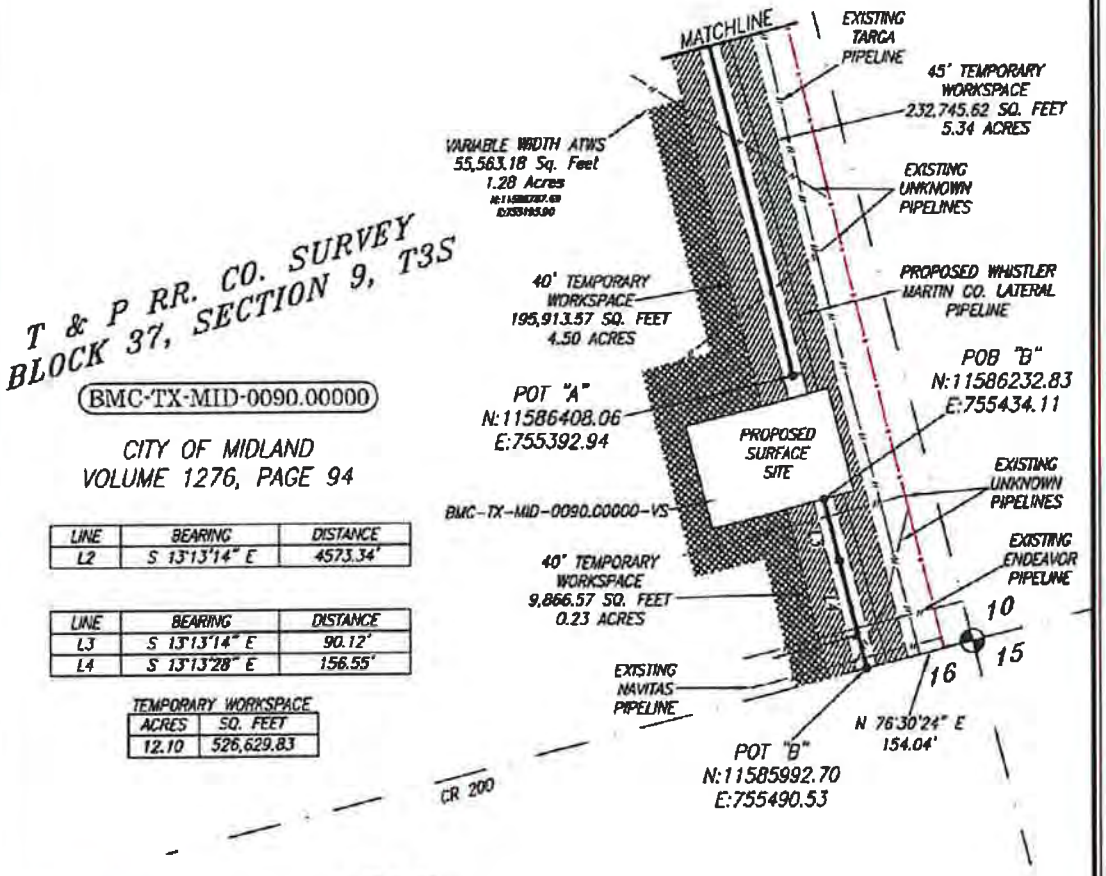
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DW
AFE: 21320	DATE: 02/15/2022	REV: #2 07/19/2022

D:\Whistler Midstream\Martin County Lateral\Plats\BMC-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OF INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

BMC-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1276, PAGE 94

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4573.34'

LINE	BEARING	DISTANCE
L3	S 13°13'14" E	90.12'
L4	S 13°13'28" E	156.55'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.10	526,629.83

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,092.06'

RODS: 308.61

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9
MIDLAND COUNTY, TEXAS

JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: GF	CHECKED BY:
AFE: 21300	DATE: 06/15/2022	REV: (2) 07/19/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description : BMC-TX-MID-0090.00000-VS

BEING a 30' x 30' surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11651056.81, E:742873.73] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 36°19'58" E, a distance of 430.66 feet;

THENCE, N 13°13'15" W, a distance of 30.00 feet, to a point for a corner;

THENCE, N 76°46'45" E, a distance of 30.00 feet, to a point for a corner;

THENCE, S 13°13'15" E, a distance of 30.00 feet, to a point for a corner;

THENCE, S 76°46'45" W, a distance of 30.00 feet, to the Point of Beginning, for a total of 900.00 Square Feet or 0.02 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3452 GARDNER ROAD
MONTGOMERY, TX 77356
FIRM LICENSE # 10194071
817-501-3847

SQUARE FOOTAGE: 900.00

ACRES: 0.02

BANGL
Belview Alternative NGL

30' X 30'
SURFACE SITE
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

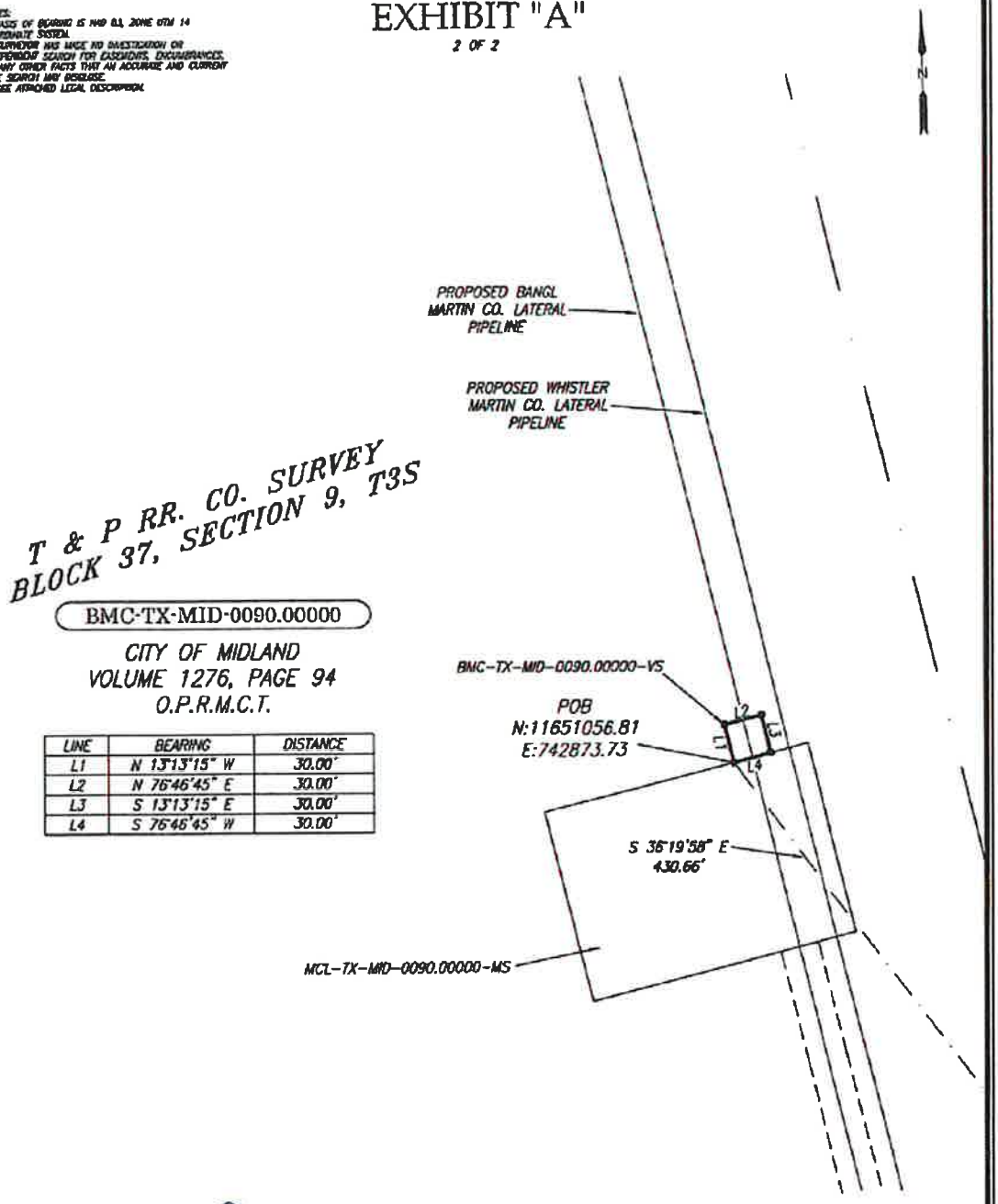
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CP	CHECKED: DAW
AFE: 21300	DATE: 05/22/2023	REV: A 07/20/2023

C:\Users\Midtown\Martin County Lateral\Plats\BMC-TX-MID-0090.00000-VS.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR WAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°13'15" W	30.00'
L2	N 76°46'45" E	30.00'
L3	S 13°13'15" E	30.00'
L4	S 76°46'45" W	30.00'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 100' 200' 300'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

BANGL
Belvieu Alternative NGL

30' X 30'
SURFACE SITE
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES
JN SERVICES, LTD
2952 CARPENTER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3047

SQUARE FOOTAGE: 900.00
ACRES: 0.02

JOB: BANGL MARTIN COUNTY LATERAL | DRAWN BY: GLF | CHECKED: DAW
AFE: 21300 | DATE: 07/21/2022 | REV: #1 07/29/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE WTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

Legal description: BMC-TX-MID-0092.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 16, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1160 Page 622, Deed Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11585924.11, E:755506.65] in the north line of said tract, from which a 3/8" iron rod found for the northeast corner of said Section bears N 52°01'20" E, a distance of 169.62 feet;

THENCE, S 13°13'28" E, a distance of 542.28 feet, to a point for a corner;

THENCE, S 05°52'18" W, a distance of 234.09 feet, to a point for a corner;

THENCE, S 14°07'42" E, a distance of 1,489.76 feet, to a point for a corner;

THENCE, S 33°13'35" E, a distance of 155.30 feet, to a point for a corner;

THENCE, S 13°13'35" E, a distance of 587.65 feet, to a point for a corner;

THENCE, S 10°24'19" E, a distance of 501.56 feet, to a point for a corner;

THENCE, S 31°54'42" E, a distance of 321.65 feet, to a point for a corner;

THENCE, S 19°33'34" E, a distance of 549.58 feet, to a point for a corner;

THENCE, S 51°39'01" E, a distance of 152.49 feet, to the Point of Terminus, [N:11581637.87, E:756754.15] in the east line of said Section, from which a 1" iron pipe found for the southeast corner of said Section bears S 14°14'03" E, a distance of 753.89 feet for a total of 4,534.35 Feet or 274.81 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194871
817-501-3847

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

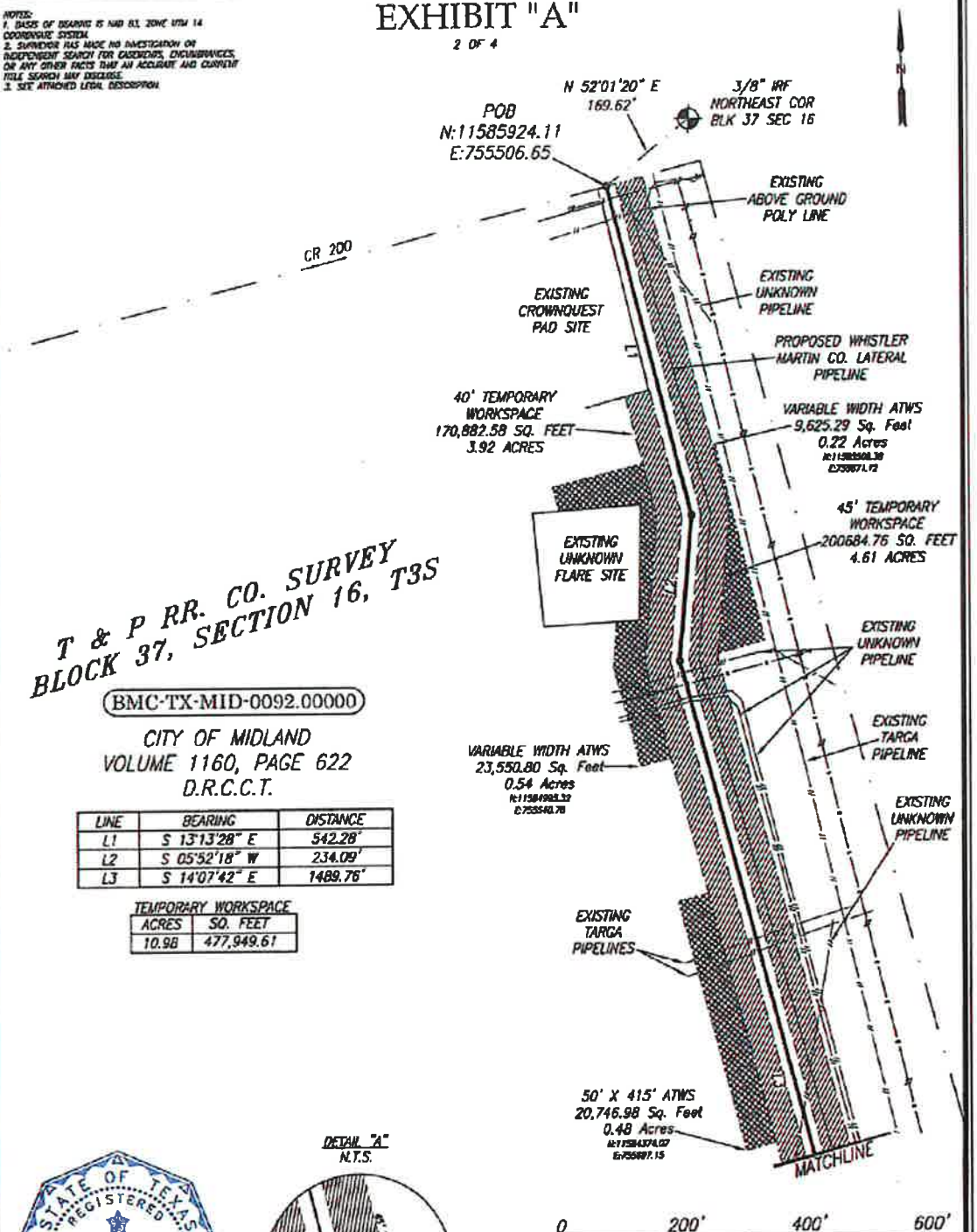
SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DW
AFE: 21300	DATE: 02/14/2022	REV: [illegible]

EXHIBIT "A"

2 OF 4

NOTES:
1. BASES OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

BMC-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L1	S 13°13'28" E	542.28'
L2	S 05°52'18" W	234.09'
L3	S 14°07'42" E	1489.76'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
3853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10191071
817-301-3647

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

BANGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

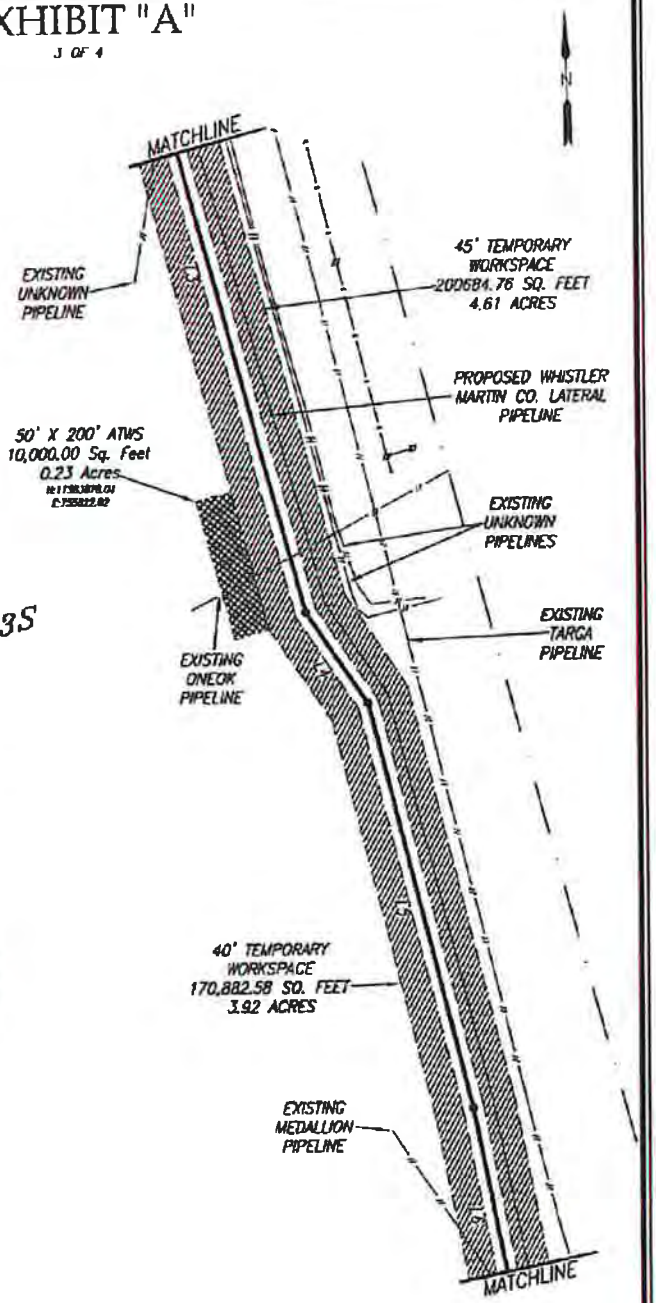
JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CJF	CHECKED: DAF
AFE: 21300	DATE: 06/15/2022	REV. #2 07/20/2022

N:\Midland\Waterstream\Martin County Lateral\Plats\Tract 022 BMC City of Midland.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

BMC-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L3	S 14°07'42" E	1489.76'
L4	S 33°13'35" E	155.30'
L5	S 13°13'35" E	587.65'
L6	S 10°24'19" E	501.56'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2852 CARAMEL ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-321-3847

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

NGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

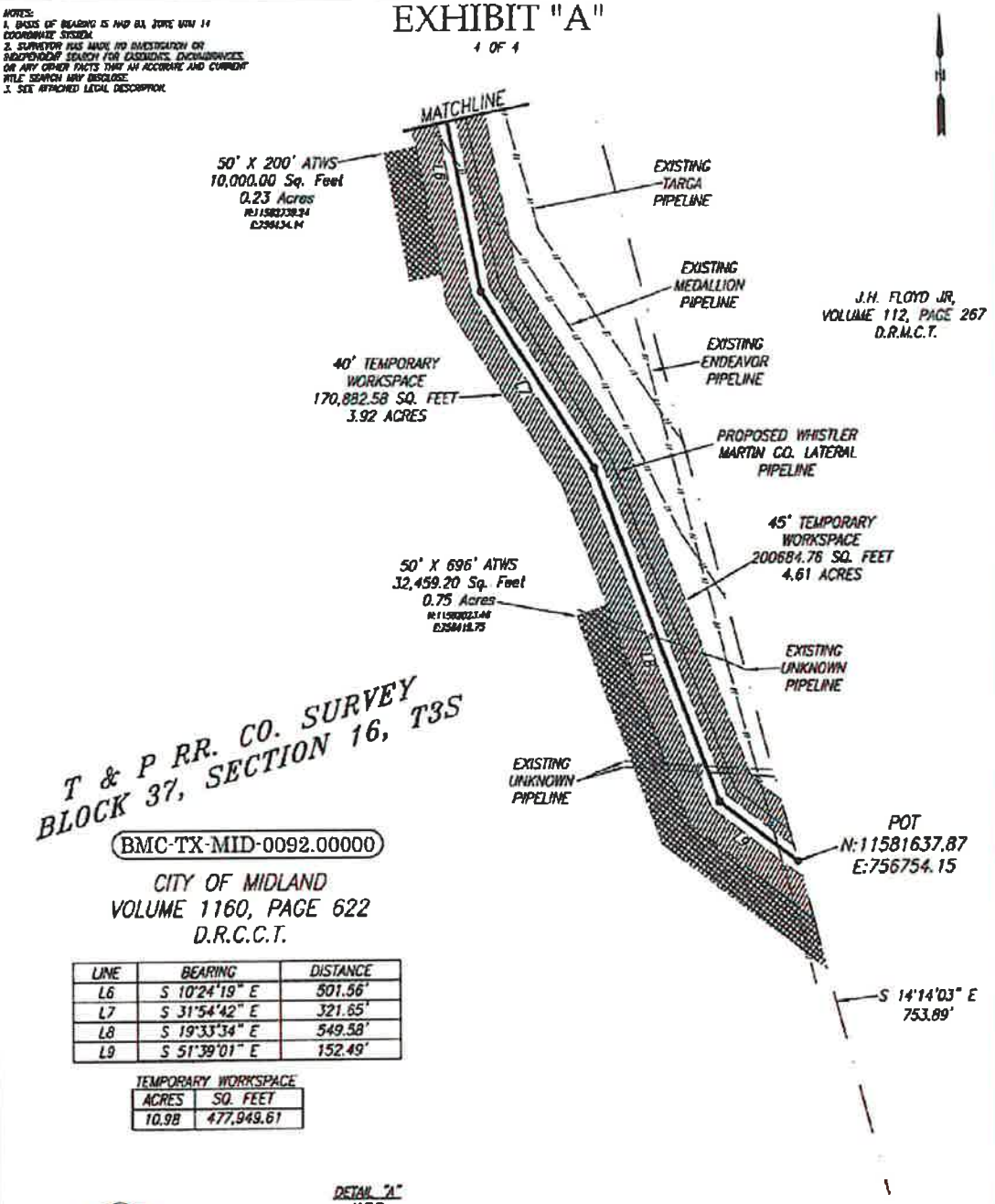
JOB: BMNGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DW
AFE: 21300	DATE: 02/15/2022	REV: (1) 07/20/2022

C:\Projects\Midstream\Martin County Lateral\Plats\Tract 002 - BMC City of Midland.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, TEXAS NAD 27 COORDINATE SYSTEM.
2. SURVEYOR WAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 4



LINE	BEARING	DISTANCE
L6	S 10°24'19" E	501.56'
L7	S 31°54'42" E	321.65'
L8	S 19°33'34" E	549.58'
L9	S 51°39'01" E	152.49'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.98	477,949.61

DETAIL "A"
N.T.S.





0 200' 400' 600'

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David A Wrisley 7-20-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2532 CHORRO ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-201-3847

CENTERLINE FOOTAGE: 4,534.35'

RODS: 274.81

BANGL
Belvieu Alternative NGL

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16
MIDLAND COUNTY, TEXAS

JOB: BANGL MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED: DW
AFE: 21300	DATE: 06/13/2022	REV: (3) 07/20/2022

CERTIFICATE OF LIABILITY INSURANCE

5/18/2023

DATE (MM/DD/YYYY) 7/13/2022

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Employers Insurance Company of Wausau	21458
INSURED 1461468	BANGL, LLC 100 Congress, Suite 2200 Austin TX 78701	**INSURER B :** Liberty Insurance Corporation	42404
		INSURER C : Liberty Mutual Fire Insurance Company	23035
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 18712268 **REVISION NUMBER:** XXXXXXX

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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	TBC-641-445638-032	5/18/2022	5/18/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
C	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY [ ] SCHEDULED AUTOS HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-445638-022	5/18/2022	5/18/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ XXXXXXX
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	TH7-641-445638-042	5/18/2022	5/18/2023	EACH OCCURRENCE AGGREGATE $	$ 5,000,000 $ 5,000,000 $ XXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WCC-641-445638-012	5/18/2022	5/18/2023	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

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

CERTIFICATE HOLDER

18712268

City of Midland, Texas,
a home-rule municipal corporation
PO Box 1152
Midland TX 79702

PACKET

CANCELLATION See Attachment

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

18.60

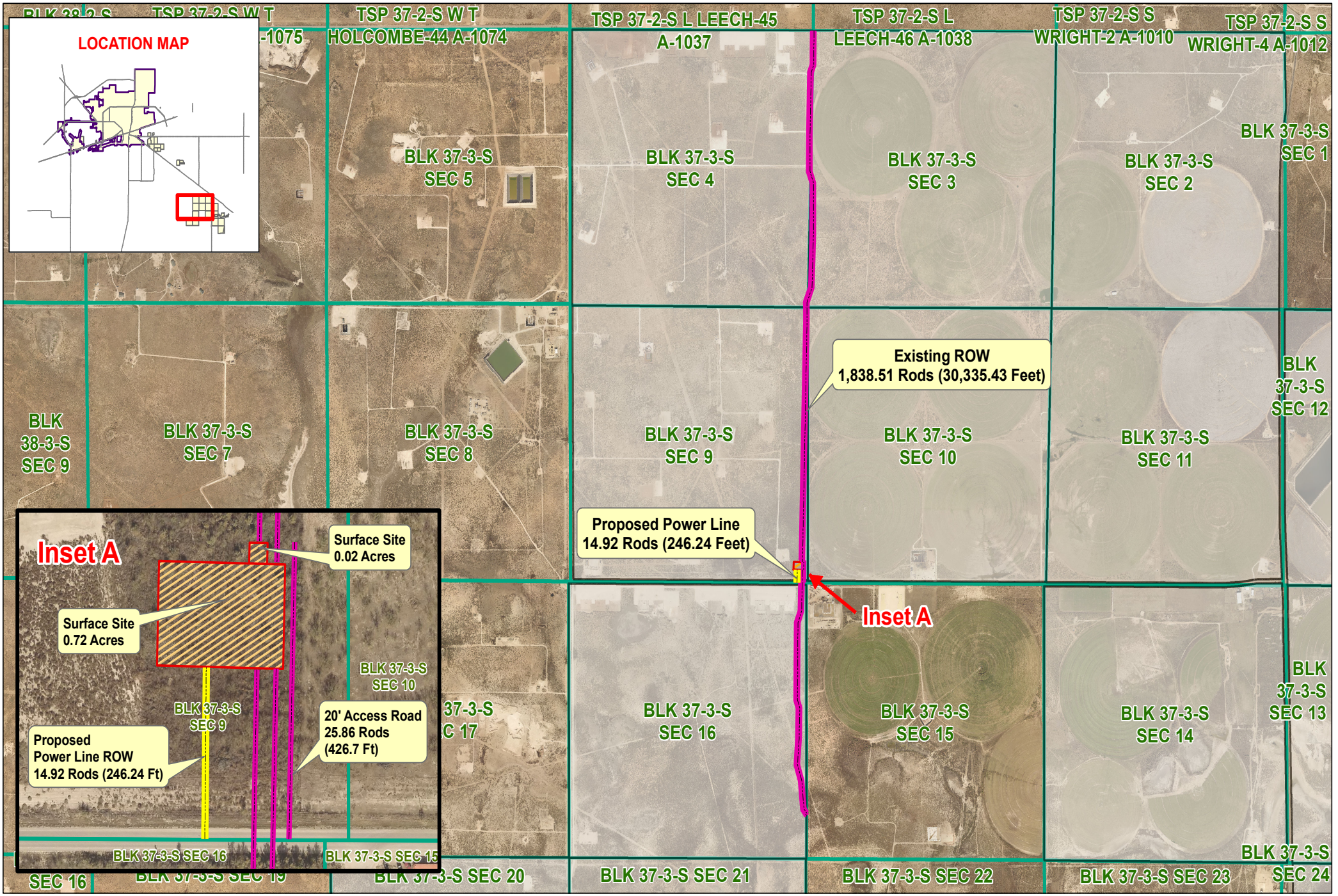
May 9, 2023

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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.



Date: 3/29/2023

Proposed Power Line
Existing ROW
Surface Site
City Owned Property
Survey Section

PACKET 18.62

Bangle and Whistler Proposed Power Line ROW

May 9, 2023

0 1,000 2,000 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 19

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of Right-of-Way license (23-329-023) with Whistler Pipeline LLC, regarding City-owned property described as Section 9, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This Right of Way License will replace the one-year License effective July 26, 2022, granting Whistler Pipeline, LLC a 20' wide right of way to build an access road to their pipeline access valves on City of Midland-owned Sprayberry Farm real property.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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:

The following fees will be collected:

Application fee (one time): $1,000

Full ten-year term paid in advance ($90 per rod x 25.86 rods) $2,327.40

TOTAL PAID: $3,327.40

Discussion:

This is a basic, dirt-construction, oilfield access road that allows access to the existing valve site and associated pipeline facilities.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris William Jr.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Whistler Pipeline LLC, a Delaware limited liability company
Licensee's Representative:	Glenn Kellison
Licensee's Mailing Address:	100 Congress Avenue, Suite 2200 Austin, Texas 78701
Property:	As described in Article III below
License Number:	23-329-023

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.

W I T N E S S E T H:

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. Initial 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.

I. Financial Consideration

A. License Fee. The license fee for the Initial Term in the amount of TWO THOUSAND THREE HUNDRED TWENTY-SEVEN and 40/100 Dollars ($2,327.40) 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.

II. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being twenty feet (20') in width of the road location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, an access road, not to exceed twenty feet (20') in width, together with the right of ingress and egress at convenient points for such purpose, (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the access road 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 access road 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 ACCESS ROAD 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 access road 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. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the access road that must be moved. 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 access road 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 not be unreasonably withheld, conditioned or delayed; provided, however, if Licensor does not respond to Licensee within four (4) weeks, such request shall be deemed approved. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. 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 by promptly removed from the Property.

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

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

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 Licensee's access road, 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 for damages against Licensor. The relocation, change or alteration shall be at the sole cost of Licensee. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the access road that must be relocated, changed or altered. 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.

III. 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 include 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 include 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 include 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 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. 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 ACCESS ROAD 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 ACCESS ROAD 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. Notwithstanding the foregoing, Licensee may assign this License, in whole, without the consent of Licensor, to any: (i) entity that, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under the common ownership or control of, Licensee; or (ii) any person, bank, financing institution or other lender, or groups thereof, as security for amounts payable under any financing or other arrangements under which Licensee has borrowed funds. Licensee will remain responsible for any obligations it incurs under this License prior to any assignment and will ensure that its assignee agrees, in writing, to be bound by the terms of this License, including but not limited to, the insurance requirements set forth hereinabove.

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 NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000.00). 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, TO THE EXTENT SUCH IMMUNITY EXISTS.

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 RELATED TO THIS LICENSE, 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 ORDINARY NEGLIGENCE.

H. Governmental Immunity. To the extent governmental immunity exists, 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 SHOULD SUCH IMMUNITY APPLY.**

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, to the extent such immunity exists.

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. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit B**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor.

Q. 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.

R. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

S. 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.

T. 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 to Follow)

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis §

BEFORE ME, the undersigned authority, on this 24th day of April, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company 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 24th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, 2011 USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description: MCL-TX-MID-0090.00000-PA

BEING the centerline of a 20' access road in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586005.25, E:755544.07] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°25'53" E, a distance of 99.05 feet;

THENCE, N 13°13'14" W, a distance of 426.70 feet, to the Point of Terminus, [N:11586420.64, E:755446.49] in said Section, for a total of 426.70 Feet or 25.86 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
6087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2853 GARDNER ROAD
HIGHLANDERS, TX 76037
FIRM LICENSE # 10194077
817-301-3647

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

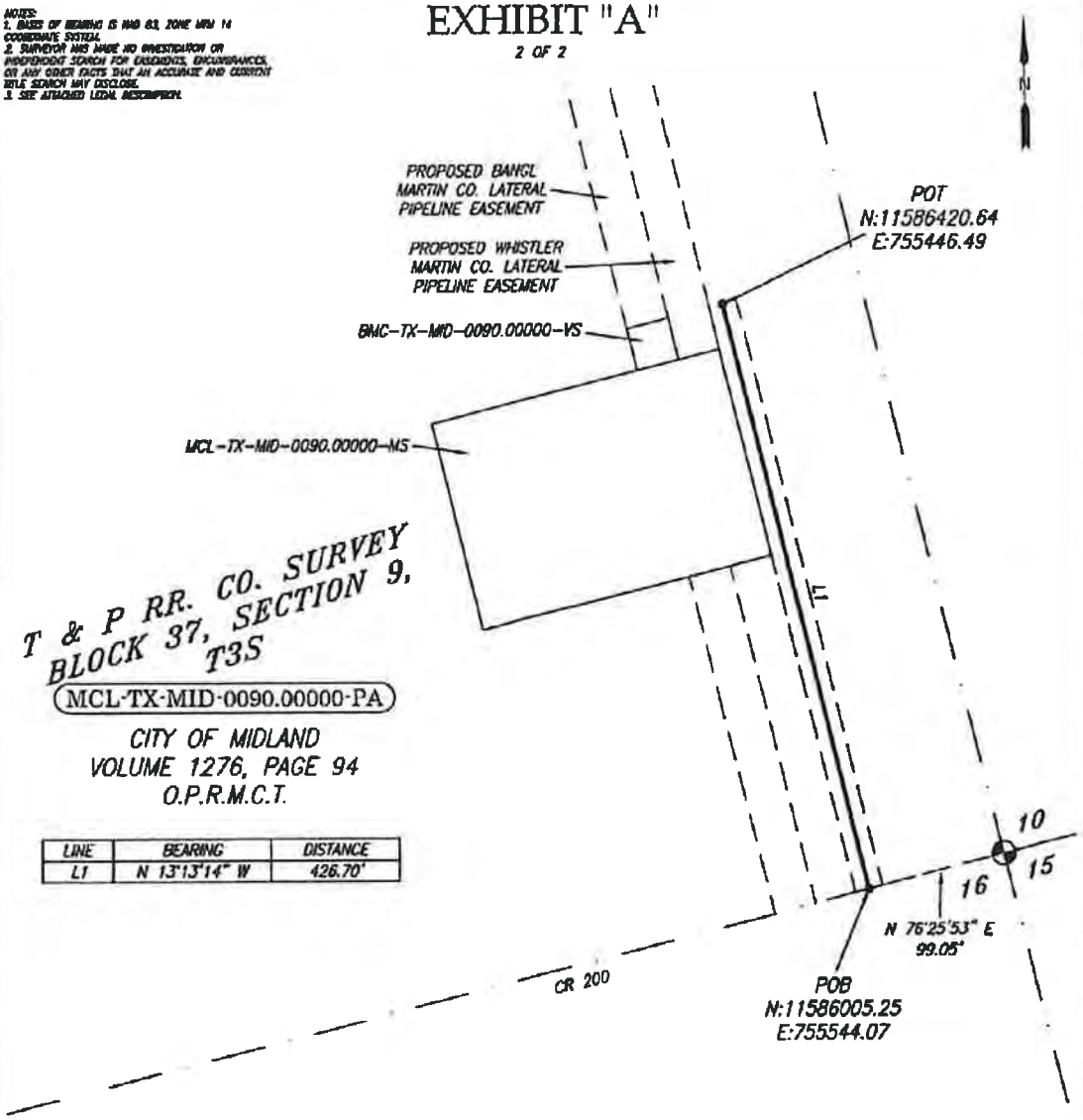
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED BY:
AFE: 21201	DATE: 01/24/2022	REV: 1 (1:32) 7/13/2022

PACKET 19.19 May 9, 2023

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE NAD 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°13'14" W	426.70'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 2 200' 300'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3833 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10134371
817-531-3047

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21291

DRAWN BY: CE

DATE: 07/14/2022

CHECKED BY:

REV: 1) 12/12/2022

E:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-PA.dwg

MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and WHISTLER PIPELINE LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ ___, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being twenty feet (20') in width of the road location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, an access road, not to exceed twenty feet (20') in width, together with the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ ___, 2023.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF Travis §

BEFORE ME, the undersigned authority, on this 24th day of April, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company 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 24th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM N COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description: MCL-TX-MID-0090.00000-PA

BEING the centerline of a 20' access road in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1276 Page 94, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586005.25, E:755544.07] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°25'53" E. a distance of 99.05 feet;

THENCE, N 13°13'14" W, a distance of 426.70 feet, to the Point of Terminus, [N:11586420.64, E:755446.49] in said Section, for a total of 426.70 Feet or 25.86 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2853 CARMEN ROAD
MIDLOTHIAN, TX 76065
FIRM LICENSE # 10194071
817-301-3047

CENTERLINE FOOTAGE: 426.70'

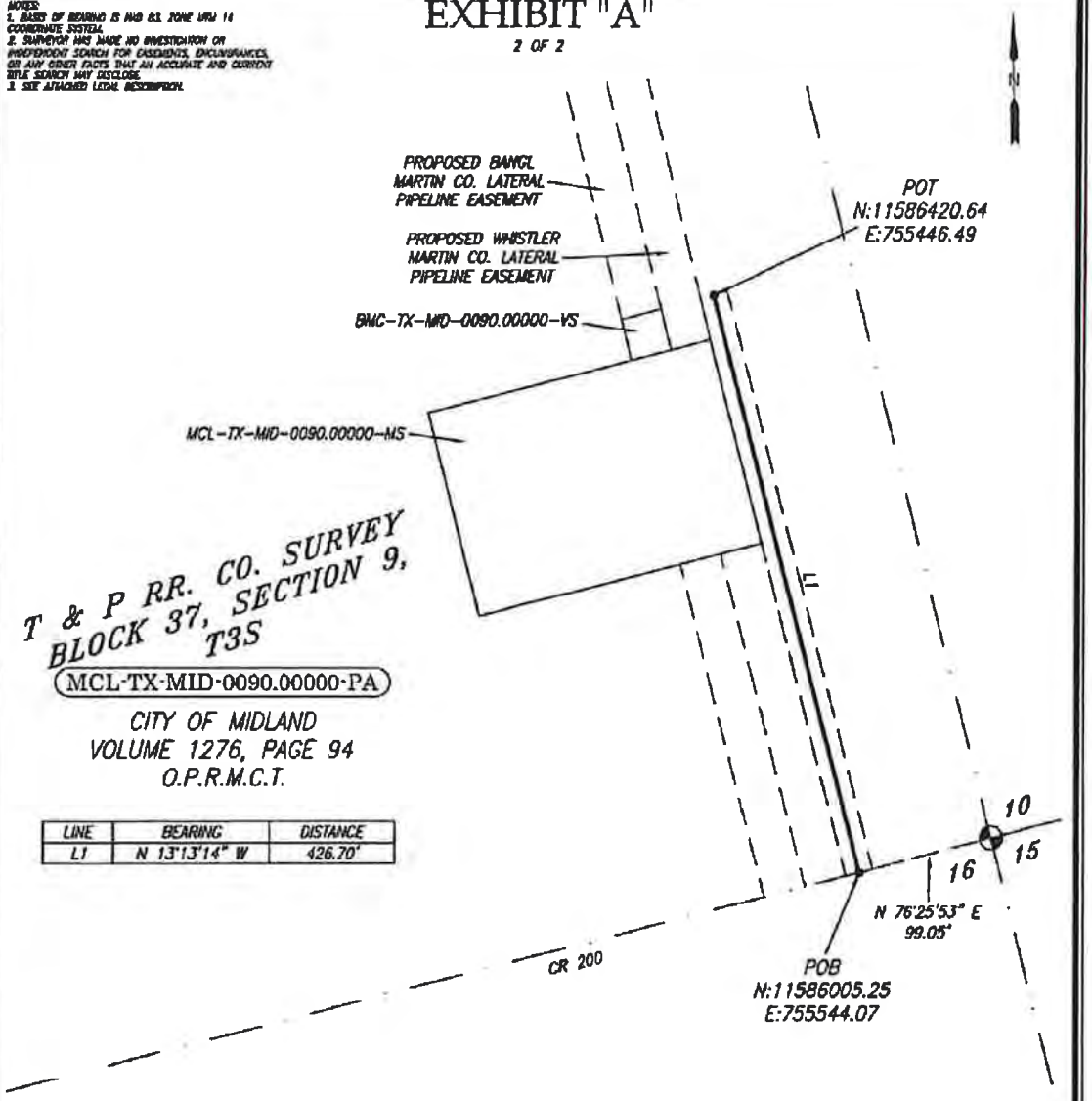
RODS: 25.86

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CF	CHECKED BY:
AFE: 21301	DATE: 05/24/2022	DATE: 06/07/2022

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
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EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
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STATE OF TEXAS
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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' ACCESS ROAD

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2633 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10154071
817-501-3947

CENTERLINE FOOTAGE: 426.70'

RODS: 25.86

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CJC	CHECKED BY:
AFE: 21201	DATE: 07/14/2022	REV: 1) 07/13/2022

D:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-PA.dwg

CERTIFICATE OF LIABILITY INSURANCE

5/18/2023

DATE (MM/DD/YYYY) 7/13/2022

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Employers Insurance Company of Wausau	21458
INSURED 1461468	Whistler Pipeline LLC 100 Congress, Suite 2200 Austin TX 78701	**INSURER B :** Liberty Insurance Corporation	42404
		INSURER C : Liberty Mutual Fire Insurance Company	23035
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 18712258 **REVISION NUMBER:** XXXXXXX

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	TBC-641-445638-032	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
C	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-445638-022	5/18/2022	5/18/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$ XXXXXXX
							BODILY INJURY (Per accident)	$ XXXXXXX
							PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	TH7-641-445638-042	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$ XXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** Y / N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WCC-641-445638-012	5/18/2022	5/18/2023	[X] 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)

CERTIFICATE HOLDER

18712258

City of Midland, Texas,
a home-rule municipal corporation
PO Box 1152
Midland TX 79702

PACKET 19.27

CANCELLATION See Attachment

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

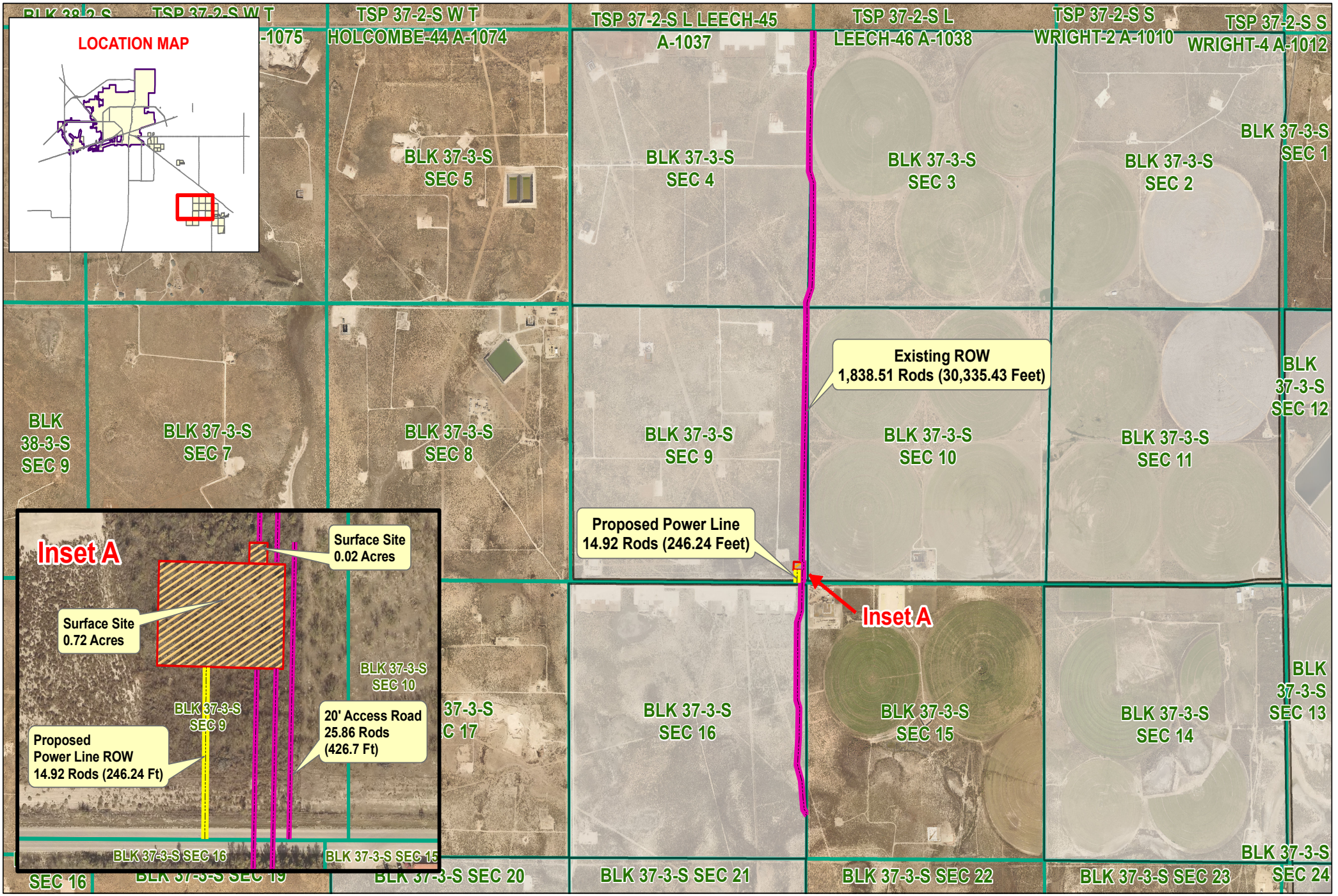
May 9, 2023

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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.



Date: 3/29/2023

Proposed Power Line
Existing ROW
Surface Site
City Owned Property
Survey Section

PACKET 19.29

Bangle and Whistler Proposed Power Line ROW

May 9, 2023

0 1,000 2,000 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 20

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of Right-of-Way license (23-329-024) with Whistler Pipeline LLC regarding City-owned property described as Sections 4, 9, and 16, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This 10-year Right of Way License will replace the one-year License effective July 26, 2022, granting Whistler Pipeline, LLC a 30' wide right of way and a 31,500 square foot surface use area to place a Thirty-Six inch (36") common carrier, steel construction, natural gas pipeline and above ground valves on City of Midland owned Sprayberry Farm real property.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. Terms are consistent with the City's standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Full ten-year term paid in advance pipeline ($470 per rod x 905.41 rods) $425,542.70
Surface area (31,500 square feet x $0.24 per sq. ft.) $7,560.00

TOTAL PAID: $435,102.70

Discussion:

This is a common carrier, steel construction natural gas line and is thirty-six inches (36) in diameter and is buried thirty-six inches (36) deep with a 31,500 square foot surface use area for valves.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris Williams Jr.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Whistler Pipeline LLC, a Delaware limited liability company
Licensee's Representative:	Glenn Kellison
Licensee's Mailing Address:	100 Congress Avenue, Suite 2200 Austin, Texas 78701
Property:	As described in Article III below
License Number:	23-329-024

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.

W I T N E S S E T H:

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. Initial 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.

I. Financial Consideration

A. License Fee. The license fee for the Initial Term in the amount of FOUR HUNDRED THIRTY-THREE THOUSAND ONE HUNDRED TWO and 70/100 Dollars ($433,102.70) 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.

II. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being thirty feet (30') in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed thirty-six inches (36") in diameter, and a 31,500-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities 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 pipeline(s) and facilities 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. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than thirty-six inches (36") in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, 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 PIPELINE 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. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline or permitted facilities or structures that must be moved. 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. However, Licensor agrees not to grant other easements crossing the surface site, as such surface site is exclusive to Licensee during the term of this License.

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 any pipeline 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 not be unreasonably withheld, conditioned or delayed; provided, however, if Licensor does not respond to Licensee within four (4) weeks, such request shall be deemed approved. 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 by promptly removed from the Property.

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

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

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 any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor, without any claim for reimbursement for the cost of the alteration, change or relocation or for damages against Licensor. The relocation change or alteration shall be at the sole cost of Licensee. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline or permitted facilities or structures that must be relocated, changed, or altered.

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.

O. Surface Site. The surface site herein may be used for the purpose of placing, constructing, operating, repairing, maintaining, replacing, and removing above and below the surface of the ground, pipelines, valves, risers, vents, cables, meters, pigging equipment, alternating current mitigation equipment, solar power facilities, cathodic protection equipment, and other appurtenances to the pipeline. Licensee may fence only the area of the surface site and install and maintain a gate or gates in the fence, and Licensee may lay a caliche base on the surface of the surface site.

III. 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 include 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 include 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 include 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 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. 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 PIPELINE OR OTHER PERMITTED FACILITIES OR STRUCTURES 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 PIPELINE OR PERMITTED FACILITIES OR STRUCTURES 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. Notwithstanding the foregoing, Licensee may assign this License, in whole, without the consent of Licensor, to any: (i) entity that, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under the common ownership or control of, Licensee; or (ii) any person, bank, financing institution or other lender, or groups thereof, as security for amounts payable under any financing or other arrangements under which Licensee has borrowed funds. Licensee will remain responsible for any obligations it incurs under this License prior to any assignment and will ensure that its assignee agrees, in writing, to be bound by the terms of this License, including but not limited to, the insurance requirements set forth hereinabove.

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 NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000.00). 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, TO THE EXTENT SUCH IMMUNITY EXISTS.

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 RELATED TO THIS LICENSE, 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 ORDINARY NEGLIGENCE.

H. Governmental Immunity. To the extent governmental immunity exists, 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 SHOULD SUCH IMMUNITY APPLY.**

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, to the extent such immunity exists.

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. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit B**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor.

Q. 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.

R. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

S. 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.

T. 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 to Follow)

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF travis §

BEFORE ME, the undersigned authority, on this 24th day of april, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company 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 24th day of april, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 4TH 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 6

Legal description: MCL-TX-MID-0089.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 4, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 760 Page 466, Official Public Records, Midland County, Texas, said right of way being described as follows:

BEGINNING at a point [N:11596295.24, E:753129.89] in the north line of said Section, from which a railroad spike found for the northwest corner of said Section bears S 76°42'54" W, a distance of 5,275.13 feet;

THENCE, S 14°00'28" E, a distance of 652.87 feet, to a point for a corner;

THENCE, S 06°42'17" W, a distance of 153.58 feet, to a point for a corner;

THENCE, S 13°17'43" E, a distance of 1,214.11 feet, to a point for a corner;

THENCE, S 14°14'21" E, a distance of 677.65 feet, to a point for a corner;

THENCE, S 34°14'21" E, a distance of 243.14 feet, to a point for a corner;

THENCE, S 14°14'39" E, a distance of 997.83 feet, to a point for a corner;

THENCE, S 12°51'06" E, a distance of 1,000.58 feet, to a point for a corner;

THENCE, S 07°08'54" W, a distance of 310.38 feet, to a point for a corner;

THENCE, S 14°57'47" E, a distance of 92.41 feet, to the Point of Terminus, [N:11591129.94, E:754305.99] in the south line of said Section, from which a 5" concrete monument with a iron rod found for the southwest corner of said Section bears S 76°41'17" W, a distance of 5,222.47 feet for a total of 5,342.55 Feet or 323.79 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

JOB: WHISTLER MARTIN COUNTY LATERAL

DRAWN BY: CR

CHECKED BY:

DATE: 21201

DATE: 07/12/2022

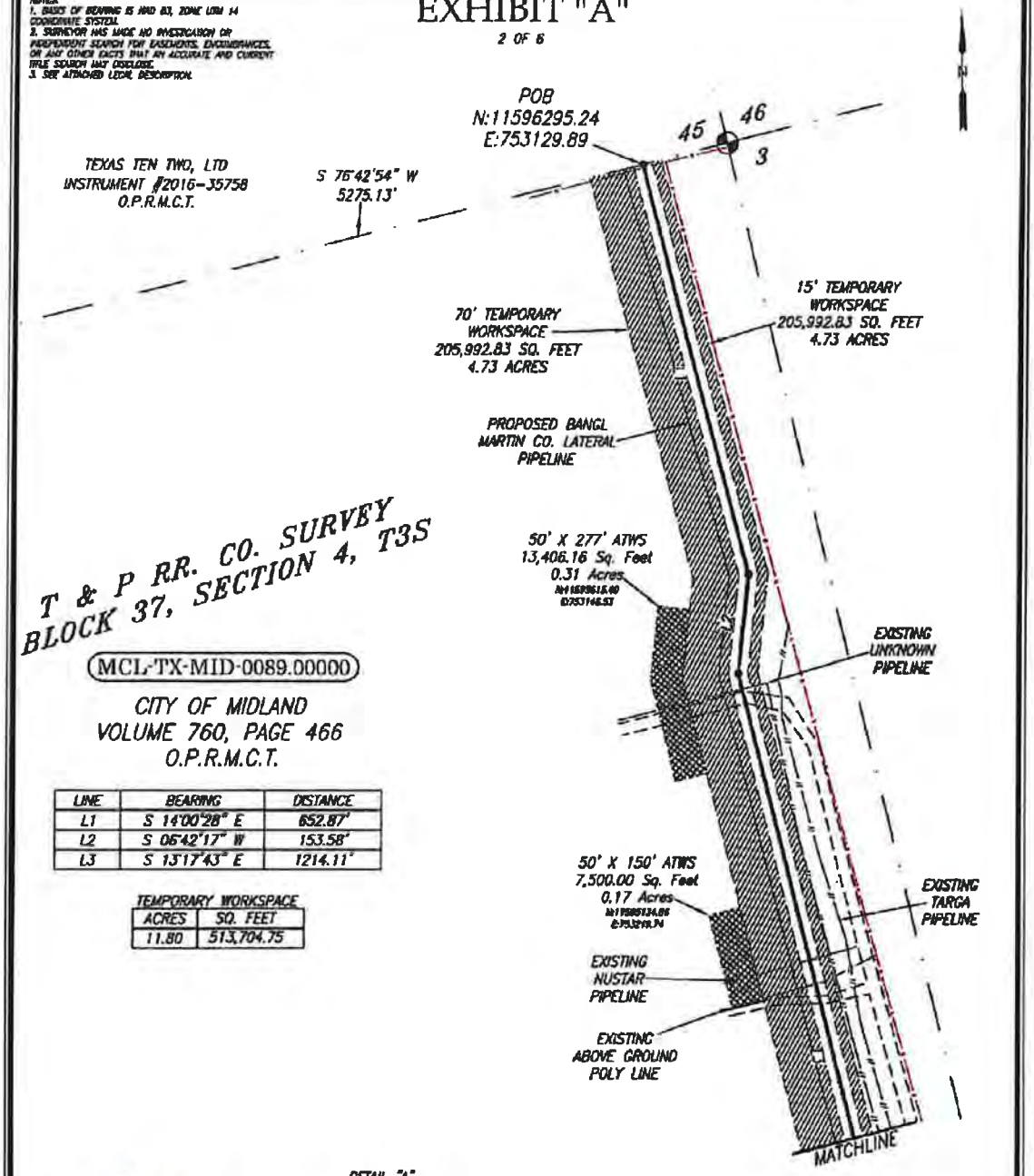
REV: (1) 07/13/2022

J:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0089.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE LCM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 6



LINE	BEARING	DISTANCE
L1	S 14°00'28" E	652.87'
L2	S 06°42'17" W	153.58'
L3	S 13°17'43" E	1214.11'

TEMPORARY WORKSPACE	
ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2652 CRADER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10134071
817-501-3847

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

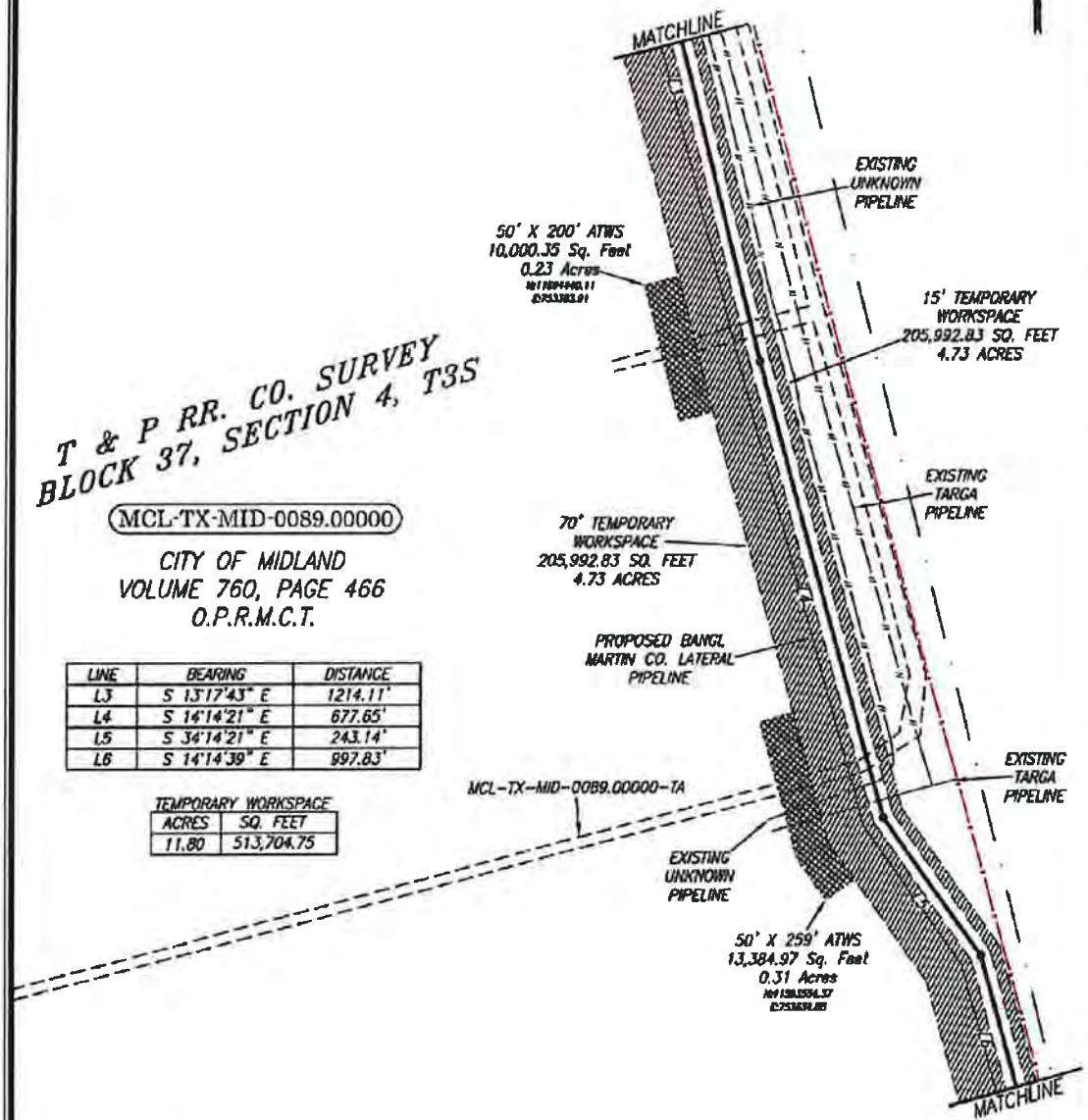
JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21201

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE: USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 6



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L3	S 13°17'43" E	1214.11'
L4	S 14°14'21" E	677.65'
L5	S 34°14'21" E	243.14'
L6	S 14°14'39" E	997.83'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3100 CRISHER ROAD
MIDLOTHIAN, TX 76065
FIRM LICENSE # 10194071
817-501-3947

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

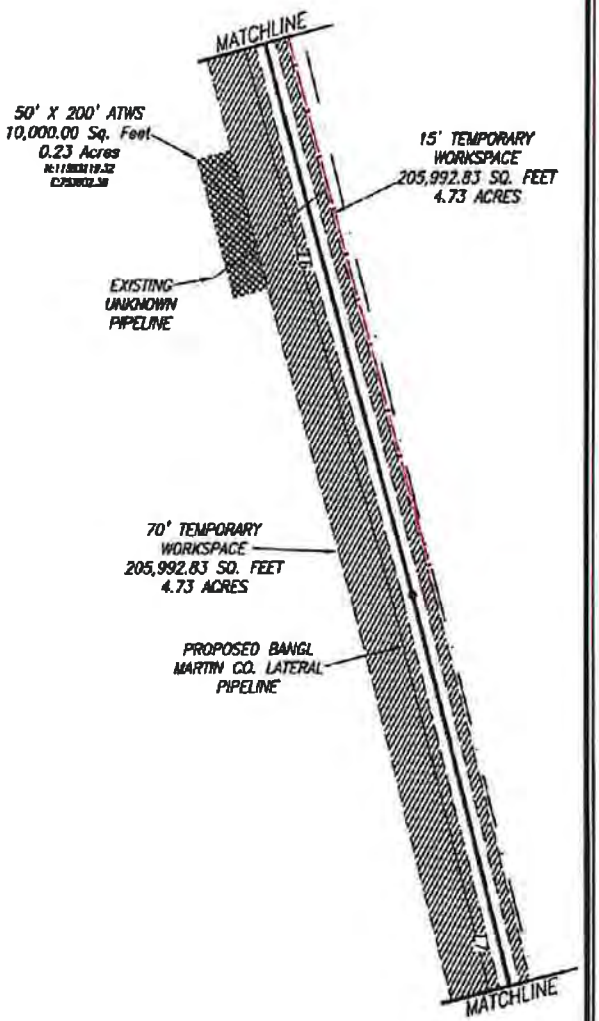
JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: DK | CHECKED BY:
AFE: 21201 | DATE: 02/10/2022 | REV: 2 07/13/2022

G:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0089.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 6



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L6	S 14°14'39" E	997.83'
L7	S 12°51'06" E	1000.58'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2937 CARDINAL ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194571
817-501-3047

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

ACAD: WHISTLER MIDLAND COUNTY LATERAL	DRAWN BY: GP	CHECKED BY:
AFE: 21201	DATE: 07/13/2022	REVISED: 07/14/2022

PACKET 20.23 May 9, 2023

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 6

T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

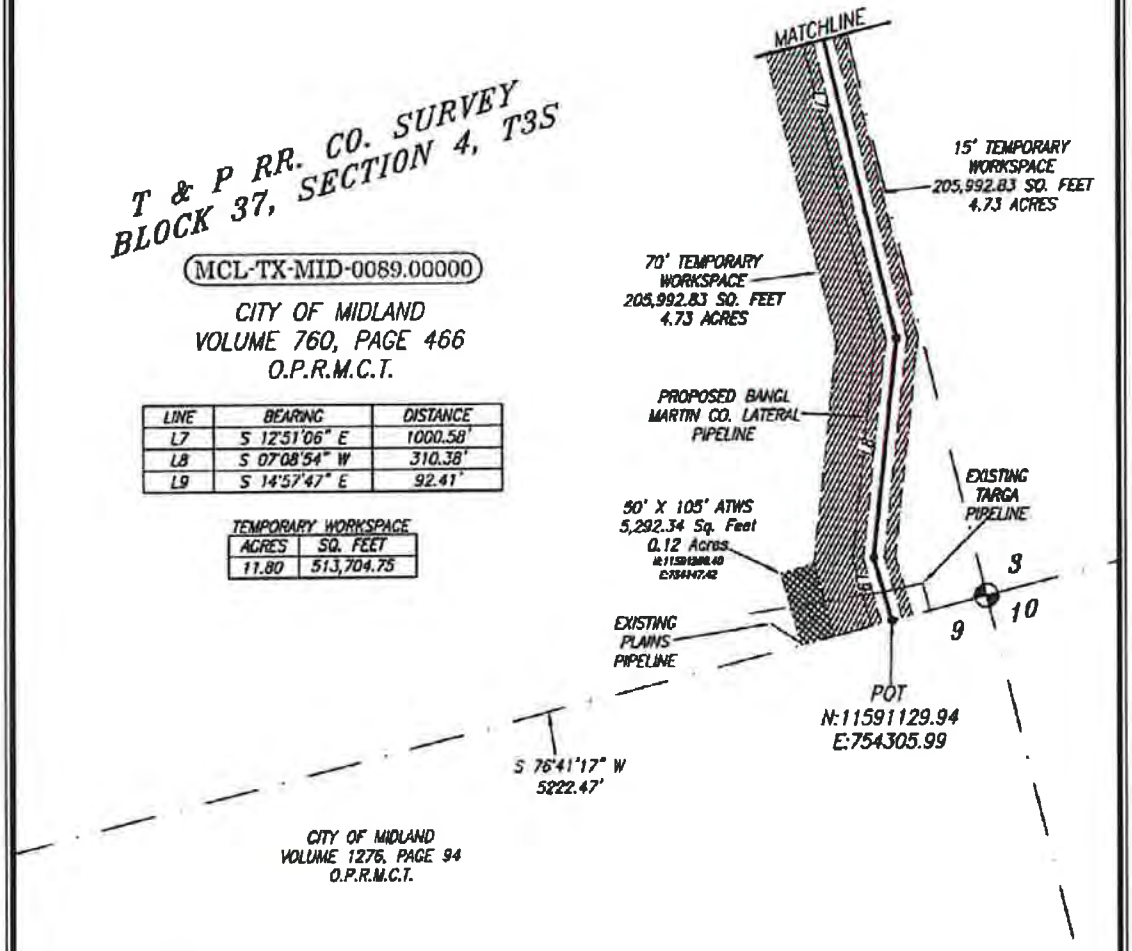
MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L7	S 12°51'06" E	1000.58'
L8	S 07°08'54" W	310.38'
L9	S 14°57'47" E	92.41'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75



CITY OF MIDLAND
VOLUME 1276, PAGE 94
O.P.R.M.C.T.

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194871
817-301-3947

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: GR | CHECKED BY: MP
AFE: 21201 | DATE: 02/16/2022 | REV: 2 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 5

Legal description "A": MCL-TX-MID-0090.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11591129.94, E:754305.99] in the north line of said Section, from which a 5" concrete monument with iron rod found for the northwest corner of said Section bears S 76°41'17" W, a distance of 5,222.47 feet;

THENCE, S 14°57'47" E, a distance of 271.65 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 4,603.79 feet, to the Point of Terminus, [N:11586385.72, E:755429.01] in the north line of of a proposed surface site in said Section, for a total of 4,875.44 Feet or 295.48 Rods

Legal description "B": MCL-TX-MID-0090.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586239.69, E:755463.31] in the south line of a proposed surface site in said Section;

THENCE, S 13°13'14" E, a distance of 90.12 feet, to a point for a corner;

THENCE, S 13°13'28" E, a distance of 156.56 feet, to the Point of Terminus, [N:11585999.55, E:755519.74] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°30'24" E, a distance of 124.04 feet for a total of 246.69 Feet or 14.95 Rods

Legal description : MCL-TX-MID-0090.00000-MS

BEING a 150' x 210' surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11586195.10, E:755273.48] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 65°34'33" E, a distance of 402.93 feet;

THENCE, N 13°13'14" W, a distance of 150.00 feet, to a point for a corner;

THENCE, N 76°46'46" E, a distance of 210.00 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 150.00 feet, to a point for a corner;

THENCE, S 76°46'46" W, a distance of 210.00 feet, to the Point of Beginning, for a total of 31,500.00 Square Feet or 0.72 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2952 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3647

CENTERLINE FOOTAGE: 5,122.13'
RODS: 310.43

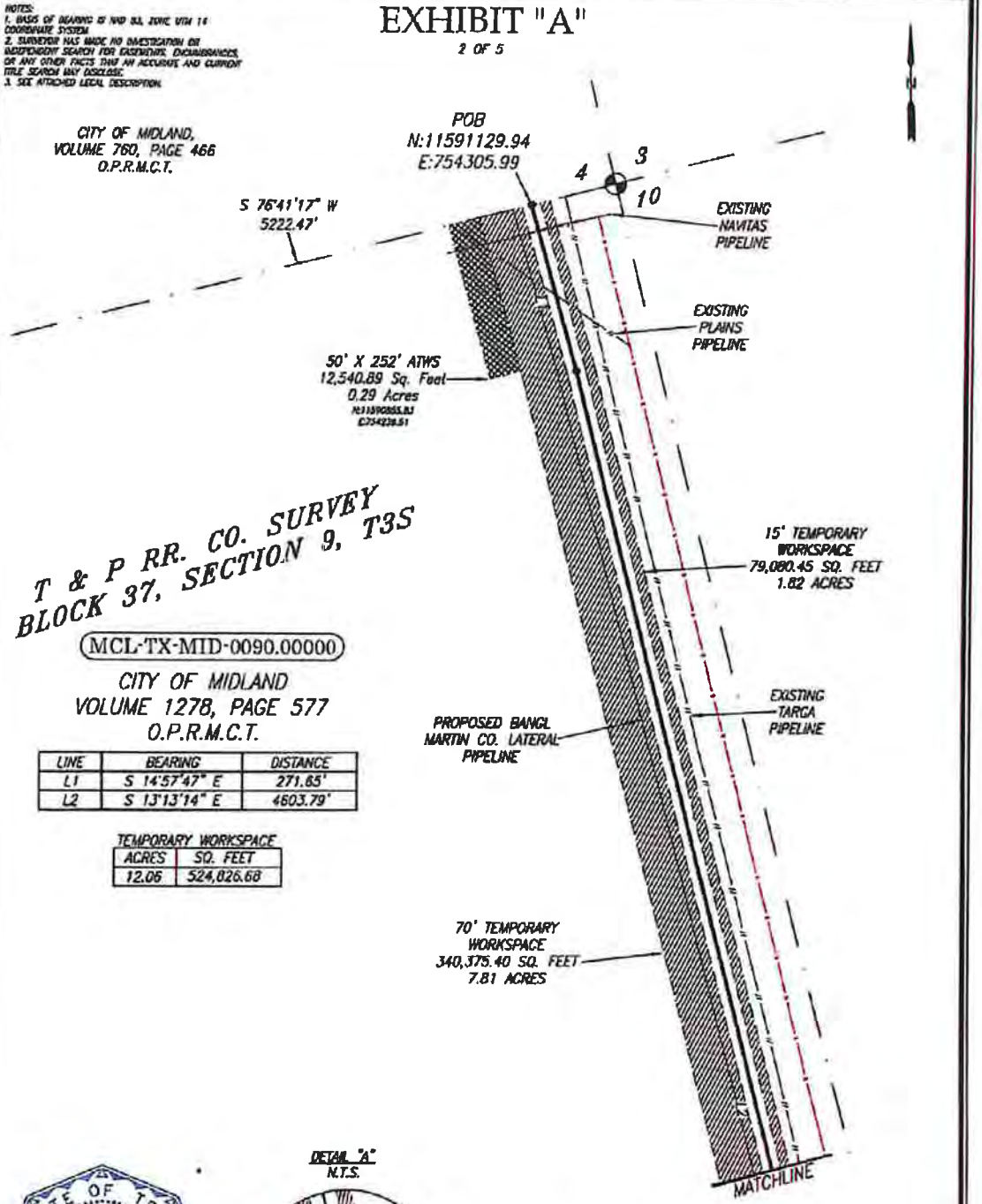
JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: CJS | CHECKED BY:
AFE: 21201 | DATE: 07/13/2022 | REV. #1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	S 14°57'47" E	271.65'
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-12-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3957 DRIVER ROAD
HEATHERFORD, TX 76087
FIRM LICENSE # 10194031
817-501-3847

CENTERLINE FOOTAGE: 5,122.13'
RODS: 310.43

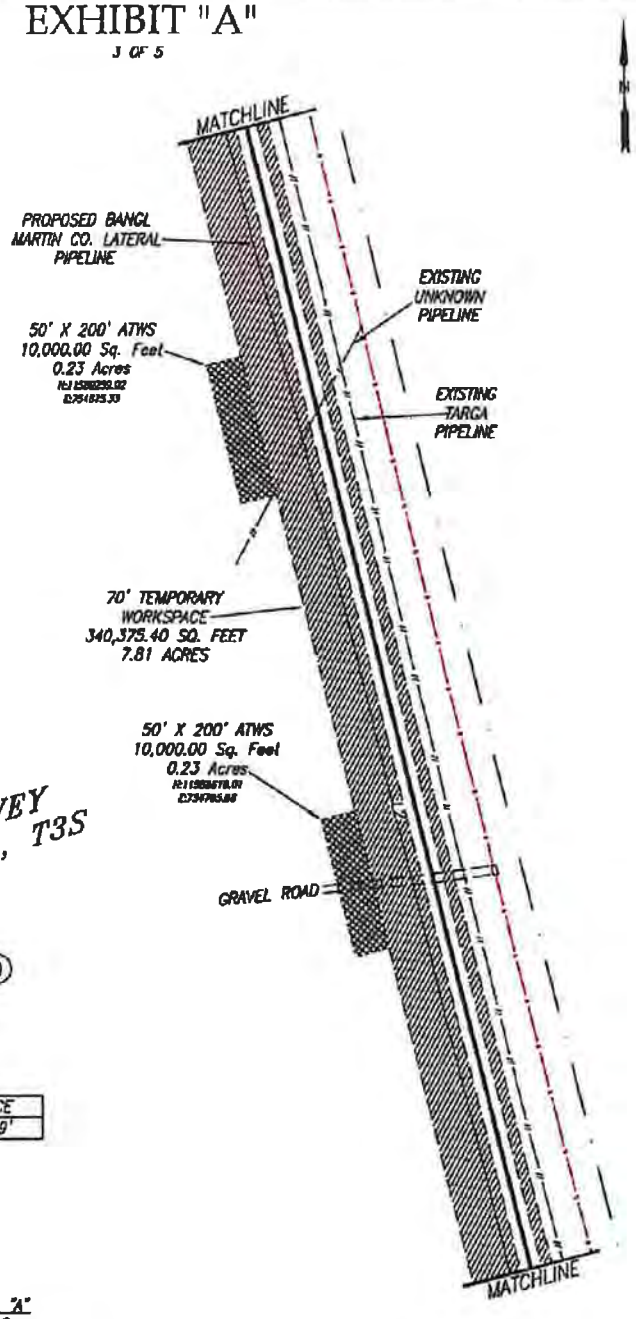
JOB: WHISTLER MARTIN COUNTY LATERAL
AFE: 21301
DRAWN BY: C.R.
DATE: 07/13/2022
CHECKED BY:
REVISED BY 07/11/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 5701 14 COORDINATE SYSTEM.
2. SURVEYOR WAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND,
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2828 DAGGETT ROAD
MIDLAND, TX 79707
FIRM LICENSE # 10194071
817-301-3947

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

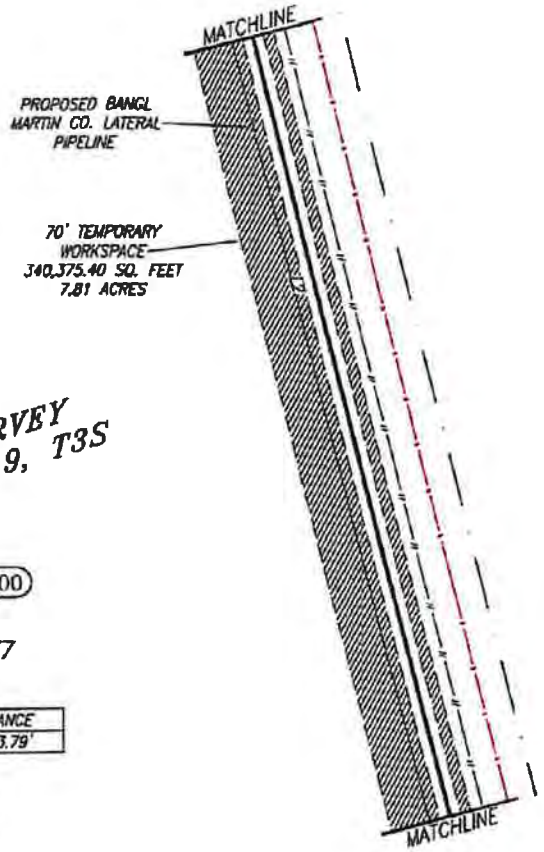
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: DK	CHECKED BY:
AFE: 21201	DATE: 07/13/2022	REV: 1 07/13/2022

P:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USN 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND,
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

0 200' 400' 600'

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3053 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3417

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21201

DRAWN BY: DAT

DATE: 07/13/2022

CHECKED BY:

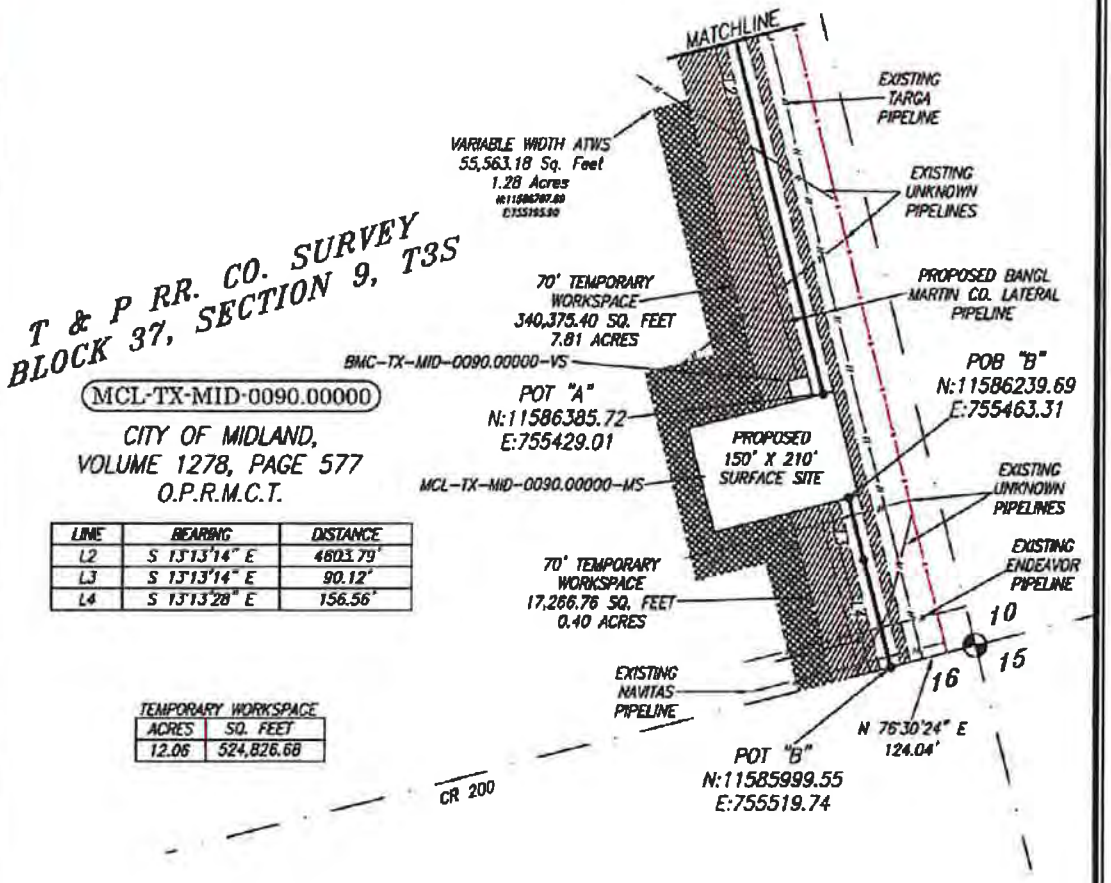
TECH: JT 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 4701 TX COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 5



LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'
L3	S 13°13'14" E	90.12'
L4	S 13°13'28" E	156.56'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

0 200' 400' 600'

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3853 CARDINAL ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21201

DRAWN BY: CT

DATED: 06/23/2022

CHECKED: DAV

REV. #1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 5TM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description : MCL-TX-MID-0090.00000-MS

BEING 0.72 Acre surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11586195.10, E:755273.48] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 65°34'33" E, a distance of 402.93 feet;

THENCE, N 13°13'14" W, a distance of 150.00 feet, to a point for a corner;

THENCE, N 76°46'46" E, a distance of 210.00 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 150.00 feet, to a point for a corner;

THENCE, S 76°46'46" W, a distance of 210.00 feet, to the Point of Beginning, for a total of 31,500.00 Square Feet or 0.72 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
BEAVERTON, OR 97007
FIRM LICENSE # 10194071
517-331-3947

SQUARE FOOTAGE: 31,500.00

ACRES: 0.72

WHISTLER
PIPELINE

150' X 210'
SURFACE SITE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

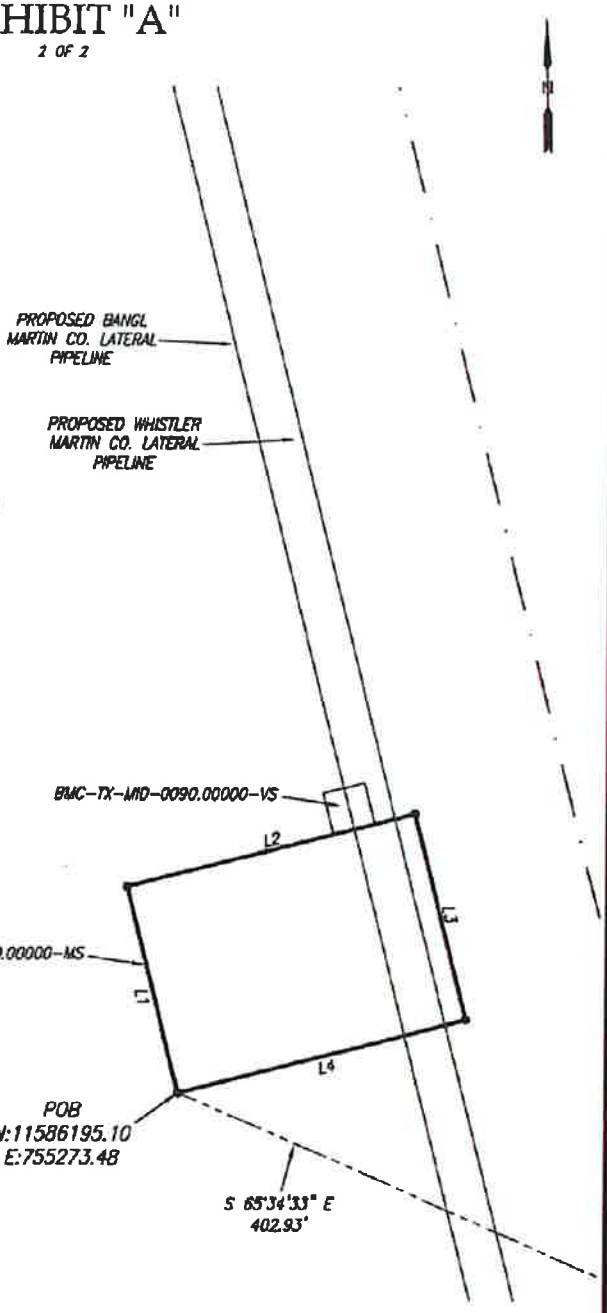
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: GP	CHECKED BY:
AFE: 21201	DATE: 05/20/2022	SCALE:

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UNI 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	N 13°13'14" W	150.00'
L2	N 76°46'46" E	210.00'
L3	S 13°13'14" E	150.00'
L4	S 76°46'46" W	210.00'

0 100' 200' 300'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

150' X 210'
SURFACE SITE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
HEADINGPORT, TX 76067
FIRM LICENSE # 10194031
817-301-3947

SQUARE FOOTAGE: 31,500.00

ACRES: 0.72

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21391

DRAWN BY: CLP

DATE: 06/22/2022

CHECKED BY: DAW

O:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-MS.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 4

Legal description: MCL-TX-MID-0092.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 16, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1160 Page 622, Deed Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11585931.12, E:755535.82] in the north line of said tract, from which a 3/8" iron rod found for the northeast corner of said Section bears N 47°02'00" E, a distance of 142.86 feet;

THENCE, S 13°13'28" E, a distance of 547.48 feet, to a point for a corner;

THENCE, S 05°52'18" W, a distance of 233.84 feet, to a point for a corner;

THENCE, S 14°07'42" E, a distance of 1,479.42 feet, to a point for a corner;

THENCE, S 33°13'35" E, a distance of 155.54 feet, to a point for a corner;

THENCE, S 13°13'35" E, a distance of 593.68 feet, to a point for a corner;

THENCE, S 10°24'19" E, a distance of 496.60 feet, to a point for a corner;

THENCE, S 31°54'42" E, a distance of 319.20 feet, to a point for a corner;

THENCE, S 19°33'34" E, a distance of 544.19 feet, to a point for a corner;

THENCE, S 51°39'01" E, a distance of 104.65 feet, to the Point of Terminus, [N:11581685.73, E:756742.01] in the east line of said Section, from which a 1" iron pipe found for the southeast corner of said Section bears S 14°14'03" E, a distance of 803.27 feet for a total of 4,474.60 Feet or 271.19 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3852 GARDNER ROAD
NORTHBROOK, TX 76067
FIRM LICENSE # 10194071
817-501-3817

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

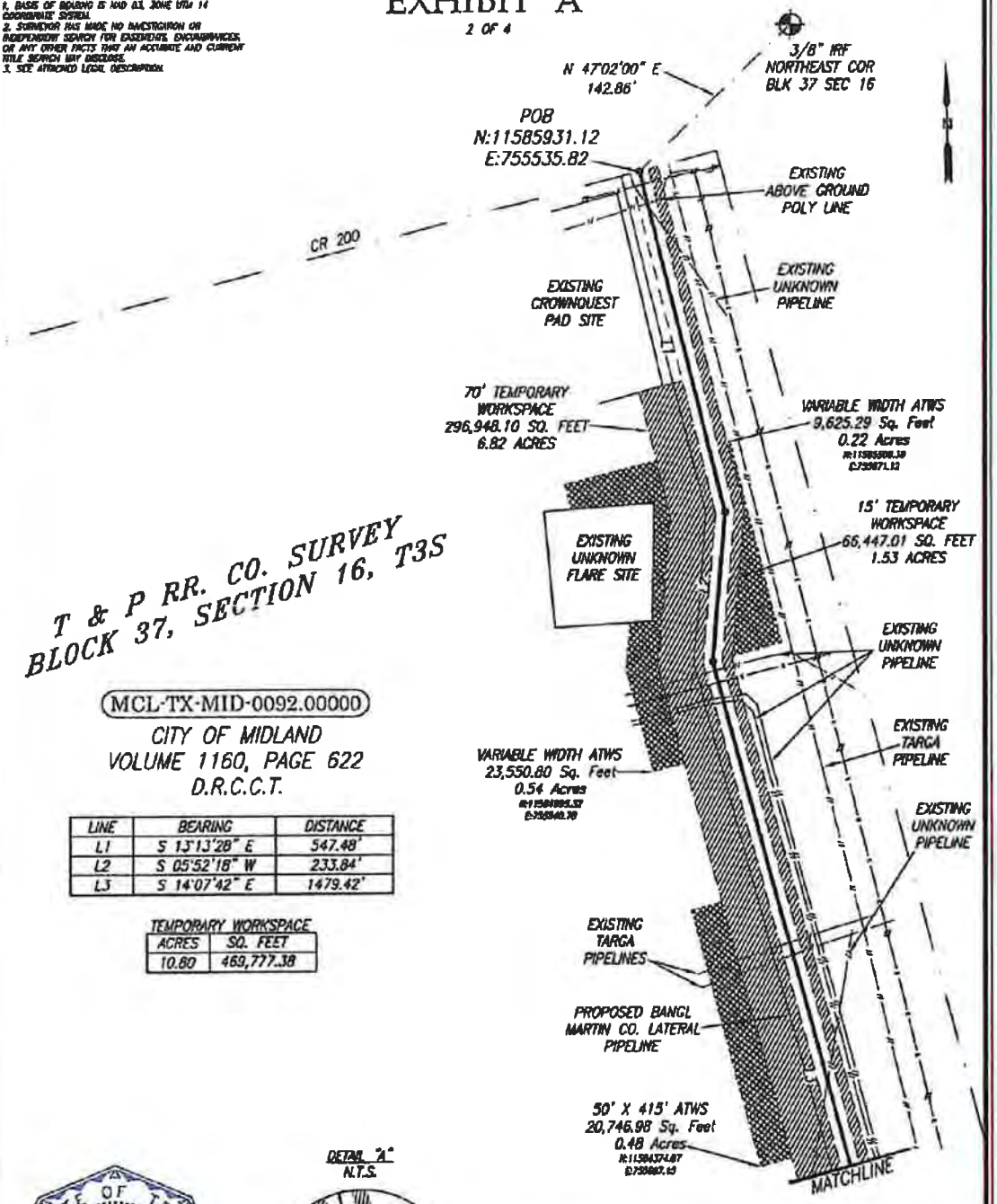
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CJS	CHECKED BY:
AFE: 21201	DATE: 07/13/2022	REV: 1 08/11/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USU 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

MCL-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L1	S 13°13'28" E	547.48'
L2	S 05°52'18" W	233.84'
L3	S 14°07'42" E	1479.42'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
BROOKSHIRE, TX 77087
FIRM LICENSE # 10194071
979-501-3947

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

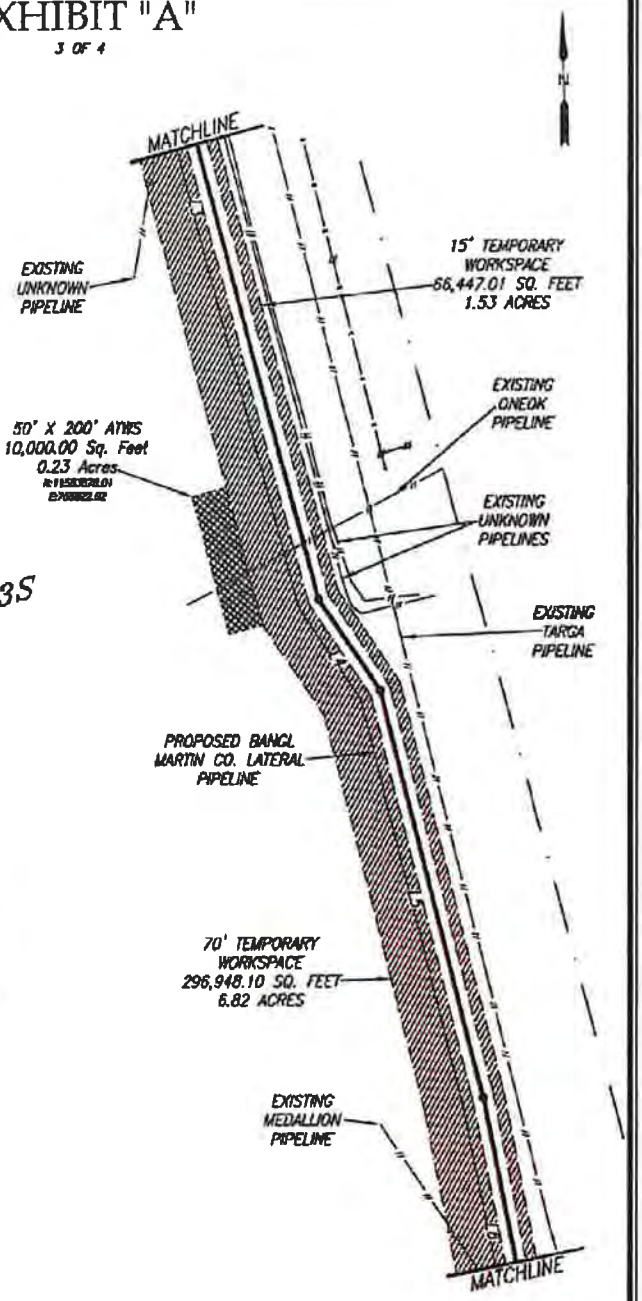
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: DK	CHECKED BY:
AFE: 21201	DATE: 03/23/2022	REV: 1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, 2011 UTM 14 GEOGRAPHIC SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

MCL-TX-MID-0092.00000
CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L3	S 14°07'42" E	1479.42'
L4	S 33°13'35" E	155.54'
L5	S 13°13'35" E	593.68'
L6	S 10°24'19" E	496.60'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
8853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3547

CENTERLINE FOOTAGE: 4,474.60'
RODS: 271.19

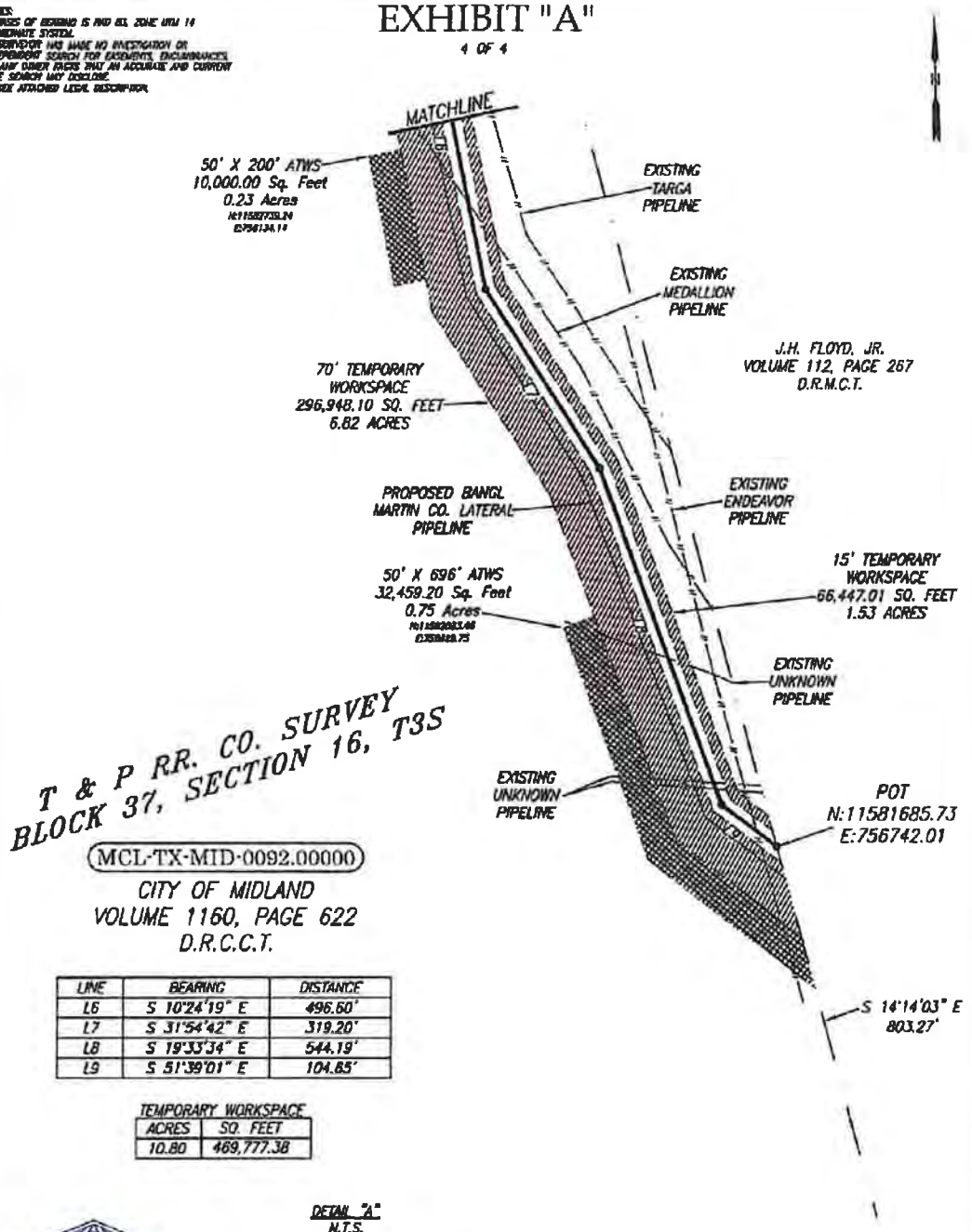
JOB: WHISTLER MARTIN COUNTY LATERAL
AFE: 21201
DRAWN BY: GR
DATE: 07/13/2022
CHECKED BY:
DATE: 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 4204, US FT COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

MCL-TX-MID-0092.00000
CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L6	S 10°24'19" E	496.60'
L7	S 31°54'42" E	319.20'
L8	S 19°33'34" E	544.19'
L9	S 51°39'01" E	104.65'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3857 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194031
817-501-3647

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21301

DRAWN: BG CHECKED: DAG

DATE: 02/18/2022 REV: #1 03/11/2022

D:\WhistlerMidstream\Martin County Laterals\Plats\Final GIF MCL City of Midland (2).dwg

EXHIBIT B
Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

FORM OF MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and WHISTLER PIPELINE LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ __, 20__ (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being one hundred fifteen feet (115') in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed thirty-six inches (36") in diameter, and a 31,500-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to thirty feet (30') after the pipeline is laid (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one

document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ __, 20__.

LICENSOR:

CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 20__, by Robert Patrick, City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By:_____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2022 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2022.

_____
Notary Public, State of Texas

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and WHISTLER PIPELINE LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ ___, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being thirty feet (30') in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed thirty-six inches (36") in diameter, and a 31,500-square-foot surface site, for the transportation of natural gas, natural gas liquids, and its and their constituents and byproducts and to have the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ ____, 2023.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF travis §

BEFORE ME, the undersigned authority, on this 24th day of april, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company 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 24th day of april, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR WAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 6

Legal description: MCL-TX-MID-0089.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 4, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 760 Page 466, Official Public Records, Midland County, Texas, said right of way being described as follows:

BEGINNING at a point [N:11596295.24, E:753129.89] in the north line of said Section, from which a railroad spike found for the northwest corner of said Section bears S 76°42'54" W, a distance of 5,275.13 feet;

THENCE, S 14°00'28" E, a distance of 652.87 feet, to a point for a corner;

THENCE, S 06°42'17" W, a distance of 153.58 feet, to a point for a corner;

THENCE, S 13°17'43" E, a distance of 1,214.11 feet, to a point for a corner;

THENCE, S 14°14'21" E, a distance of 677.65 feet, to a point for a corner;

THENCE, S 34°14'21" E, a distance of 243.14 feet, to a point for a corner;

THENCE, S 14°14'39" E, a distance of 997.83 feet, to a point for a corner;

THENCE, S 12°51'06" E, a distance of 1,000.58 feet, to a point for a corner;

THENCE, S 07°08'54" W, a distance of 310.38 feet, to a point for a corner;

THENCE, S 14°57'47" E, a distance of 92.41 feet, to the Point of Terminus, [N:11591129.94, E:754305.99] in the south line of said Section, from which a 5" concrete monument with a iron rod found for the southwest corner of said Section bears S 76°41'17" W, a distance of 5,222.47 feet for a total of 5,342.55 Feet or 323.79 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2853 GARDNER ROAD
BROOKFIELD, IL 60513
FIRM LICENSE # 10194031
817-501-3947

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

JOB: WHISTLER MARTIN COUNTY LATERAL

DRAWN BY: CE

DATED: 06/14/2022

CHECKED BY:

REV. 2: 12/13/2022

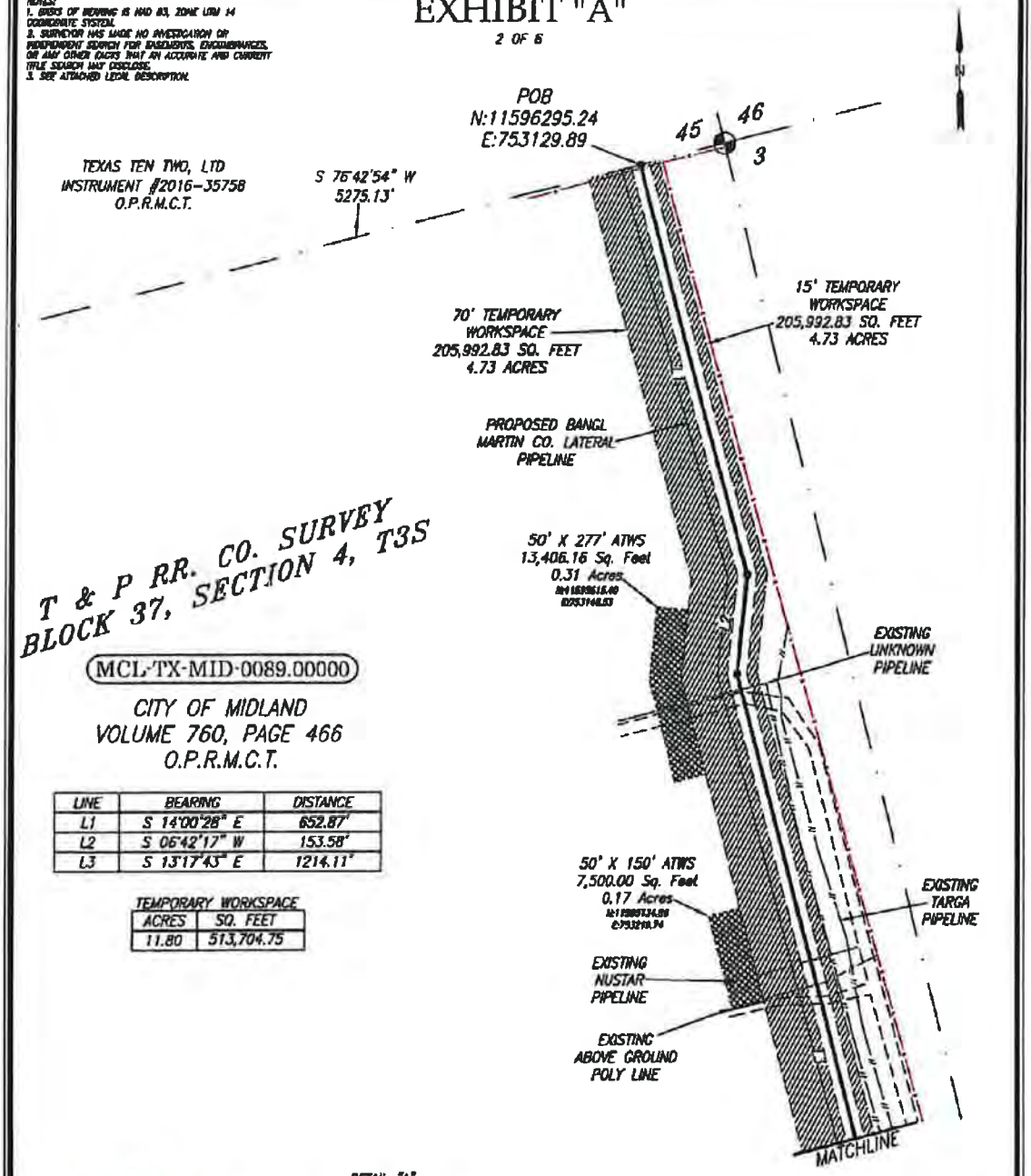
AFE: 21201

D:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0089.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USN 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 6



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	S 14°00'28" E	652.87'
L2	S 06°42'17" W	153.58'
L3	S 13°17'43" E	1214.11'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3832 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-301-3047

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

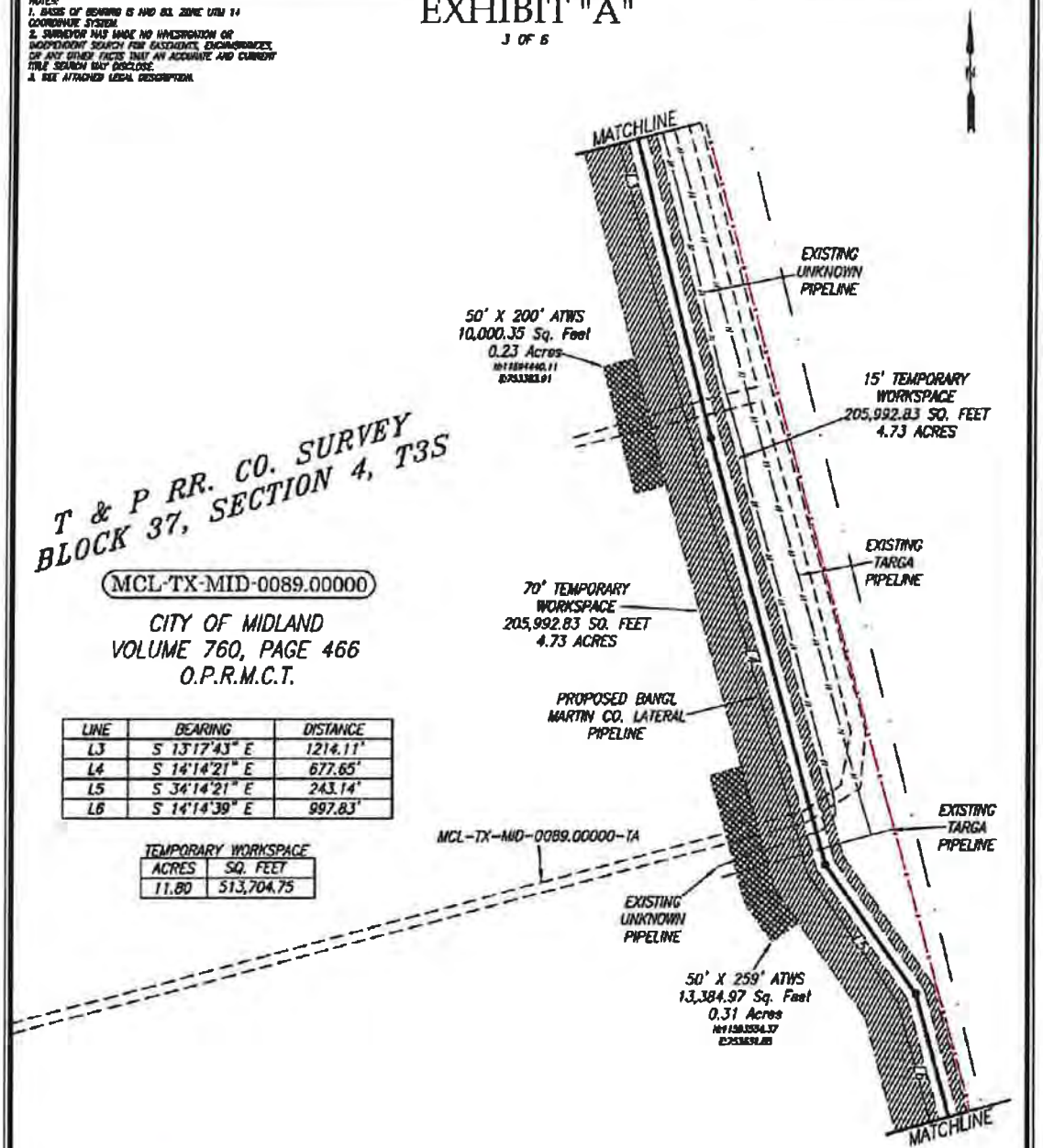
JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: CJC | CHECKED: DJW
AFE: 21201 | DATE: 06/10/2022 | REV: 1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE: UTM 14 COORDINATE SYSTEM.
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3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 6



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L3	S 13°17'43" E	1214.11'
L4	S 14°14'21" E	677.65'
L5	S 34°14'21" E	243.14'
L6	S 14°14'39" E	997.83'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



STATE OF TEXAS
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DAVID A. WRISLEY
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LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2903 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194971
817-521-3947

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21201

DRAWN BY: GT

DATE: 02/16/2022

CHECKED BY:

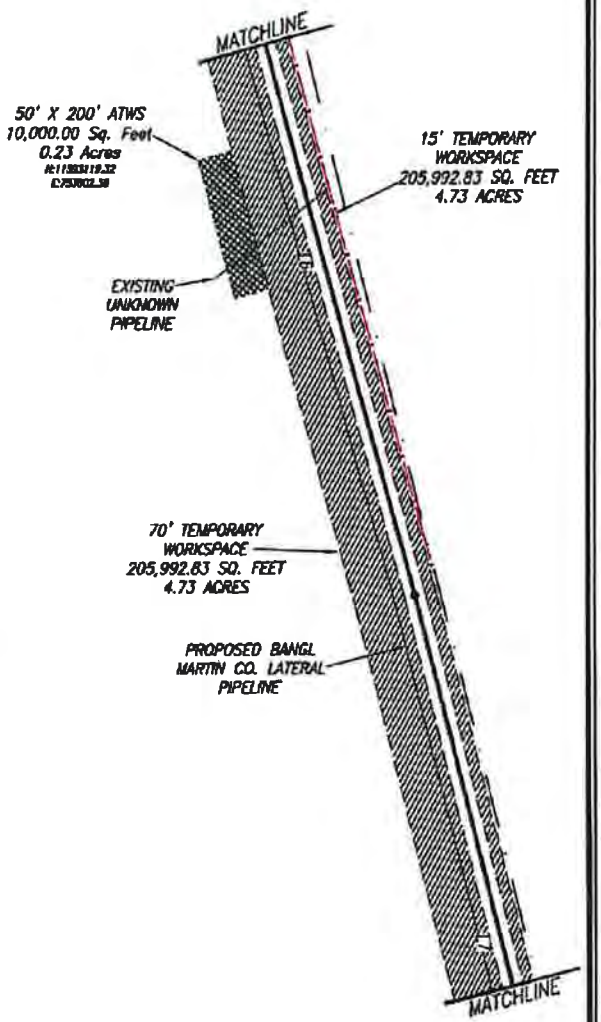
REV: 2 07/13/2022

G:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0089.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE LCN 14 COORDINATE SYSTEM.
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3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 6



T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L6	S 14°14'39" E	997.83'
L7	S 12°51'06" E	1000.58'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
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PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3053 GARDNER ROAD
BEAVERCREEK, TX 76002
FIRM LICENSE # 10194071
817-501-3047

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: BC | CHECKED BY:

AFE: 21301 | DATE: 02/08/2022 | REV: (R 02/14/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 6

T & P RR. CO. SURVEY
BLOCK 37, SECTION 4, T3S

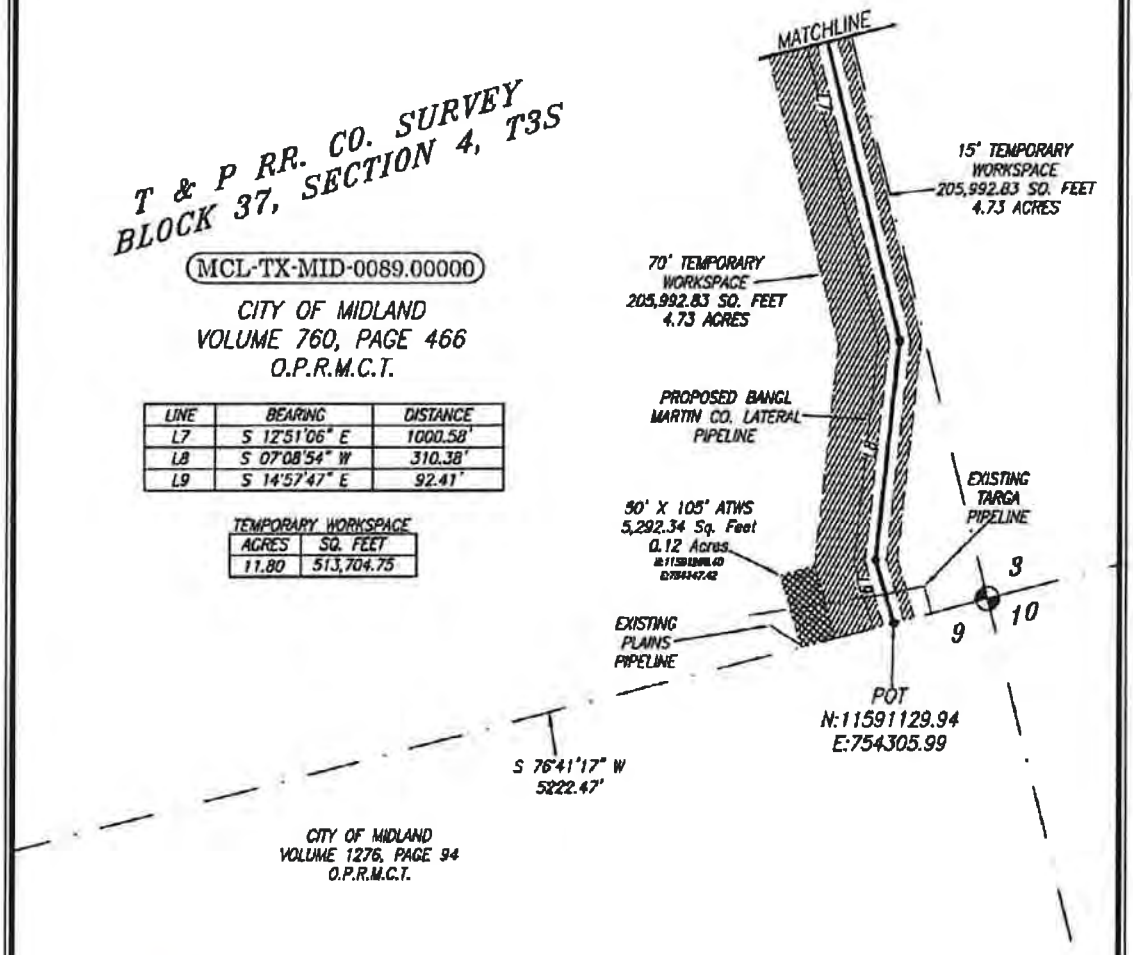
MCL-TX-MID-0089.00000

CITY OF MIDLAND
VOLUME 760, PAGE 466
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L7	S 12°51'06" E	1000.58'
L8	S 07°08'54" W	310.38'
L9	S 14°57'47" E	92.41'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
11.80	513,704.75



DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2652 CARCHER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194871
817-391-3847

CENTERLINE FOOTAGE: 5,342.55'

RODS: 323.79

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 4, T3S
MIDLAND COUNTY, TEXAS

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: GT	CHECKED: DAC
AFE: 21201	DATE: 07/13/2022	REV: 12/07/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 5

Legal description "A": MCL-TX-MID-0090.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11591129.94, E:754305.99] in the north line of said Section, from which a 5" concrete monument with iron rod found for the northwest corner of said Section bears S 76°41'17" W, a distance of 5,222.47 feet;

THENCE, S 14°57'47" E, a distance of 271.65 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 4,603.79 feet, to the Point of Terminus, [N:11586385.72, E:755429.01] in the north line of of a proposed surface site in said Section, for a total of 4,875.44 Feet or 295.48 Rods

Legal description "B": MCL-TX-MID-0090.00000

BEING the centerline of a 30' pipeline right of way license in the T & P RR Company Survey, Block 37, Section 9, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11586239.69, E:755463.31] in the south line of a proposed surface site in said Section;

THENCE, S 13°13'14" E, a distance of 90.12 feet, to a point for a corner;

THENCE, S 13°13'28" E, a distance of 156.56 feet, to the Point of Terminus, [N:11585999.55, E:755519.74] in the south line of said Section, from which a 3/8" iron rod found for the southeast corner of said Section bears N 76°30'24" E, a distance of 124.04 feet for a total of 246.69 Feet or 14.95 Rods

Legal description : MCL-TX-MID-0090.00000-MS

BEING a 150' x 210' surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11586195.10, E:755273.48] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 65°34'33" E, a distance of 402.93 feet;

THENCE, N 13°13'14" W, a distance of 150.00 feet, to a point for a corner;

THENCE, N 76°46'46" E, a distance of 210.00 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 150.00 feet, to a point for a corner;

THENCE, S 76°46'46" W, a distance of 210.00 feet, to the Point of Beginning, for a total of 31,500.00 Square Feet or 0.72 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
8853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-201-3847

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

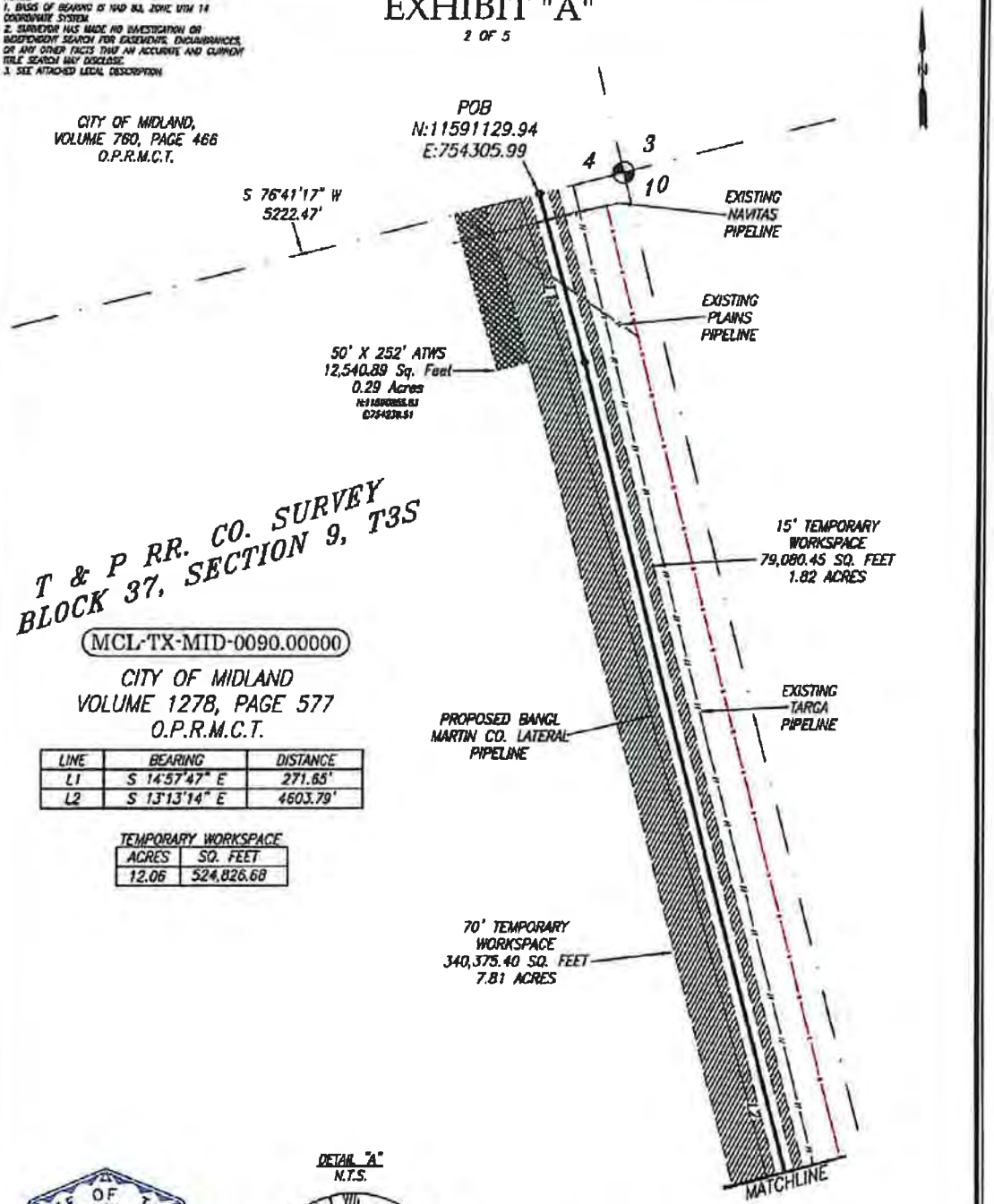
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY:	CHECKED BY:
AFE: 21201	DATE: 06/23/2022	REV. #1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE TEXAS 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 5



LINE	BEARING	DISTANCE
L1	S 14°57'47" E	271.65'
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley, 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3813 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194031
817-301-3047

CENTERLINE FOOTAGE: 5,122.13'
RODS: 310.43

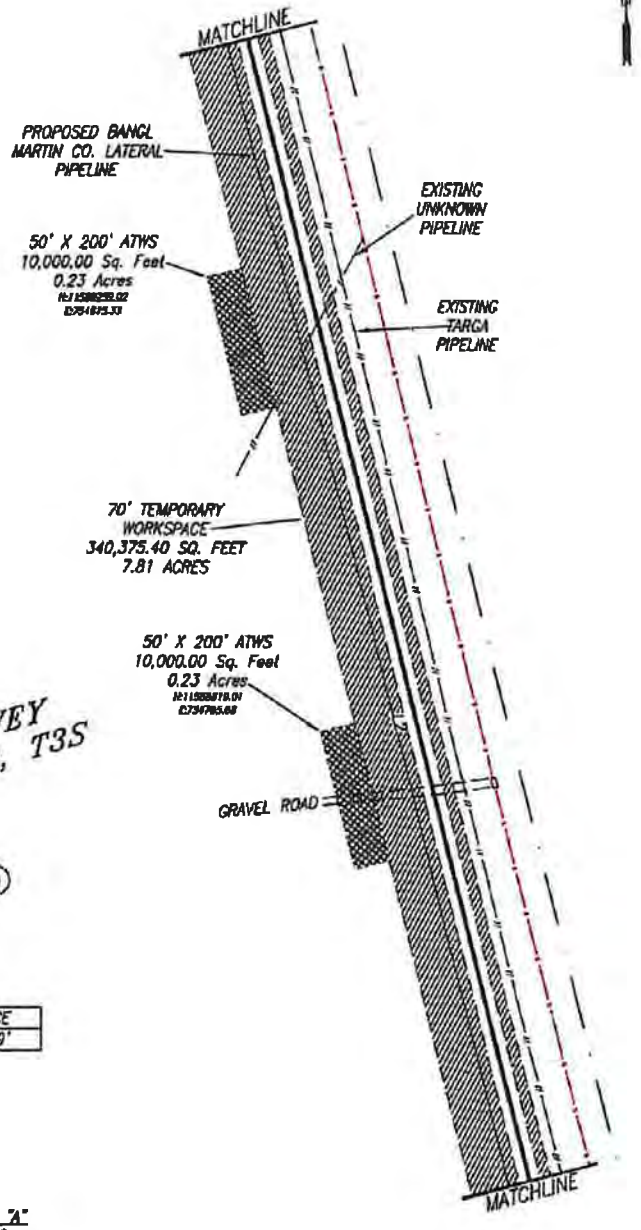
JOB: WHISTLER MARTIN COUNTY LATERAL
AFE: 21201
DRAWN BY: CK
DATE: 07/13/2022
CHECKED BY:
REV: 1 07/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND,
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
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PROFESSIONAL
LAND SURVEYOR

0 200' 400' 600'

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David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3532 GARDNER ROAD
HEMPSTEAD, TX 77487
FIRM LICENSE # 10194071
817-501-3047

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

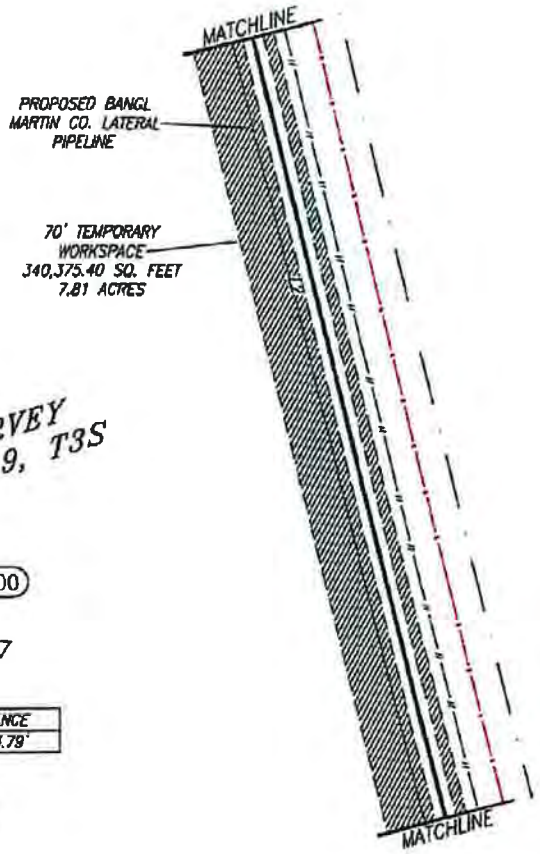
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: DF	CHECKED BY:
AFE: 21201	DATE: 02/23/2022	DATE: 02/13/2022

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NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE TXN 14 COORDINATE SYSTEM.
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3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

4 OF 5



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND,
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



0 200' 400' 600'

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LAND SURVEYOR

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David A. Wrisley 7-13-22

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TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
3833 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-901-3417

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

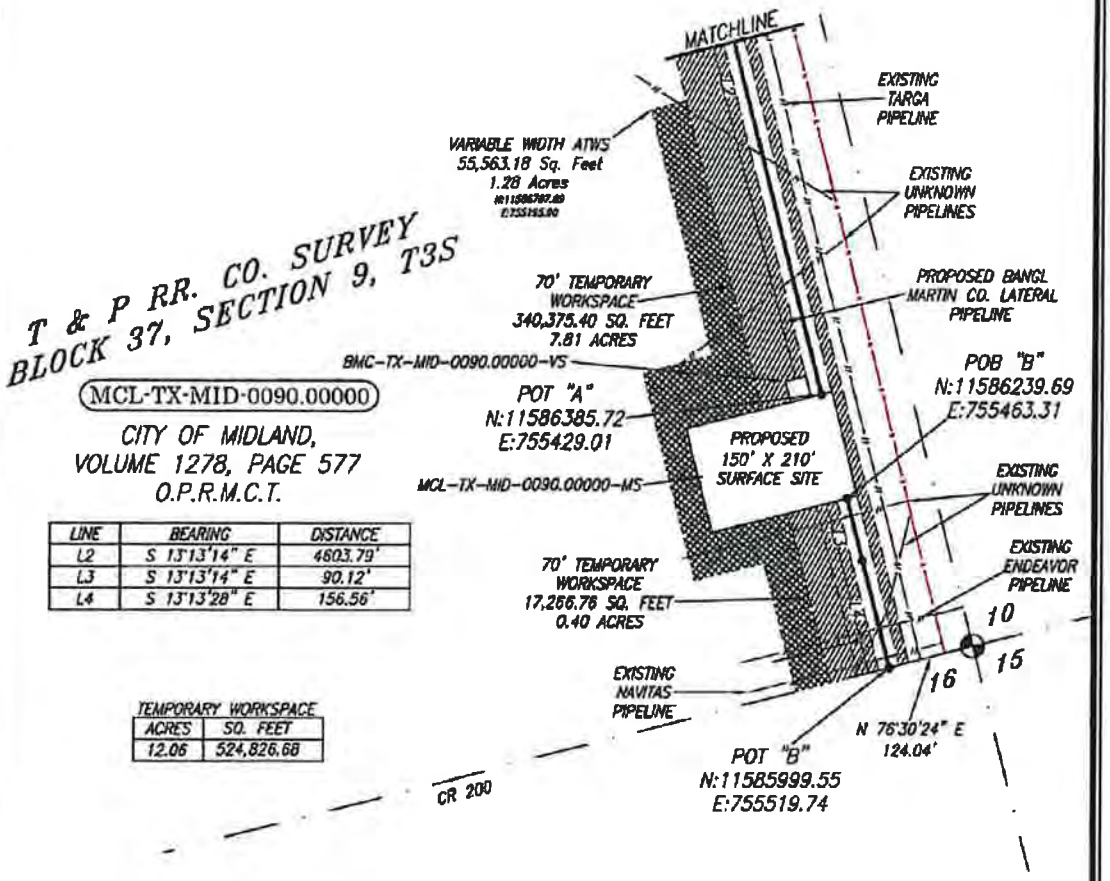
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: BT	CHECKED: DW
AFE: 21201	DATE: 07/13/2022	REV: (1) 07/13/2022

D:\WhistlerMidstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE 4204 TX COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

5 OF 5



LINE	BEARING	DISTANCE
L2	S 13°13'14" E	4603.79'
L3	S 13°13'14" E	90.12'
L4	S 13°13'28" E	156.56'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
12.06	524,826.68

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SURVEYING

JN SERVICES, LTD
3853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 5,122.13'

RODS: 310.43

JOB: WHISTLER MARTIN COUNTY LATERAL

AFE: 21201

DRAWN BY: CJ

DATE: 05/11/2022

CHECKED: DAW

REV. #1 05/13/2022

P:\WhistlerMidstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS, THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description : MCL-TX-MID-0090.00000-MS

BEING 0.72 Acre surface site in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said easement being described by metes and bounds as follows:

BEGINNING at a point [N:11586195.10, E:755273.48] in said Section, from which a 3/8" iron rod found for the southeast corner of said tract bears S 65°34'33" E, a distance of 402.93 feet;

THENCE, N 13°13'14" W, a distance of 150.00 feet, to a point for a corner;

THENCE, N 76°46'46" E, a distance of 210.00 feet, to a point for a corner;

THENCE, S 13°13'14" E, a distance of 150.00 feet, to a point for a corner;

THENCE, S 76°46'46" W, a distance of 210.00 feet, to the Point of Beginning, for a total of 31,500.00 Square Feet or 0.72 Acres

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194371
817-501-3947

SQUARE FOOTAGE: 31,500.00

ACRES: 0.72

WHISTLER PIPELINE

150' X 210'
SURFACE SITE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

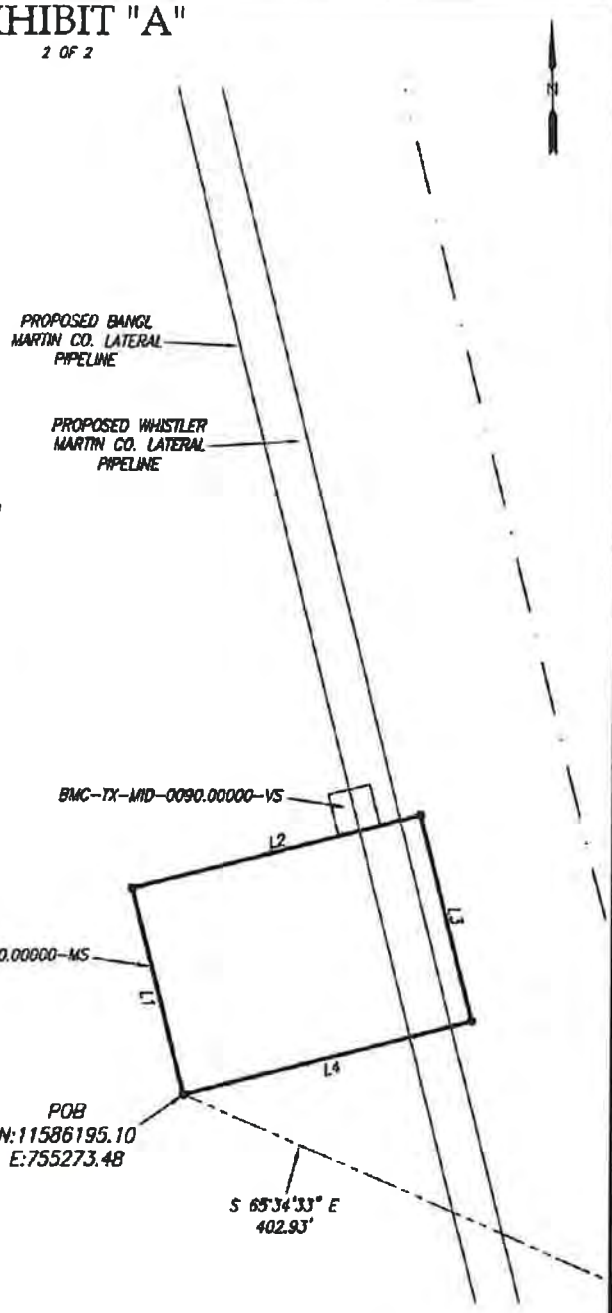
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CP	CHECKED BY:
AFE: 21201	DATE: 07/20/2022	SCALE:

B:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-MS.dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USN 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 2



T & P RR. CO. SURVEY
BLOCK 37, SECTION 9, T3S

MCL-TX-MID-0090.00000

CITY OF MIDLAND
VOLUME 1278, PAGE 577
O.P.R.M.C.T.

LINE	BEARING	DISTANCE
L1	N 13°13'14" W	150.00'
L2	N 76°46'46" E	210.00'
L3	S 13°13'14" E	150.00'
L4	S 76°46'46" W	210.00'

0 100' 200' 300'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

150' X 210'
SURFACE SITE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES
JN SERVICES, LTD
3853 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-301-3047

SQUARE FOOTAGE: 31,500.00
ACRES: 0.72

JOB: WHISTLER MARTIN COUNTY LATERAL
APE: 21391

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 4

Legal description: MCL-TX-MID-0092.00000

BEING the centerline of a 30' right of way license in the T & P RR Company Survey, Block 37, Section 16, T3S, Midland County, Texas, and being part of tract described in deed to City of Midland, recorded in Volume 1160 Page 622, Deed Records, Midland County, Texas, said easement being described as follows:

BEGINNING at a point [N:11585931.12, E:755535.82] in the north line of said tract, from which a 3/8" iron rod found for the northeast corner of said Section bears N 47°02'00" E, a distance of 142.86 feet;

THENCE, S 13°13'28" E, a distance of 547.48 feet, to a point for a corner;

THENCE, S 05°52'18" W, a distance of 233.84 feet, to a point for a corner;

THENCE, S 14°07'42" E, a distance of 1,479.42 feet, to a point for a corner;

THENCE, S 33°13'35" E, a distance of 155.54 feet, to a point for a corner;

THENCE, S 13°13'35" E, a distance of 593.68 feet, to a point for a corner;

THENCE, S 10°24'19" E, a distance of 496.60 feet, to a point for a corner;

THENCE, S 31°54'42" E, a distance of 319.20 feet, to a point for a corner;

THENCE, S 19°33'34" E, a distance of 544.19 feet, to a point for a corner;

THENCE, S 51°39'01" E, a distance of 104.65 feet, to the Point of Terminus, [N:11581685.73, E:756742.01] in the east line of said Section, from which a 1" iron pipe found for the southeast corner of said Section bears S 14°14'03" E, a distance of 803.27 feet for a total of 4,474.60 Feet or 271.19 Rods

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-601-3817

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: DE | CHECKED: DAV

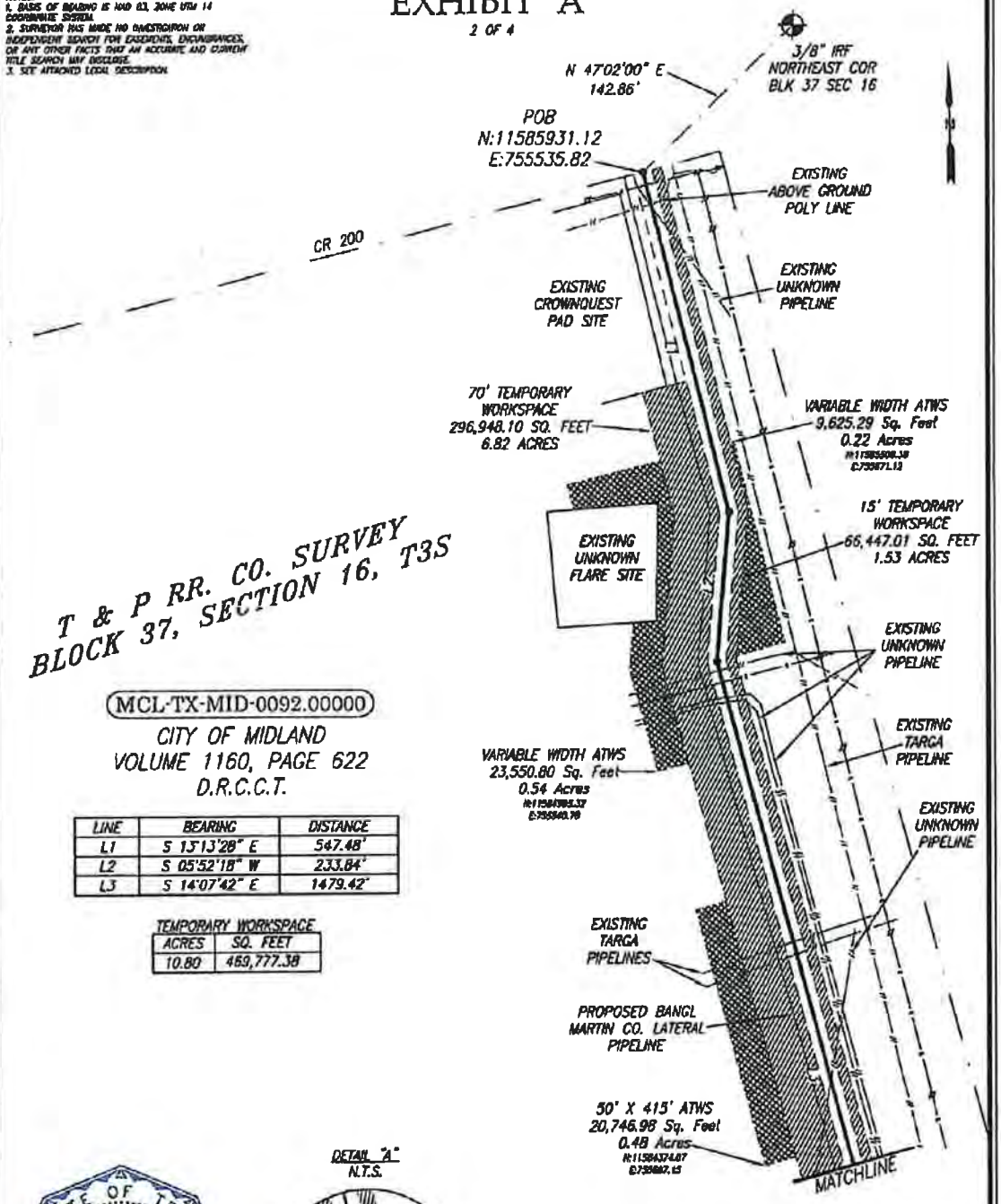
AFE: 21201 | DATE: 02/15/2022 | REV: 1 | 06/17/2022

D:\Whistler Midstream\Martin County Lateral\Plats\Tract 092 MCL City of Midland (2).dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE USA 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

2 OF 4



MCL-TX-MID-0092.00000
CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L1	S 13°13'28" E	547.48'
L2	S 05°52'18" W	233.84'
L3	S 14°07'42" E	1479.42'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES
JN SERVICES, LTD
3952 CARSON ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 4,474.60'
RODS: 271.19

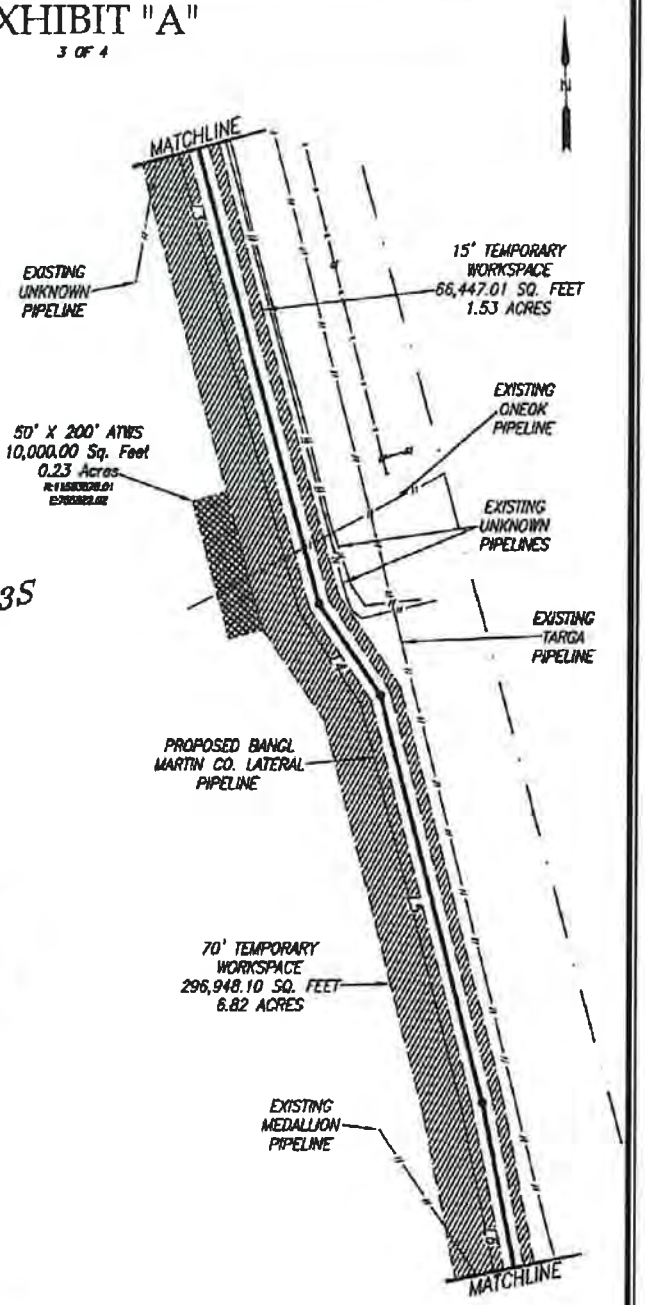
JOB: WHISTLER MARTIN COUNTY LATERAL
DRAWN BY: CA
CHECKED: DW
AFE: 21201
DATE: 05/13/2022
REV: JN 07/13/2022

G:\Whistler Midstream\Martin County Laterals\Plats\Tract 092 MCL City of Midland (2).dwg

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

EXHIBIT "A"

3 OF 4



T & P RR. CO. SURVEY
BLOCK 37, SECTION 16, T3S

MCL-TX-MID-0092.00000

CITY OF MIDLAND
VOLUME 1160, PAGE 622
D.R.C.C.T.

LINE	BEARING	DISTANCE
L3	S 14°07'42" E	1479.42'
L4	S 33°13'35" E	155.54'
L5	S 13°13'35" E	593.68'
L6	S 10°24'19" E	496.60'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS REGISTERED DAVID A. WRISLEY 5087 PROFESSIONAL LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

30' PIPELINE RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
3857 CARDINAL ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-581-3847

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: CR | CHECKED BY:

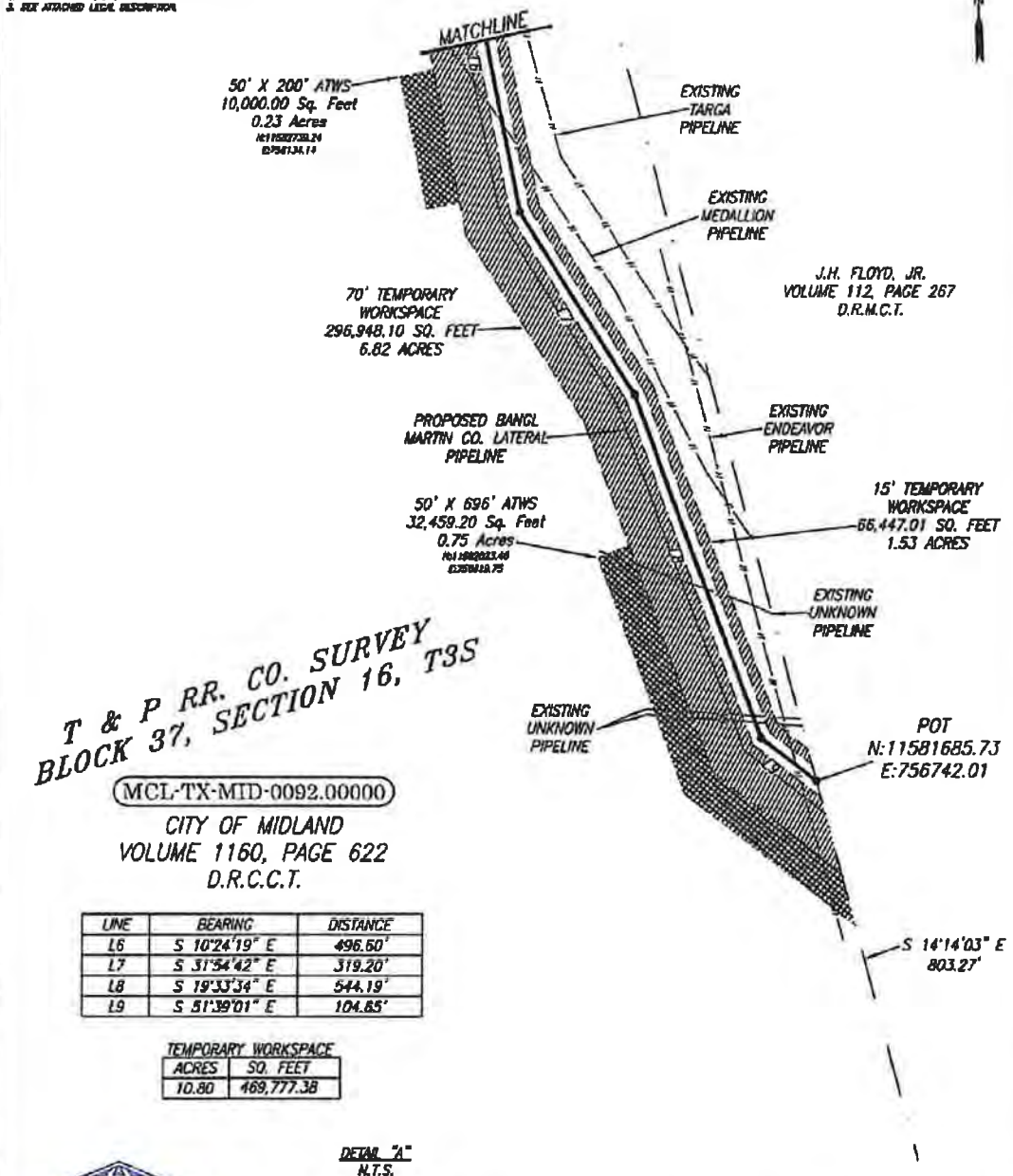
AFE: 21201 | DATE: 07/19/2022 | REVISED: 07/13/2022

D:\WhistlerMidstream\Martin County Lateral\Plats\Sheet 002 MCL City of Midland (2).dwg

EXHIBIT "A"

4 OF 4

NOTES:
1. BASIS OF BEARING IS NAD 83, ZONE UTM 14 COORDINATE SYSTEM.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.



LINE	BEARING	DISTANCE
L6	S 10°24'19" E	496.50'
L7	S 31°54'42" E	319.20'
L8	S 19°33'34" E	544.19'
L9	S 51°39'01" E	104.85'

TEMPORARY WORKSPACE

ACRES	SQ. FEET
10.80	469,777.38

DETAIL "A"
N.T.S.



0 200' 400' 600'

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 7-13-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES, LTD
2653 GARDNER ROAD
BEAUMONT, TX 77707
FIRM LICENSE # 10194171
817-501-3647

CENTERLINE FOOTAGE: 4,474.60'

RODS: 271.19

WHISTLER PIPELINE

30" PIPELINE
RIGHT OF WAY LICENSE

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 16, T3S
MIDLAND COUNTY, TEXAS

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY: CA	CHECKED BY:
AFE: 21201	DATE: 06/15/2022	REV: JN 06/13/2022

D:\WhistlerMidstream\Martin County Lateral\Plats\Tract 007 MCL City of Midland (T).dwg

CERTIFICATE OF LIABILITY INSURANCE

5/18/2023

DATE (MM/DD/YYYY) 7/13/2022

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Employers Insurance Company of Wausau	21458
INSURED 1461468	Whistler Pipeline LLC 100 Congress, Suite 2200 Austin TX 78701	**INSURER B :** Liberty Insurance Corporation	42404
		INSURER C : Liberty Mutual Fire Insurance Company	23035
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 18712258 **REVISION NUMBER:** XXXXXXX

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	TBC-641-445638-032	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
C	**AUTOMOBILE LIABILITY** [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-445638-022	5/18/2022	5/18/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$ XXXXXXX
							BODILY INJURY (Per accident)	$ XXXXXXX
							PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
B	[ ] **UMBRELLA LIAB** [X] OCCUR [X] **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	TH7-641-445638-042	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$ XXXXXXX
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WCC-641-445638-012	5/18/2022	5/18/2023	[X] 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)

CERTIFICATE HOLDER

18712258

City of Midland, Texas,
a home-rule municipal corporation
PO Box 1152
Midland TX 79702

PACKET

CANCELLATION See Attachment

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

20.60

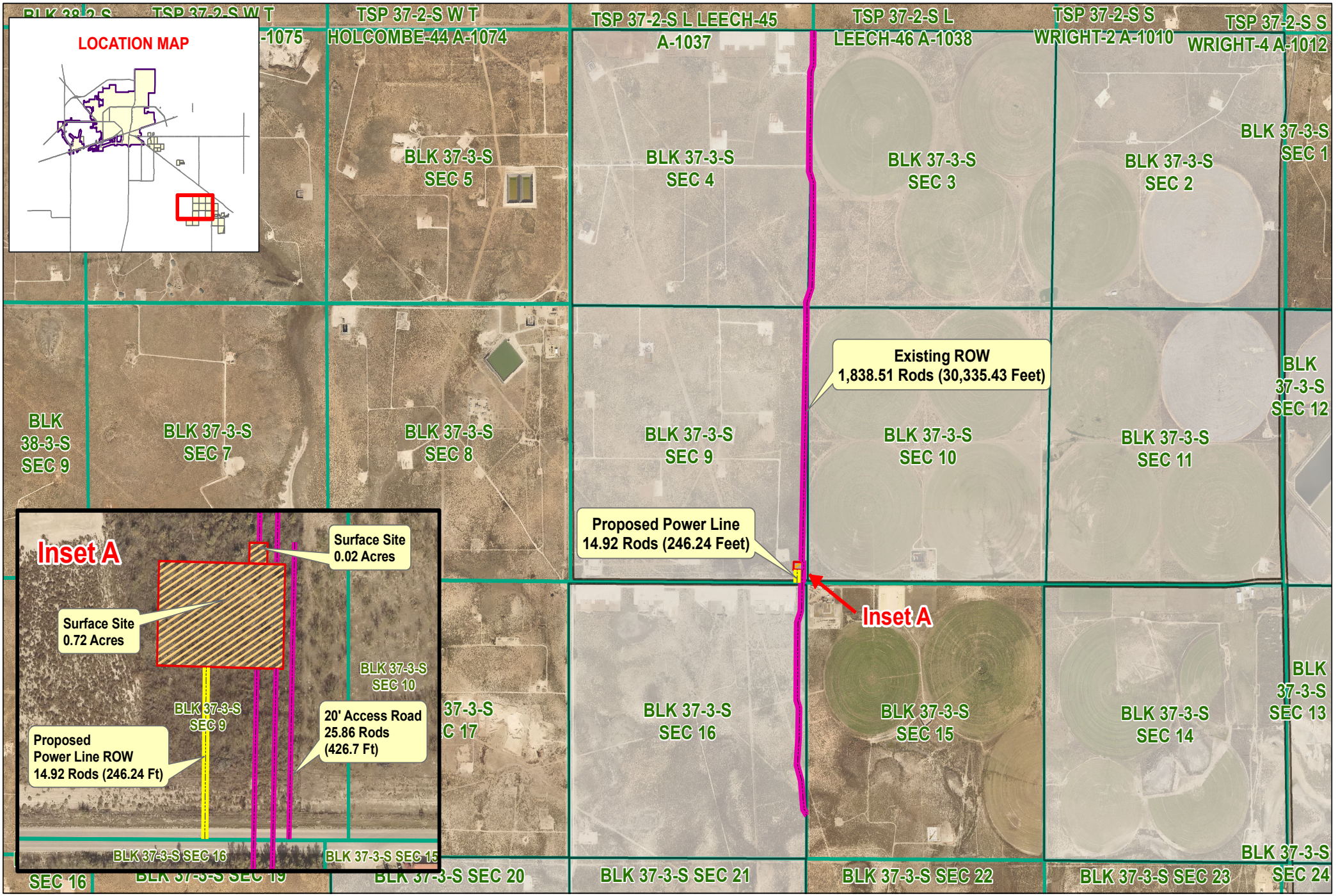
May 9, 2023

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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.



Date: 3/29/2023

Proposed Power Line
Existing ROW
Surface Site
City Owned Property
Survey Section

PACKET 20.62

Bangle and Whistler Proposed Power Line ROW

May 9, 2023

0 1,000 2,000 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 21

Meeting Date: May 9, 2023

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of Right-of-Way license (23-329-025) with Whistler Pipeline LLC regarding City-owned property described as Section 9, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This Right of Way License will grant Whistler Pipeline, LLC a 20' wide right of way to place a 22Kv power line to their pipeline access valves on the City of Midland-owned Sprayberry Farm real property. No temporary workspace is being requested.

This Right-of-Way License is proposed for a single ten (10) year period, paid in advance. 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

Full ten-year term paid in advance ($30 per rod x 14.92 rods) $447.60

TOTAL PAID: $1,447.60

Discussion:

This right of way will allow the applicant to build a power line to their existing above-ground valve facility.

Certificates of Insurance are on file

City Secretary is to record all documents

Morris Williams Jr.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	May 10, 2023
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Morris Williams, Jr., Interim City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Whistler Pipeline LLC, a Delaware limited liability company
Licensee's Representative:	Glenn Kellison
Licensee's Mailing Address:	100 Congress Avenue, Suite 2200 Austin, Texas 78701
Property:	As described in Article III below
License Number:	23-329-025

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.

W I T N E S S E T H:

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. Initial 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 FOUR HUNDRED FORTY-SEVEN and 60/100 Dollars ($447.60) ("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 twenty feet (20') in width of the line location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described line locations, a 22kv phase-to-ground overhead electrical power line and to have the right of ingress and egress at convenient points for such purpose (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the line(s) and facilities 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(s) and facilities 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 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. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the line or permitted facilities or structures that must be moved. 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. However, Licensor agrees not to grant other easements crossing the surface site, as such surface site is exclusive to Licensee during the term of this License.

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 any line 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 not be unreasonably withheld, conditioned or delayed; provided, however, if Licensor does not respond to Licensee within four (4) weeks, such request shall be deemed approved. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. 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 by promptly removed from the Property.

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

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

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 any 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 for damages against Licensor. The relocation, change or alteration shall be at the sole cost of Licensee. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the line or permitted facilities or structures that must be relocated, changed or altered. 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.

O. Surface Site. Intentionally omitted.

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 include 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 include 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 include 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 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. 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 OR STRUCTURES 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 OR STRUCTURES 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. Notwithstanding the foregoing, Licensee may assign this License, in whole, without the consent of Licensor, to any: (i) entity that, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under the common ownership or control of, Licensee; or (ii) any person, bank, financing institution or other lender, or groups thereof, as security for amounts payable under any financing or other arrangements under which Licensee has borrowed funds. Licensee will remain responsible for any obligations it incurs under this License prior to any assignment and will ensure that its assignee agrees, in writing, to be bound by the terms of this License, including but not limited to, the insurance requirements set forth hereinabove.

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. 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, TO THE EXTENT SUCH IMMUNITY EXISTS.

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 RELATED TO THIS LICENSE, 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 ORDINARY NEGLIGENCE.

H. Governmental Immunity. To the extent governmental immunity exists, 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 SHOULD SUCH IMMUNITY APPLY**.

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, to the extent such immunity exists.

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. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit B**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor.

Q. 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.

R. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

S. 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.

T. 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 to Follow.)

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:

WHISTLER PIPELINE LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this 24th day of April, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company, 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 24th day of April, 2023.

_____
Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
Notary ID 130416209

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline, LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TX CENTRAL ZONE.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED PLAT.

EXHIBIT "A"

Legal description : MCL–TX–MID–0090.00000–PL

BEING the Centerline of a 20' Power Line right of way in the T & P RR Company Survey, Block 37, Section 9, T3S Midland County, Texas, and being part of tract described in deed to City of Midland recorded in Volume 1278, Page 577, Official Public Records, Midland County, Texas, said right of way being described as follows:

BEGINNING at a point [N:10653130.29, E:1825260.88] in the south line of said tract, from which a 3/8" iron rod found for the southeast corner of said tract bears S 75°55'29" E, a distance of 239.22 feet;

THENCE, N 13°56'47" W, a distance of 246.24 feet, to the point of Terminus [N:10653369.27, E:1825201.54] in the south line of a proposed surface site in said tract, from which a 3/8" iron rod found for the southeast corner of said tract bears S 58°10'51" E, a distance of 342.92 feet, for a total of 246.24 Feet or 14.92 Rods;

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY:	CHECKED BY:
AFE: 21201	DATE: 04/14/2022	REV:

JN SERVICES
JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 246.24'

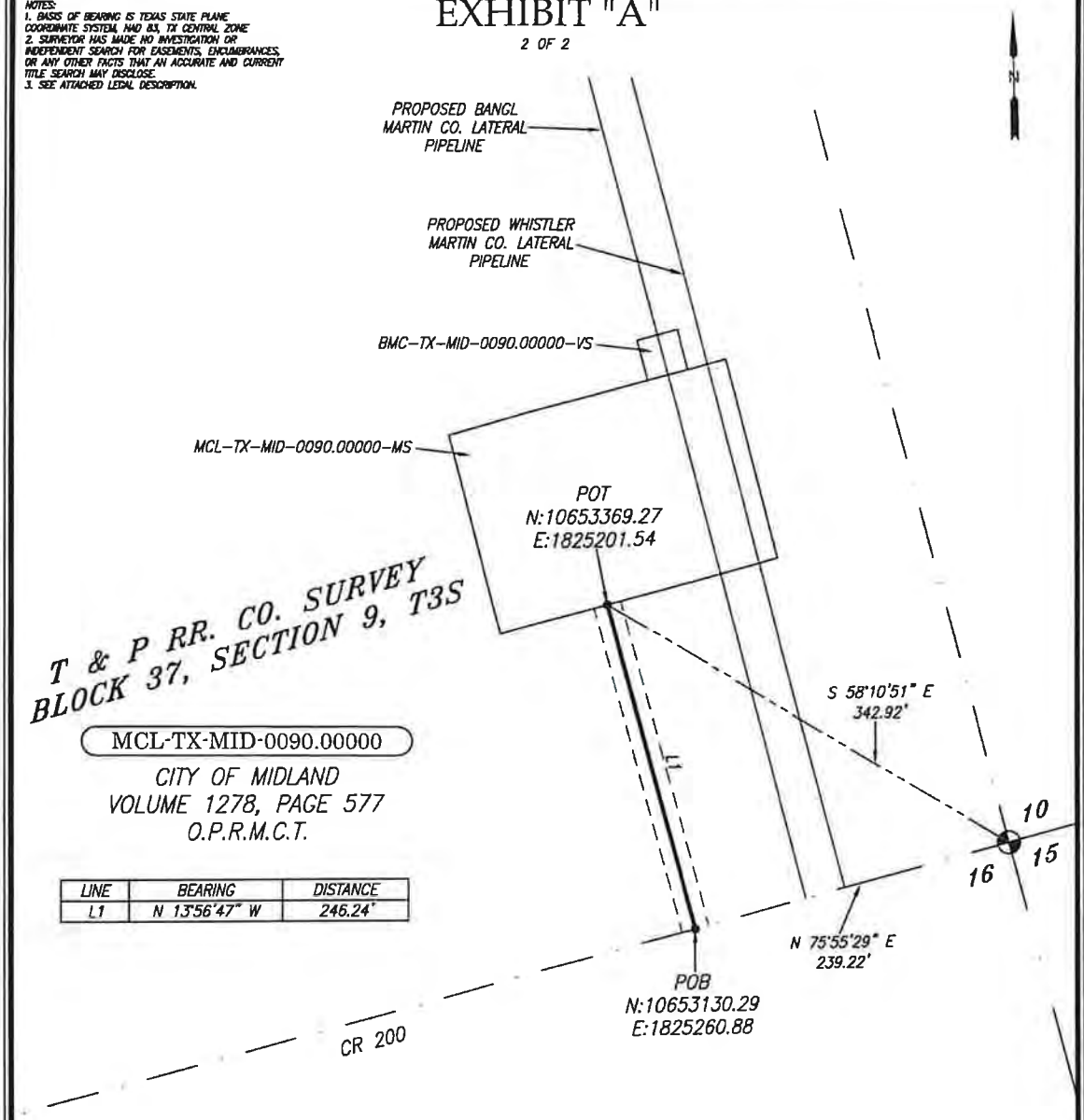
RODS: 14.92

D:\WhistlerMidstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

NOTES:
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3. SEE ATTACHED LEGAL DESCRIPTION.

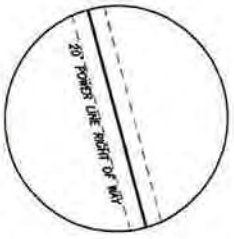
EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°56'47" W	246.24'

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

0 100' 200' 300'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 246.24'
RODS: 14.92

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: | CHECKED BY:
AFE: 21201 | DATE: 04/14/2022 | REV:

D:\WhistlerMidstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

EXHIBIT B
Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline, LLC, as "Licensee"

FORM OF MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and WHISTLER PIPELINE LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ __, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being twenty feet (20') in width of the line location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described line locations, a 22Kv phase-to ground overhead electrical power line and to have the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ __, 2023.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
WHISTLER PIPELINE LLC,
a Delaware limited liability company

By:_____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

_____
Notary Public, State of Texas

EXHIBIT A

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as "Licensor"
and
Whistler Pipeline LLC, as "Licensee"

Property

(see attached)

NOTES:
1. BASIS OF BEARING IS TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TX CENTRAL ZONE
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3. SEE ATTACHED PLAT.

EXHIBIT "A"

1 OF 2

Legal description : MCL–TX–MID–0090.00000–PL

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THENCE, N 13°56'47" W, a distance of 246.24 feet, to the point of Terminus [N:10653369.27, E:1825201.54] in the south line of a proposed surface site in said tract, from which a 3/8" iron rod found for the southeast corner of said tract bears S 58°10'51" E, a distance of 342.92 feet, for a total of 246.24 Feet or 14.92 Rods;

STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 246.24'

RODS: 14.92

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: | CHECKED BY:

AFE: 21201 | DATE: 04/14/2022 | REV:

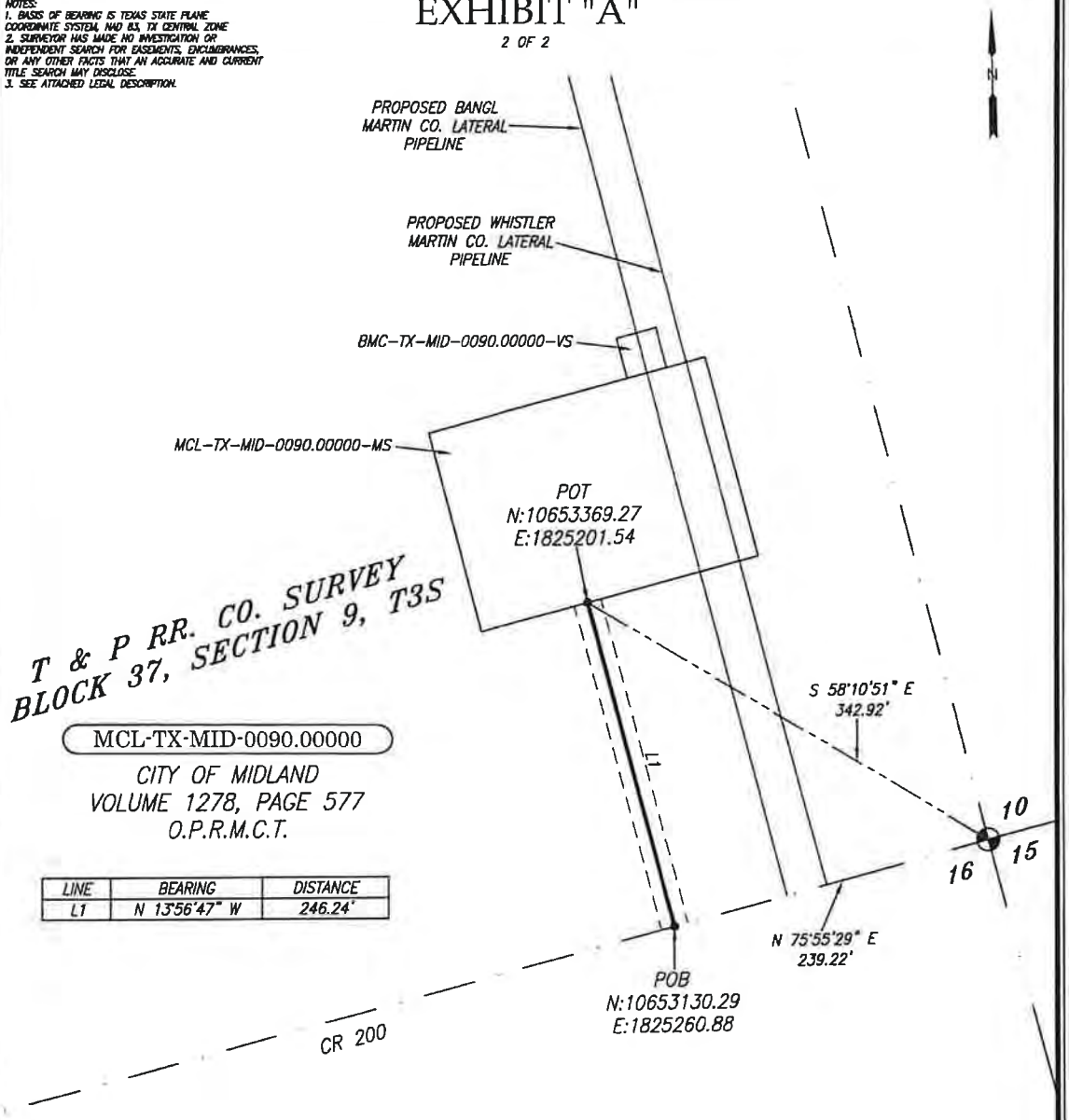
PACKET 21.25 May 9, 2023

D:\WhiteWater Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

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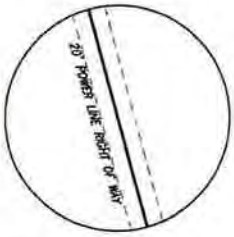
EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°56'47" W	246.24'

DETAIL "A"
N.T.S.



STATE OF TEXAS
REGISTERED
DAVID A. WRISLEY
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LAND SURVEYOR

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David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

0 100' 200' 300'

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 246.24'

RODS: 14.92

JOB: WHISTLER MARTIN COUNTY LATERAL | DRAWN BY: | CHECKED BY:

AFE: 21201 | DATE: 04/14/2022 | REV:

D:\Whitewater Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

MEMORANDUM OF RIGHT OF WAY LICENSE

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Memorandum of Right of Way License (this "Memorandum") is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein "Licensor") and WHISTLER PIPELINE LLC, a Delaware limited liability company, whose address is 100 Congress Avenue, Suite 2200, Austin, Texas 78701 (herein "Licensee").

WITNESSETH:

Licensor and Licensee have entered into that certain Right of Way License dated effective as of _____ __, 2023 (the "Right of Way License") under which Licensor grants unto Licensee the right to enter upon the Property, being twenty feet (20') in width of the line location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described line locations, a 22Kv phase-to ground overhead electrical power line and to have the right of ingress and egress at convenient points for such purpose (the "Property"), for such purposes, subject to the terms of the Right of Way License and as more particularly described in the Right of Way License.

Licensor and Licensee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

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IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____ __, 2023.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Morris Williams, Jr., Interim City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ___ day of _____, 2023, by Morris Williams, Jr., Interim City Manager of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

_____
Notary Public – State of Texas

LICENSEE:
Whistler Pipeline LLC,
a Delaware limited liability company

By: _____
Printed Name: Glenn Kellison
Title: SVP - Engineering

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this 24th day of April, 2023 personally appeared Glenn Kellison an officer of Whistler Pipeline LLC, a Delaware limited liability company 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 24th day of April, 2023.

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Notary Public, State of Texas

THAO THANH NGUYEN
Notary Public, State of Texas
Comm. Expires 10-22-2023
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Property

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STATE OF TEXAS
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DAVID A. WRISLEY
5087
PROFESSIONAL
LAND SURVEYOR

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David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

JN SERVICES, LTD
28512 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3847

CENTERLINE FOOTAGE: 246.24'

RODS: 14.92

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
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T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

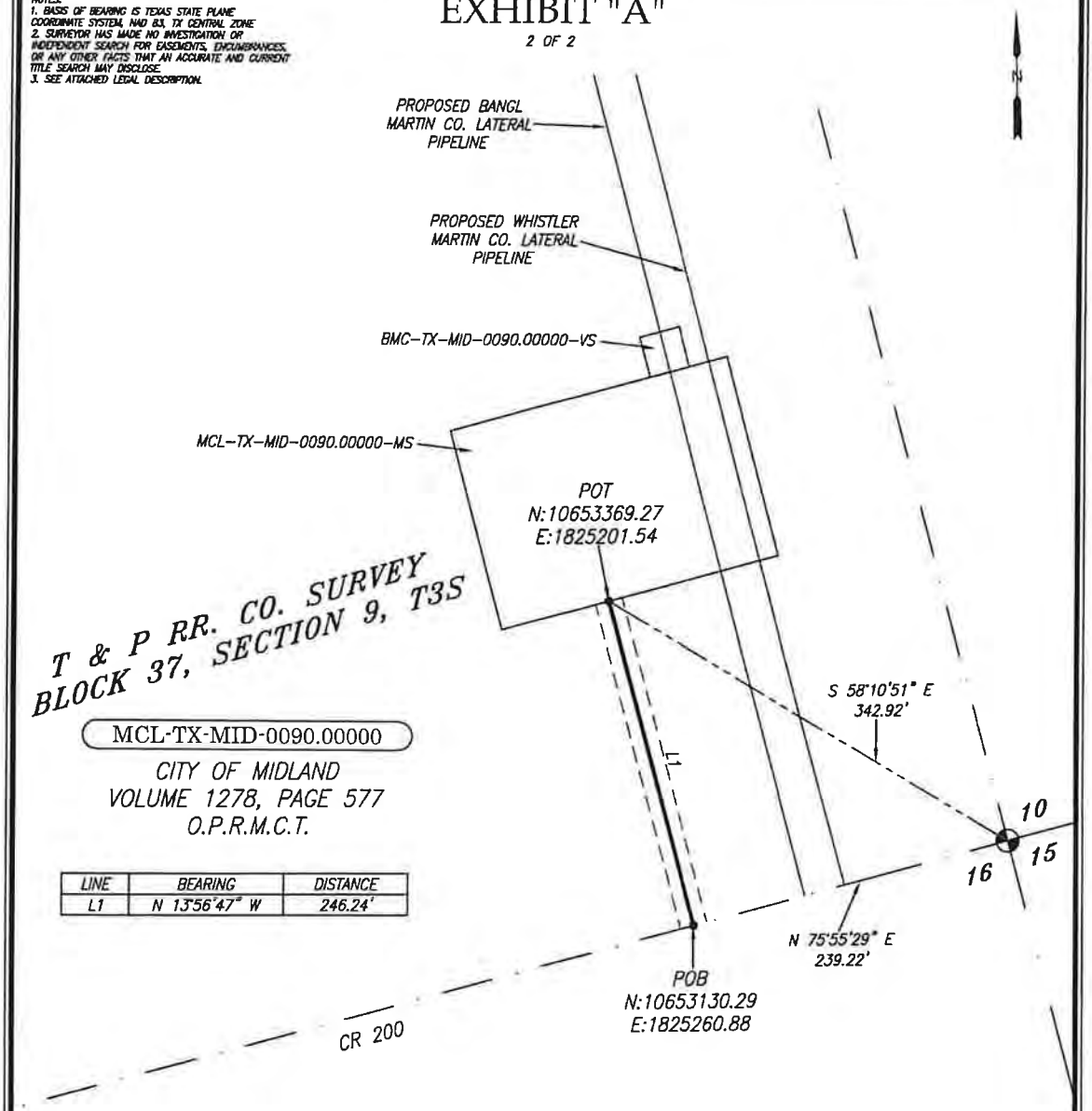
JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY:	CHECKED BY:
AFE: 21201	DATE: 04/14/2022	REV:

D:\WhiteWater Midstream\Martin County Laterals\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

NOTES:
1. BASIS OF BEARING IS TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TX CENTRAL ZONE
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS, ENCUMBRANCES, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3. SEE ATTACHED LEGAL DESCRIPTION.

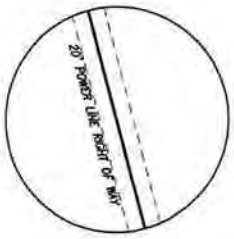
EXHIBIT "A"

2 OF 2



LINE	BEARING	DISTANCE
L1	N 13°56'47" W	246.24'

DETAIL "A"
N.T.S.





0 100' 200' 300'

I, DAVID A. WRISLEY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THIS PLAT IS TRUE AND CORRECT OF A SURVEY MADE ON THE GROUND.

David A. Wrisley 4-14-22

DAVID A. WRISLEY
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5087

WHISTLER PIPELINE

20' POWER LINE RIGHT OF WAY

SITUATED IN THE
CITY OF MIDLAND
PROPERTY
T & P RR COMPANY SURVEY
BLOCK 37, SECTION 9, T3S
MIDLAND COUNTY, TEXAS

JN SERVICES

JN SERVICES, LTD
2852 GARDNER ROAD
WEATHERFORD, TX 76087
FIRM LICENSE # 10194071
817-501-3947

CENTERLINE FOOTAGE: 246.24'

RODS: 14.92

JOB: WHISTLER MARTIN COUNTY LATERAL	DRAWN BY:	CHECKED BY:
AFE: 21201	DATE: 04/14/2022	REV:

D:\Whistler Midstream\Martin County Lateral\Plats\MCL-TX-MID-0090.00000-Power Easement_State Plane.dwg

CERTIFICATE OF LIABILITY INSURANCE

5/18/2023

DATE (MM/DD/YYYY) 7/13/2022

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	LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:**	
		PHONE (A/C, No, Ext):	**FAX (A/C, No):**
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	**NAIC #**
		INSURER A : Employers Insurance Company of Wausau	21458
INSURED 1461468	Whistler Pipeline LLC 100 Congress, Suite 2200 Austin TX 78701	**INSURER B :** Liberty Insurance Corporation	42404
		INSURER C : Liberty Mutual Fire Insurance Company	23035
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 18712258 **REVISION NUMBER:** XXXXXXX

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	TBC-641-445638-032	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
C	**AUTOMOBILE LIABILITY** [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2-641-445638-022	5/18/2022	5/18/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$ XXXXXXX
							BODILY INJURY (Per accident)	$ XXXXXXX
							PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
B	[ ] **UMBRELLA LIAB** [X] OCCUR [X] **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	Y	Y	TH7-641-445638-042	5/18/2022	5/18/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$ XXXXXXX
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	WCC-641-445638-012	5/18/2022	5/18/2023	[X] 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)

CERTIFICATE HOLDER

18712258

City of Midland, Texas,
a home-rule municipal corporation
PO Box 1152
Midland TX 79702

PACKET 21.33

CANCELLATION See Attachment

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

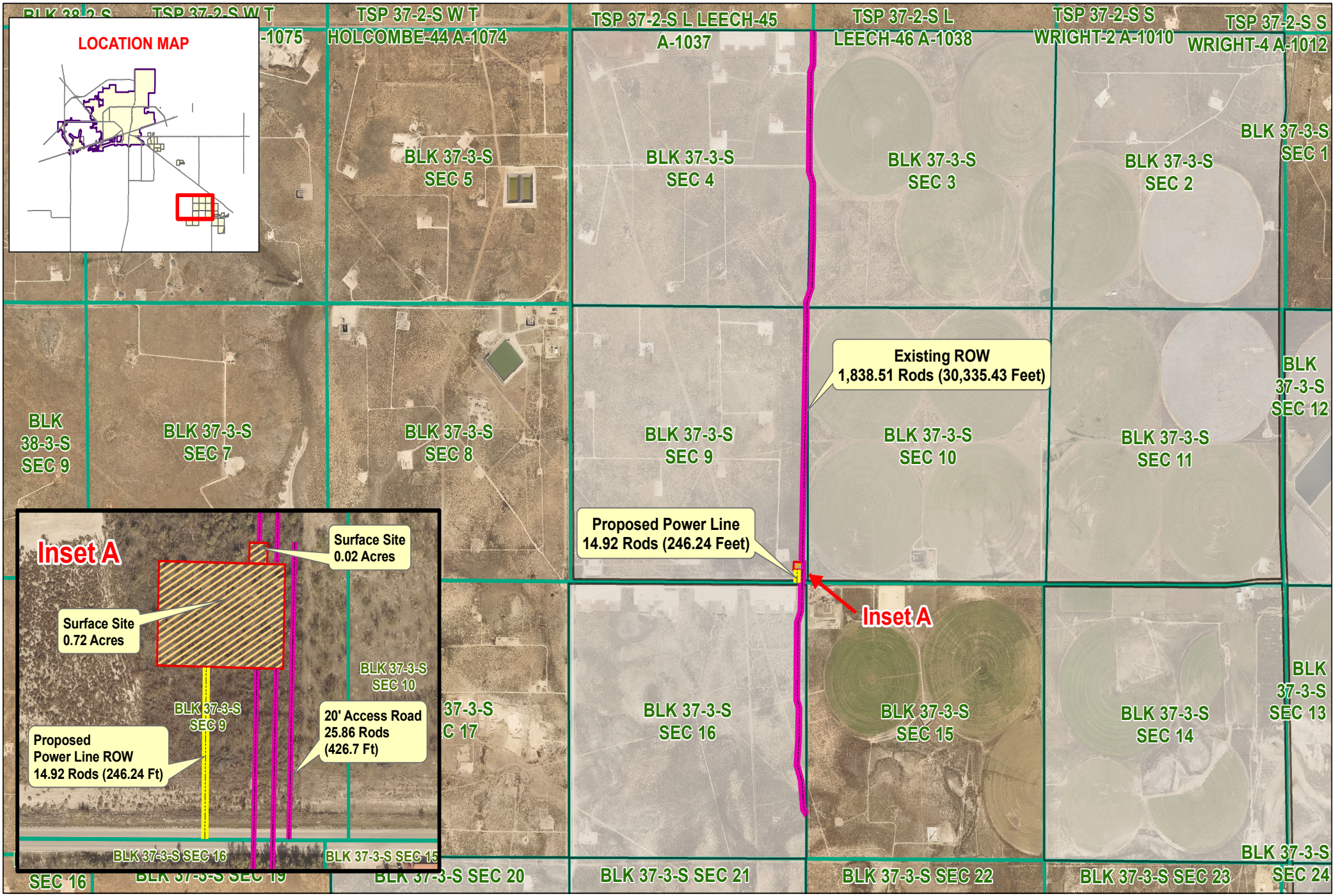
May 9, 2023

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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation endorsement [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.



Date: 3/29/2023

Proposed Power Line
Existing ROW
Surface Site
City Owned Property
Survey Section

PACKET 21.35

Bangle and Whistler Proposed Power Line ROW

May 9, 2023

0 1,000 2,000 Feet

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

City Council Meeting

Item Number: 22

Meeting Date: April 25, 2023

To: City Council / City Manager

From: James Reber, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,126-SQUARE FOOT PORTION OF LOT 1A, BLOCK 11, KIMBER-LEA ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MAXWELL DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Miguel Hernandez, d/b/a Casa Real, LLC, is requesting a Specific Use Designation with term for the sale of all alcoholic beverages for on-premises consumption in a restaurant located at 3408 North Midkiff Road, Suite 104.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north are zoned PD, Planned Development District for an Office Center (Ordinance 8,281). Properties to the east, south, and west are zoned SF-2, Single-Family Dwelling District.

Discussion:

The property is located at 3408 North Midkiff Road, Suite 104, and is currently zoned RR, Regional Retail District, which permits the sale of all alcoholic beverages for on-premises consumption in a restaurant, with the approval of a Specific Use Designation with Term.

The restaurant is currently not in operation. The site plan attached hereto as "Exhibit "A" illustrates the location of the restaurant on the property, and the floor plan attached hereto as "Exhibit B" illustrates that the restaurant will have a total square footage of 4,126, of which 2,379 square feet will be dedicated to the alcohol serviceable area.

The proposed site plan provides adequate parking, access, and internal circulation. A total of 203 shared parking spaces for all proposed buildings, of which 8 will be accessible spaces.

The proposed days and hours of operation are:

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.
Friday and Saturday from 11:00 a.m. to 12:00 a.m.

The applicant is requesting the following alcohol serviceable hours.

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.
Friday and Saturday from 11:00 a.m. to 12:00 a.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300-feet of the property using the front door to door distance measurement.

This request has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Building Code: (Approved)

The SUD for Casa Real is acceptable. The property must adhere to the maximum occupant load of 158 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Code Compliance: (Approved)

No Oil and Gas issues.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) Casa Real is an establishment that will provide Midland residents with a unique social gathering experience.

This request was recommended for approval at the April 3, 2023, Planning and Zoning Commission meeting.

Staff recommends approval of this Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, For the sale of all alcoholic beverages for on premises consumption in a restaurant, subject to conditions A through G.

Conditions:

A. **That the alcohol serviceable area shall be limited to approximately 2,379 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.
Friday and Saturday from 11:00 a.m. to 12:00 a.m.

C. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

D. That the establishment shall meet all requirements of the Fire Department and Code Administration.

E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the Zoning Ordinance, the establishment shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of April 20, 2023, staff have not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,126-SQUARE FOOT PORTION OF LOT 1A, BLOCK 11, KIMBER-LEA ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MAXWELL DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 4,126-square foot portion of Lot 1A, Block 11, Kimber-Lea Addition, Section 11, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 2,379 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.; and
Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

TABLE COUNT

6 TOP TABLE 2
4 TOP TABLE 13
4 TOP BOOTH 8
6 TOP BOOTH 3
10 BAR SEATS

TOTAL TABLES 26

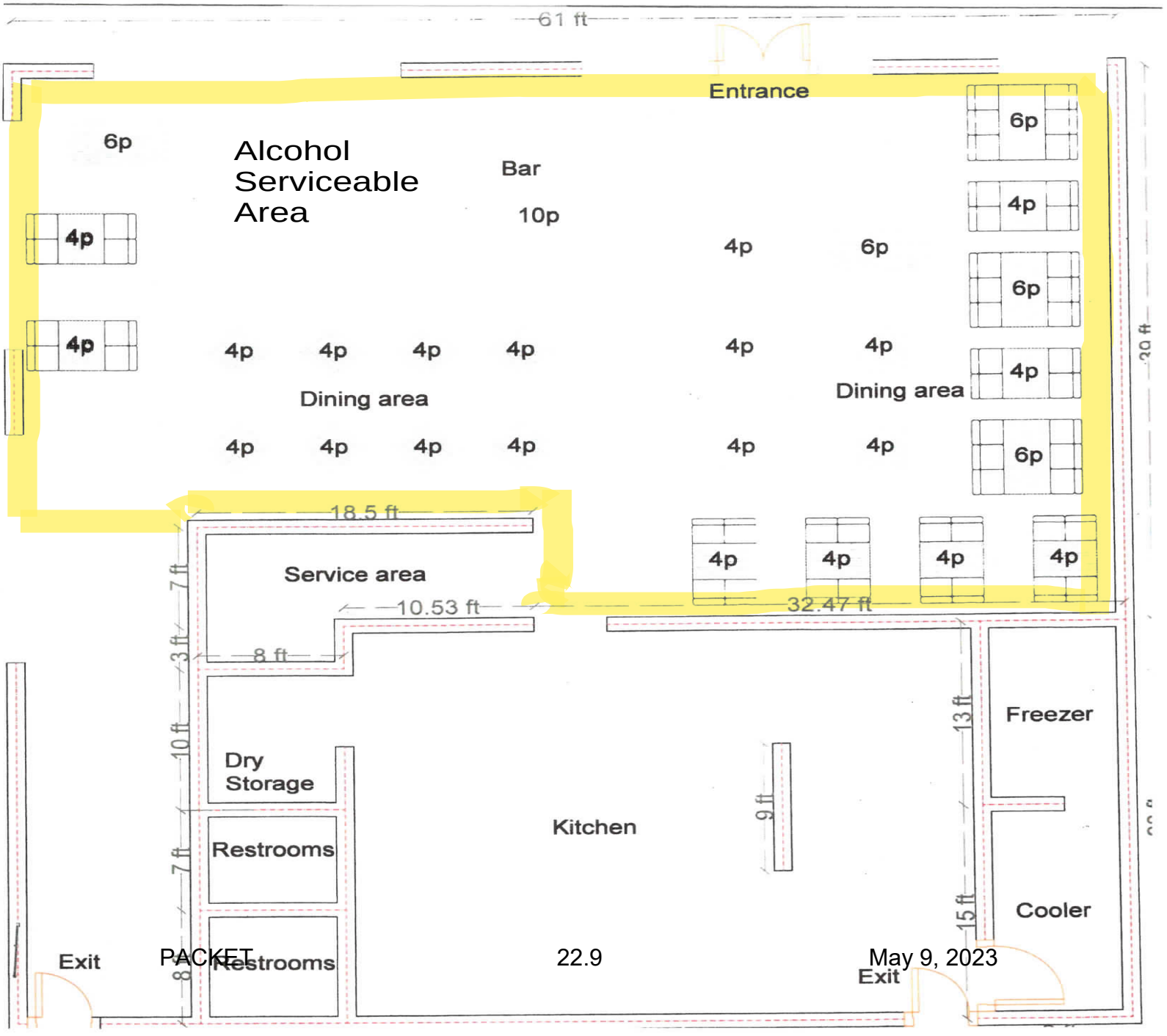
SEATS 124
EXITS 3
RESTR 2

KITCHEN 27.68 X 51
SERVICE 39 X 61
TOTAL SQARE 66.68 X 61

EXHIBIT "A"

Total Sq. ft. 4126

Serviceable Area: 2379



MIDLAND Planning Division

Specific Use Permit with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-23-0153

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Miguel Angel Hernandez		Phone (806) 773-1098 Email METZKER@LIVE.COM	
Address 4003 106th	City Lubbock	State TX	Zip 79423

Property Owner Printed Name: 3408 Midkiff, LLC		Phone (806) 584-0800 Email kcollins@doubleeagledevelopment.com	
Address 5600 S Bell St Ste 105, Space 284	City Amarillo	State TX	Zip 79109

Representative *(if different from Applicant or Property Owner)* Firm: ~~ALFREDO REYNA~~ (CONTACT) Printed Name: ALFREDO REYNA		Phone (806) 549-7320 Email AREYNA1108@GMAIL.COM	
Address 2810 EMORY ST	City LUBBOCK	State TX	Zip 79415

Street Address:	3408 N Midkiff, Suite 104, Midland, TX 79705
Business Name:	Casa Real, LLC
Legal Description Lot: 1 Block: 11 Subdivision: Kimber Lea Sec 11	
Current Zoning:	RR-Regional Retail District
Reason for Request:	Open a restaurant that serves alcohol while dining

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant					
Proposed/Current Days and Hours of Operation: Sunday - Thurs 11AM - 11PM Friday 11AM - 12MM Saturday 11AM - 12AM					
Proposed Days and Hours of Alcohol Service: Same Hours As operating Hours					
Total Square Footage of Business: 4126 SF					
Square Footage of Alcohol Serviceable Area: 2379					
Restroom Fixtures:	*Men*	**Toilets/Urinals:**	1/1	**Bathroom Sinks:**	1
	Women	**Toilets:**	2	**Bathroom Sinks:**	1

RECEIVED
MAR 02 2023

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature): Miguel Hernandez	Date: 03/01/23
Applicant (printed): Miguel Angel Hernandez	
Property Owner (signature):	Date: 2-23-2023
Property Owner (printed) : 3408 Midkiff, LLC Blake Carpenter, Manager	

The Specific Use Permit with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Miguel Angel Hernandez who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Miguel Hernandez
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 1st day of MARCH, 20 23 to certify which witness my hand and seal of office.

ANDREW BENGOA
Notary Public, State of Texas
Comm. Expires 02-10-2024
Notary ID 132352381

Andrew Bengoa
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

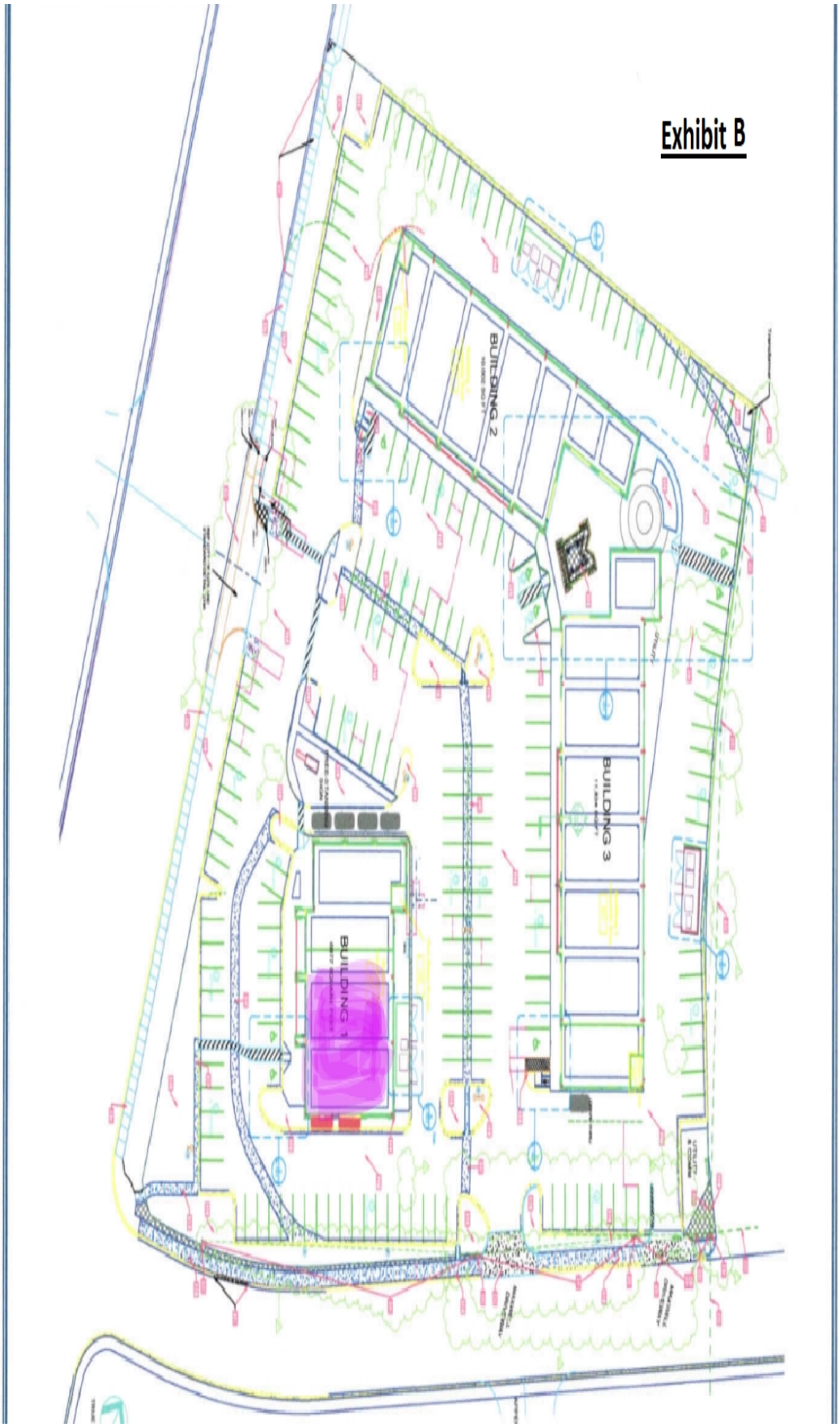
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MAR 02 2023
BY: .....

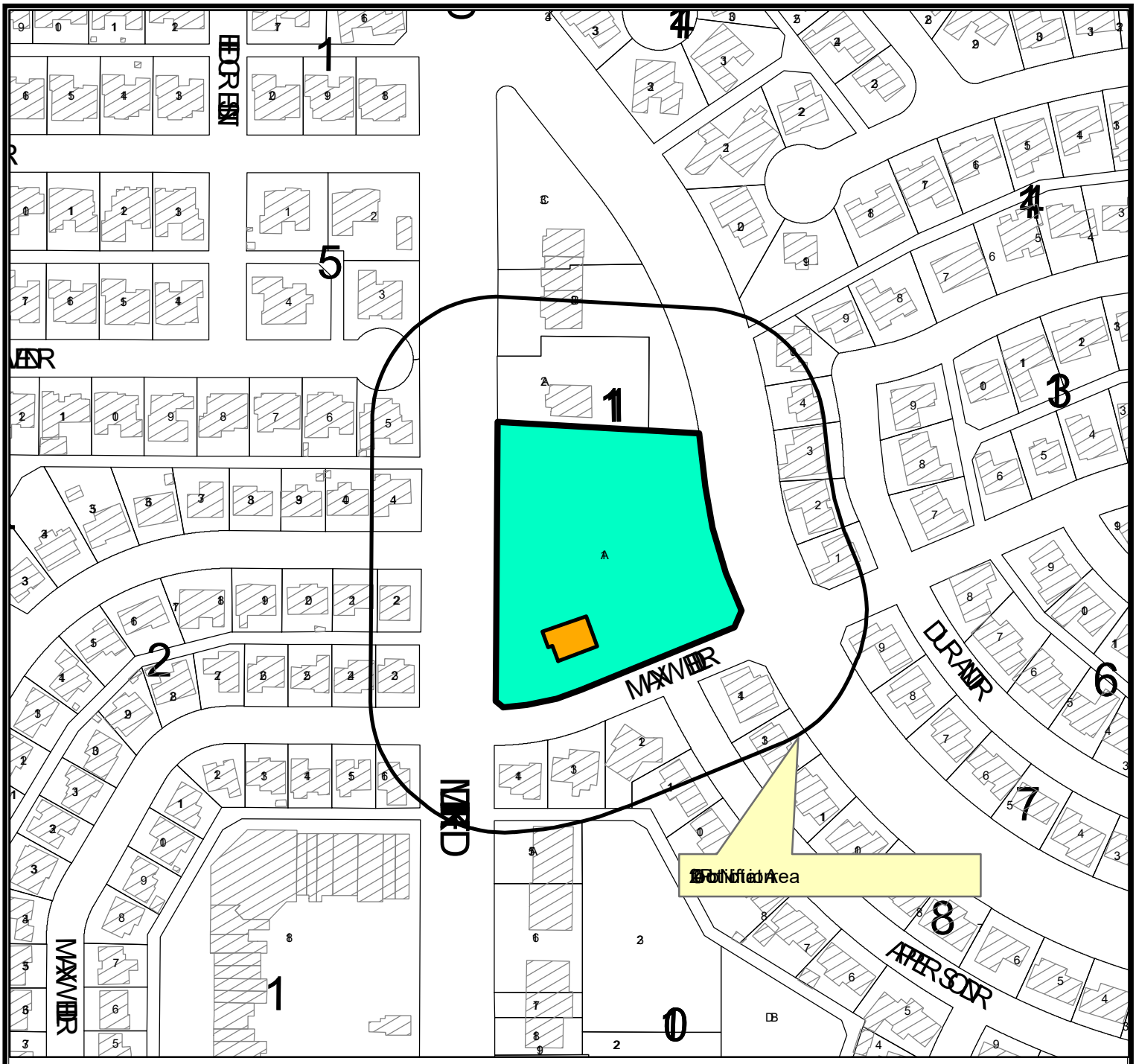
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Floor Plan
☒ Application Fee	☒ Site Plan
Check # 1207	☒ Plans in Digital Format (PDF/JPEG)
Received By:	Date:

RECEIVED
MAR 0 2 2023
BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****


Exhibit B
BUILDING 2
BUILDING 3
BUILDING 1



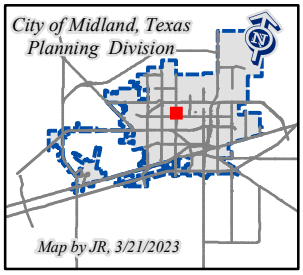
LOCATION MAP

SUD-23-0153 **Scale: 1" = 200'**

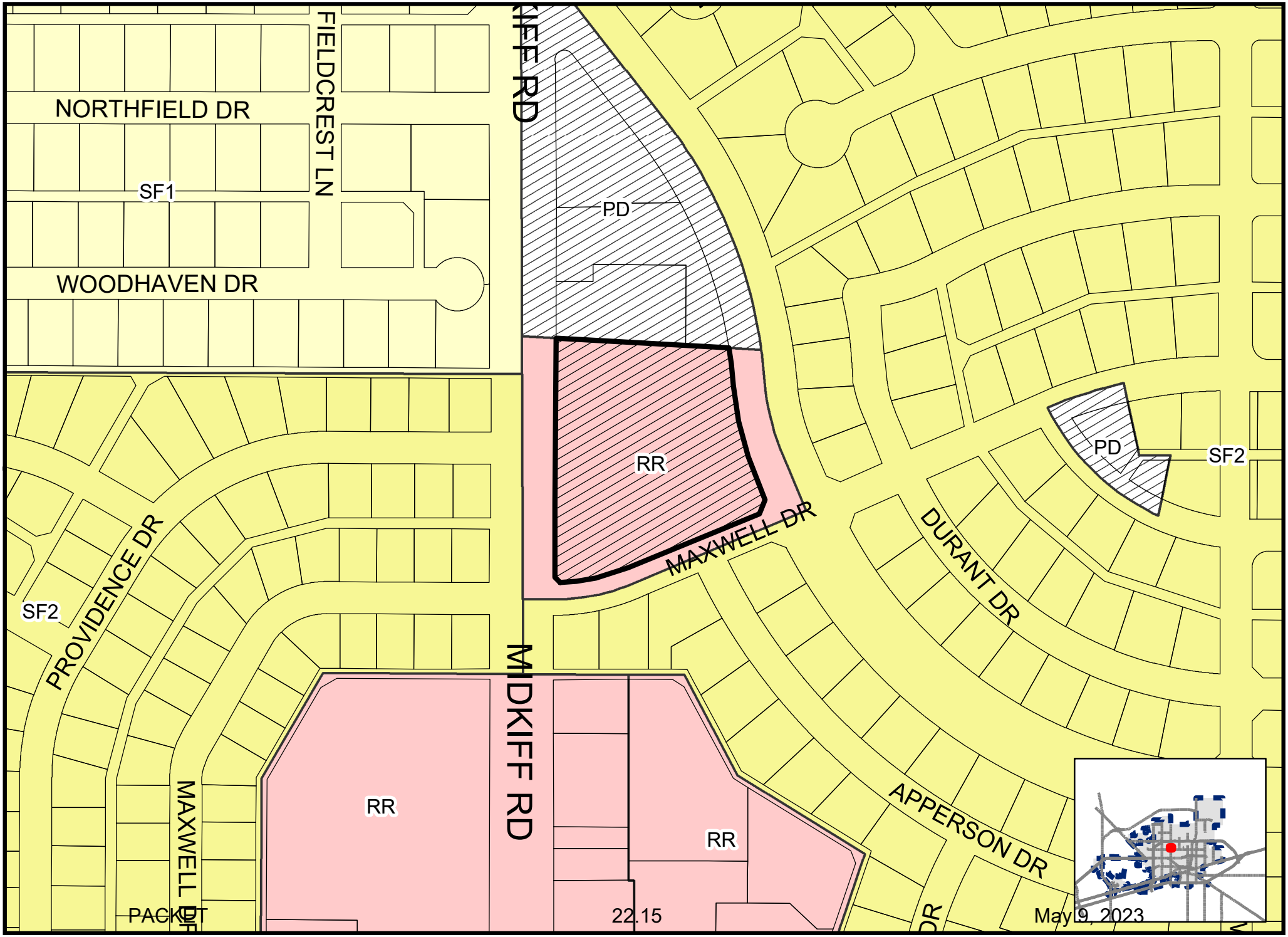
Consider a request by Miguel Hernandez, d/b/a Casa Real, LLC., for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption in a restaurant on a 2,379-square foot portion of Lot 1A, Block 11, Kimber-Addition, Section 11, City and County of Midland, Texas.(Generally located on the northeast corner of the intersection of North Midkiff Road and Maxwell Drive. - Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By JR, 3/29/23

SUD-23-0153

Scale: 1" = 200'

ZONING MAP

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THE CRAB STATION
OYSTER BAR
Great Clips
NAILS AMERICA
stewart title
LONE STAR
KING FU
SOCIETY
Kimber-Lea Place
at Clips
FIRE LANE


LONE STAR
BLDG.
1
101
104
cantina cocina


FIRE LANE


FIRE LANE NO PARKING

City Council Meeting

Item Number: 23

Meeting Date: April 25, 2023

To: City Council / City Manager

From: Landon Ochoa, Planner

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST 32 FEET OF LOT 3 AND THE EAST 63 FEET OF LOT 4, BLOCK 6, IMPERIAL HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CIMMARON AVENUE, APPROXIMATELY 230 FEET WEST OF WHITNEY DRIVE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Roy Bermea, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart*, concerning the side yard setbacks to build an accessory structure three feet from the property line.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 3205 Cimmaron and is the location of a house. The applicant is requesting a special exception to the west side yard setback requirement for the property's current zoning of SF-2, Single-Family Dwelling District for the purpose of building an accessory structure three feet from the property line instead of the required five feet.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the side yard setback for a corner lot in SF-2:*

SF-2, Single-Family Dwelling District
Yard Setback Dimensions
Minimum Side Yard Setback
Interior Lot: 5 feet

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Fire: (Approved)

No objections

Building: (Approved with Conditions)

Building must also be 10 feet from the covered porch or any other portion of the home. This will be verified by the Residential Plans Examiner and on site building inspectors.

Engineering: (Approved)

No objections. [For the Applicant's information only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning (Denial):

This request represents a deviation from the Current Zoning Code. *Section 5.04 Residential Zoning District Dimensional Regulations Chart* shows that the west side yard setback is five feet. There is an existing '20 x 20' concrete foundation on the property that is three feet away

from the west property line. The property owner is wanting to use the foundation to build a storage building to store tools and equipment. It is possible that the property owner could remove two feet from the west side of the foundation and add two feet to the east side of the foundation. This would keep the dimensions of the foundation the same while meeting the side yard setback requirement. This solution was proposed to the applicant but the applicant is trying to reduce the cost of the project by applying for a special exception instead. The property would also need to be re-platted as the west and east lot lines are currently on structures.

Although this request deviates from the code, this request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Low, a classification which calls for “A mix of complementary uses including mostly single-family, with some attached, townhome and small multi-family projects, schools, small parks and churches, and neighborhood retail or mixed use.” The use of an accessory structure for storage for a residence would not deviate from this designation.

Due to these factors, staff is recommending denial of this request. However, if it is approved, staff recommends that it be subject to conditions A through D.

Conditions:

A. That said special exception shall not become effective until the Property is replatted into a single lot.

B. That the minimum side yard setback on the west side of the Property shall be three feet; provided, however, that said reduced minimum side yard setback shall apply only to the 20' x 20' accessory building shown in Exhibit “A”, which is attached hereto and incorporated herein. Said accessory building is not drawn to scale in Exhibit “A”.

C. That the accessory building described in Subsection B above shall be (1) located at least 10 feet from any portion of the building identified in Exhibit “A” as “RESIDENCE”, (2) located at least 10 feet from any portion of the structure identified in Exhibit “A” as “COVERED PATIO”, and (3) located at least five feet from the alley on the south side of the Property.

Letters of Objection:

Staff has not received any letters of objection as of April 24, 2023.

Attachments:

Application
Site plan (Exhibit A)
Maps

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR THE WEST 32 FEET OF LOT 3 AND THE EAST 63 FEET OF LOT 4, BLOCK 6, IMPERIAL HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CIMMARON AVENUE, APPROXIMATELY 230 FEET WEST OF WHITNEY DRIVE), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE WEST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE

CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as the west 32 feet of Lot 3 and the east 63 feet of Lot 4, Block 6, Imperial Heights Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum side yard setback on the west side of the Property.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That said special exception shall not become effective until the Property is replatted into a single lot.

B. That the minimum side yard setback on the west side of the Property shall be three feet; provided, however, that said reduced minimum side yard setback shall apply only to the 20' x 20' accessory building shown in Exhibit "A", which is attached hereto and incorporated herein. Said accessory building is not drawn to scale in Exhibit "A".

C. That the accessory building described in Subsection B above shall be (1) located at least 10 feet from any portion of the building identified in Exhibit "A" as "RESIDENCE", (2) located at least 10 feet from any portion of the structure identified in Exhibit "A" as "COVERED PATIO", and (3) located at least five feet from the alley on the south side of the Property.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

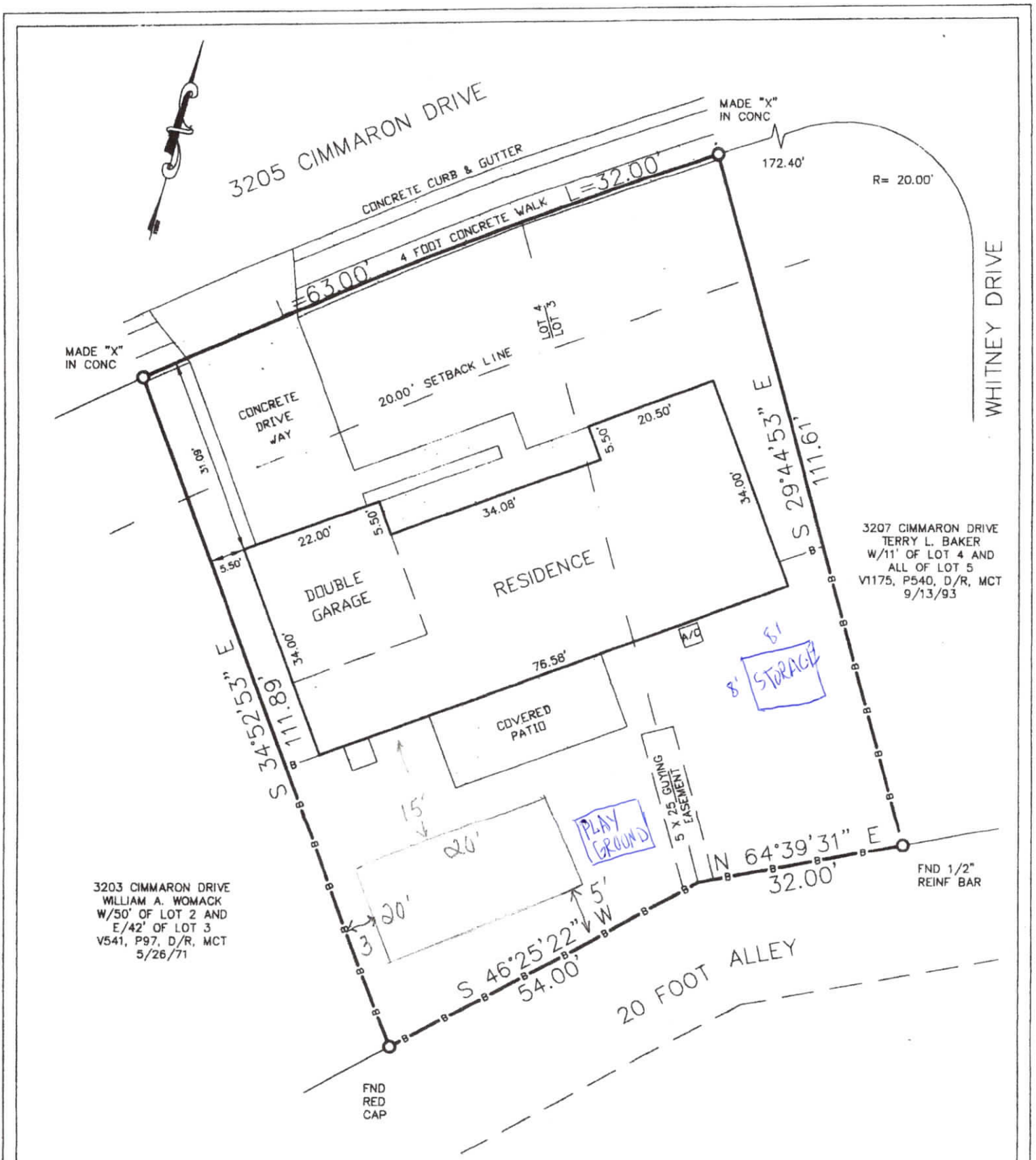
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



FOR FLOOD INSURANCE RATING PURPOSES: THIS PROPERTY LIES WITHIN FLOOD INSURANCE ZONE DESIGNATION "X" AS DEPICTED ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 48329-C0101D, MIDLAND COUNTY, TEXAS AND INCORPORATED AREAS EFFECTIVE DATE, SEPTEMBER 17, 1992, AS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). CENSUS TRACT NO. 3.03

TO THE LIENHOLDER, ROY R. BERMEA AND NORMA BERMEA

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS

SURVEY PLAT

MIDLAND Planning Division

Special Exception Application

Project Number: E-23-0096

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: ROY BERMEA		Phone (432) 638-7339 Email RBermea52@gmail.com	
Address 3205 CIMMARON	City MIDLAND	State TX	Zip 79705

Property Owner Printed Name: ROY BERMEA		Phone (432) 638-7339 Email RBermea52@gmail.com	
Address 3205 CIMMARON	City MIDLAND	State TX	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 3205 CIMMARON

Legal Description
Lot: Block: Subdivision:

Current Zoning:

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Existing foundation 20'x20' is 5' from alley, but only 3ft from property line. I'm told its enforced from 3' to 5' between property lines. I want to put a pre-fab metal lea on that foundation, so I'm ~~RE~~ asking for an exception to the city code. Thank you!

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature): Roy Bermea	Date:
Applicant (printed): ROY BERMEA	
Property Owner (signature): Roy Bermea	Date:
Property Owner (printed) : ROY BERMEA	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

RECEIVED
MAR 0 7 2023
BY: .....

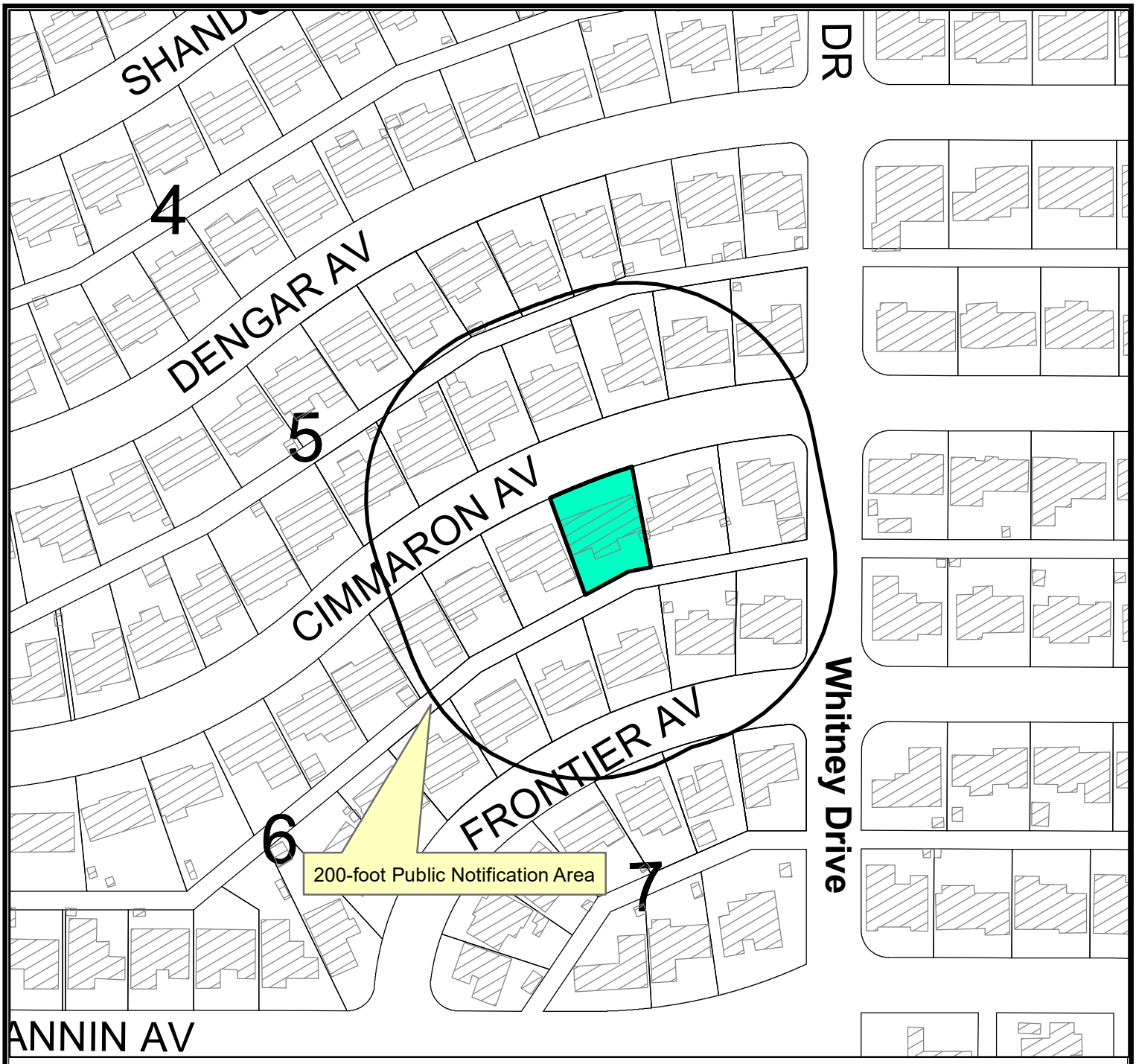
☐ Property Owner Authorization ☐ Dimensioned Site Plan

☐ Application Fee ☐ Plans in Digital Format (PDF/JPEG)

Check #_____

Received By: James Reber	Date: 3/7/23

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

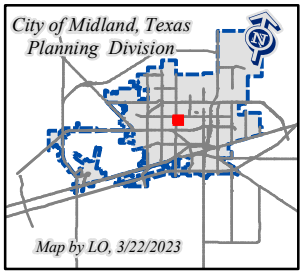
E-23-0096 **Scale: 1" = 1,862'**

Consider a request by Roy Bermea for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, for a reduced minimum side yard setback on the west 32 feet of Lot 3 and the east 63 feet of Lot 4, Block 6, Imperial Heights Addition, City and County of Midland, Texas.

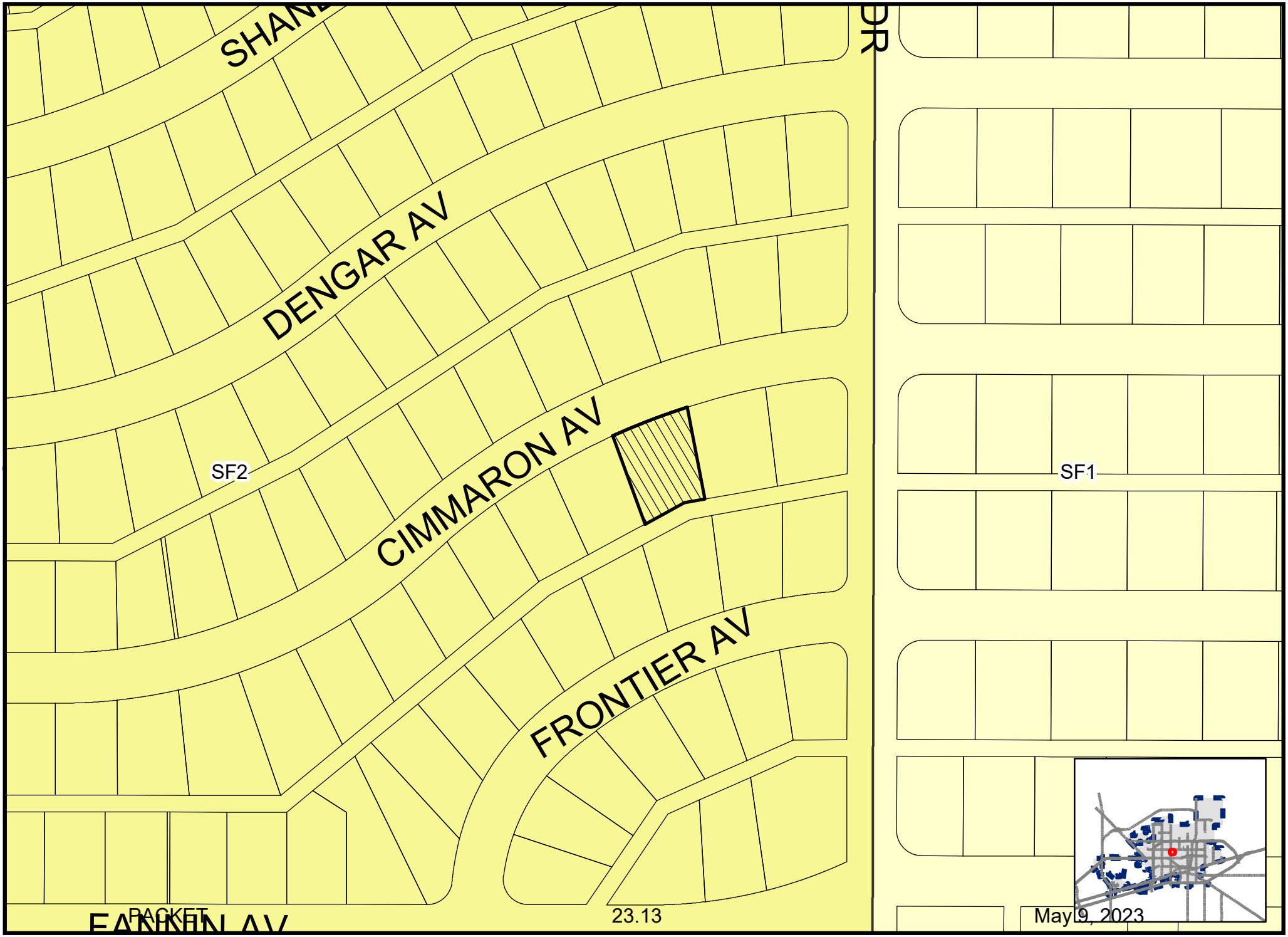
Generally located south of Cimmaron Avenue Approximately 635 feet west of Whitney Drive. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS THE ONLY 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.



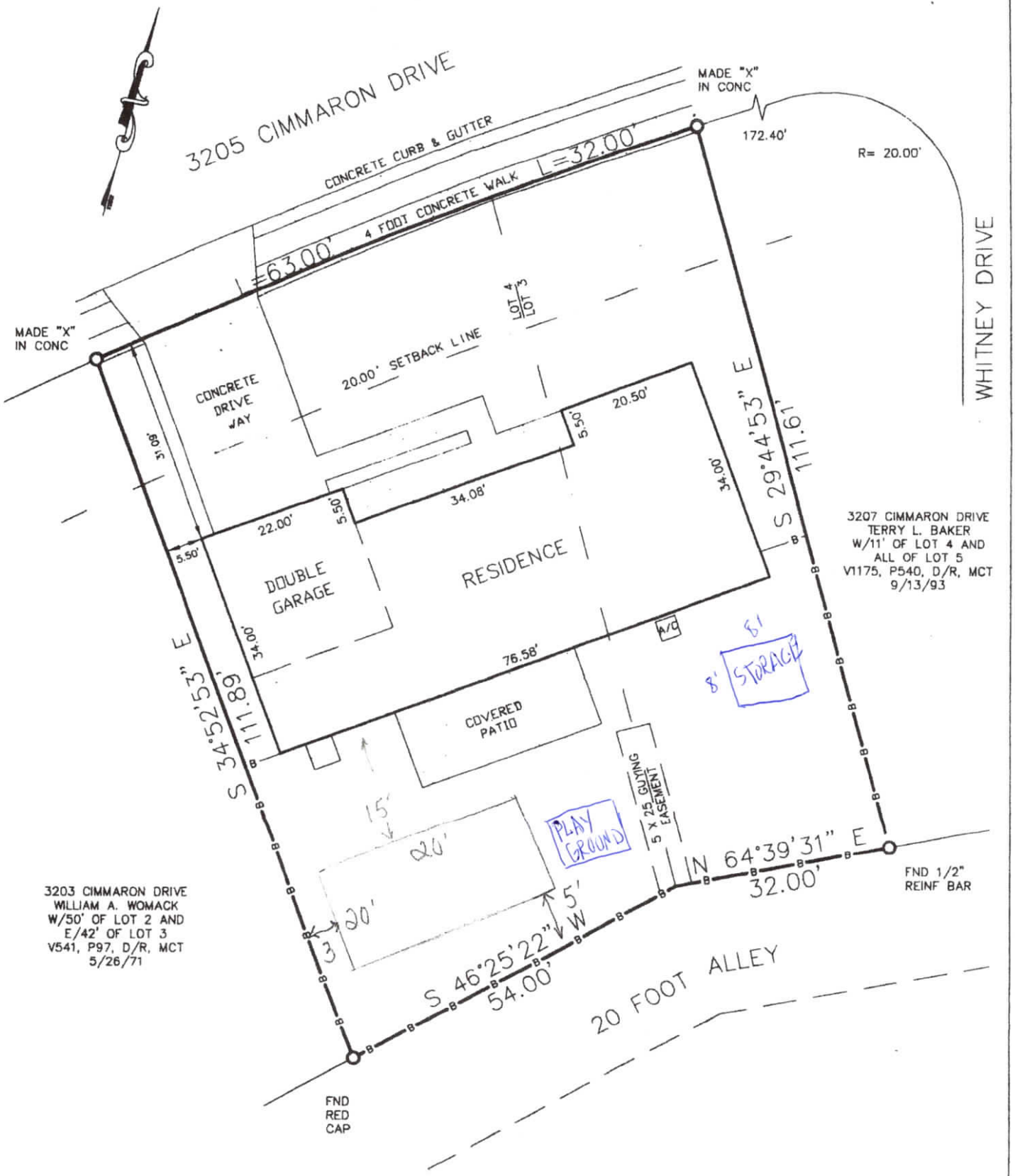
Map By LO, 3/22/2023

E-23-0096

Scale: 1" = 1,715'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

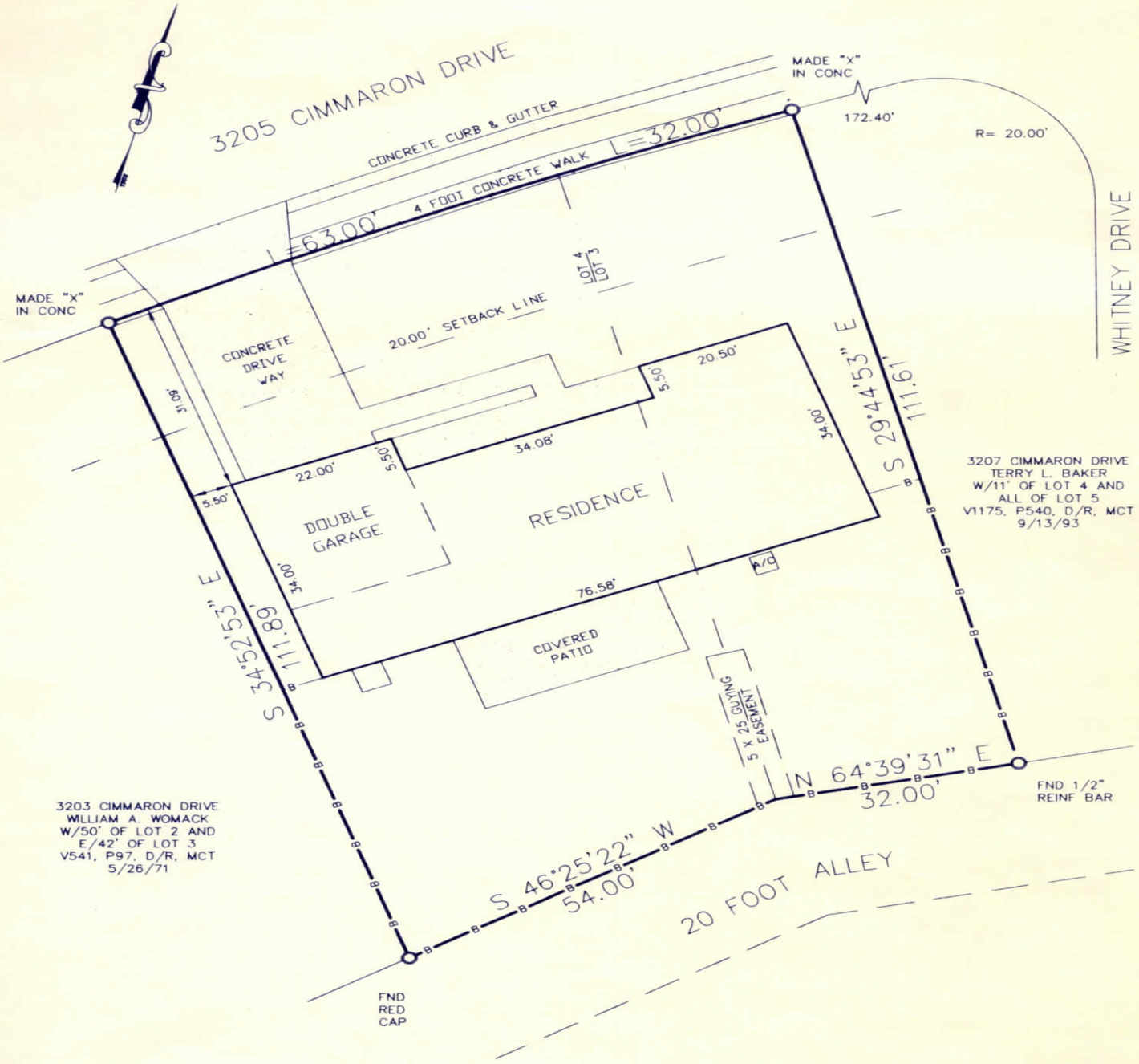


FOR FLOOD INSURANCE RATING PURPOSES: THIS PROPERTY LIES WITHIN FLOOD INSURANCE ZONE DESIGNATION "X" AS DEPICTED ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 48329-C0101D, MIDLAND COUNTY, TEXAS AND INCORPORATED AREAS EFFECTIVE DATE, SEPTEMBER 17, 1992, AS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). CENSUS TRACT NO. 3.03

TO THE LIENHOLDER(S) ROY R. BERMEA AND NORMA BERMEA

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS

SURVEY PLAT



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TO THE LIENHOLDERS, ROY R. BERMEA AND NORMA BERMEA

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT AND THAT THERE ARE NO DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS–OF–WAY, EXCEPT AS SHOWN HEREON AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY.

DATED THIS 28TH DAY OF JULY, 1997

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

SURVEY PLAT

THE WEST 32 FEET OF LOT 3 AND
LOT 4 EXCEPT THE WEST 11 FEET

BLOCK 6

IMPERIAL HEIGHTS ADDITION

AN ADDITION TO THE CITY OF MIDLAND,
AS PER PLAT OF RECORD IN
CABINET "A", PAGE 42, PLAT RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1"= 20'

PROJECT: 63070LSA
JOB NO.: 63,070

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET – P. O. BOX 504
MIDLAND, TEXAS 79702–0504

Office (915) 684–5548
Fax (915) 684–6973




TEXAS
FWX-5747





City Council Meeting

Item Number: 24

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE OIL AND GAS WELL KNIGHT 120 MIPA UNIT H120LS; SAID WELL BEING GENERALLY LOCATED 1,878 FEET EAST OF NORTH A STREET EXTENSION AND 1,833 FEET SOUTH OF WEST LOOP 250 NORTH (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The proposed granting of oil and gas well permit to Permian Deep Rock Oil Co., LLC ("Operator") for the drilling of the oil and gas well Knight 120 MIPA Unit H120LS said well being generally located 1,878 feet east of North A Street extension and 1,833 feet south of W Loop 250 N. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval. Per the City agreement requirements, Permian Deep Rock will be using 24 ft. tall sound walls on all sides of location during drilling and fracing. In addition, a quiet frac system will be used and truck traffic will enter from turn out lane off of Big Spring and follow a row to well locations and then exit leaving on Smith Road and then left on Veterans Parkway. A closed loop system will be used for drilling operations. A production tank battery will be located

outside the city limits and transfer facility will be located on the South side of the actual well pad location. Permian Deep Rock has a surface agreement and lease agreement with the City of Midland. Receiving support of the Oil & Gas Advisory Committee, Permian Deep Rock Oil is requesting the following variances:

(1) requests to allow for twenty-four-hour fracing operations.
(2) requests variance for fence of the drill pad instead of individual well
(3) request a variance to the landscaping and irrigation to follow the Surface Agreement.
(4) requests variance to remove drill cuttings from the location per the Surface Agreement.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Monroe Williams Jr.

City Manager's Office

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
03/01/2023	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Kyle M. Hammond	500 W. Wall St. Ste 300 Midland, TX 79701	432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes✓ No___	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Office buildings, City Collection Center, undeveloped pasture

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,

Current Tax Roll from Midland Central Appraisal District), **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

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

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

IV. Well & Operations Information

Proposed Well Name: Knight 120 MIPA UNIT H120LS

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

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 1833' FNL & 1878' FWL, Section 14
Block 39, T1S, T&PRR Co. Survey, Midland County, Texas

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

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

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

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

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

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

***ATTACHED AS EXHIBIT M*: Road use and repair agreement attached**

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

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

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

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

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

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

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

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

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

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

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

ATTACHED AS EXHIBIT V: Applicants variances

Permian Deep Rock Oil Co.
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

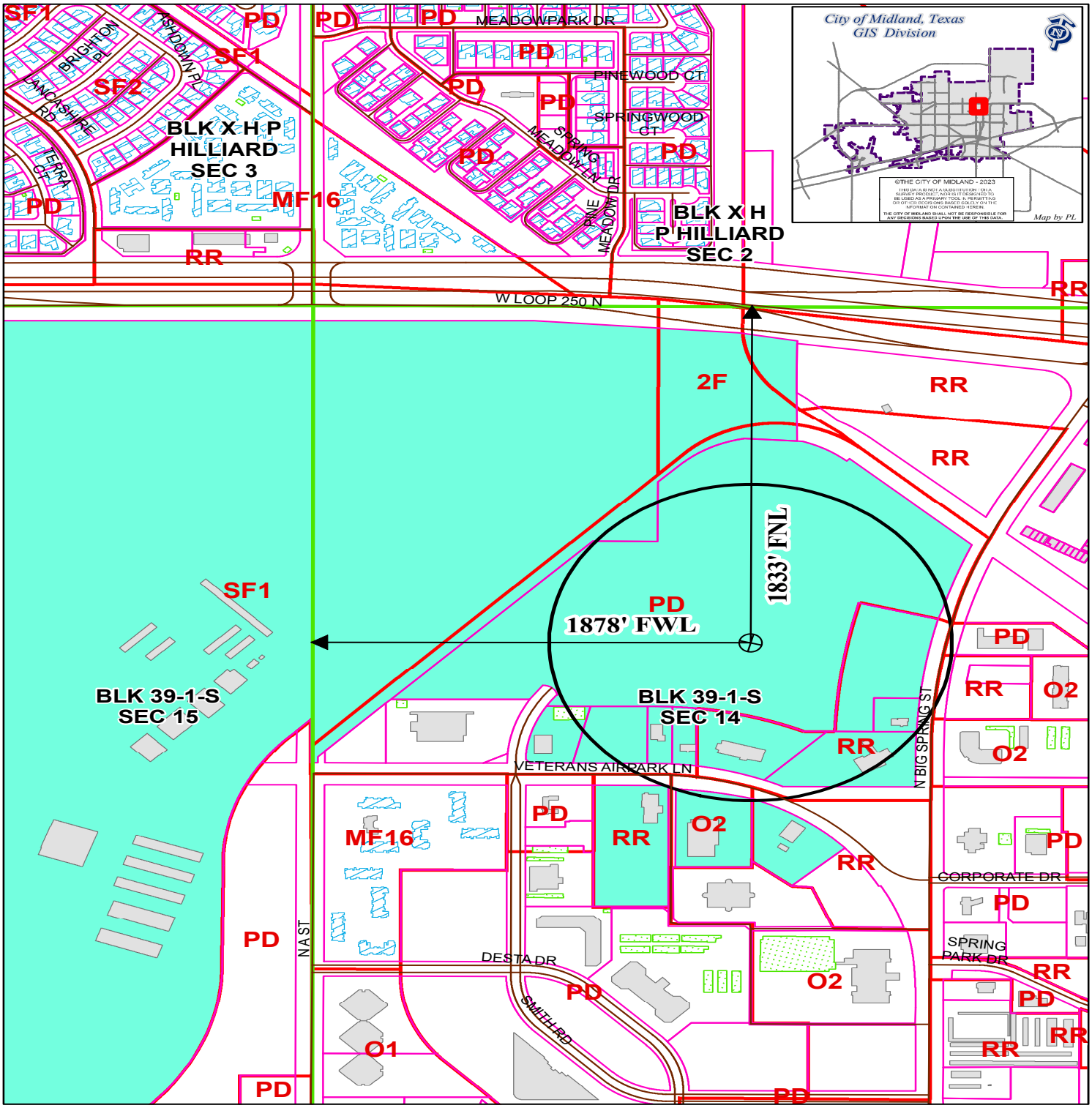
County of Midland)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

ESTELLA PENA
Notary Public, State of Texas
My Commission Expires
August 03, 2025
NOTARY ID 13123361-8

[S E A L]

Estella Peña
Notary Public, State of Texas



LOCATION AND ZONING MAP

Oil - 050028 - 2023 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,833' FNL and 1,878' FWL, Section 14, Block 39, T-1-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,878 feet east of North A Street extension and 1,833 feet south of W Loop 250 N.

Knight 120 MIPA Unit H120LS

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

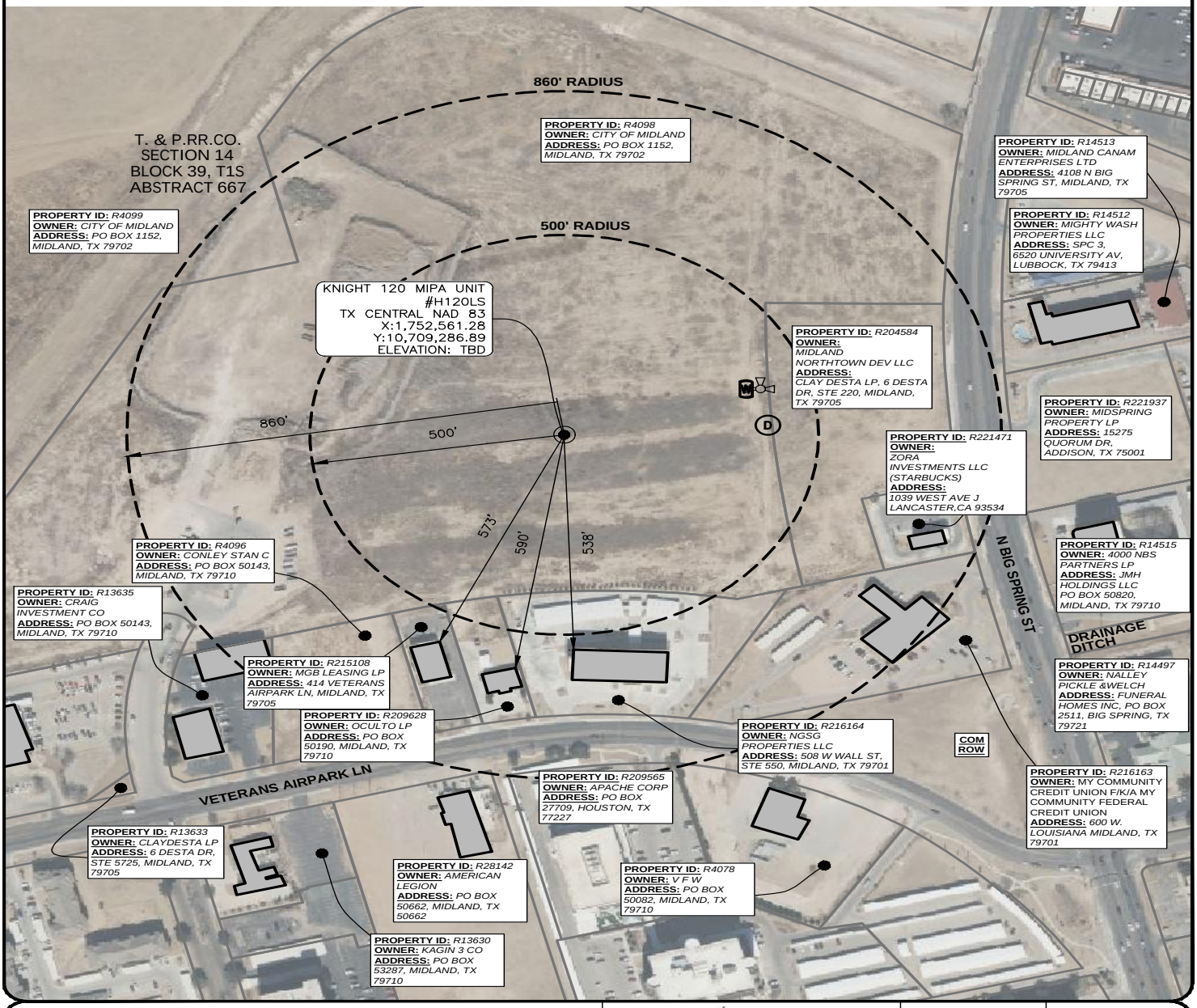
NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. THIS EXHIBIT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS. THIS IS NOT A "BOUNDARY SURVEY".
3. THE PROPOSED WELL LOCATION WAS SURVEYED ON 01-19-2023

SYMBOL LEGEND:

- FIRE HYDRANT
- STORM DRAIN MANHOLE
- WATER VALVE

N
W E
S
0' 150' 300'



WARNING: PLAT MAY NOT SHOW ALL CROSSINGS OF PIPELINES OR CABLES. USE TEXAS ONE CALL SYSTEM BEFORE EXCAVATION ON PROPERTY.

WELL RADIUS

PROPOSED KNIGHT 120 MIPA UNIT #H120LS
T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S, ABSTRACT 667, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS
WELL SECTION LINE TIES: 1,878' FSWL & 1,833' FNWL

NOTES:
1. SURVEY RECONSTRUCTION FILED IN THE OFFICE OF ATWELL, LLC.
2. ALL BEARING AND GRID COORDINATES SHOWN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF NAD 83, CENTRAL ZONE.
3. THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY.

PERMIAN DEEP ROCK OIL COMPANY

ATWELL
866.850.4200 www.atwell-group.com
10100 Reunion Place, Suite 700
San Antonio, Texas 78216
TBPLS FIRM # 10194153

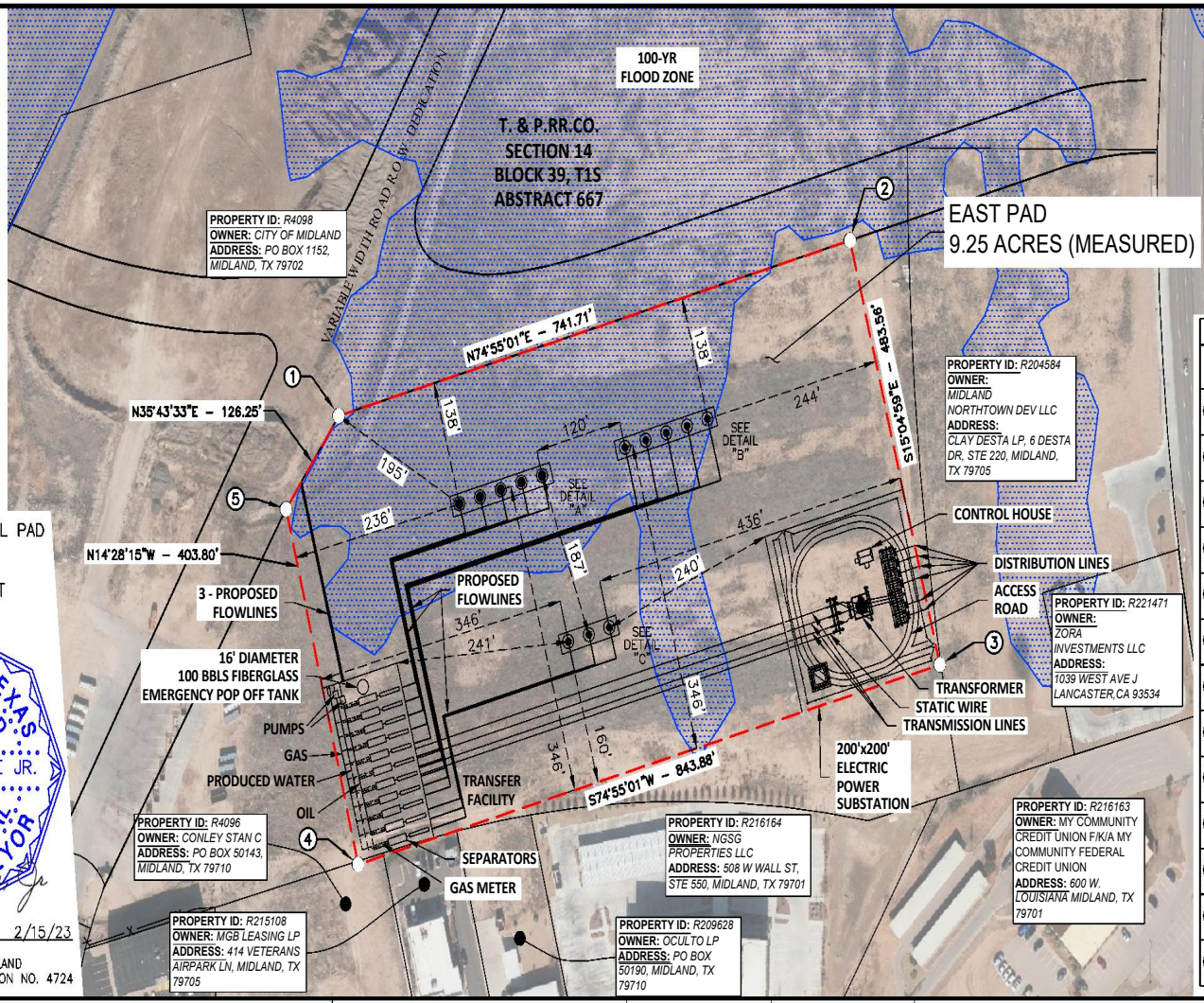
DRAWN	RS	DATE	1/20/23
CHECKED	DC	DATE	1/20/23
APP'D		DATE	
SCALE	1"=300'	PAGE	2 OF 4

REV#	DATE	DESC.

JOB NAME	WELL RADIUS
JOB NO.	21003805

Date: Jan 20, 2023, 8:50am User ID: rsolis
File: K:\21003805 – Arrington – MIPA Wells East Pad\11 MAPPING\00 PLAN SETS\00 PLAT – TENTATIVE PRELIM\01 REV 0\Exhibit E – Well Radius\21003805 – WELL RADIUS – KNIGHT H 120LS – NAD 83.dwg

MIDLAND COUNTY, TEXAS



Coordinates			
Corner No.	State Plane TX–C NAD27	Geographic NAD27	Elev:
1	N: 866745.51 E: 1455693.62	Lat: 32°02'16.57" Long: –102°05'23.09"	2,783.4'
2	N: 866938.51 E: 1456409.77	Lat: 32°02'18.59" Long: –102°05'14.81"	2,787.3'
3	N: 866471.61 E: 1456535.60	Lat: 32°02'13.99" Long: –102°05'13.26"	2,784.0'
4	N: 866252.03 E: 1455720.80	Lat: 32°02'11.69" Long: –102°05'22.69"	2,785.3'
5	N: 866643.02 E: 1455619.90	Lat: 32°02'15.54" Long: –102°05'23.93"	2,784.2'

Well Information			
Well No.	State Plane TX–C NAD27	Geographic NAD27	Elev:
A KNIGHT 135 MIPA UNIT #H135WA	N: 866648.48 E: 1455862.69	Lat: 32°02'15.63" Long: 102°05'21.11"	2,781.6'
B KNIGHT 130 MIPA UNIT #H130LS	N: 866656.28 E: 1455891.65	Lat: 32°02'15.71" Long: 102°05'20.78"	2,782.2'
C KNIGHT 130 MIPA UNIT #H130WB	N: 866664.08 E: 1455920.62	Lat: 32°02'15.80" Long: 102°05'20.44"	2,782.0'
D KNIGHT 125 MIPA UNIT #H125WA	N: 866671.88 E: 1455949.59	Lat: 32°02'15.88" Long: 102°05'20.11"	2,782.7'
E KNIGHT 120 MIPA UNIT #H120WB	N: 866679.67 E: 1455978.56	Lat: 32°02'15.96" Long: 102°05'19.77"	2,783.3'
F KNIGHT 120 MIPA UNIT #H120LS	N: 866710.78 E: 1456094.49	Lat: 32°02'16.29" Long: 102°05'18.43"	TBD
G KNIGHT 115 MIPA UNIT #H115LS	N: 866718.67 E: 1456123.40	Lat: 32°02'16.37" Long: 102°05'18.10"	2,783.7'
H KNIGHT 115 MIPA UNIT #H115WA	N: 866726.47 E: 1456152.37	Lat: 32°02'16.45" Long: 102°05'17.76"	2,783.9'
I KNIGHT 110 MIPA UNIT #H110WB	N: 866734.27 E: 1456181.34	Lat: 32°02'16.53" Long: 102°05'17.43"	2,784.6'
J KNIGHT 110 MIPA UNIT #H110UH	N: 866742.06 E: 1456210.31	Lat: 32°02'16.61" Long: 102°05'17.09"	2,786.0'
K KNIGHT 130 MIPA UNIT #H130SS	N: 866496.84 E: 1456014.91	Lat: 32°02'14.16" Long: 102°05'19.32"	2,783.0'
L KNIGHT 120 MIPA UNIT #H120MS	N: 866504.64 E: 1456043.88	Lat: 32°02'14.24" Long: 102°05'18.98"	2,782.6'
M KNIGHT 110 MIPA UNIT #H110SS	N: 866512.44 E: 1456072.85	Lat: 32°02'14.32" Long: 102°05'18.65"	2,782.6'

DETAIL "A" NOT TO SCALE (A B C D E; 30' 30' 30' 30')

DETAIL "B" NOT TO SCALE (F G H I J; 30' 30' 30' 30')

DETAIL "C" NOT TO SCALE (K L M; 30' 30')

TOTAL AREA OF WELL PAD

= 9.25 ACRES
= 402,945 SQ. FEET

STATE OF TEXAS REGISTERED JERRY D. WILKIE JR. 4724 PROFESSIONAL LAND SURVEYOR

2/15/23

JERRY D. WILKIE, JR.
REGISTERED PROFESSIONAL LAND SURVEYOR TEXAS REGISTRATION NO. 4724

EXHIBIT "G"

KNIGHT 135 MIPA UNIT #H135WA, KNIGHT 130 MIPA UNIT #H130LS, KNIGHT 130 MIPA UNIT #H130WB, KNIGHT 125 MIPA UNIT #H125WA, KNIGHT 120 MIPA UNIT #H120WB, KNIGHT 115 MIPA UNIT #H115LS, KNIGHT 115 MIPA UNIT #H115WA, KNIGHT 110 MIPA UNIT #H110WB, KNIGHT 110 MIPA UNIT #H110UH, KNIGHT 130 MIPA UNIT #H130SS, KNIGHT 120 MIPA UNIT #H120MS, & KNIGHT 110 MIPA UNIT #H110SS
SITUATED IN
T. & P. RR. CO. SURVEY, SECTION 14, BLOCK 39, T1S, ABSTRACT 667 OF THE CITY MIDLAND, MIDLAND COUNTY, TEXAS.

REV.	DRAWING NAME
4	EXHIBIT "G" KNIGHT MIPA EAST PAD

PERMIAN DEEP ROCK OIL COMPANY

ATWELL

DRAWN	MA	DATE	01/03/22
CHECKED	LF	DATE	01/03/22
APP'D		DATE	
SCALE	1"=200'	PAGE	1 OF 2

REV#	DATE	DESC.
2 - MA	02/22/22	PAD REVISION
3 - MA	07/20/22	PAD REVISION
4 - RS	02/14/23	WELL REVISION
JOB NO.	21003805	

N W E S

0' 100' 200'

LEGEND

PAD LINE
SURFACE HOLE LOCATION

NOTES

1. ALL BEARINGS & DISTANCES SHOWN HEREON ARE GRID BASED UPON TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM OF 1927, US SURVEY FOOT, AS DERIVED FROM AN ON THE GROUND SURVEY PERFORMED BY ATWELL, LLC ON JUNE 16, 2022.

PACKET 24.9 May 9 2023

Date: Feb 15, 2023, 2:38pm User ID: rsolis
File: \\txsan\projects\21003805 – Arrington – MIPA Wells East Pad\11 MAPPING\00 PLAN SETS\00 PLAT – TENTATIVE PRELIM\01 REV 0\Exhibit G\Rev4\21003805 – Arrington – MIPA Wells East Pad – Exhibit G – Rev4.dwg

City Council Meeting

Item Number: 25

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Alexandra Walling, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED APPROXIMATELY 520 FEET SOUTH OF WEST LOOP 250 NORTH AND APPROXIMATELY 515 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Scott A. Mommer Consulting C/O Cassie Permenter, is requesting a Zone Change from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center to amend the adopted site plan to allow outside storage and display of merchandise.

Recommended City Council Action:

☒ **Approve** ☐ **Deny** ☐ **Direction/Informational**

Fiscal Impact:

No City funds would be required for this project.

Discussion:

Current Zoning:

PD, Planned Development District for a Shopping Center with a base zoning RR, Regional Retail District. (Ordinance No. 10154)

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Shopping Center, and the location of restaurants. The property to the east is zoned PD, Planned District for a Shopping Center, and the location of retail use. The properties to the south are zoned SF-2, Single-Family Dwelling District, and the location of residences. The property to the west is zoned PD, Planned District for a Shopping Center, and the location of a storage facility.

Analysis:

The subject property is located at 4009 North Midland Drive, the applicant is requesting to amend the site plan for the property to designate an outdoor staging area as well as an area for outdoor sales and display.

The staging area will be enclosed by a six-foot tall wood vinyl screening fence on the east side of the property as illustrated in Exhibit A which will be used to store new products, mainly garden supplies, and will remain there for no longer than 72 hours until taken into the main garden center and/or store. The staging area will be 2,900± square feet.

The outdoor sales and display area will be 5,639± square feet along the north side of the building as shown in Exhibit A. This outdoor sales and display area will be used to store seasonal items such as barbeques, patio furniture, material displays, fencing displays, and landscape products including live plants, blocks, and sand.

This request has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objection to zone change.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections. [For the Applicant’s information only.]

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Planning:

This request conforms with the Tall City Tomorrow Comprehensive Plan, Chapter 3-Land Use Vision. The future land use map designates this area to be used for RC, Regional Commercial developments. These areas are characterized by major community and regional commercial development that are both large in scale and have high traffic impact and are typically located at intersections of arterial streets.

This requested zone change will allow for alterations to the previously adopted Site Plan, which includes the proposed outdoor sales area and staging area.

This item was approved by the Planning and Zoning Commission on April 17, 2023.

Staff recommends approval of this zone change from PD, Planned Development District for a Shopping Center, to Amended PD, Planned Development District for a Shopping Center subject to conditions A and B.

Conditions:

A. **That the use and development of the property shall significantly conform to the site plan and elevation drawings attached hereto as Exhibit "A".**

B. **That outside displays in the areas shown as "Proposed Outdoor Sales & Display Area" in Exhibit "A" are permitted at all times.**

Letters of Objection:

As of May 3, 2023, staff has received no letters of objection for this request.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED APPROXIMATELY 520 FEET SOUTH OF WEST LOOP 250 NORTH AND APPROXIMATELY 515 FEET WEST OF NORTH MIDLAND DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 6, Block 45, Fairmont Park Addition, Section 15, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the use and development of the Property shall significantly conform to the site plan and elevation drawings attached hereto as Exhibit "A".

B. That outside displays in the areas shown as "PROPOSED OUTDOOR SALES & DISPLAY AREA" in Exhibit "A" are permitted at all times.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

EXHIBIT "A"

THE HOME DEPOT MIDLAND #0561

4009 N MIDLAND DR.
MIDLAND, TX 79707

PROJECT INFORMATION

SITE ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
APN:	R0000-19-018
ZONING DISTRICT:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
SCOPE OF WORK:	DESIGNATED AREAS INTENDED FOR HOME DEPOT OUTDOOR DISPLAY AND STORAGE AREA.
LOT AREA :	12.96 AC (564,534 SF)
BUILDING AREA:	129,500 SF
COVERAGE AREA:	132,970 SF
TOTAL PARKING:	561 STALLS

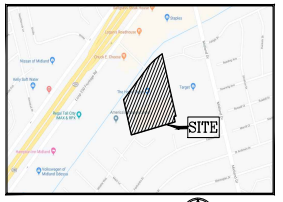
LEGEND

- EXISTING LIMITS OF SUBJECT BOUNDARY
- EXISTING HANDICAP STALLS
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING LIGHT POLE
- EXISTING DOOR/EMERGENCY EXIT
- EXISTING BOLLARD
- EXISTING CART CORRAL
- EXISTING CURB
- EXISTING FENCE
- EXISTING WALL
- EXISTING STRIPING

SHEET INDEX

SHEET 1	COVER SHEET
SHEET 2	OUTDOOR DISPLAY AND STORAGE – SITE PLAN
SHEET 3	OUTDOOR DISPLAY AND STORAGE – ELEVATIONS

SAMC
SCOTT A. MOMMER CONSULTING



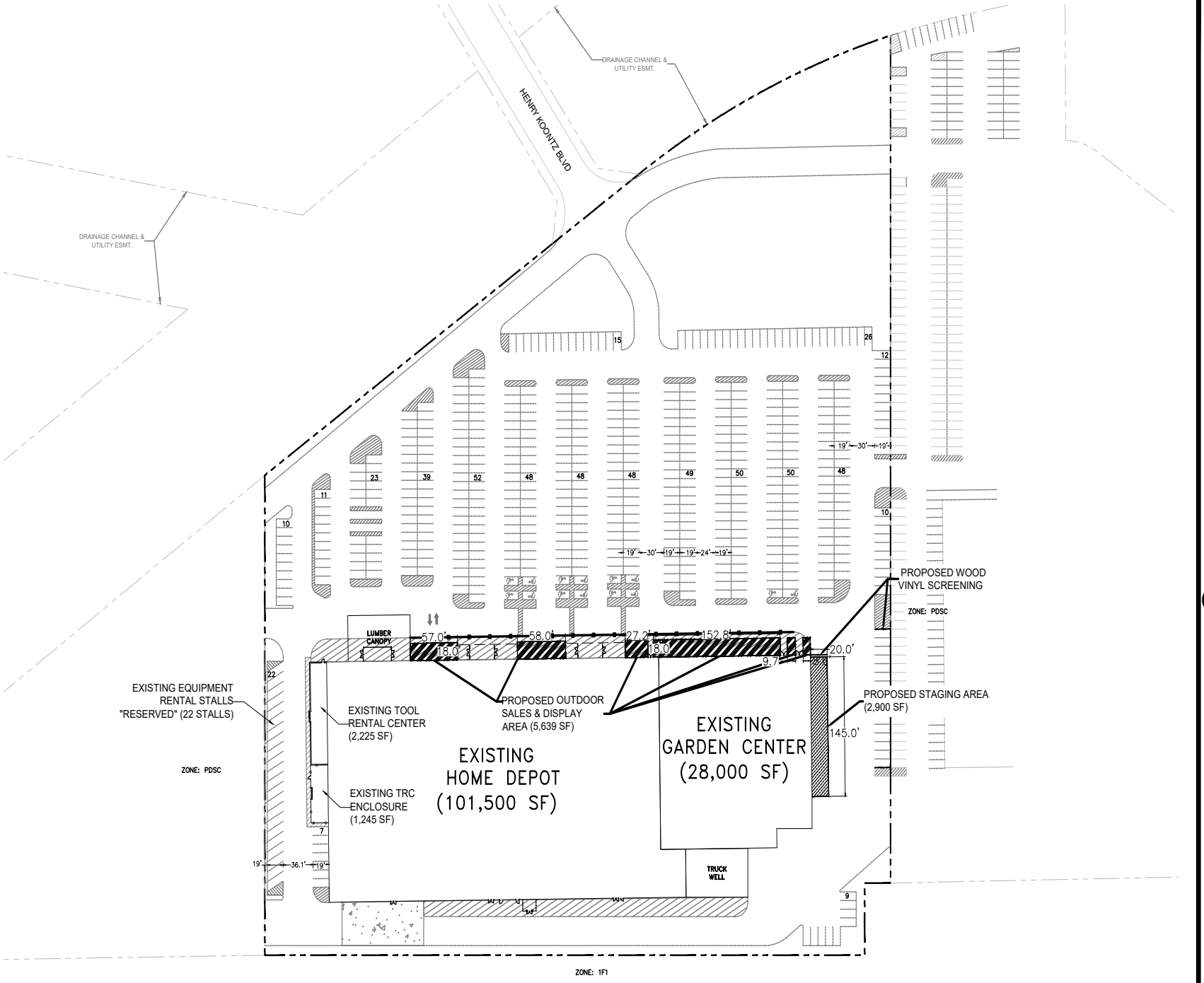
VICINITY MAP
NOT TO SCALE

OUTDOOR DISPLAY AND STORAGE

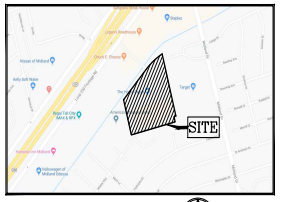
DATE:	9/22/2022
REVISION DATES:	2/24/2023
SITE PLANNER	DAVID GOMEZ
SITE DEV. COORDINATOR	CASSIE PERMENTER

TX - MIDLAND
STORE #0561

ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22



SAMC
SCOTT A. MOMMER CONSULTING



VICINITY MAP
NOT TO SCALE

PROJECT INFORMATION

ZONING INFORMATION

APN:	R0000-19-018
ZONING:	PDSC
LAND USE:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
JURISDICTION:	CITY OF MIDLAND,TX

HOME DEPOT SITE DATA

HOME DEPOT AREA	12.96 AC

HOME DEPOT BUILDING AREAS

EXISTING HOME DEPOT BUILDING	101,500 SF
EXISTING GARDEN CENTER	28,000 SF
EXISTING TOOL RENTAL CENTER	+ 2,225 SF
TOTAL HD BUILDING AREA	131,725 SF

PARKING REQUIRED PER CITY CODE

HOME DEPOT (@ 3.7 PER 1,000 SF PER ORDINANCE NO. 8893) (INCLUDING GARDEN CENTER & TRC)	487 STALLS

PARKING PROVIDED

FRONT FIELD PARKING	529 STALLS
SIDE FIELD PARKING	23 STALLS
REAR FIELD PARKING	+ 9 STALLS
TOTAL PARKING PROVIDED	561 STALLS

INCLUDED WITHIN PARKING PROVIDED

ACCESSIBLE PARKING	14 STALLS

NOT INCLUDED WITHIN PARKING PROVIDED

THD EQUIPMENT RENTAL STAGING AREA	22 STALLS (2,900 SF)

NOTE: GREEN STRIPING TO BE INCORPORATED IN PROPOSED STAGING AREA.

OUTDOOR DISPLAY AND STORAGE

DATE:	9/22/2022
REVISION DATES:	2/24/2023
SITE PLANNER	DAVID GOMEZ
SITE DEV. COORDINATOR	CASSIE PERMENTER

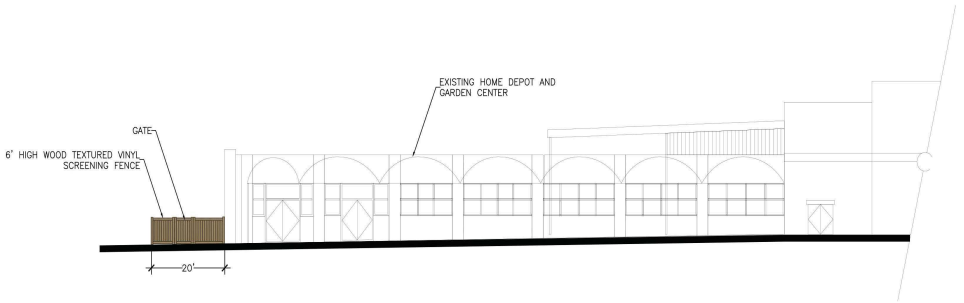
THE HOME DEPOT

TX - MIDLAND
STORE #0561

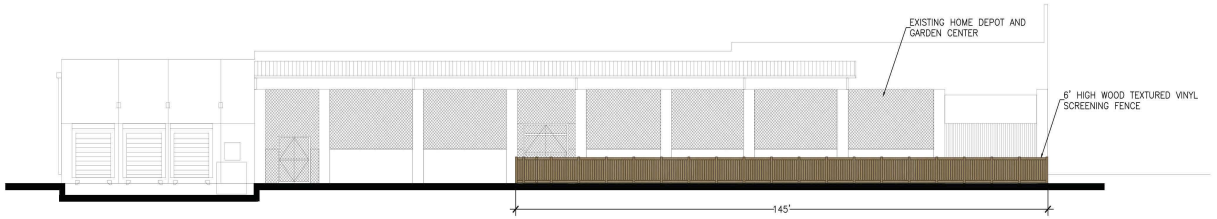
ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22

0' 50' 100'
SCALE 1"=50'

SITE PLAN
SHEET 2 OF 3

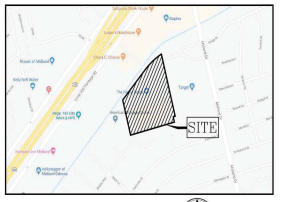


1 PARTIAL NORTH ELEVATION
Scale: 1/16"= 1'-0"



2 EAST ELEVATION
Scale: 1/16"= 1'-0"

SAMC
SCOTT A. MOMMER CONSULTING



VICINITY MAP
NOT TO SCALE

PROJECT INFORMATION

ZONING INFORMATION

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STORE #0561

ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22

0' 50' 100'
SCALE 1"=50'

ELEVATIONS
SHEET 3 OF 3

THE HOME DEPOT MIDLAND #0561

4009 N MIDLAND DR.
MIDLAND, TX 79707

PROJECT INFORMATION

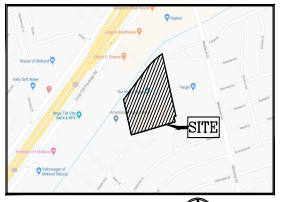
SITE ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
APN:	R0000-19-018
ZONING DISTRICT:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
SCOPE OF WORK:	DESIGNATED AREAS INTENDED FOR HOME DEPOT OUTDOOR DISPLAY AND STORAGE AREA.
LOT AREA :	12.96 AC (564,534 SF)
BUILDING AREA:	129,500 SF
COVERAGE AREA:	132,970 SF
TOTAL PARKING:	561 STALLS

LEGEND

- EXISTING LIMITS OF SUBJECT BOUNDARY
- EXISTING HANDICAP STALLS
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING LIGHT POLE
- EXISTING DOOR/EMERGENCY EXIT
- EXISTING BOLLARD
- EXISTING CART CORRAL
- EXISTING CURB
- EXISTING FENCE
- EXISTING WALL
- EXISTING STRIPING

SHEET INDEX

SHEET 1	COVER SHEET
SHEET 2	OUTDOOR DISPLAY AND STORAGE – SITE PLAN
SHEET 3	OUTDOOR DISPLAY AND STORAGE – ELEVATIONS



VICINITY MAP
NOT TO SCALE

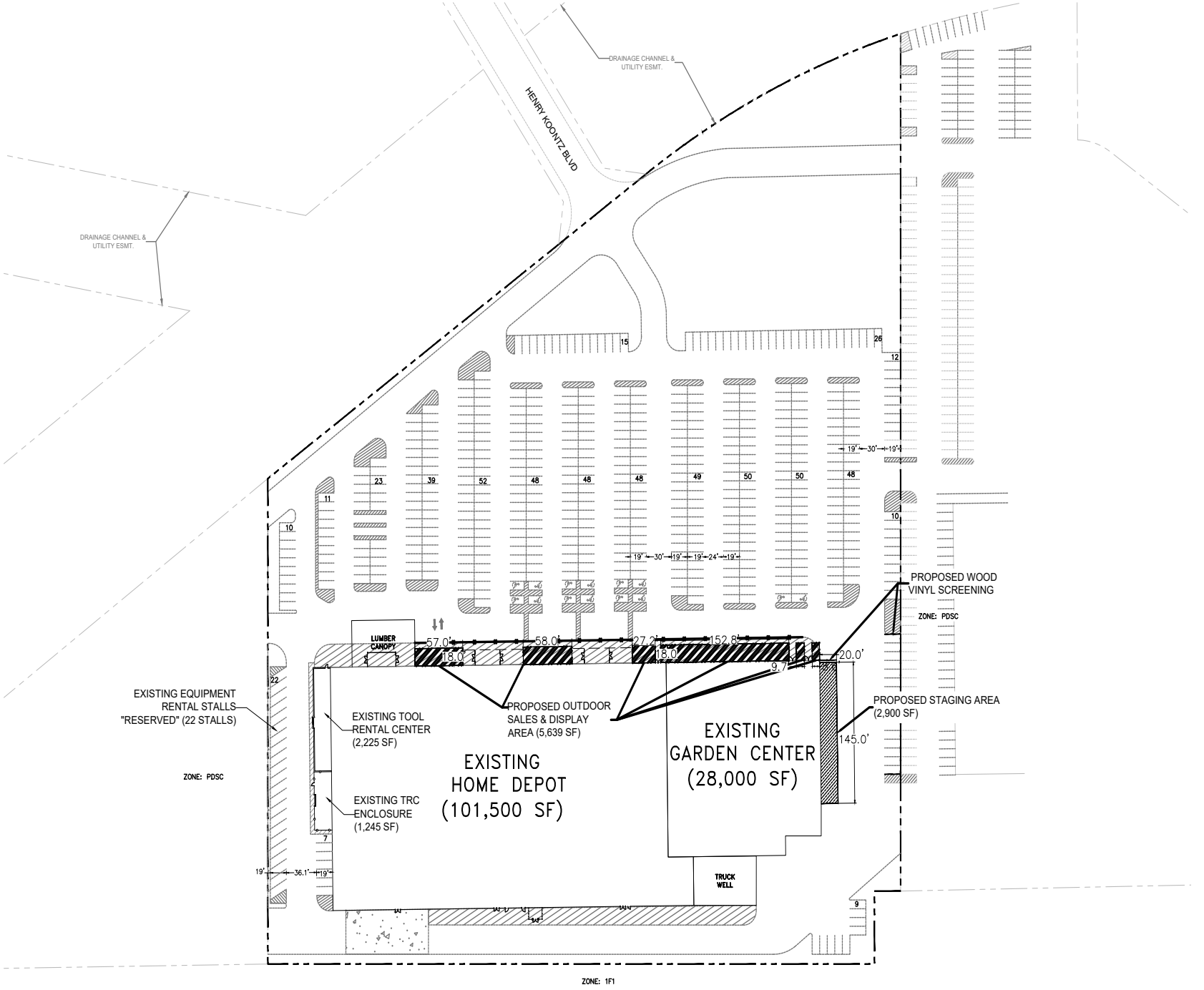
OUTDOOR DISPLAY AND STORAGE

DATE:	9/22/2022
REVISION DATES:	2/24/2023
SITE PLANNER	DAVID GOMEZ
SITE DEV. COORDINATOR	CASSIE PERMENTER

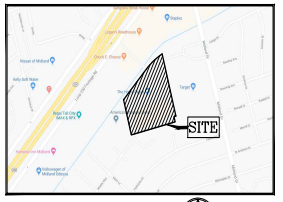
TX - MIDLAND
STORE #0561

ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22

PACKET 25.12 May 9, 2023



SAMC
SCOTT A. MOMMER CONSULTING



VICINITY MAP
NOT TO SCALE

PROJECT INFORMATION

ZONING INFORMATION

APN:	R0000-19-018
ZONING:	PDSC
LAND USE:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
JURISDICTION:	CITY OF MIDLAND,TX

HOME DEPOT SITE DATA

HOME DEPOT AREA	12.96 AC

HOME DEPOT BUILDING AREAS

EXISTING HOME DEPOT BUILDING	101,500 SF
EXISTING GARDEN CENTER	28,000 SF
EXISTING TOOL RENTAL CENTER	+ 2,225 SF
TOTAL HD BUILDING AREA	131,725 SF

PARKING REQUIRED PER CITY CODE

HOME DEPOT (@ 3.7 PER 1,000 SF PER ORDINANCE NO. 8893) (INCLUDING GARDEN CENTER & TRC)	487 STALLS

PARKING PROVIDED

FRONT FIELD PARKING	529 STALLS
SIDE FIELD PARKING	23 STALLS
REAR FIELD PARKING	+ 9 STALLS
TOTAL PARKING PROVIDED	561 STALLS

INCLUDED WITHIN PARKING PROVIDED

ACCESSIBLE PARKING	14 STALLS

NOT INCLUDED WITHIN PARKING PROVIDED

THD EQUIPMENT RENTAL STAGING AREA	22 STALLS (2,900 SF)

NOTE: GREEN STRIPING TO BE INCORPORATED IN PROPOSED STAGING AREA.

OUTDOOR DISPLAY AND STORAGE

DATE:	9/22/2022
REVISION DATES:	2/24/2023
SITE PLANNER	DAVID GOMEZ
SITE DEV. COORDINATOR	CASSIE PERMENTER

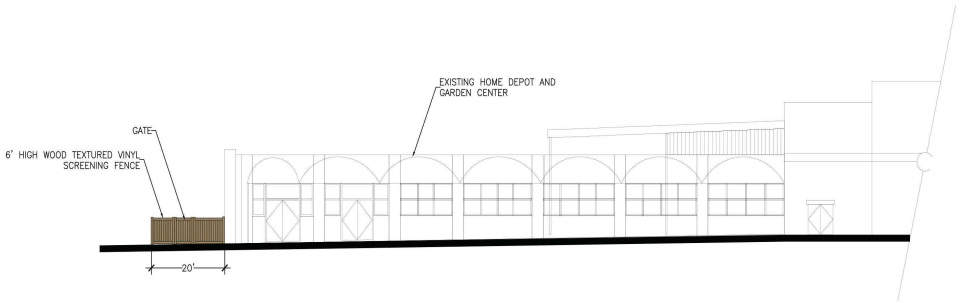
THE HOME DEPOT

TX - MIDLAND
STORE #0561

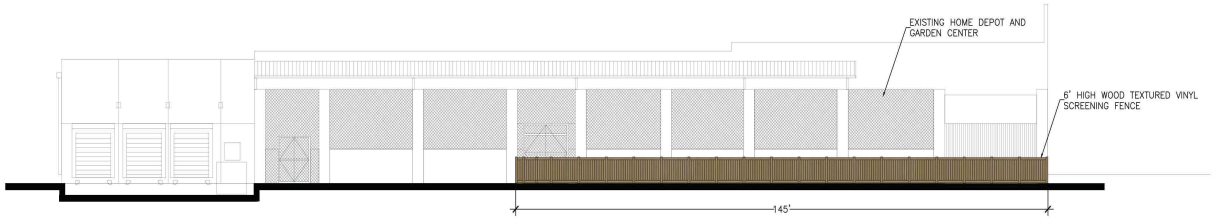
ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22

0' 50' 100'
SCALE 1"=50'

SITE PLAN
SHEET 2 OF 3

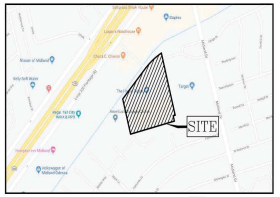


1 PARTIAL NORTH ELEVATION
Scale: 1/16"= 1'-0"



2 EAST ELEVATION
Scale: 1/16"= 1'-0"

SAMC
SCOTT A. MOMMER CONSULTING



VICINITY MAP
NOT TO SCALE

PROJECT INFORMATION

ZONING INFORMATION

APN:	R0000-19-018
ZONING:	PDSC
LAND USE:	U-M NC (URBAN-MEDIUM NEIGHBORHOOD CENTER)
JURISDICTION:	CITY OF MIDLAND,TX

HOME DEPOT SITE DATA

HOME DEPOT AREA	12.96 AC

HOME DEPOT BUILDING AREAS

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NOT INCLUDED WITHIN PARKING PROVIDED

THD EQUIPMENT RENTAL STAGING AREA	22 STALLS (2,900 SF)

NOTE: GREEN STRIPING TO BE INCORPORATED IN PROPOSED STAGING AREA.

OUTDOOR DISPLAY AND STORAGE

DATE:	9/22/2022
REVISION DATES:	2/24/2023
SITE PLANNER	DAVID GOMEZ
SITE DEV. COORDINATOR	CASSIE PERMENTER

THE HOME DEPOT

TX - MIDLAND
STORE #0561

ADDRESS:	4009 N MIDLAND DR. MIDLAND, TX 79707
LA PROJECT NUMBER	SM 343.22

0' 50' 100'
SCALE 1"=50'

ELEVATIONS
SHEET 3 OF 3

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Scott A Mommer Consulting C/O Cassie Permenter		Phone (623) 250-3810 ext 103 Email CPermenter@larsandersen.com	
Address 28827 N 91st Avenue	City Peoria	State AZ	Zip 85383

Property Owner Printed Name: HD Development Properties LB C/O Suzanne Russo		Phone (770) 384-2406 Email suzanne_russo@homedepot.com	
Address 2455 Paces Ferry Rd C-20	City Atlanta	State GA	Zip 30339

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4009 N Midland Drive TX 79707

Legal Description
Lot: Block: Subdivision:

Current Zoning: PDSC	**Proposed Zone:** SC *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To utilize outdoor storage areas, front sidewalk sales and seasonal sales during specific times through the year.

Present Use of Property: Home Depot

Proposed Use of Property: Home Depot with Seasonal Sales, Front Sidewalk Sales and Outdoor Storage Areas

How would this zone change affect the public health, safety and welfare? It would make it easier for customers to purchase big ticket items. Additionally, having designated areas would promote safety throughout the parking lot.

Describe how conditions affecting the property have changed since present zoning designation: N/A

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): *Cassandra Permenter*	Date: 8/22/2022
Applicant (printed): Cassandra Permenter	
Property Owner (signature): Suzanne Russo	Date: 8-23-22
Property Owner (printed) : Suzanne Russo	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF ~~TEXAS~~ GA
COUNTY OF ~~MIDLAND~~ Cobb

Before me, the undersigned authority, on this day personally appear Suzanne Russo who, being by me duly sworn, upon oath says: That (s)he is the owner of Property 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 23 day of August, 2022, to certify which witness my hand and seal of office.

Barbara Turner
NOTARY PUBLIC
Fulton County, GEORGIA
My Commission Expires 09/10/2022

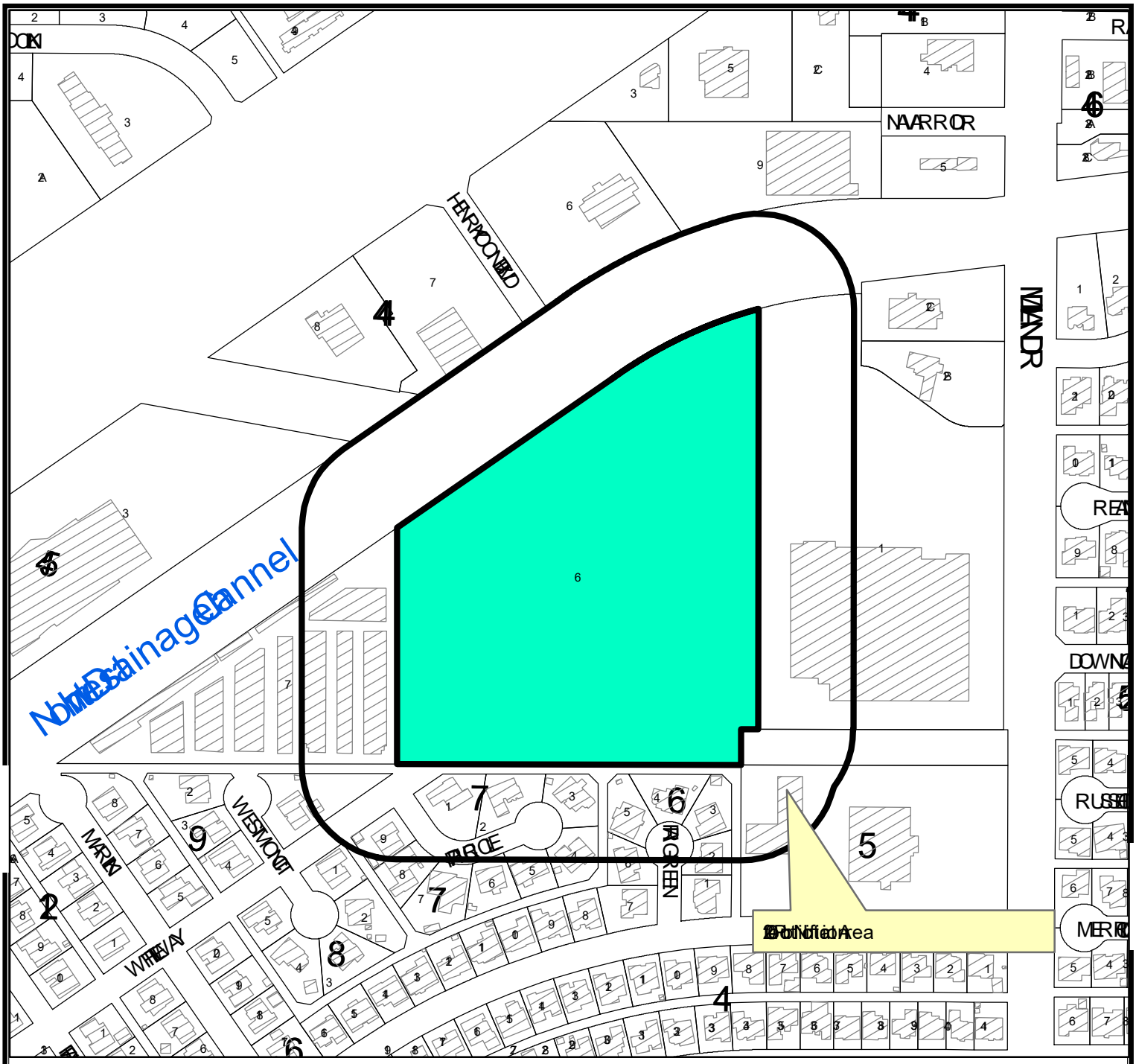
Barbara Turner

NOTARY PUBLIC, ~~MIDLAND~~ Fulton COUNTY, ~~TEXAS~~ GA

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

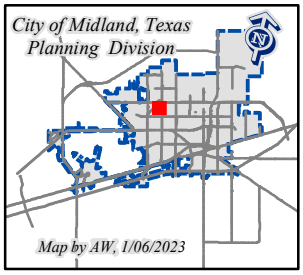
Z-22-0320 **Scale: 1" = 300'**

Consider a request by Scott A Mommer Consulting C/O Cassie Permenter for a zone change from PD, Planned Development District for a Shopping Center to PD, Planned Development District for a Shopping Center, on Lot 6, Block 45, Fairmont Park Addition, Section 15, City and County of Midland, Texas.

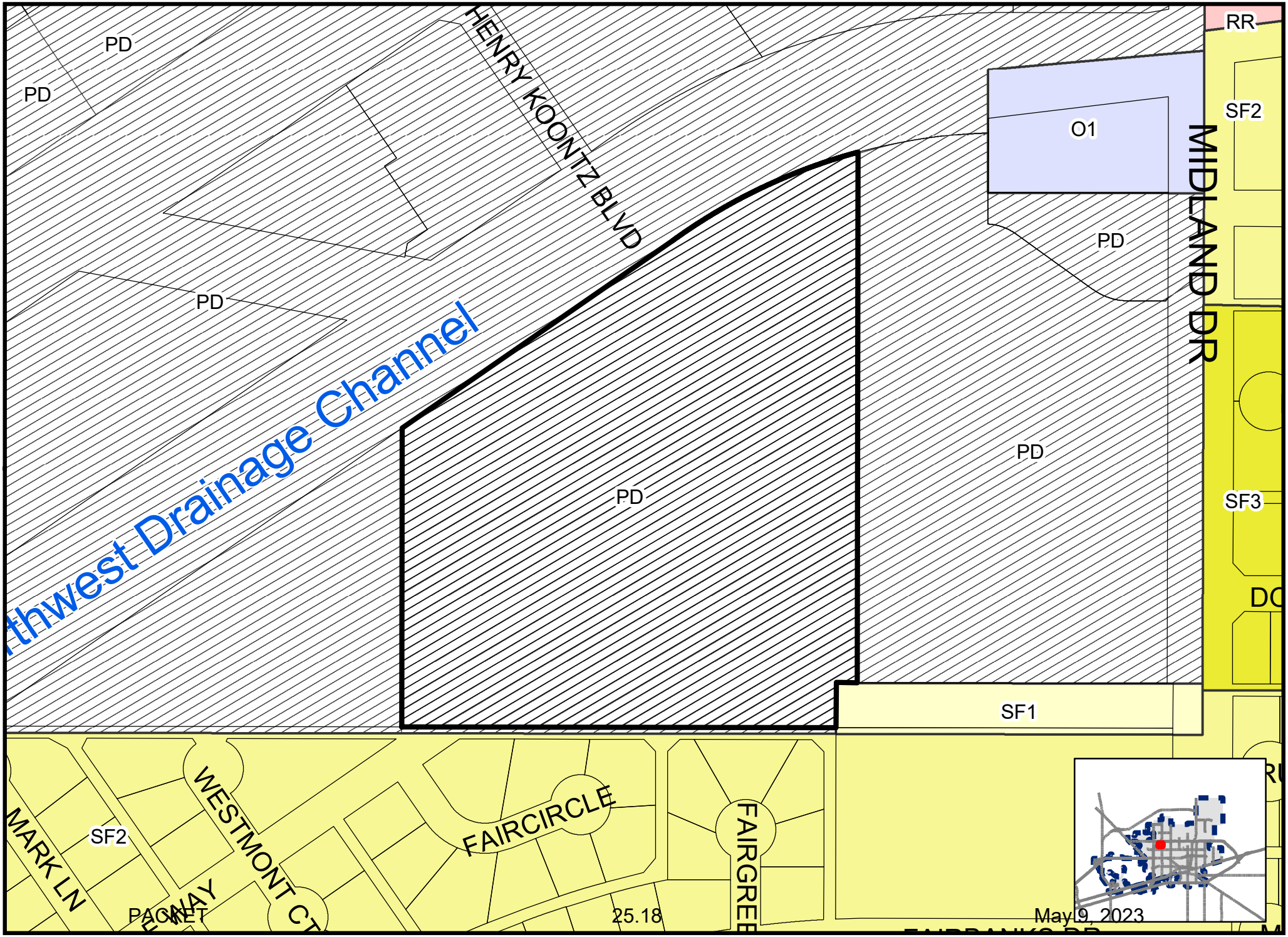
Generally located approximately 520-feet south of West Loop 250 North and approximately 515-feet west of North Midland Drive. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS THE ONLY 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.



Map By AW, 1/06/2023

Z-22-0320

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

MEMORANDUM

DATE: November 3rd 2022

TO: Planning Department
City of Midland

FROM: Cassie Permenter
Scott A Mommer Consulting

SUBJECT: Parking Analysis for the proposed Home Depot Outdoor Display & Storage : 4009 N Midland Drive Midland, TX 79707

This memorandum documents the parking analysis for the proposed Outdoor Display & Storage at the above address. The purpose of the memo is to request approval of the proposed parking supply to accommodate the project. This parking analysis includes a project description and parking supply summary, documentation of minimum code required parking, and estimated peak parking demand forecasts based on parking demand studies conducted at existing Home Depot sites.

Project Description

The Home Depot Outdoor Sales & Display Project is at the existing Home Depot located at 4009 N Midland Drive Midland, TX 79707. The proposed project is to convert a portion of the existing Parking Lot stalls into Outdoor Display & Storage.The Home Depot store proposes to display along the front of the store a number of items such as barbeques, patio furniture, material displays, fencing displays, and landscape products including living plants, sand, and blocks.The purpose for the staging area is to allow for product to be brought in and taken off the flat-bed trucks to be brought into the store or garden center within 72 hours. This is to allow for available merchandise during heavy sale periods to keep product on-site and avoid additional trucking, which helps on the carbon footprint. The height is typically 3 stacked pallets.

Parking Supply

A total of 545 parking stalls will be provided with the approval of the attached Site Plan. This number does not include the parking stalls utilized for Equipment Rental and Staging Areas.

City of Midland Required Parking

The City of Midland evaluates parking required based on “Sales Floor Area”. The Town has determined that the Sales Floor Area is 131,715 SF and required to be parked at 3.7/1000SF. This requires 487 parking stalls.

Table 1
Summary of Parking Requirements based on Town of Lexington Evaluation

HOME DEPOT BUILDING AREAS	
EXISTING HOME DEPOT BUILDING	101,500 SF
EXISTING GARDEN CENTER	28,000 SF
EXISTING TOOL RENTAL CENTER	+ 2,225 SF
TOTAL HD BUILDING AREA	131,725 SF
PARKING REQUIRED PER CITY CODE	
HOME DEPOT (@ 3.7 PER 1,000 SF PER ORDINANCE NO. 6893) (INCLUDING GARDEN CENTER & TRC)	487 STALLS

Future Parking Demand Estimate

To estimate the future parking demand of the Home Depot Midland site, parking demand studies conducted at four comparable existing Home Depot sites and the resulting peak parking demand ratios were used.

Existing Home Depot Parking Demand

Data from recent parking demand studies conducted at four existing Home Depot sites in Arizona, Texas, and California were provided by the project applicant. The parking demand studies at the four existing sites were conducted on a Saturday and a Sunday since parking demand for home improvement stores is higher on weekend days than weekdays.

Table 3 summarizes the results of the parking demand studies at the four existing Home Depot sites.

Table 3
Summary of Home Depot Parking Demand Studies

Parking Supply Site Location	(stalls)	Size			Observed Peak Parking Demand			
					Saturday		Sunday	
		Building	Outdoor Areas	Total	Occ. Stalls	Rate (occ. stalls per 1,000 SF	Occ. Stalls	Rate (occ. stalls per 1,000 SF
Moreno Valley, CA	436	102,314	19,242	121,556	206	1.69	160	1.32
Granbury, TX	688	114,000	25,944	139,944	132	0.94	144	1.03
Phoenix, AZ	496	113,319	23,413	136,732	201	1.47	147	1.08
Phoenix, AZ	509	104,398	33,391	137,789	212	1.54	163	1.18
Average	1.41							1.15

As shown in Table 3, the average peak parking demand of the four existing Home Depot sites was 1.41 stalls per 1,000 SF on a Saturday and 1.15 stalls per 1,000 SF on a Sunday.

Based on the existing Home Depot parking demand data in Table 3, the estimated peak parking demand for the Home Depot Midland site is 186 stalls (131,715 SF X 1.41 stalls per 1,000 SF) on a Saturday. The estimated peak parking demand of 186 stalls on a Saturday would be accommodated by the proposed 545 stall parking supply.

Conclusion

Based on results of the analysis, the total proposed on-site parking supply of 545 stalls at the Home Depot Midland site would accommodate the estimated peak parking demand of 186 stalls.
Retail requirements for Parking has changed over the years due to further evaluation by the Institute of Engineers and the common practice by the Retailer. The other Retailers do not have the large-retail format, in which there is more building area in a Home Depot to create a greater customer experience. In addition, the Use of "Home Improvement" does not impose as high of a parking demand as standard "Retail".




GARDEN
CENTER
CHEVROLET


THE HOME DEPOT


RESERVED
PARKING
VAN
ACCESSIBLE
RESERVED
PARKING
VAN
ACCESSIBLE

City Council Meeting

Item Number: 26

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1 AND THE EAST HALF OF LOT 2, BLOCK 76, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH N 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 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting a Zone Change from O-1, Office District to RR, Regional Retail District, for the development of a UPS center.

Recommended City Council Action:

Approve

Current Zoning:

O-1, Office District.

Surrounding Zoning and Land Use:

The property to the west is zoned O-1, Office District, and the location of a barbershop. The properties to the north and east are zoned O-1, Office District and the location of St. Ann's School and St. Ann's youth activity center. The property to the south is zoned LR, Local Retail District and the location of Jack and Jill Donuts.

Analysis:

The subject property is located at 2101 W. Texas Avenue and is currently the location of a chiropractor's office. The current zoning allows for low intensity office and professional uses. The property must change the zoning district from O-1, Office District to RR, Regional Retail District to allow a UPS store.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to 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.]

Oil and Gas: (Approved)

No Oil and Gas Issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning (Approved):

The City of Midland Planning Department supports this rezone because of the existing surrounding zoning and uses. There are many retail shops in this area with a few offices and a school. The UPS store will not disrupt the nature of this neighborhood. This is consistent with

the Tall City Tomorrow Comprehensive Plan, Chapter 3-Land Use which identifies this property as within the Village Area of extensive retail uses.

This request was recommended for approval by the Planning and Zoning Commission on April 17, 2023.

Staff recommends approval of this zone change from O-1, Office District, to RR, Regional Retail District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

As of April 12, 2023, Staff have received no letters of objection.

Attachments:

Application
Metes and Bounds
Maps

Morris William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1 AND THE EAST HALF OF LOT 2, BLOCK 76, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH N 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 1 and the east half of Lot 2, Block 76, West End Addition, 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 O-1, Office District to RR, Regional Retail District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-23-0324

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Mike Canon		Phone ( ) Email	
Address 25 Oaklawn Park	City Midland	State TX	Zip 79705

Property Owner Printed Name: Clint Hurt		Phone ( ) Email	
Address PO Box 1973	City Midland	State TX	Zip 79702

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: 2101 W Texas Ave

Legal Description
Lot: 1 Block: 2 Subdivision: West End Addn

Current Zoning: O1	**Proposed Zone:** RR *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: In order to tenant improve the Building Allowing a UPS Center to commence Buisness endeavors.

Present Use of Property: The Preset use is O1 & and a Chiropractor office is located there.

Proposed Use of Property: RR

How would this zone change affect the public health, safety and welfare? No affect that is adverse.

Describe how conditions affecting the property have changed since present zoning designation: N/A

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): Michael Canon	Date: 3/10/2023
Applicant (printed): Michael Canon	
Property Owner (signature): Clint Hurt	Date: 3/10/2023
Property Owner (printed) : Clint Hurt	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Clint Hurt, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 10th day of March, 2023, to certify which witness my hand and seal of office.

Kelsey Ann Lewis
My Commission Expires
2/19/2026
Notary ID
131456388

Kelsey Ann Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization	☐ Dimensioned Site Plan
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # 3984	
Received By: KM	Date: RECEIVED MAR 10 2023 BY:

****Application will not be considered for scheduling until reviewed by a planner.****

DESCRIPTION OF A 0.24 ACRE TRACT OF LAND FOR THE PROPOSED LOT 1A, BLOCK 76, WEST END ADDITION, SECTION 28, BEING FULLY AND COMPLETELY DESCRIBED AS LOT 1 AND THE EAST HALF OF LOT 2, BLOCK 76, WEST END ADDITION, AS DEPICTED IN A PLAT RECORDED IN PLAT CABINET E ON PAGE 52 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS AND BEING DESCRIBED BY METES AND BOUNDS FOR REFERENCE ONLY AS FOLLOWS;

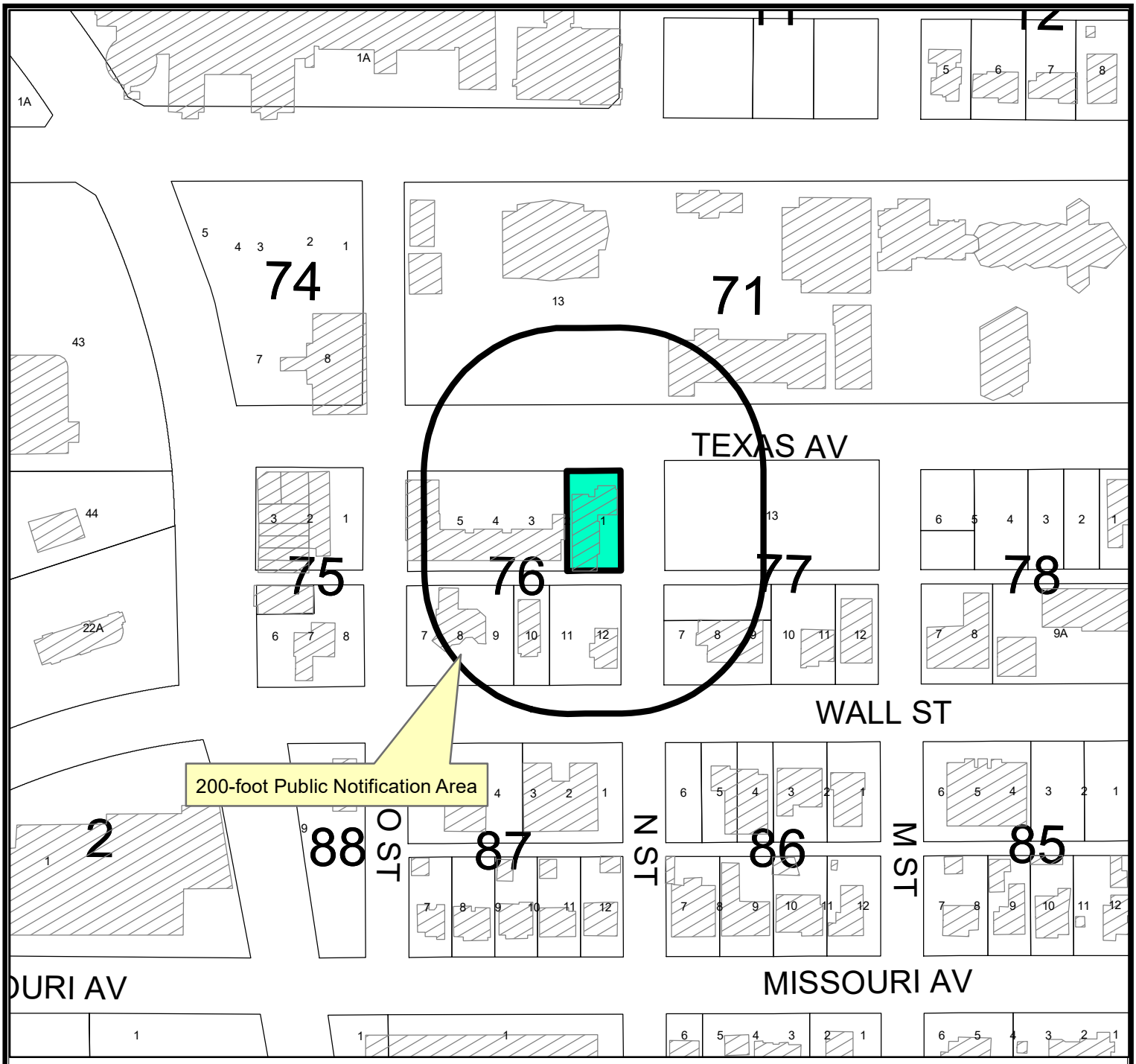
BEGINNING AT N.(y):10693580.23, E.(x):1749647.71, A ONE HALF INCH IRON ROD FOUND FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°17'17"E., 75.05 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" SET FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°33'48"E., 139.81 FEET TO A ONE INCH IRON PIPE FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°17'17"W., 75.05 FEET TO A BENT ONE HALF INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°33'48"W., 139.81 FEET TO THE POINT OF BEGINNING, CONTAINING 0.24 ACRES OF LAND.



LOCATION MAP

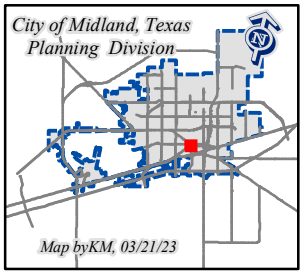
Z-23-0324 **Scale: 1" = 200'**

Consider a request by Maverick Engineering for a zone change from O-1, Office District, to RR, Regional Retail District, on Lot 1 and the east half of Lot 2, Block 76, West End Addition, City and County of Midland, Texas.

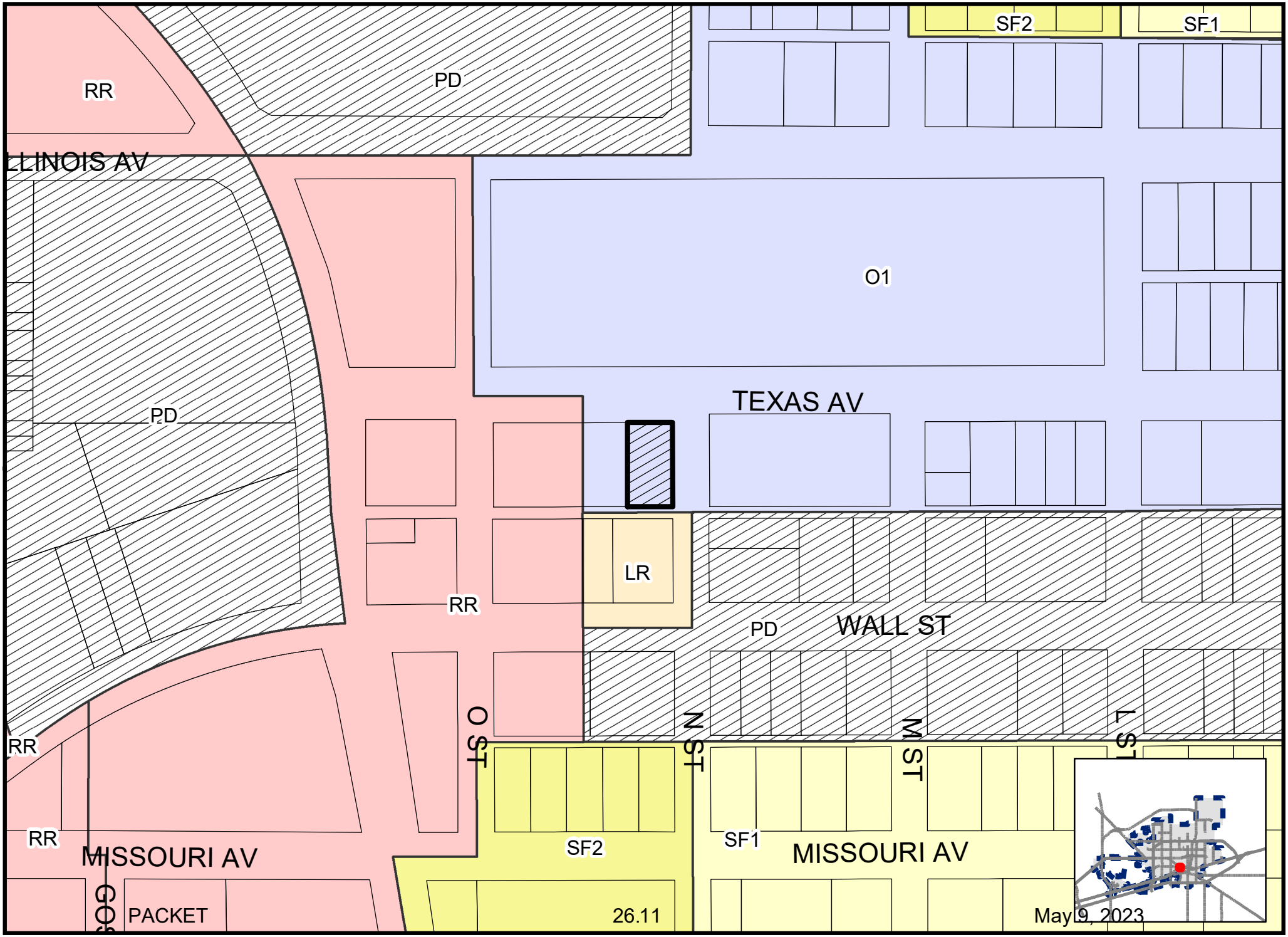
Generally located on the southwest corner of West Texas Avenue and North N Street (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOT IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 03/23/2023

Z-23-0324

Scale: 1" = 200'

ZONING MAP

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2101
2103
WAY OPTICAL


MIDLAND MEDICAL PLAZA
30

City Council Meeting

Item Number: 27

Meeting Date: May 9, 2023

To: City Council / City Manager

From: James Reber, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 200 FEET SOUTH OF EAST WASHINGTON AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jorge Chavez**,** is requesting a Zone Change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District, for a new house located at 506 South Clay Street.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Current Zoning:

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The property to the north is zoned SF-3, Single-Family Dwelling District, and is the location of a house. Properties to the east, south, and west, are zoned MF-22, Multi-Family Dwelling District, and are the locations of houses.

Analysis:

The property is located at 506 South Clay Street and is currently vacant. The applicant is requesting this zone change for the purposes of constructing a single-family residence on the property. The current zoning is MF-22, Multiple-Family Dwelling District. Per the previous zoning ordinance, single-family detached dwellings were allowed within this zoning district. As of July 1, 2019, the new zoning ordinance does not allow the use of single-family detached dwellings within the MF-22, Multiple-Family Dwelling District. The property does meet the minimum lot size requirements for the SF-3, Single Family Dwelling District.

The SF-3, Single-Family Dwelling District requires a minimum of 5,500 square feet per lot, with a minimum width of 50-feet and 100-feet of depth for an interior lot. The property has a lot frontage of 50 feet, lot depth of 140 feet, and total lot area of 7,000 sq. ft. in compliance with the SF-3 dimensional standards. The lot was platted as Lot 4, Block 22, in the Greenwood Addition, Third, Fourth, and Fifth Sections.

The applicant will be required to adhere to the site plan review standards outline within the City of Midland Zoning Ordinance Section 5.04: - Residential Zoning District Dimensional Regulations Chart.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For Applicant’s Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant’s Information Only.]

Code: (Approved)

No Oil and Gas Issues. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified. No construction is allowed on top of P&A wells.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning (Approved):

The Tall City Tomorrow Comprehensive Plan identifies this area as (UR-M) Urban Residential-Medium which incorporates an array of housing styles such as single-family housing, two-family housing, townhouses, and manufactured housing. The purpose of the UR-M land use is to provide a sense of neighborhood. MF-22, Multiple-Family District is not included under the potential zoning for this UR-M land use. Therefore, changing the zoning to SF-3, Single-Family Dwelling District would fit the intended land use appropriately. The City of Midland Planning Department supports this rezone because the proposed project fits the existing surrounding uses properly.

This item was approved by the Planning and Zoning Commission on April 17, 2023.

Staff recommends approval of this zone change from MF-22, Multi-Family Dwelling District to SF-3, Single-Family Dwelling District, subject to condition A.

Condition:

A. That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.

Letters of Objection:

Staff has not received any letters of objection as of May 4, 2023.

Attachments:

Aerial Map (Exhibit A)
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 200 FEET SOUTH OF EAST WASHINGTON AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 4, Block 22, 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., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-23-0325

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jorge Chavez		Phone (432) 889-7005 Email Jorgecchavezz@gmail.com	
Address 714 N. Calhoun St.	City Midland	State TX	Zip 79701
Property Owner Printed Name: Jorge Chavez		Phone (432) 889-7005 Email Jorgecchavezz@gmail.com	
Address 714 N. Calhoun St	City Midland	State TX	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone (432) 889-7005 Email Jorgecchavezz@gmail.com	
Address	City	State	Zip

Street Address: 506 S. Clay Midland tx 79701

Legal Description
Lot: 4 Block: 22 Subdivision: Greenwood Addition

Current Zoning: MF 22	**Proposed Zone:** SF 3 *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: New House Build

Present Use of Property: Vacant

Proposed Use of Property: New house

How would this zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation: Good

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): Jorge Chavez	Date: 03-13-2023
Applicant (printed): Jorge Chavez	
Property Owner (signature): Jorge Chavez	Date: 03-13-2023
Property Owner (printed) : Jorge Chavez	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 1542
- ☑ Dimensioned Site Plan
- ☐ Plans in Digital Format (PDF/JPEG)

Received By: DM

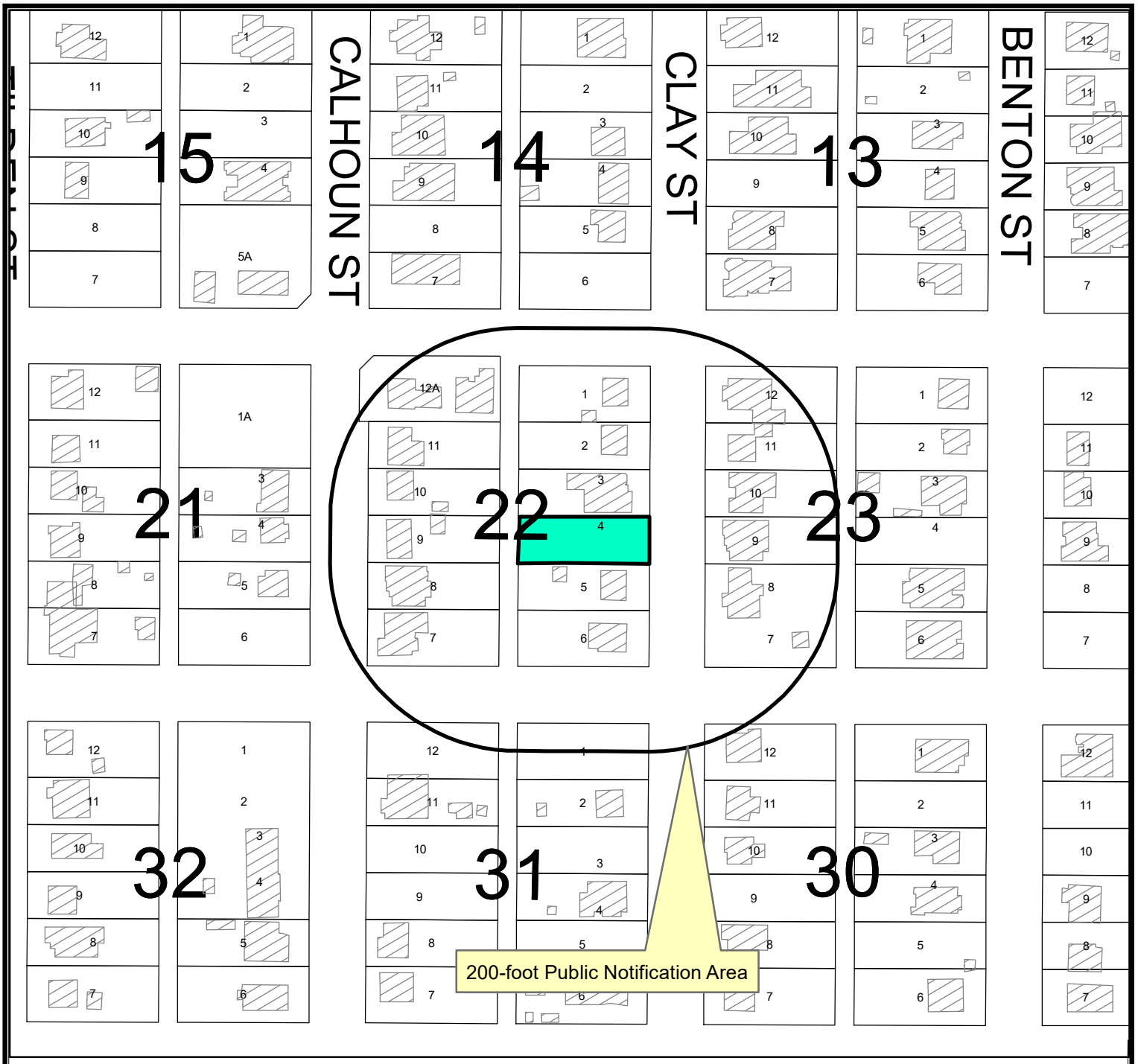
Date: RECEIVED MAR 13 2023

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****



RECEIVED
MAR 1 3 2023
BY: .....



LOCATION MAP

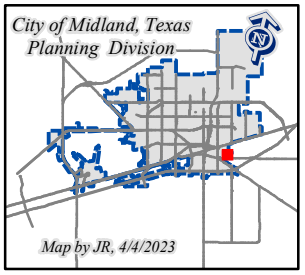
Z-23-0325 **Scale: 1" = 200'**

Consider a request by Jorge Chavez for a zone change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District, on Lot 4, Block 22, Greenwood Addition, Third, Fourth, and Fifth Sections, City and County of Midland, Texas.

Generally located on the west side of South Clay Street, approximately 200-feet south of East Washington Avenue. - Council District 2.

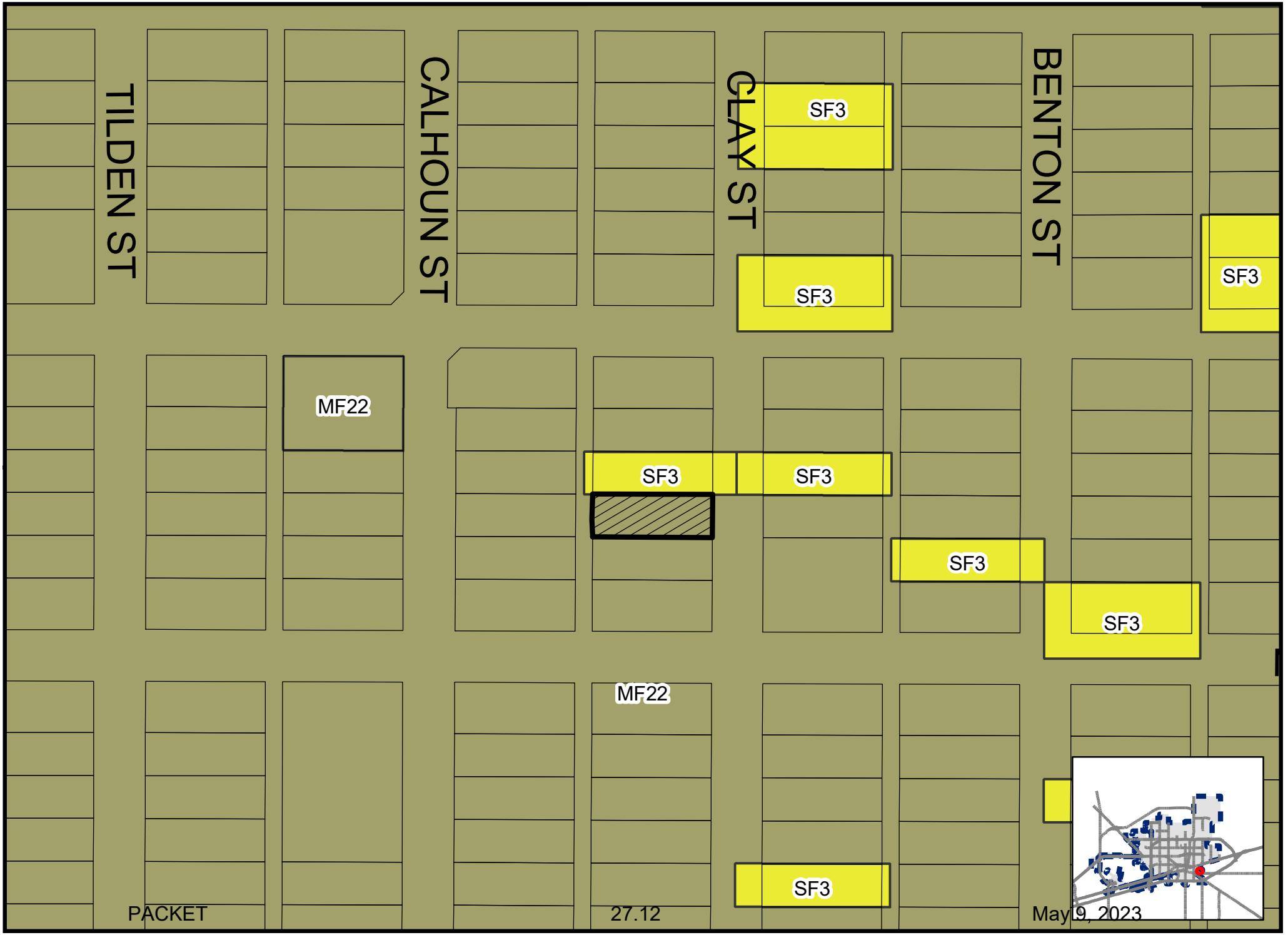
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

May 9, 2023



Map By JR, 4/28/2023

Z-23-0325

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 28

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,200-SQUARE FOOT PORTION OF LOT 2, BLOCK 1, W.P. KNIGHT ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH POWELL STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Alejandro Dominguez, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

PD, Planned Development District for a Shopping Center.

Surrounding Zoning and Land Use:

The property to the north is zoned MF-16, Multiple Family District, and the location of residential homes. The properties to the east are zoned TH, Townhouse Dwelling District, C, Commercial District and RR, Regional Retail District, and the location of undeveloped property, residences, and an auto upholstery center. The property to the south is zoned C, Commercial District, and the location of a warehouse/storage facility. The property to the West is zoned RR, Regional Retail District, and the location of an auto dealership.

Analysis:

The applicant is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant operating as Ocho 80 is located inside the Wyndham Hotel. The restaurant is currently in operation, however, per City ordinance is required to have a Specific Use Designation to serve alcohol for on-premises consumption.

The property is undergoing a zone change to facilitate the increase in the floor area of the existing hotel and restaurant use on site. The restaurant is 5,200± square feet, and 3,744± square feet of floor area will be used for the alcohol serviceable area. A parking agreement is in place to allow customers of the restaurant to use the same parking lot as the hotel.

The proposed hours of operation and alcohol serviceable hours are:

> **Monday through Thursday from 11:00 a.m. to 11:00 p.m., Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight), and Sunday from 11:00 a.m. to 11:00 p.m.**

Per Midland City Code 5.4.4. – Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches or schools within 300 feet of the property.

This request has been circulated to all City departments for review. Below are the departments' comments.

Fire: (Approved)

No objections.

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.]

Transportation: (Approved)

No objection to zone change.

Building Code: (Approved)

The SUD for OCHO 80 is acceptable. The property must adhere to the maximum occupant load of 249 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved)

The request follows the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4,* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) Ocho 80 will continue to create a vibrant atmosphere where residents can socialize and enjoy drinks.

This request was recommended approval at the April 17,2023, Planning and Zoning Commission meeting.

Staff recommends approval of the request for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, subject to Conditions A through E.

Conditions:

A. That the alcohol serviceable area of the restaurant shall be limited to approximately 3,744 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Thursday from 11:00 a.m. to 11:00 p.m.,
Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight),
and Sunday from 11:00 a.m. to 11:00 p.m.

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

Letters of Objection:

As of April 12, 2023, staff have received no letters of objection.

Attachments:

Application
Floor Plan (Exhibit A)
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,200-SQUARE FOOT PORTION OF LOT 2, BLOCK 1, W.P. KNIGHT ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH POWELL STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and

after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the Specific Use Designation with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption, together with the conditions hereinafter imposed, and the Zoning District Map should be amended to grant such Specific Use Designation with Term for the 5,200-square foot portion of Lot 2, Block 1, W.P. Knight Addition, Section 2, an addition to the City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant a Specific Use Designation with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption, together with the conditions hereinafter imposed, and the Zoning District Map should be amended to grant such Specific Use Designation with Term for the 5,200-square foot portion of Lot 2, Block 1, W.P. Knight Addition, Section 2, an addition to the City and County of Midland, Texas (the "Property"), as set out hereinafter;

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 3,744 square feet as shown in Exhibit "A" which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.; and

Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

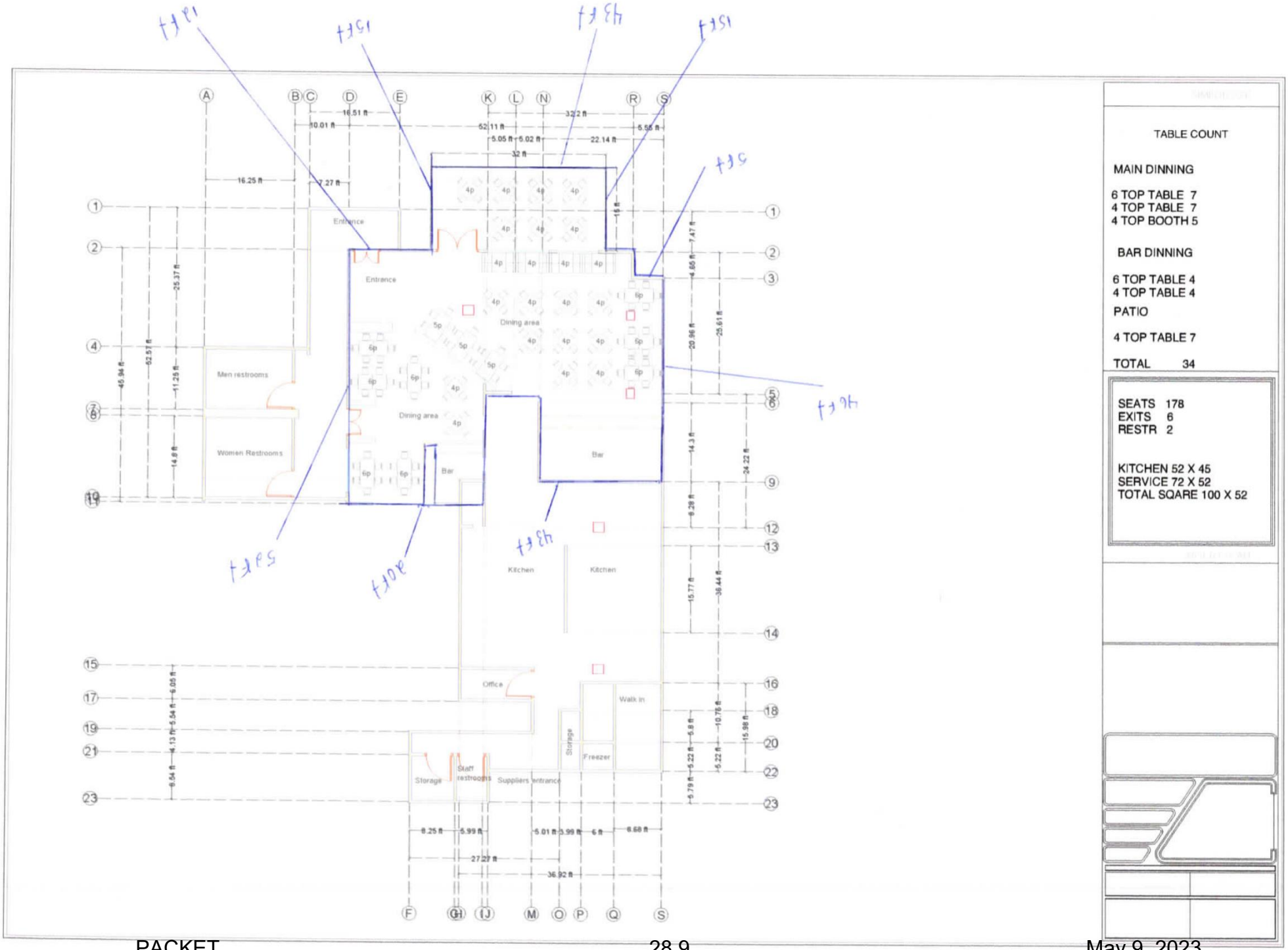


TABLE COUNT

MAIN DINNING

6 TOP TABLE 7
4 TOP TABLE 7
4 TOP BOOTH 5

BAR DINNING

6 TOP TABLE 4
4 TOP TABLE 4

PATIO

4 TOP TABLE 7

TOTAL 34

SEATS 178
EXITS 6
RESTR 2

KITCHEN 52 X 45
SERVICE 72 X 52
TOTAL SQARE 100 X 52

EXHIBIT "A"

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Alejandro Dominguez		Phone (432) 741 0121 Email ocho80texas@gmail.com	
Address: 3601 Andrews Hwy Apt 502	City: Midland	State: TX	Zip: 79703
Property Owner Printed Name: Nazim Enterprises, Inc, Nazim Butt		Phone (432) 699 4144 Email Nazimb1@gmail.com	
Address: 3100 W Wall st	City: Midland	State: TX	Zip: 79701
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 3100 W Wall st Midlnt tx 79701

Business Name: OCHO 80 LLC

Legal Description
Lot: 20 Block: 1 Subdivision: WPK NIGHT SEC 2

Current Zoning:

Reason for Request: Create jobs, contribute to my state of texas, own progress and that of employees

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant - Bar

Proposed/Current Days and Hours of Operation: Monday - Thursday: 11:00 AM - 11:00 PM
FRIDAY AND SATURDAY: 11:00 AM - 12:00 AM / SUNDAY: 11:00 AM - 11:00 PM

Proposed Days and Hours of Alcohol Service: Monday - Thursday: 11:00 AM - 11:00 PM
FRIDAY AN SATURDAY: 11:00 AM - 12:00 AM / SUNDAY: 11:00 AM - 11:00 PM

Total Square Footage of Business:

Square Footage of Alcohol Serviceable Area:

Restroom Fixtures:			
Men	**Toilets/Urinals:** 3 / 3	**Bathroom Sinks:** 2
Women	**Toilets:** 3	**Bathroom Sinks:** 3

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing: *Parking *Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 03/23/2023
Applicant (printed): Alejandro Dominguez	
Property Owner (signature):	Date: 03/23/2023
Property Owner (printed) : Nazim Bath	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, 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 application on behalf of property owner, agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Alejandro Dominguez who, being by me duly sworn, upon oath says: That (s)he is authorized by Nazim Bath, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____

Subscribed and sworn to before me, this_____day of_____, 20 _, to certify which witness my hand and seal of office.

_____

Notary Public

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check #_____	☐ Plans in Digital Format (PDF/JPEG)
Received By:_____	Date:_____

****Application will not be considered for scheduling until reviewed by a planner.**

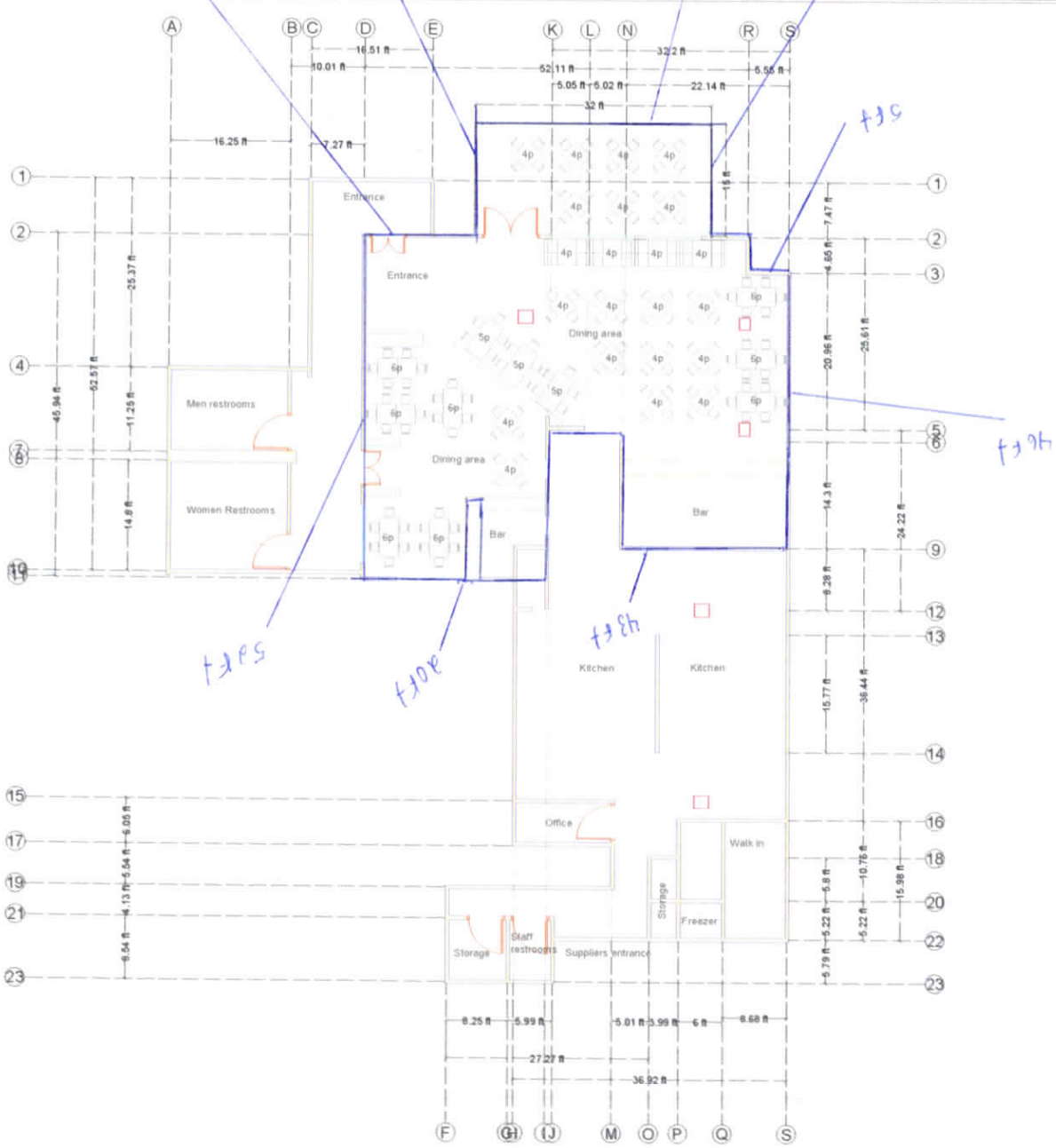


TABLE COUNT

MAIN DINNING

6 TOP TABLE 7
4 TOP TABLE 7
4 TOP BOOTH 5

BAR DINNING

6 TOP TABLE 4
4 TOP TABLE 4

PATIO

4 TOP TABLE 7

TOTAL 34

SEATS 178
EXITS 6
RESTR 2

KITCHEN 52 X 45
SERVICE 72 X 52
TOTAL SQARE 100 X 52

May 9, 2023

28.12

PACKET

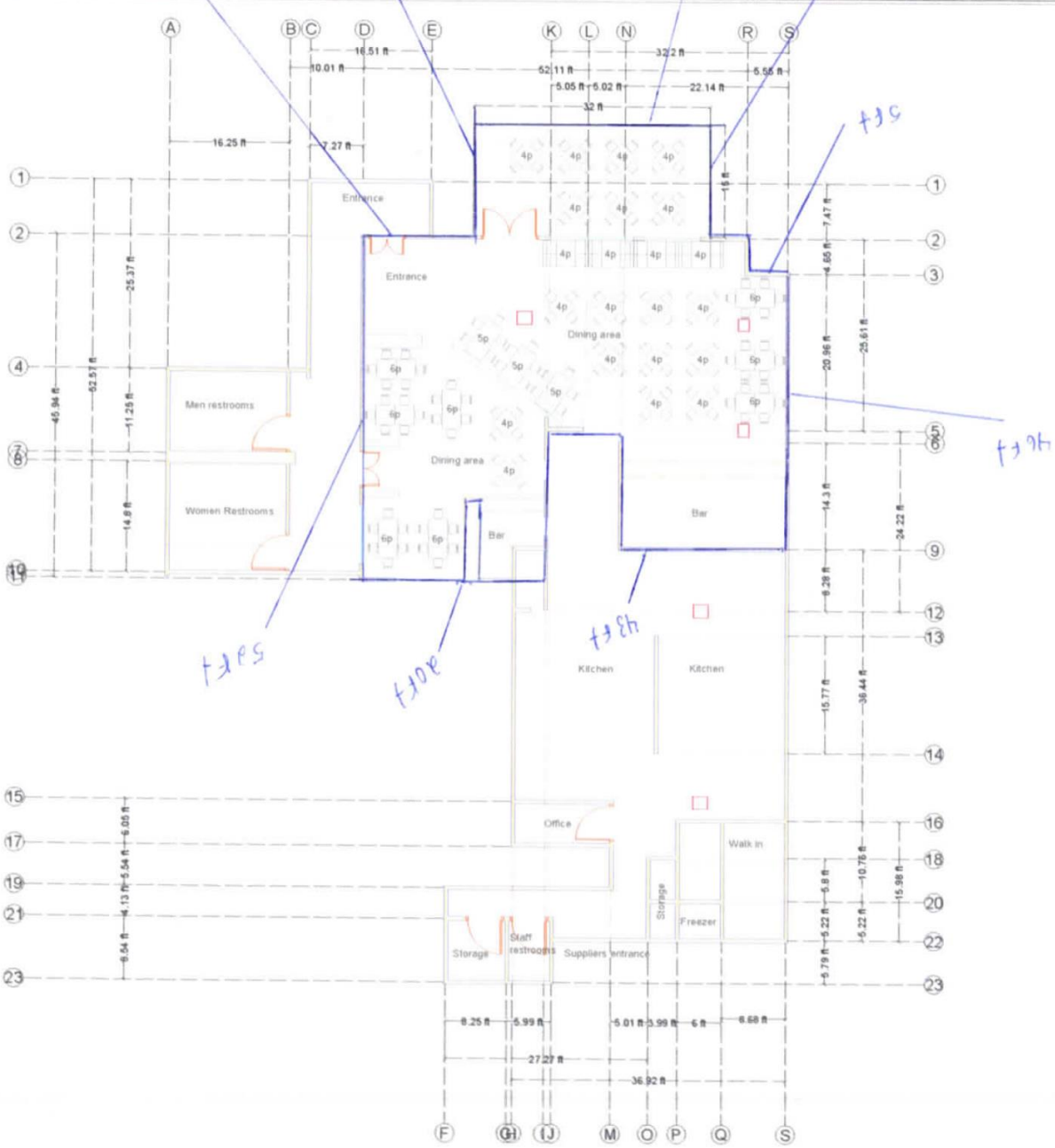


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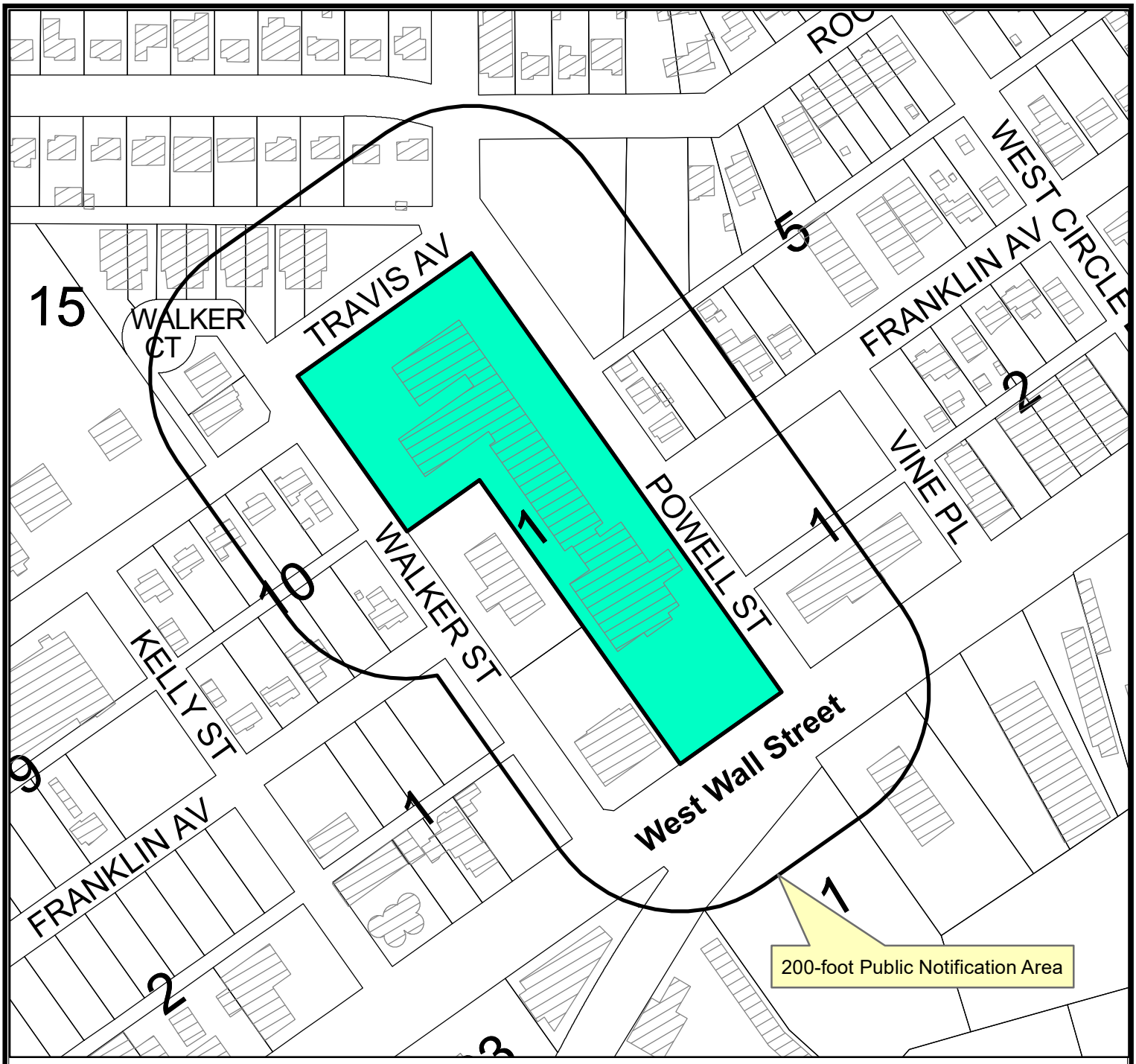
PATIO

4 TOP TABLE 7

TOTAL 34

SEATS 178
EXITS 6
RESTR 2

KITCHEN 52 X 45
SERVICE 72 X 52
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LOCATION MAP

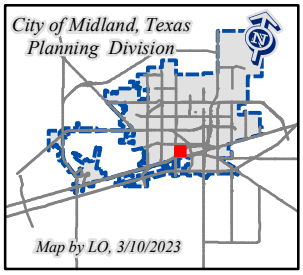
Z-23-0323 **Scale: 1" = 2,328'**

Consider a request by Alejandro Dominguez for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a restaurant, on a 5,200 square foot portion of Lot 2, Block 1, W.P. Knight Addition, Section 2, City and County of Midland, Texas.

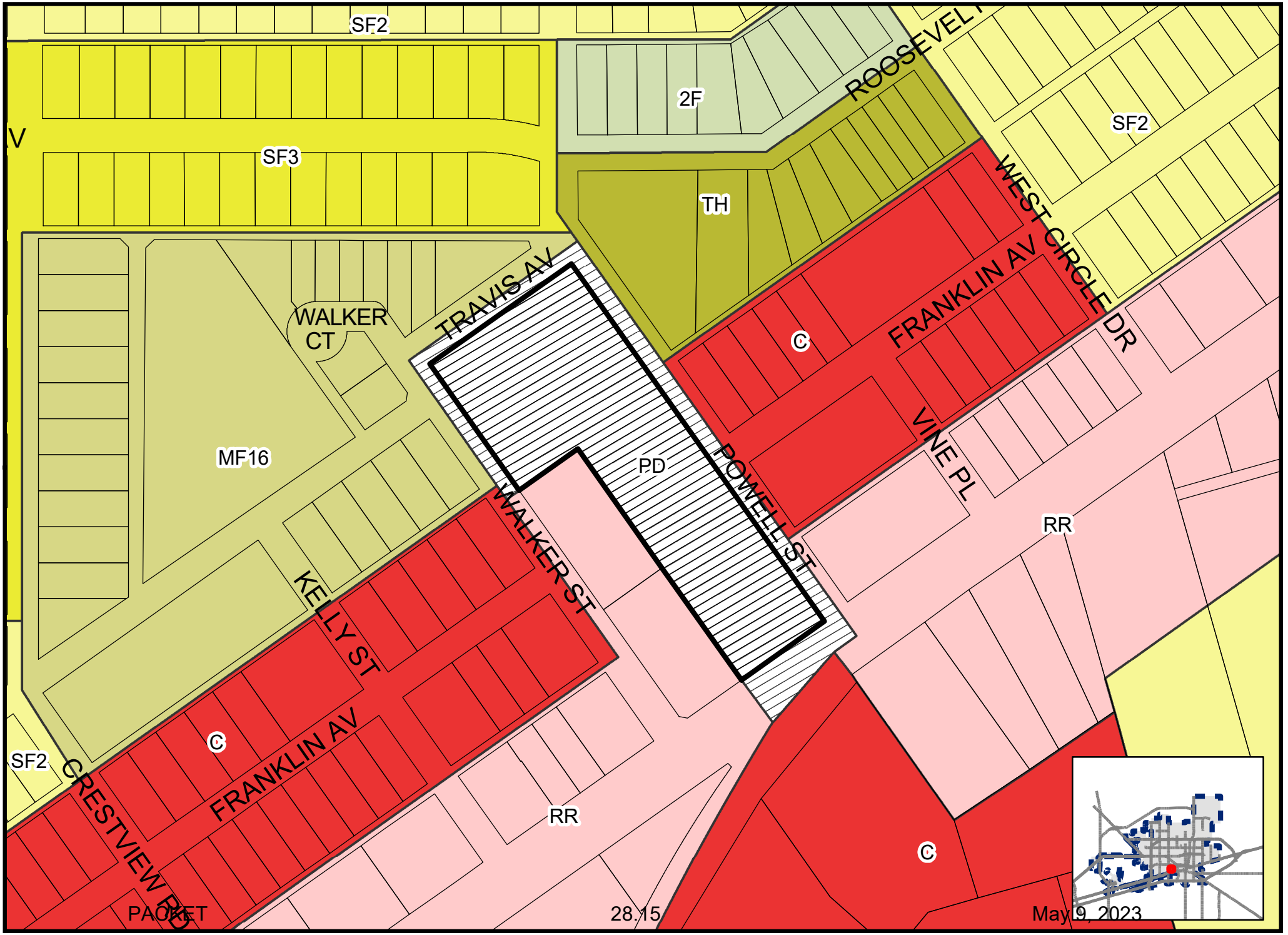
Generally located on the northwest corner of the intersection of West Wall Street and South Powell Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS THE ONLY 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.



Map By KM, 04/12/2023

SUD-23-0152

Scale: 1" = 200'

ZONING MAP

©THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.


OCHO 80
WYNDHAM
GARDEN


WYNDHAM
GARDEN




BUICK
GMC

City Council Meeting

Item Number: 29

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Alexandra Walling, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 1,600-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, PAVILION PARK, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 310 FEET SOUTHEAST OF SAN FELIPE DRIVE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; 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 (DISTRICT1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Broadus Services, is requesting a Specific Use Designation without Term for Wireless Communication Systems including a monopole antenna structure.

Recommended City Council Action:

☒ **Approve** ☐ **Deny** ☐ **Direction/Informational**

Fiscal Impact:

No City funds would be required for this project.

Discussion:

Current Zoning:

AE, Agricultural Estates District.

Surrounding Zoning and Land Use:

The properties to the north are zoned SF-3, Single-Family Dwelling District, 2F, Two-Family Dwelling District, and TH, Townhouse (Attached) Dwelling District and the location of residences. The properties to the east and south are zoned AE, Agricultural Estate District, and are undeveloped. The properties to the west are zoned SF-2, Single-Family Dwelling District, and undeveloped.

Analysis:

The applicant, Broadus Services, is requesting a Specific Use Designation for Wireless Communication Systems to install and operate a 140-foot tall monopole antenna structure and related equipment at 1801 Solomon Lane. The monopole antenna structure is 135 feet plus a 5-foot lightning rod with a total height of 140 feet. The pole will sit on a 1,600 square feet concrete pad that will be enclosed by an eight-foot-tall chain link fence. The fence will have a gate for access that will be locked.

Wireless Communication Systems are allowed in the AE, Agricultural Estate District with the approval of a Specific Use Designation however, per Section (4.04) (20)(a)(i)(a) the location of towers in residential areas is to be discouraged. The proposed structure will be adjacent to a residential area however, the required fall radius is approximately 140 feet with a total setback of 150 feet. The nearest lot line is approximately 310 ft. away from the base of the wireless communication system and is compliant with the setback of the Midland City Code (4.04)(20)(c)(i)(a).

The tower will be required to have a stealth design per (4.04)(20)(c)(iii) of the City Code in residential zones. This may include the same color scheme as adjacent land uses, and towers to not look like towers, such as light poles, power poles, or trees. The tower must also be landscaped to screen as much as possible (trees, shrubs, or decorative fencing), in this case along the northwest, north, and northeast of the fenced area facing residential uses per (c)(iv) of the City Code.

The proposed location of the monopole is within the flight path of the Midland Executive Airpark. The Airport staff has approved the height clearance and does not have any objections to the proposed location of the pole. The applicant also submitted a Federal Aviation Administration study, which was reviewed and shared with Airport staff.

This project has been circulated to all City departments for review. Below are the departments' comments.

Fire: (Approved)

Future development shall meet the requirements of IFC 2015 ed. and local ordinances.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

No objections.

Oil and Gas: (Approved)

No objections.

Planning:

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, which classifies this area as Urban Residential-Low (UR-L). This land use incorporates detached single-family homes and some attached single-family homes. UR-L is identified as a "Restrictive land use." While discouraged in residential areas, Wireless Communications Systems can be allowed provided that the location of the antenna structure is spaced a minimum of 200 feet from the nearest residential zoning districts.

This item was approved by the Planning and Zoning Commission on April 17, 2023.

Staff recommends approval of this Specific Use Designation without Term for Wireless Communication Systems including a monopole structure, subject to conditions A through C.

Conditions:

A. **That the site shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.**

B. **That at the time of permitting, the applicant shall provide details of stealth design and landscaped screening in front of the fenced area at a minimum of 8 feet in height to be approved upon review by the Planning Division.**

C. **That the site shall conform to all applicable City ordinances, state and federal laws, rules, and regulations.**

Letters of Objection:

As of May 3, 2023 staff has not received any letters of objection.

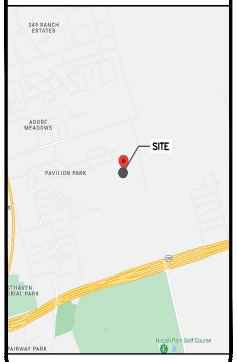
Attachments:

Exhibit A
Application
Maps
FAA Summary Report
1-A Certification
Necessity Case

Morris William Jr.

City Manager's Office

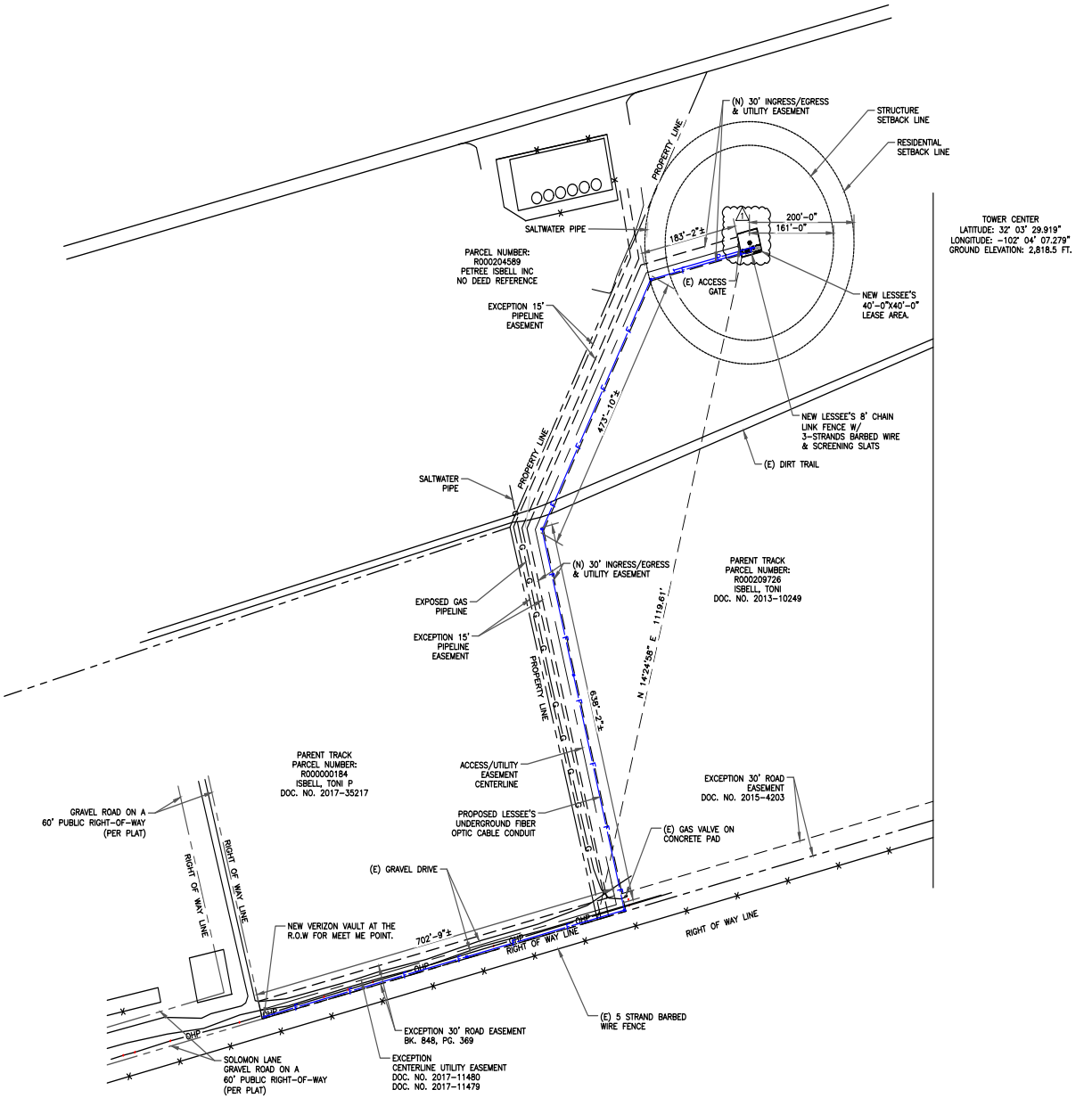
MAP



PROPOSED SITE REVISIONS

INCLUDE SYMBOLS OR ABBREVIATIONS USED ON THE DRAWING.

1. PROPOSED CONSTRUCTION OF A NEW CELL SITE W/ 135' MONOPOLE WITH CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR
2. PROPOSED INSTALLATION OF PANEL ANTENNAS AND ASSOCIATED RADIO EQUIPMENT MOUNTED ON THE NEW MONOPOLE TOWER.



1 OVERALL SITE PLAN
SCALE: 100' 50' 0 100' 1" = 100'-0" (FULL SIZE) 1" = 200'-0" (11x17)

N

LEGEND

- ○ = 5/8" REBAR SET
- ● = FOUND PROPERTY MARKER
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- POE = POINT OF ENDING
- ▲ = CALCULATED POINT
- ⊘ = POWER POLE
- ⊥ = GUY ANCHOR
- ▣ = POWER BOX
- ▥ = TELEPHONE PEDESTAL
- ⊙ = SERVICE POLE
- ⊙ = FIRE HYDRANT
- ◉ = WATER VALVE
- ▣ = WATER METER
- ▣ = GAS METER
- Ⓢ = SEWER MANHOLE
- ◆ = FLUID LINE MARKER
- ⊕ = TEMPORARY BENCHMARK
  5/8" REBAR SET
  ELEVATION: 2819.31'
- ——x——x—— FENCE LINE
- ——OHP—— POWER LINE

SITE DATA SUMMARY TABLE

USE: CELL SITE AS PART OF A WIRELESS COMMUNICATIONS NETWORK.	
ZONING.....	AE – AGRICULTURAL ESTATE DISTRICT
SERVICE SURFACE.....	106 SQ. FT.
LOT AREA.....	1,600 SQ. FT.
ACCESS & UTILITY EASEMENT..	59,668 SQ. FT.
TOWER STRUCTURE HEIGHT:	135'
TOTAL PARKING REQUIRED:.	N/A
INTERIOR LANDSCAPE RQRD:	N/A

OWNER
TONI ISBELL
1801 E. SOLOMON LANE
MIDLAND, TX 79705

APPLICANT
VERIZON WIRELESS
600 HIDDEN RIDGE
IRVING, TX

ENGINEER
CAA SOLUTIONS, PLLC
170 BOULEVARD SUITE E108
ATLANTA, GA 30312
PH: (770) 548-8268
CONTACT: ALEXANDER ABERNATHY, P.E.

ACTION

APPROVED ☐ DENIED ☐

STAFF _____ Date _____ Initials

P&Z _____ Date _____ Initials

Neighborhood # ____

See the Staff Approval Letter or P&Z Result Memo for any conditions associated with the approval of the project.

THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A NEW CELL SITE WITH MONOPOLE TOWER, ANTENNAS, HYBRID CABLES INSIDE THE TOWER, AND CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR.

ZONING CASE NO. ----
CELL SITE CARRIER ADDITION PLAN
1801 "U" SOLOMON LANE
MIDLAND, TX 79705
TONI ISBELL
PARCEL NUMBER: R000209726
DOC. NO. 2013-10249

verizon
600 HIDDEN RIDGE
IRVING, TX

BROADUS SERVICES
4 COUNTRY PLACE CIRCLE
DALWORTHINGTON GARDENS
TEXAS 76016

VERIZON SITE NAME:
MIRA VISTA

VERIZON LOCATION CODE:
496585

FUZE ID:
16879284

1801 "U" SOLOMON LANE
MIDLAND, TX 79705

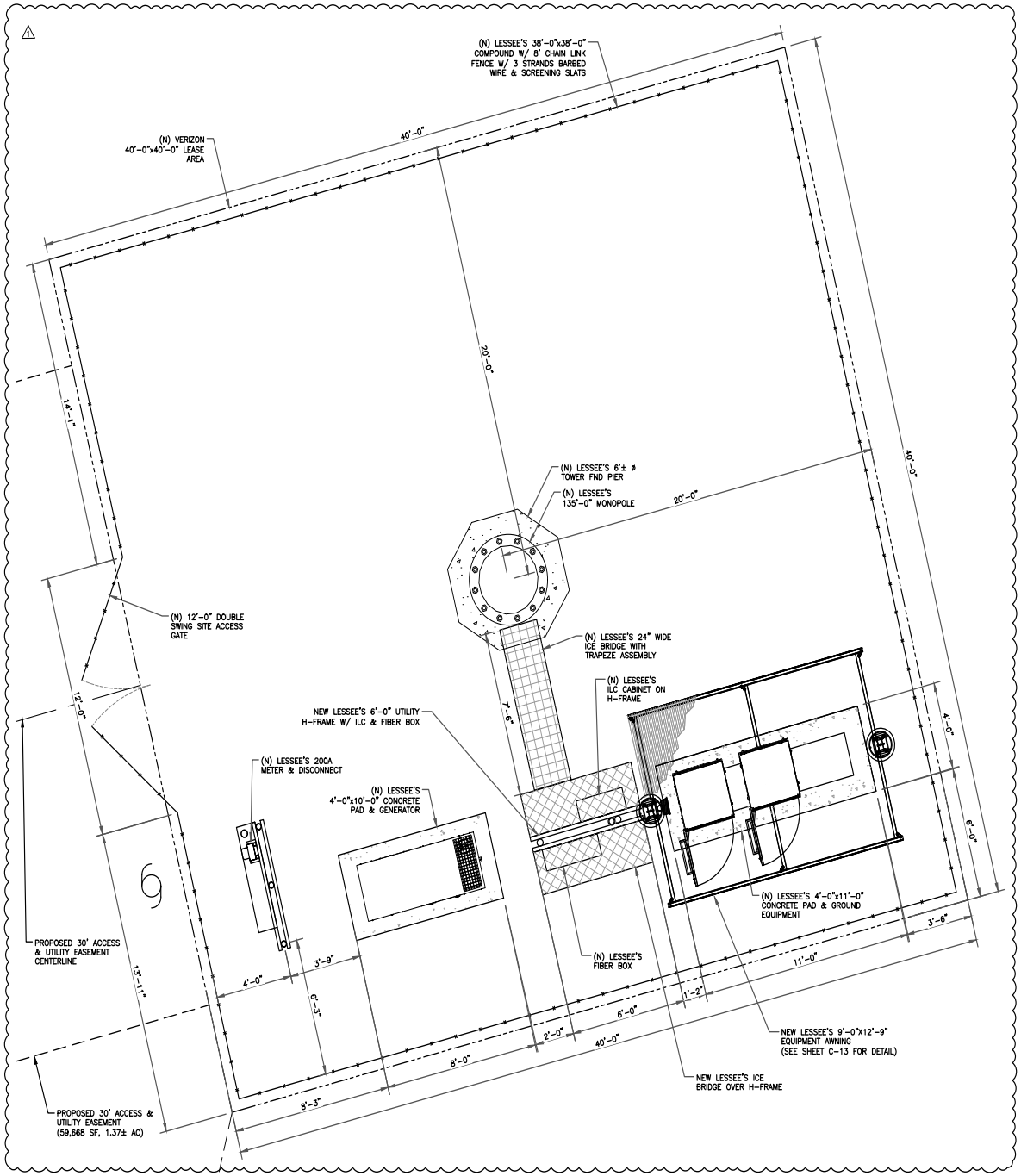
NEW MONOPOLE TOWER

ISSUED FOR:

REV	DATE	DRWN	DESCRIPTION	DES./QA
A	06/13/2022	WHS	ZONING	SN

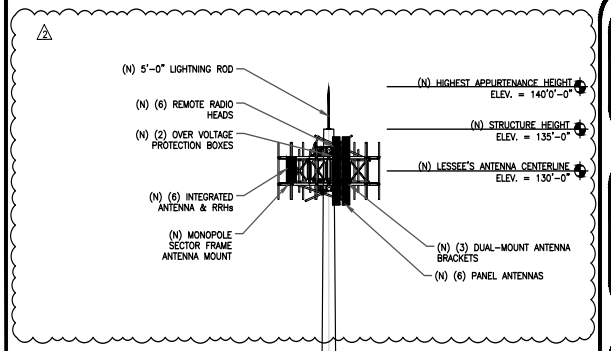
IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

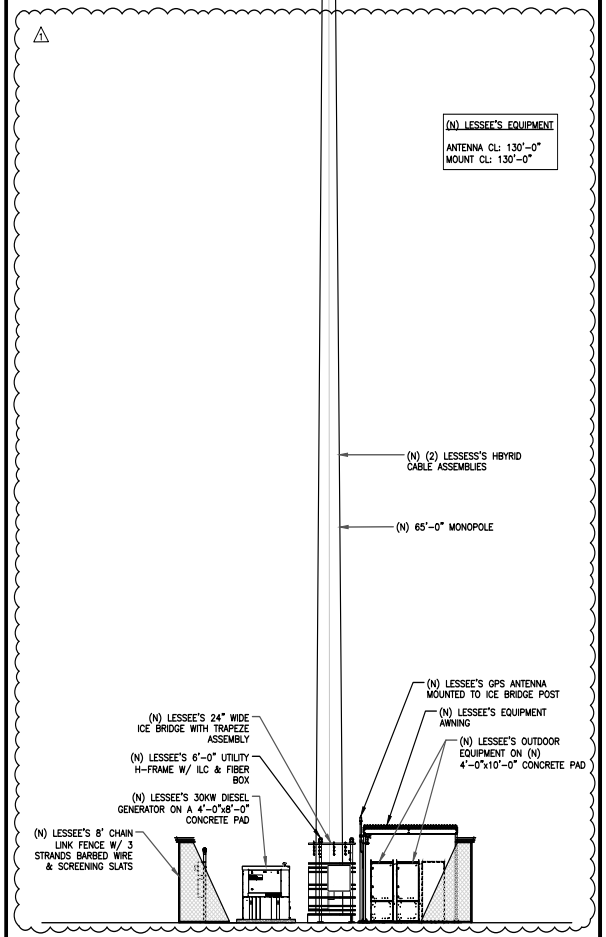
SHEET NUMBER: A-1
REVISION: A



1 EQUIPMENT PLAN
SCALE: 2 1' 0 2' 3/8"=1'-0" (FULL SIZE) 3/16"=1'-0" (11x17)

N





2 TOWER ELEVATION
SCALE: NOT TO SCALE

THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A NEW CELL SITE WITH MONOPOLE TOWER, ANTENNAS, HYBRID CABLES INSIDE THE TOWER, AND CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR.

ZONING CASE NO. --May 9, 2023
CELL SITE CARRIER ADDITION PLAN
1801 "U" SOLOMON LANE
MIDLAND, TX 79705

verizon
600 HIDDEN RIDGE
IRVING, TX

BROADUS SERVICES
4 COUNTRY PLACE CIRCLE
DALWORTHINGTON GARDENS
TEXAS 76016

VERIZON SITE NAME:
MIRA VISTA

VERIZON LOCATION CODE:
496585

FUZE ID:
16879284

1801 "U" SOLOMON LANE
MIDLAND, TX 79705

NEW MONOPOLE TOWER

ISSUED FOR:

REV	DATE	DRWN	DESCRIPTION	DES./QA
A	06/13/2022	WHS	ZONING	SN

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SHEET NUMBER: A-2
REVISION: A

PACKET

MIDLAND Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUDwo-22-0031

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Alec Broadus-Agent for owner		Phone (432)557-0719 682-23 Email jennifer@gobroadus.com	
Address 4 Country Place Cir	City Arlington	State TX	Zip 76016
Property Owner Printed Name: Toni Isbell		Phone (432)557-0719 682-23 Email jennifer@gobroadus.com	
Address 1801 E SOLOMON LANE	City MIDLAND	State TX	Zip 79705
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name: Alec Broadus-Agent for owner		Phone (432)557-0719 682-23 Email jennifer@gobroadus.com	
Address	City	State	Zip

Type of Permit: Specific Use

For Office Use Only
☐ with Term ☐without Term

Is there any Code Enforcement action pending on property? ☐ Yes ■ No

Street Address: 1801 SOLOMON LANE

Legal Description
Lot: 0081 Block: 002 Subdivision: 24.8 AC PAVILION PARK

Current Zoning: AE, Agricultural Estate District

Maximum Floor Area: N/A **Maximum Occupancy:** N/A

Proposed hours and days of use or operation: Unmanned Utility so only automated operation 24/7

Reason for request: Improve cellular and data coverage in the area.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Cell towers have not had any adverse affects in the many locations they occupy.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing
  - Parking (if applicable)
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature): Alec Broadus	Date: 9/19/22
Applicant (printed): Alec Broadus	
Property Owner (signature):	Date: 9/19/22
Property Owner (printed) : TONI ISBELL/PETREE ISBELL INC	

The Specific Use Designation shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF ~~MIDLAND~~ Tarrant

Before me, the undersigned authority, on this day personally appeared Alec Broadus who, being by me duly sworn, upon oath says: That (s)he is authorized by Toni Isbell/Petree Isbell Inc, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Alec Broadus
Authorized Agent (*signature*)

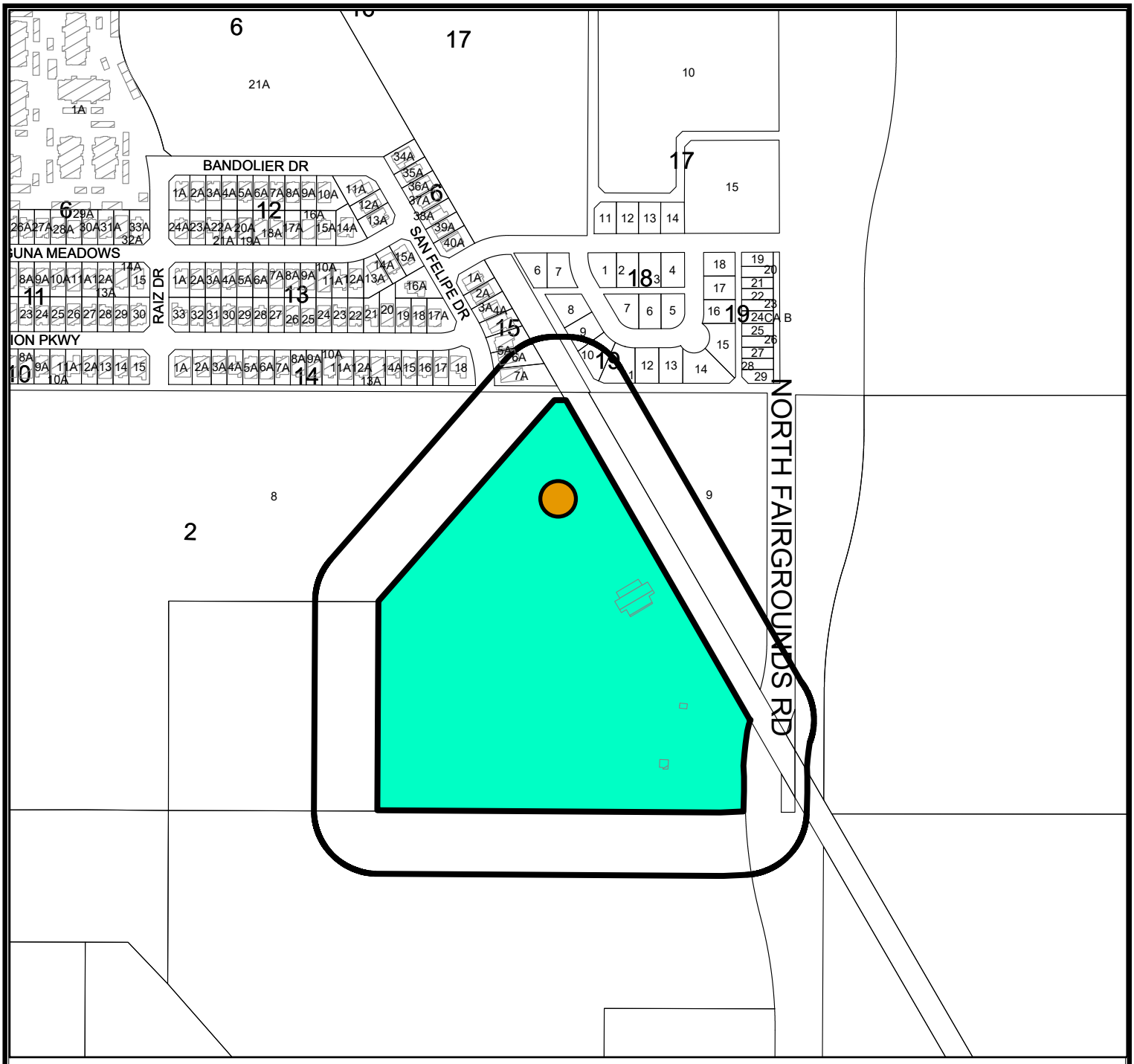
Subscribed and sworn to before me, this 19 day of Sept., 2022, to certify which witness my hand and seal of office.

TEJAS NAIK
Notary Public, State of Texas
Comm. Expires 03-19-2026
Notary ID 124158339

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Site Plan in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

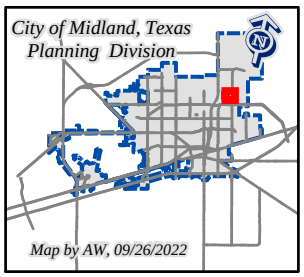
SUDwo-22-0031 **Scale: 1" = 200'**

Consider a request by Broadus Services for a Specific Use Designation without Term for Wireless Communication Systems, including a monopole antenna structure on a 1,600-square foot portion of Lot 8, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas.

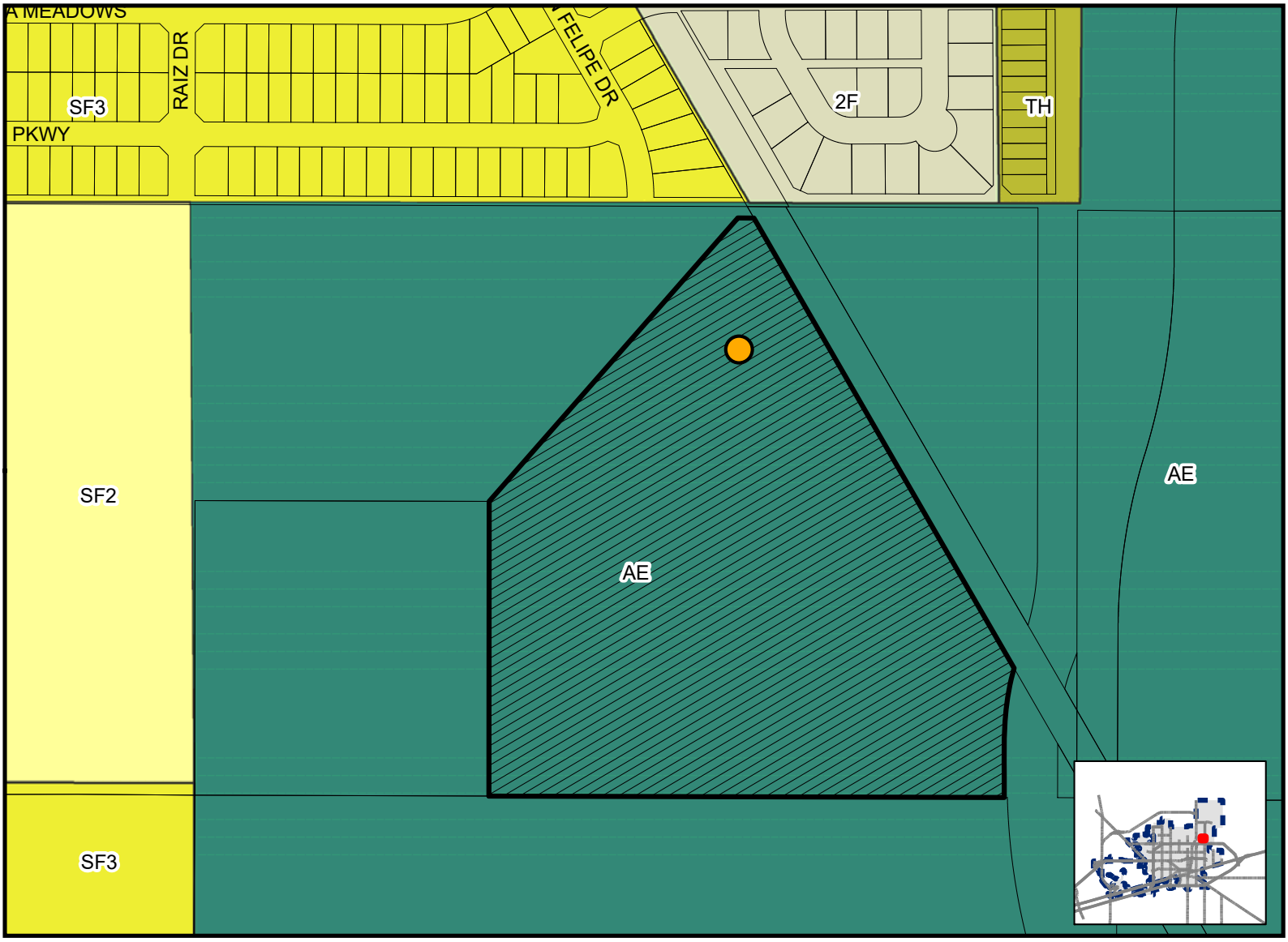
(Generally located on the west side of North Fairgrounds Road, approximately 310-feet southeast of San Felipe Drive. - Council District 1)
(DEVELOPMENT SERVICES)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



May 9, 2023



Map By AW, 9/26/2022

SUDwo-22-0031

Scale: 1" = 200'

ZONING MAP

© THE CITY OF NI
TO BE USED AS A PR
HEREIN. THE CITY OF
UCT, NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.

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**************************************************
                    *            Federal Airways & Airspace
*
                    *         Summary Report: New Construction
*
                    *                Antenna Structure
*

**************************************************

                    Airspace User: Susan Davis

                    File: MIRA_VISTA

                    Location:  Midland, TX

                    Latitude:  32°-3'-29.91"         Longitude: 102°-
4'-7.27"

                    SITE ELEVATION AMSL......2819 ft.
                    STRUCTURE HEIGHT.........140 ft.
                    OVERALL HEIGHT AMSL......2959 ft.

     NOTICE CRITERIA
       FAR 77.9(a): NNR (DNE 200 ft AGL)
       FAR 77.9(b): NR  (Exceeds Notice Slope, Maximum: 2888 ft.)
       FAR 77.9(c): NNR (Not a Traverse Way)
       FAR 77.9:    NNR FAR 77.9 IFR Straight-In Notice Criteria for
MDD
       FAR 77.9:    NNR FAR 77.9 IFR Straight-In Notice Criteria for
MAF
       FAR 77.9(d): NNR (Off Airport Construction)

       NR  = Notice Required
       NNR = Notice Not Required
       PNR = Possible Notice Required (depends upon actual IFR
procedure)
             For new construction review Air Navigation Facilities at
bottom
             of this report.

       Notice to the FAA is required because height exceeds Notice
Slope criteria.
       The maximum height to avoid notice is 2888 ft AMSL.

     OBSTRUCTION STANDARDS
       FAR 77.17(a)(1): DNE 499 ft AGL
       FAR 77.17(a)(2): DNE - Airport Surface
       FAR 77.19(a):    DNE - Horizontal Surface
       FAR 77.19(b):    DNE - Conical Surface
       FAR 77.19(c):    DNE - Primary Surface
```

```
       FAR 77.19(d):    DNE - Approach Surface
       FAR 77.19(e):    DNE - Approach Transitional Surface
       FAR 77.19(e):    DNE - Abeam Transitional Surface

     VFR TRAFFIC PATTERN AIRSPACE FOR: MDD: MIDLAND AIRPARK
     Type: A   RD: 9891.576   RE: 2789.9
       FAR 77.17(a)(1):          DNE
       FAR 77.17(a)(2):          DNE - Height No Greater Than 200 feet
AGL.
       VFR Horizontal Surface:   DNE
       VFR Conical Surface:      DNE
       VFR Primary Surface:      DNE
       VFR Approach Surface:     DNE
       VFR Transitional Surface: DNE

       The structure is within VFR - Traffic Pattern Airspace
Climb/Descent Area.
       Structures exceeding the greater of 350' AAE, 77.17(a)(2), or
VFR horizontal
       and conical surfaces will receive a hazard determination from
the FAA.
       Maximum AMSL of Climb/Descent Area is 3155 feet.

     VFR TRAFFIC PATTERN AIRSPACE FOR: MAF: MIDLAND INTL AIR AND SPACE
P
     Type: A   RD: 55621.14   RE: 2872.5
       FAR 77.17(a)(1):          DNE
       FAR 77.17(a)(2):          DNE - Greater Than 5.99 NM.
       VFR Horizontal Surface:   DNE
       VFR Conical Surface:      DNE
       VFR Primary Surface:      DNE
       VFR Approach Surface:     DNE
       VFR Transitional Surface: DNE

     TERPS DEPARTURE PROCEDURE (FAA Order 8260.3, Volume 4)
       FAR 77.17(a)(3) Departure Surface Criteria (40:1)
       DNE Departure Surface

     MINIMUM OBSTACLE CLEARANCE ALTITUDE (MOCA)
       FAR 77.17(a)(4) MOCA Altitude Enroute Criteria
       The Maximum Height Permitted is 3400 ft AMSL

     PRIVATE LANDING FACILITIES
       FACIL                                  BEARING    RANGE  DELTA
ARP FAA
       IDENT TYP NAME                         To FACIL   IN NM
ELEVATION IFR
       ----- --- ---------------------------- --------   -----  -----
---- ---
       7TX7  AIR RYAN AERODROME                   73.12    2.3
+219
       Possible Impact to Private Landing Facility.
```

Possible Exceeds VFR Transitional Surface (N/A Private Airport).

03TA HEL MIDLAND MEML HOSPITAL 203.95 4.04 +145
No Impact to Private Landing Facility
Structure is beyond notice limit by 19547 feet.

AIR NAVIGATION ELECTRONIC FACILITIES

FAC IDNT	TYPE	AT	FREQ	VECTOR	DIST (ft)	DELTA ELEVA	ST	LOCATION	GRND ANGLE	APCH BEAR
MAF	VORTAC	R	114.8	244.68	41705	+99	TX	MIDLAND	.14	

Alert! IFR Notice is not Required for this structure.
Predict within Final Segment of Approach plus Fix Error Area. Predict within FAR 77.9 IFR Notice Requirement Area for MDD: VOR/DME RWY 25
The maximum IFR No Notice Height for new construction is: 3100' AMSL.

KMAF	RADAR	WXL	Y		221.77	56071	+33	TX	MIDLAND WXL	.03
MAF	RADAR		I	2805.	232.07	58555	+14	TX	MIDLAND INTL AIRP	.01

No Impact. This structure does not require Notice based upon EMI.
The studied location is within 20 NM of a Radar facility.
The calculated Radar Line-Of-Sight (LOS) distance is: 133 NM.
This location and height is within the Radar Line-Of-Sight.

MAF	LOM		I		252.09	83475	+4	TX	RWY 10 MIDLAND IN	0.00

No Impact. Does Not Exceed NDB Notice Height Criteria.

MA	NDB		I	32	252.11	83490	+2	TX	FARLY	0.00

No Impact. Does Not Exceed NDB Notice Height Criteria.

QXS	RADAR	ARSR	Y	1250.4	328.5	211800	-181	TX	Odessa	-.05

CFR Title 47, §1.30000-§1.30004
AM STUDY NOT REQUIRED: Structure is not near a FCC licensed AM station.
Movement Method Proof as specified in §73.151(c) is not required.
Please review 'AM Station Report' for details.

Nearest AM Station: KCRS @ 3881 meters.

Airspace® Summary Version 22.7.647

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08-17-2022
07:32:17

SMW Engineering Group, Inc.
158 Business Center Drive
Birmingham, Alabama 35244
Telephone: (205) 252-6985
Fax: (205) 320-1504

1-A CERTIFICATION

Date: April 25, 2022

RE: Site Name: **Mira Vista**

Project Number: **2608053**

Location Code: **20181810702**

Ground Elevation: **2818.5' (AMSL)**

City Name: Midland **County: Midland** **State: Texas**

I certify that the Latitude of 32 Degrees 03 Min. 29.919 Sec. North and the longitude of 102 Degrees 04 Min. 07.279 Sec. West is accurate to within +/- 20 feet horizontally; and is accurate to within +/- 3 feet vertically. The horizontal datum (coordinates) is in terms of the North America Datum of 1983 (NAD83) and is expressed in degrees, minutes and seconds. The vertical datum (heights) is in terms of the North American Vertical Datum of 1988 (NAVD88).

Decimal Format

32.058311 Latitude
-102.068689 Longitude

State of Texas

Date: 4/25/22

William H. Sommerville III
Texas Registered No. 6094
SMW Job No. 22-10258
Prepared By: BB



Verizon Wireless Communication Facility

Engineering Necessity Case – MIRA_VISTA

Prepared by Chia Chang

September 2022

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Project Need Overview

The primary objective for this project is to improve service quality on the northeast side of downtown Midland and in the residential and commercial area along Hwy 349 and E Loop 250 N. This new site will provide increased coverage and capacity which will allow for greater throughput and reliability in the area.

Our engineering data shows that this area is trending toward data capacity limits. The existing site, TXMI_MIDLANDCC and TXMI_GREENWOOD need to have some of the area it covers moved onto another site to allow it to keep performing well. This new site, MIRA_VISTA, does an good job of moving traffic onto a more localized site, better able to serve this area.

Additional details and explanations follow in this presentation.

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Introduction:

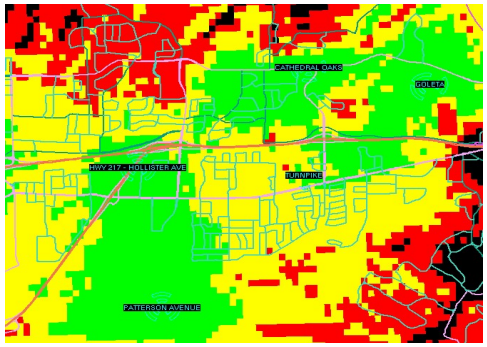
Coverage and/or capacity deficiencies are the two main drivers that prompt the need for a new wireless communications facility (WCF). Most WCF provide a mixture of both capacity and coverage for the benefit of the end user.

Coverage describes the existence or lack of wireless service in an area. The request for improved service often comes from our customers or emergency services personnel that have no service or poor service. Coverage used to refer to the ability to make or place a call in vehicles, however, as usage patterns have shifted, coverage is now determined based on whether or not sufficient WCF exist to provide a reliable signal inside of buildings and residential areas, as well. Historically, when wireless was still in its infancy, coverage was the primary means to measure the effectiveness of the network in a given area.

Capacity is the metric used to determine if sufficient wireless resources exist and is now the primary means to measure how a community's wireless needs are being addressed. "Five bars" no longer means guaranteed coverage and capacity because each WCF has a limited amount of resources to handle voice calls, data connections and data volume. When these limits are reached and the WCF becomes overloaded (meaning there is more demand than signal to service it), the user experience quickly degrades preventing customers from making/receiving calls or getting applications to run. A WCF short on capacity could also make internet connections time out or delay information to emergency response personnel

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Explanation of Wireless Coverage



Coverage is best shown via coverage maps. RF engineers use tools that take into account terrain, vegetation, building types, and WCF specifics to model the existing coverage and prediction what we expect to see with the addition of a proposed WCF.

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Explanation of Wireless Capacity



Capacity is the amount of resources that a WCF has to service customer demand. Verizon utilizes sophisticated programs and customer feedback to monitor current usage trends and to forecast future needs. Because it takes an average of 2-3 years to complete a WCF, we have to start the process of adding a new WCF several years in advance of when the WCF will be needed.

Location, Location, Location. A good capacity WCF needs to be in the center of a user population which insures that traffic is evenly distributed around the WCF. A typical WCF is configured into three sectors (like a pie cut into three pieces), with each slice (sector) having 33% of the WCF resources. If one sector is under-utilized, it's resources can not necessarily be diverted to another sector. Therefore, optimal performance is only obtained when all three sectors have an even traffic distribution.

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Wireless Data Growth

Each year Verizon sees large increases in how much data its customers need. As the resolution of the pictures we send increases, the quality of the video we watch improves and the complexity of the applications grow, we commonly see tremendous growth year-over-year

Machine to Machine communications will also increase the data burden on wireless networks, as over the next five (5) years more and more services that improve our safety and make our lives easier will be available over the wireless infrastructure , such as:

- Cars that notify 911 when an airbag deploys.
- “Driverless” cars needing traffic data and maps to reach your destination as quickly as possible.
- Medical monitors that will alert us should a loved one neglect taking their prescription drugs.
- Home alarms that notify you when your child arrives home from school.
- Smart street lights that notify the city when they are not working.
- City garbage cans that let people know when they need to be emptied.
- Tracking watches will aid in finding lost Alzheimer patients.

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Radio Emission Safety

A common question received is “Are the radio emissions safe?”

Verizon goes to great effort to ensure that all of its projects meet the standards established by the FCC to ensure safety of the public and its employees. The links below are to three reputable organizations that have performed extensive reviews of the science available on this subject and have good educational articles on the results of their research.

World Health Organization
http://www.who.int/peh-emf/about/WhatisEMF/en/index1.html

American Cancer Society
https://www.cancer.org/cancer/cancer-causes/radiation-exposure/cellular-phone-towers.html

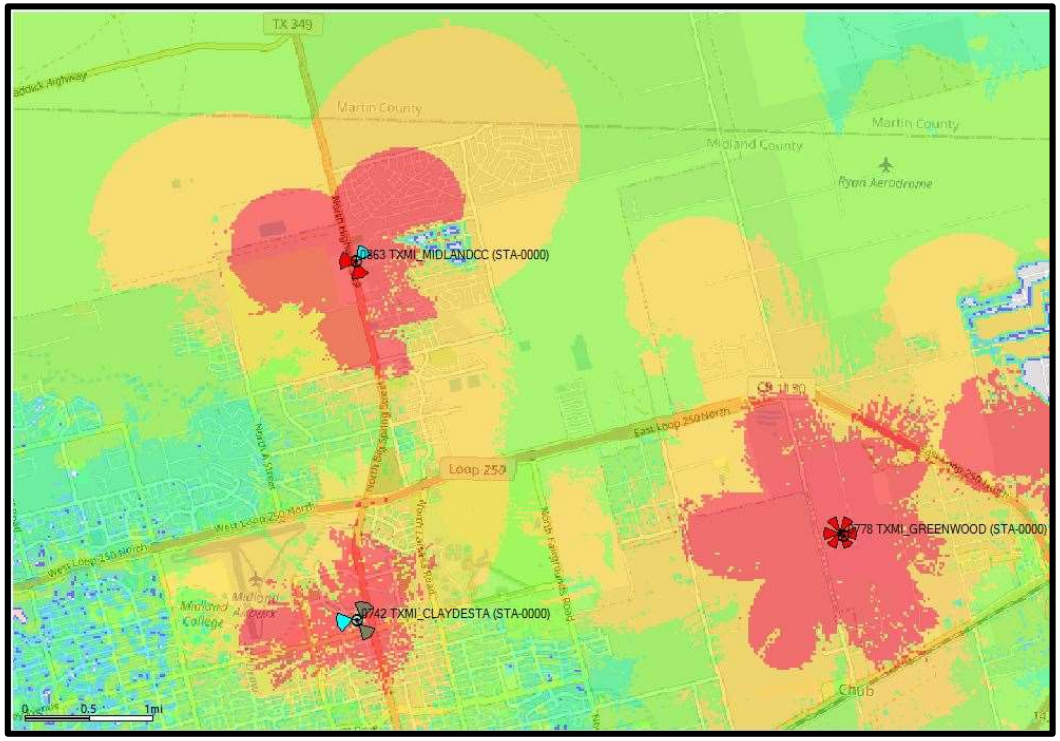
FCC Radio Frequency Safety
https://www.fcc.gov/general/radio-frequency-safety-0

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Current Coverage

Current coverage near the proposed MIRA_VISTA site



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Proposed Coverage

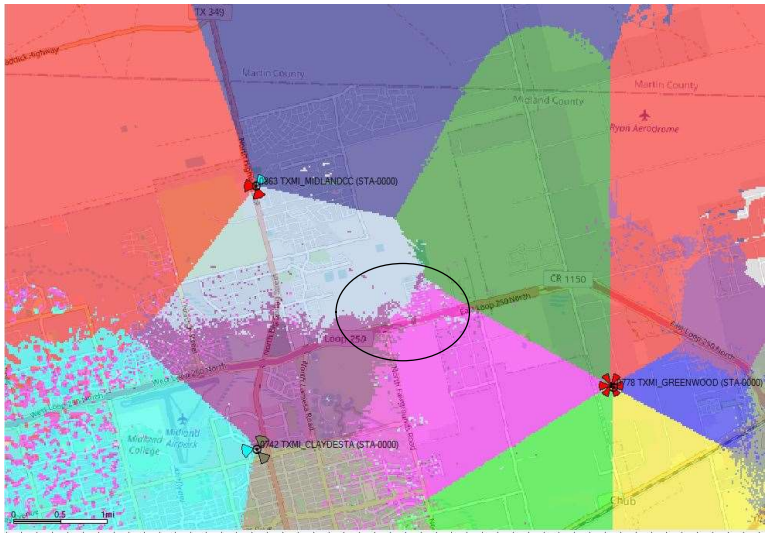
Although this site is proposed primarily to offload capacity from the TXMI_MIDLANDCC site, an added benefit is improved coverage in the area around the proposed MIRA_VISTA site, improving data throughput.



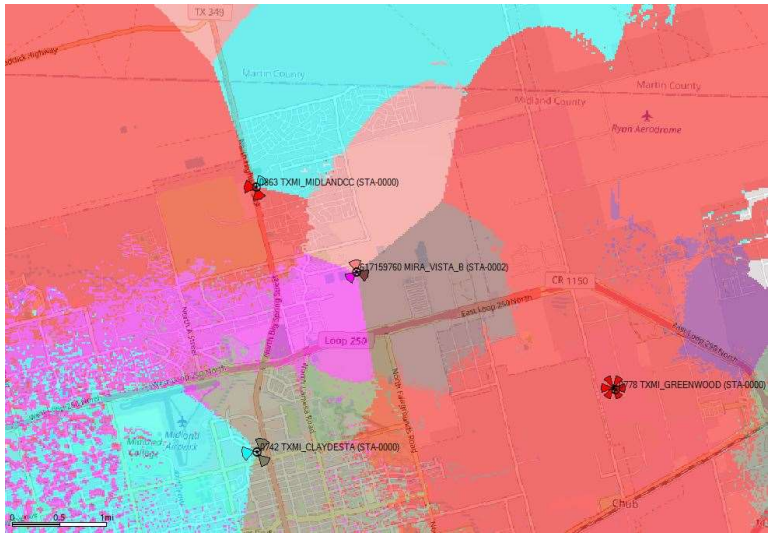
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Serving Sector Maps



Best Server without MIRA_VISTA Site



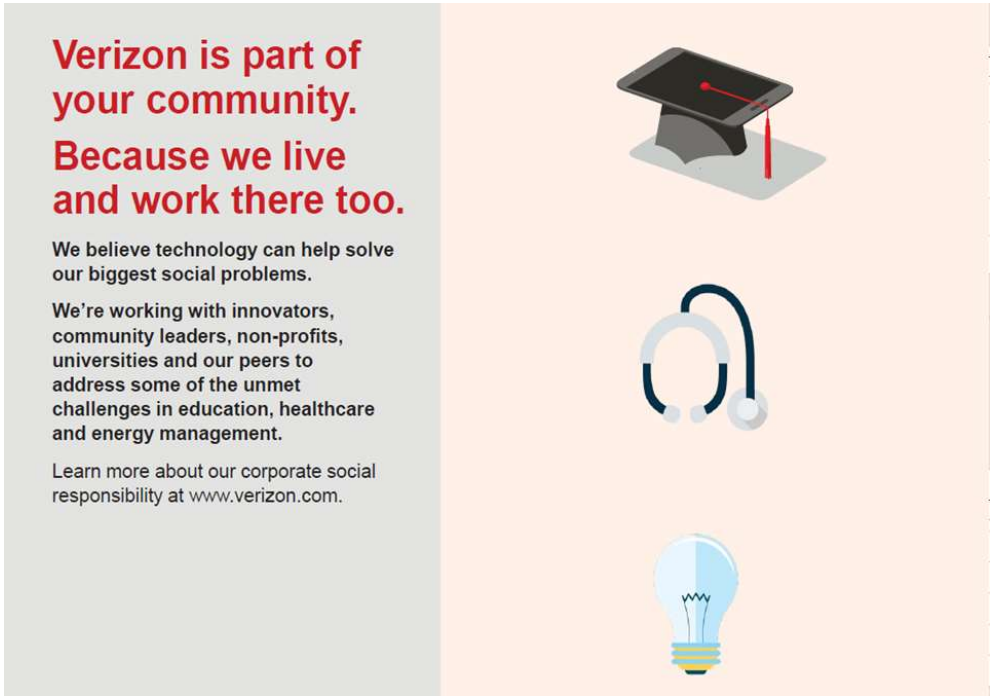
Best Server with MIRA_VISTA Site

The proposed site footprint on the right will improve both capacity and coverage in the highlighted area. The plots above show the best servers or sectors that cover this area with each sector shown in a different color. The left map shows what sectors currently cover this area with the projected overloaded sectors circled. The right map shows the area this new site will cover. This project will improve service by providing necessary capacity to support the growth we are seeing in 4G data traffic. The area around the proposed site will see much better service. If the site is not built the area circled on the left map will see data speeds and new 4G voice service start to degrade as the site overloads.

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Verizon Wireless



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ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 1,600-SQUARE FOOT PORTION OF LOT 8, BLOCK 2, PAVILION PARK, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 310 FEET SOUTHEAST OF SAN FELIPE DRIVE), WHICH IS PRESENTLY ZONED AE, AGRICULTURAL ESTATE DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR WIRELESS COMMUNICATION SYSTEMS, INCLUDING A MONOPOLE ANTENNA STRUCTURE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for a 1,600-square foot portion of Lot 8, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas (the "Property") as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for wireless communication systems, including a monopole antenna structure (the "Specific Use"), together with the uses permitted in the present AE, Agricultural Estate District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

That the use and development of the Property for the Specific Use:

A. shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

B. shall conform to all applicable City ordinances and state and federal laws, rules and regulations.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

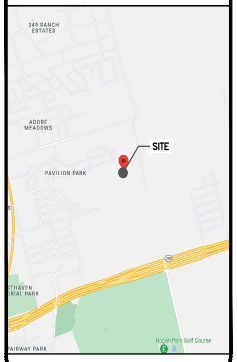
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

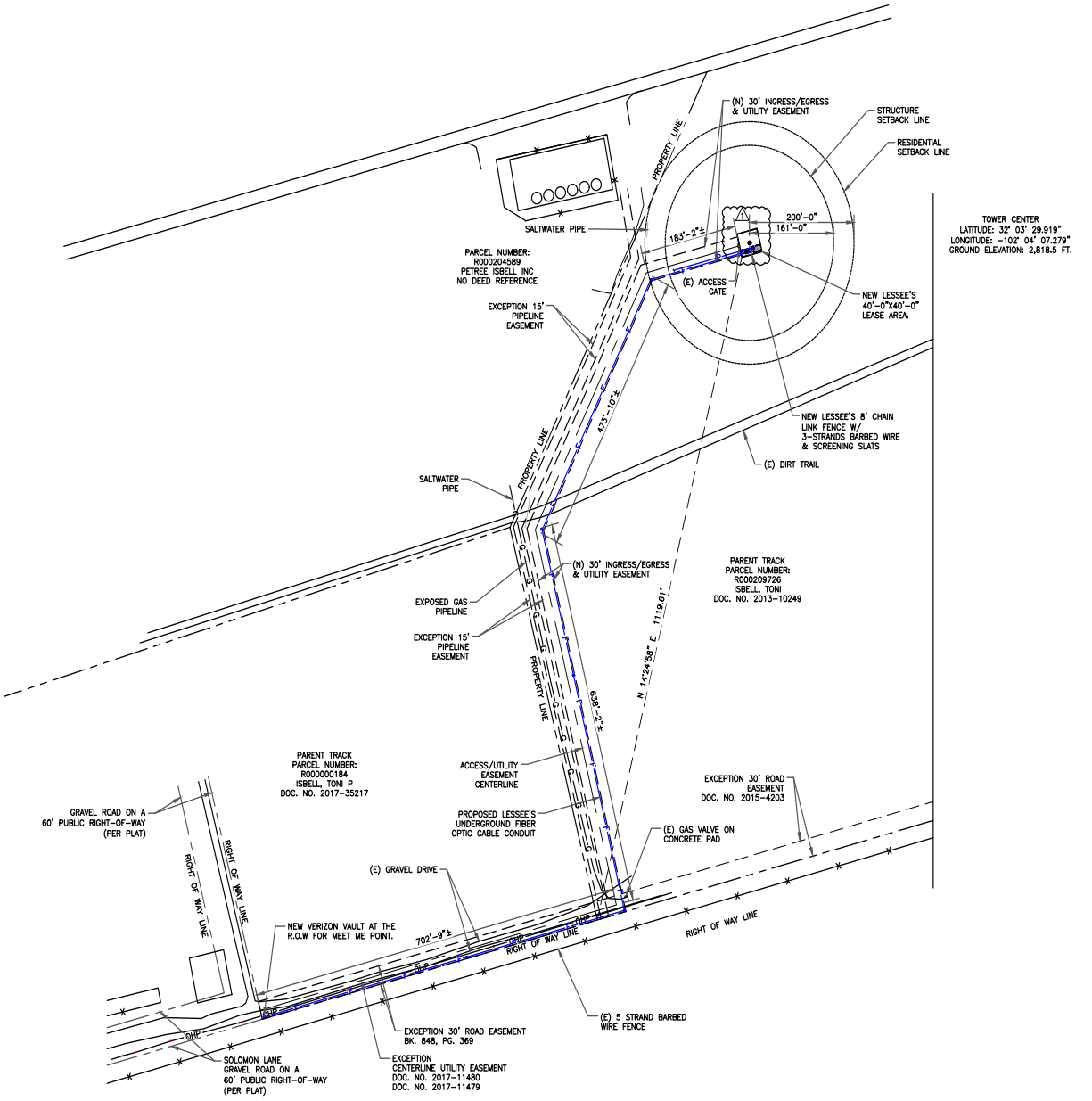
MAP



PROPOSED SITE REVISIONS

INCLUDE SYMBOLS OR ABBREVIATIONS USED ON THE DRAWING.

1. PROPOSED CONSTRUCTION OF A NEW CELL SITE W/ 135' MONOPOLE WITH CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR
2. PROPOSED INSTALLATION OF PANEL ANTENNAS AND ASSOCIATED RADIO EQUIPMENT MOUNTED ON THE NEW MONOPOLE TOWER.



1 OVERALL SITE PLAN
SCALE: 100' 50' 0 100' 1" = 100'-0" (FULL SIZE) 1" = 200'-0" (11x17)

N

LEGEND

- ○ = 5/8" REBAR SET
- ● = FOUND PROPERTY MARKER
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- POE = POINT OF ENDING
- ▲ = CALCULATED POINT
- = POWER POLE
- = GUY ANCHOR
- = POWER BOX
- = TELEPHONE PEDESTAL
- = SERVICE POLE
- = FIRE HYDRANT
- = WATER VALVE
- = WATER METER
- = GAS METER
- = SEWER MANHOLE
- = FLUID LINE MARKER
- = TEMPORARY BENCHMARK 5/8" REBAR SET ELEVATION: 2819.31'
- FENCE LINE
- OHP POWER LINE

SITE DATA SUMMARY TABLE

USE: CELL SITE AS PART OF A WIRELESS COMMUNICATIONS NETWORK.	
ZONING.....	AE – AGRICULTURAL ESTATE DISTRICT
LEASE AREA SURFACE.....	106 SQ. FT.
LOT AREA.....	1,600 SQ. FT.
ACCESS & UTILITY EASEMENT..	59,668 SQ. FT.
TOWER STRUCTURE HEIGHT:	135'
TOTAL PARKING REQUIRED:.	N/A
INTERIOR LANDSCAPE RQRD:	N/A

OWNER
TONI ISBELL
1801 E. SOLOMON LANE
MIDLAND, TX 79705

APPLICANT
VERIZON WIRELESS
600 HIDDEN RIDGE
IRVING, TX

ENGINEER
CAA SOLUTIONS, PLLC
170 BOULEVARD, SUITE108
ATLANTA, GA 30312
PH: (770) 548-8268
CONTACT: ALEXANDER ABERNATHY, P.E.

ACTION

APPROVED ☐ DENIED ☐

STAFF _____ Date _____ Initials

P&Z _____ Date _____ Initials

Neighborhood # ____

See the Staff Approval Letter or P&Z Result Memo for any conditions associated with the approval of the project.

THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A NEW CELL SITE WITH MONOPOLE TOWER, ANTENNAS, HYBRID CABLES INSIDE THE TOWER, AND CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR.

ZONING CASE NO. ----
CELL SITE CARRIER ADDITION PLAN
1801 "U" SOLOMON LANE
MIDLAND, TX 79705
TONI ISBELL
PARCEL NUMBER: R000209726
DOC. NO. 2013-10249

verizon
600 HIDDEN RIDGE
IRVING, TX

BROADUS SERVICES
4 COUNTRY PLACE CIRCLE
DALWORTHINGTON GARDENS
TEXAS 76016

VERIZON SITE NAME:
MIRA VISTA

VERIZON LOCATION CODE:
496585

FUZE ID:
16879284

1801 "U" SOLOMON LANE
MIDLAND, TX 79705

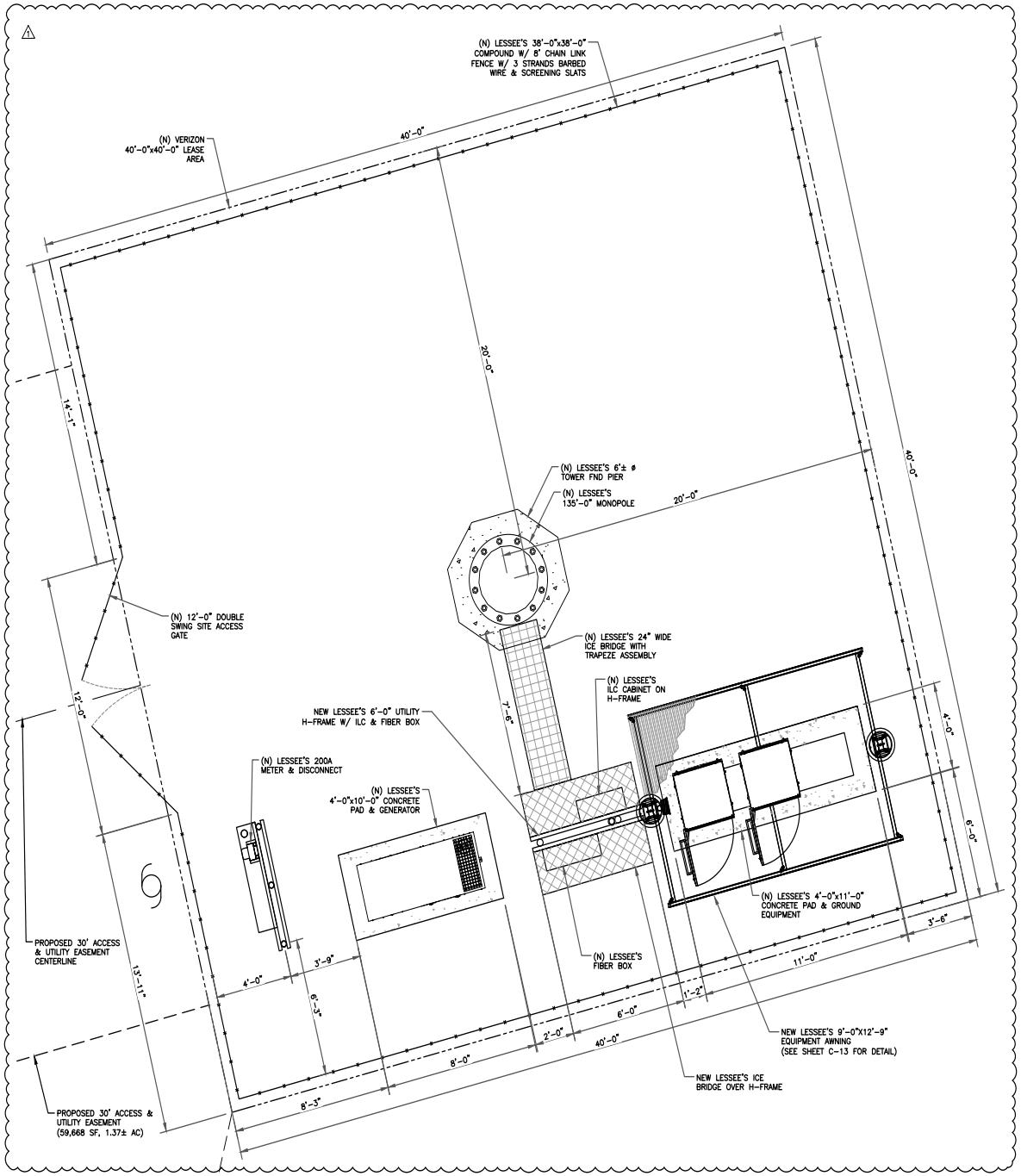
NEW MONOPOLE TOWER

ISSUED FOR:

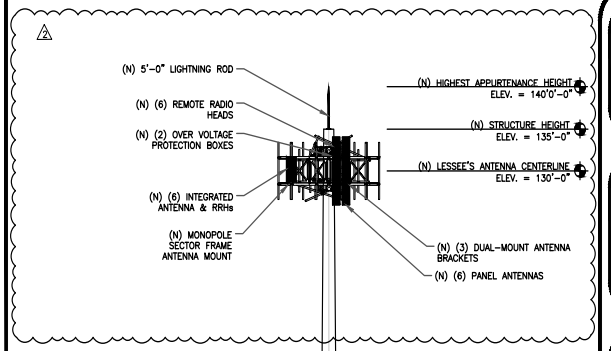
REV	DATE	DRWN	DESCRIPTION	DES./QA
A	06/13/2022	WHS	ZONING	SN

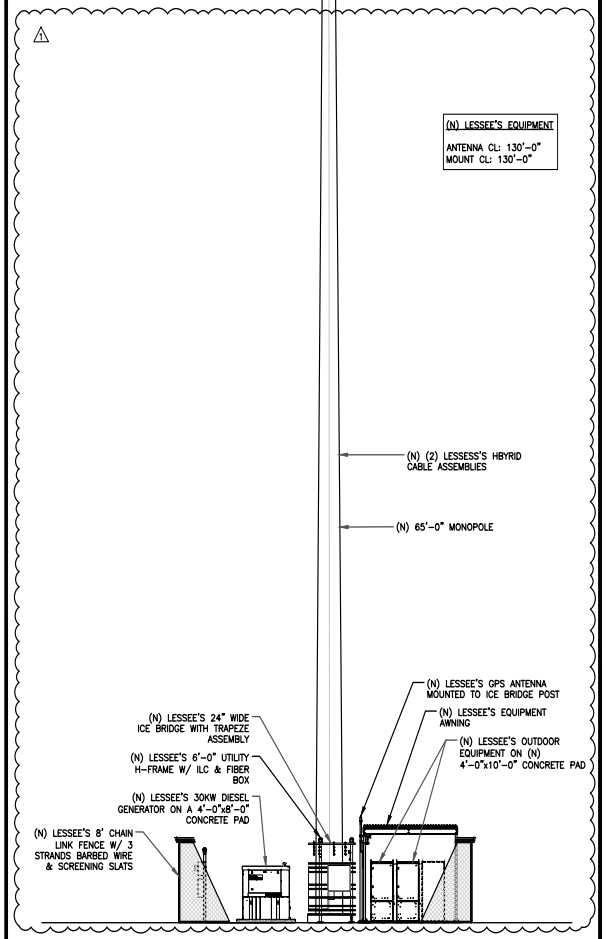
IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SHEET NUMBER: A-1
REVISION: A



1 EQUIPMENT PLAN
SCALE: 2' 1' 0 2' 3/8"=1'-0" (FULL SIZE) 3/16"=1'-0" (11x17)





2 TOWER ELEVATION
SCALE: NOT TO SCALE

THE PURPOSE OF THIS PROJECT IS TO CONSTRUCT A NEW CELL SITE WITH MONOPOLE TOWER, ANTENNAS, HYBRID CABLES INSIDE THE TOWER, AND CONCRETE PADS FOR GROUND EQUIPMENT & GENERATOR.

ZONING CASE NO. --May 9, 2023
CELL SITE CARRIER ADDITION PLAN
1801 "U" SOLOMON LANE
MIDLAND, TX 79705

PACKET 29.36

verizon
600 HIDDEN RIDGE
IRVING, TX

BROADUS SERVICES
4 COUNTRY PLACE CIRCLE
DALWORTHINGTON GARDENS
TEXAS 76016

VERIZON SITE NAME:
MIRA VISTA

VERIZON LOCATION CODE:
496585

FUZE ID:
16879284

1801 "U" SOLOMON LANE
MIDLAND, TX 79705

NEW MONOPOLE TOWER

ISSUED FOR:

REV	DATE	DRWN	DESCRIPTION	DES./QA
A	06/13/2022	WHS	ZONING	SN

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

SHEET NUMBER: A-2
REVISION: A

City Council Meeting

Item Number: 30

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Landon Ochoa, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 258.87-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF EAST MOCKINGBIRD LANE, APPROXIMATELY 900 FEET EAST OF NORTH FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting a Zone Change from PD, Planned Development District for Housing Development (Ordinance No. 10344) to an amended PD, Planned Development District for Housing Development to modify the lot sizes of proposed housing development and revise the previously approved preliminary plat. This is because Betenbough is changing up their product line due to the change in the market.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Discussion:

Current Zoning:

PD, Planned Development District for Housing Development (Ordinance No. 10344)

Surrounding Zoning and Land Use:

The property to the north is zoned SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and LR, Local Retail District, in part. The property to the east and south is zoned AE, Agricultural Estate District. The properties to the west are zoned MF-16, Multiple-Family Dwelling District, in part, and RR, Regional Retail District in part.

Analysis:

The applicant, Betenbough Homes, is requesting approval of a Zone Change for the development of a multi-use site, including a mix of residential and greenspace uses. This proposed subdivision will have a total of six hundred ninety-five (695) residential lots, approximately 102.42-acres of greenspace/detention pond that is composed of common areas and drainage ponds.

The applicant is proposing this section of the development to be executed in eight phases (4-11). Phases 1-3 are remaining the same from the first zone change related to this project and are not included in this request.

Product Class		Smallest Lot Area SF	Smallest Lot Depth LF	Phase # 4	5	6	7	8	9	10	11	Percent of Total
Core	30-45'	4236	85'		27	18	23		20	24	12	17.8%
	30-50'	4404	86'		59	33	80		55	70	27	46.6%
Reserve	40-50'	5750	95'	26				19				6.5%
	40-60'	6250	90'	42				52				13.5%
	75'	9387	125'					8				1.2%
	85'	11816	125'					2				0.3%
Cottages	30-50'	4173	81'		33				23		42	14.1%
PHASE TOTAL				68	119	51	103	81	98	94	81	100%
OVERALL TOTAL				695								

These lots will have an underlying zoning of SF-3, Single Family Dwelling District but with the following amendments. The minimum dimensions are as follows:

Core Product Class: 448 lots

1. Minimum lot width - 30 feet.
2. Minimum lot depth - 85 feet
3. Minimum lot area - 4,200 square feet.

Reserve Product Class: 149 lots

1. Minimum lot width - 40 feet.

2. Minimum lot depth - 90 feet
3. Minimum lot area - 5,700 square feet.

Cottages Product Class: 98 lots
1. Minimum lot width - 30 feet.
2. Minimum lot depth - 81 feet
3. Minimum lot area - 4,100 square feet.

The previous request had only nine phases compared to the current request which contains phases 4-11. The previous lot counts for each product class in phases 4-9 for the first zone change request are as follows:

Core: 510
Reserve: 112
Cottages: 85

The appropriate setbacks and maximum height of future development will comply with the regulations as described in Section 5.04 Residential Zoning District Dimensional Regulations chart. Not all the proposed lots meet the minimum lot depth, minimum lot width, and minimum lot area requirements of the SF-3 Single-Family Dwelling District. However, the new PD Ordinance will allow reduced depth, width, and areas as outlined above.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved with Conditions)

No objection to zone change. [For the Applicant's information only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] Our staff has examined the FEMA flood map and it appears that several property lies entirely within Zone AH, which is a Special Flood Hazard Area subject to inundation by the 1% annual chance flood. [For the Applicant's information only.] If a LOMR is not proposed to remove these properties from 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. [For the Applicant's information only.]

Code: (Approved)

Phase 6 page 2 – (High Country Ct.) the Stinson-Burley B #2 API 329-31044 is identified but missing the 135 ft radius as previously requested for a non-City permitted well. Previous preliminary plat had it included correctly. Noted it will be Plugged and Abandoned (No building permits inside 135 ft. radius till P&A completed). Phase 11 Page 3- the non-city permitted Stimson Burley #1M API 329-31751 is identified with radius but needs to be identified as a 135 ft radius as required. Previous preliminary plat had it correctly. Noted to be P&A well (No building permits inside 135 ft. radius till P&A). Phase 11, page 3 -the non-City permitted Stimson Burley B #3 API 32--31045 is identified on plat with radius but needs to be identified as a 135 ft. radius as required. Previous preliminary plat had it correctly. Noted to be P&A well. No building permits are allowed in the 135 ft radius of existing well until it is actually P&A with a W-3 permit per RRC. In addition, the City permitted Endeavor operated Willow Lakes 19 #191 (located south of Mockingbird Lane) is identified with a 500 ft. radius that is located below Mockingbird Lane. Any occupied residential/commercial building permits inside the 500 ft. radius will require a variance to a permitted well from the City Council. For information: Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures.

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:

The area is classified as Urban Residential-Low, in part, which calls for restrictive land use, emphasizing single-family detached development. The area is also classified as Urban Medium which calls for a mix of complementary uses, including single-family housing, multi-family housing, schools, mid-sized parks and churches, commercial and mixed use. The plan also calls for a parkway that would run through the property which is identified on the site plan. All of these uses are compatible with the Low and Medium designations.

The Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, "Development Policy Areas" labels this area as part of the "Current Development Area" which seeks to address the compatibility of uses, "specifically between different housing intensities," As shown in the proposed site plan, the applicant is planning to create a gradual transition from existing housing developments at the western edge of the property in question which is consistent with this statement.

Principle 4 of Chapter 3 of the Tall City Tomorrow Plan seeks to increase the diversity of the

housing stock in Midland specifically including the need for smaller lot homes. This proposal works in compliance since the development will be introducing a neighborhood with a mix of housing intensities to include smaller townhouse-sized lots as well as larger single-family lots. Additionally, Principle 8 of the Chapter 3 requests that land use policies and regulations support the creation of more balanced neighborhoods, which include “a variety of housing options, access to open space, and contain activity centers such as parks…” The applicant is proposing to develop more specifically delineated park space and trails in the development which will help give the residents a diversity of recreation allowing for a more balanced feel.

Principle 5 of Chapter 3 requests planning for community amenities such as parks and open space to support “community activity, personal interaction a sense of place, and ultimately a sense of ownership in the community.” The applicant is proposing to include a park, greenspace, and trails all of which will contribute to creating a sense of place for new residents.

The Planning & Zoning Commission recommended approval of this request April 17, 2023.

Staff recommends approval of this request subject to conditions A through C.

Conditions:

A. **That the Property, including the minimum dimensions of lots contained therein, 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 all signage shall conform to the regulations set forth in Title XI, Chapter 7a of the City Code.**

Letters of Objection:

As of May 8, 2023, staff has received no letters of objection for this request.

Attachments:

Application
Metes and Bounds (Exhibit A)
Site Plan (Exhibit B)
Maps

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 258.87-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF EAST MOCKINGBIRD LANE, APPROXIMATELY 900 FEET EAST OF NORTH FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds

that the public health, safety and general welfare will be best served by rezoning a

258.87-acre tract of land out of Section 18, Block 38, 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"), for a Housing Development 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 Housing Development, to PD, Planned Development District for a Housing Development, subject to the conditions hereinafter adopting and imposed.

SECTION TWO. That the base zoning district to which the use and development of the Property is subject shall be as set out hereinafter;

of the Property shall conform, except as modified by Section Three of this ordinance, is the SF-3, Single-Family Dwelling 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, including the minimum dimensions of lots contained therein, 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 7a of the City Code.

C. That all signage shall conform to the regulations set forth in Title XI, Chapter 9 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 ordinances or parts of ordinances governing or regulating the same subject matter as are covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code

of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

EXHIBIT "A"

MAVERICK
ENGINEERING • SURVEY • WATER RESOURCES
1909 West Wall Street, Suite K • Midland, TX 79701
Tel: 432.262.0999 • Fax: 432.262.0989 • maverick-eng.com
ENGINEER FIRM #: F-15089 | SURVEY FIRM #:10194514

FIELD NOTE DESCRIPTION OF A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH, ABSTRACT NUMBER 734, GLO FILE NUMBER 66103, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY. TEXAS, AND BEING A PORTION OF THAT CALLED 340.49 TRACT DESCRIBED IN DOCUMENT NUMBER 2021-35675 OF THE OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING *AT N.(Y):10719693.07, E.(X):1764462.90, A FIVE EIGHTHS INCH IRON ROD FOUND IN THE NORTH LINE OF SECTION 20, SAME BLOCK, FOR THE SOUTH COMMON CORNER OF SECTION 17, SAME BLOCK AND SAID SECTION 18, FROM WHICH A SIX INCH STEEL FENCE POST CALLED THE NORTHWEST CORNER OF A CALLED 244.4 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2017-34694, OF SAID OFFICIAL PUBLIC RECORDS, BEARS N.63°31'14"W., 44.34 FEET, AND A 2 INCH IRON PIPE CALLED THE SOUTHWEST CORNER OF A CALLED 316.39 ACRE TRACT IN DOCUMENT NUMBER 2011-8666 OF SAID OFFICIAL PUBLIC RECORDS BEARS N.82°07'34"W., 36.64 FEET, AND BEING THE SOUTHEAST CORNER HEREOF;*

THENCE *S.75°43'57"W., ALONG THE LINE COMMON TO SAID SECTIONS 20 AND 18, AT 75.80 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT OR NEAR THE NORTH COMMON CORNER OF SAID SECTION 20 AND SECTION 19, SAME BLOCK, CONTINUING ALONG SAID COMMON LINE, AT 572.95 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF TRACTS 2 AND 3 AS DESCRIBED IN DOCUMENT NUMBER 2018-20726, OF SAID OFFICIAL PUBLIC RECORDS, AT 1981.61 FEET PASSING A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF SAID TRACT 2 AND A CALLED "TRACT 3" IN DOCUMENT NUMBER 2018-2268, OF SAID OFFICIAL PUBLIC RECORDS, AT 3801.97 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID TRACT 3, BEING THE NORTHEAST CORNER OF A TRACT CALLED 12.3 ACRES IN VOLUME 867 ON PAGE 35 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AT 3951.98 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID CALLED 12.3 ACRE TRACT, BEING THE NORTHEAST CORNER OF A CALLED TRACT 1, IN SAID DOCUMENT NUMBER 2018-2268, IN ALL 4132.38 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#10194514" (RPC) SET FOR THE SOUTHWEST CORNER HEREOF;*

THENCE *N.14°07'10"W., 419.64 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *S.75°52'50"W., 28.10 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;*

THENCE *N. N.14°07'10"W., 2069.30 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *N.22°36'06"W., 80.28 FEET TO A POINT OF DEFLECTION RIGHT AND A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF N.57°59'24"E., 142.96 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 143.11 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 1950.00 FEET AND A CHORD BEARING AND DISTANCE OF N.77°01'32"E., 1554.60 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 1599.03 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF S.88°33'08"E., 349.94 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 351.41 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION LEFT;*

THENCE *N.07°37'18"W., 115.00 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.78°25'37"E., 137.13 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 137.24 FEET TO AN "RPC" SET AT THE POINT OF TANGENCY;*

THENCE *N.72°23'25"E., 72.42 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.51°36'34"E., 637.86 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 649.32 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT;*

THENCE *S.57°05'08"E., 115 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF N.30°10'44"E., 105.95 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 105.99 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT, FOR AN EXTERIOR CORNER HEREOF;*

THENCE *THE FOLLOWING 11 COURSES AND DISTANCES, ALL TO AN "RPC" FOR ANGLE POINTS IN THE BOUNDARY HEREOF;*

1. N.70°45'27"E., 112.51 FEET;
2. S.66°30'04"E., 115.00 FEET;
3. N.77°16'15"E., 15.51 FEET;
4. N.14°39'08"W., 46.14 FEET;
5. N.69°08'15"E., 114.62 FEET;
6. N.81°18'37"E., 60.27 FEET;
7. N.75°20'52"E., 115.00 FEET;
8. N.14°25'02"W., 7.06 FEET;
9. N.75°20'52"E., 115.00 FEET;
10. N.80°51'01"E., 60.26 FEET;
11. N.75°20'52"E., 487.58 FEET TO AN "RPC" SET ON THE WEST LINE OF A CALLED 632.79 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2011-8666 OF SAID DEED RECORDS, ON THE LINE COMMON TO SAID SECTIONS 17 AND 18, FOR THE NORTHWEST CORNER HEREOF;

THENCE *S.14°30'16"E., ALONG THE COMMON LINE OF SAID SECTIONS 17 AND 18, AT 1623.59 FEET PASSING A ONE HALF INCH IRON ROD FOR THE NORTHWEST CORNER OF A CALLED 22.368 ACRE TRACT IN DOCUMENT NUMBER2014-5886 OF SAID OFFICIAL PUBLIC RECORDS, BEARING S.75°32'01"W., 15.87 FEET, AT 2815.90 FEET PASSING SAID 6 INCH STEEL FENCE POST BEARING S.75°29'44"W., 33.47 FEET, IN ALL 2844.98 FEET TO THE* ***POINT OF BEGINNING****, CONTAINING 258.87 ACRES OF LAND.*

BASIS OF BEARING, DISTANCE, COORDINATES AND AREA ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FOOT, HAVING A CONVERGENCE ANGLE (theta) OF -0°53'04.89" AND A COMBINED SCALE FACTOR OF 0.999925027 AT THE POINT OF BEGINNING.



MARCH 20, 2023

Gregory W. Shoults
www.maverick-eng.com
Texas RPLS - No. 5356
Maverick Engineering (FIRM – No. 10194514)

EXHIBIT "B"



SCALE 1" = 200'

FEMA NOTE:
FLOOD STATEMENT: ACCORDING TO FEMA'S N.F.I.P. FLOOD INSURANCE RATE MAP #48329C0100E DATED SEPTEMBER 16, 2005, PORTION OF THIS PROPERTY SHOWN HEREON ARE WITHIN THE UNSHADED ZONE "X" AREAS DEFINED THEREON AS BEING OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN, AND PORTIONS OF THIS PROPERTY SHOWN HEREON ARE WITHIN ZONE "AH" AREA WITH LIKE ANNUAL CHANCE OF SHALLOW FLOODING, USUALLY IN THE FORM OF A POND, WITH AN AVERAGE DEPTH RANGING FROM 1 TO 3 FEET. THESE AREAS HAVE A 26% CHANCE OF FLOODING OVER THE LIFE OF A 30-YEAR MORTGAGE. BASE FLOOD ELEVATIONS DERIVED FROM DETAILED ANALYSES ARE SHOWN AT SELECTED INTERVALS WITHIN THESE ZONES. REFER TO FEMA FLOOD LOMR NO. 19-06-2980P ISSUED AUGUST 14, 2020 FOR DETENTION BASIN (M156) FILL IN THE NW CORNER OF THIS PROPERTY. THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF MAVERICK ENGINEERING.

- 45' FRONT WIDTH - CORE
- 50' FRONT WIDTH - CORE
- 50' FRONT WIDTH - COTTAGE
- 50' FRONT WIDTH - RESERVE
- 60' FRONT WIDTH - RESERVE
- 75' FRONT WIDTH - RESERVE
- 85' FRONT WIDTH - RESERVE

NOTE
1. LOCATION OF BURIED UTILITIES AND PIPELINES, IF ANY, ARE APPROXIMATE BASED UPON OBSERVED EXISTING SIGNAGE, CITY OF MIDLAND GIS AND VISUAL EVIDENCE. CP &I (TYPE 811) SITE MARKINGS AT THE TIME OF THIS SURVEY.
2. DIRECTIONS AND DISTANCES SHOWN HEREON ARE BASED UPON THE RECORDED DOCUMENT AND DO NOT NECESSARILY REFLECT ACTUAL FIELD MEASUREMENTS.
3. ALL LOTS ARE PROPOSED AND PROVISIONAL OR FOR PLANNING PURPOSES AND MAY BE SUBJECT TO CHANGE.

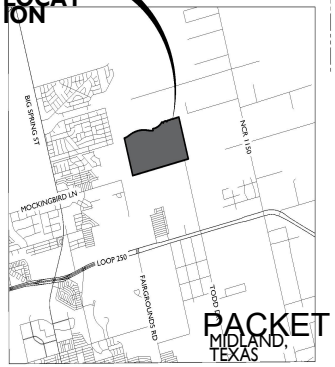
DIMENSIONAL NOTES

- ALL INTERIOR ROAD RIGHT-OF-WAYS TO THIS DEVELOPMENT ARE 60' WIDE, ALL CUL-DE-SACS ARE A 60' RADIUS. FIREWHEEL ROAD IS A PROPOSED 80' WIDE.
- RIGHT-OF-WAY WITH ROUNDABOUT.
- ALL SIDEWALKS WILL BE 5' IN WIDTH ALONG ALL PUBLIC RIGHT-OF-WAYS.
- ALL CORNER CLIPS ARE 20'x20' (TYP.) UNLESS OTHERWISE NOTED.

GREENSPACE NOTES

- DEVELOPMENT CONTAINS 258.87 ACRES. OF WHICH 102.42 ACRES ARE ELIGIBLE NON-DEVELOPED GREENSPACE FOR A TOTAL PERCENTAGE OF 39.5%

SITE LOCATION



VICINITY MAP

N.T.S.

DEVELOPMENT NOTES

- GENERAL: SITE PLAN IS FOR A PROPOSED 495 LOT RESIDENTIAL SUBDIVISION WITH A PROPOSED DEDICATED STORMWATER DETENTION BASIN SITUATED WITHIN AN HOA-MAINTAINED COMMON AREA GREEN SPACE, ALL BEING OUT OF A 258.87 ACRE DEVELOPMENT SITE. DEVELOPMENT WILL CONSIST OF A SINGLE FAMILY RESIDENTIAL AND AMENITY CENTER (MIXED USE).
- CLASSIFICATION: SEE INCLUDED TABULATION FOR THE OVERALL LOT CLASSIFICATION FOR THE DEVELOPMENT.
- SETBACKS: PROPOSED SETBACKS ON THE RESIDENTIAL COMPONENT OF THE SUBDIVISION ARE AS FOLLOWS: FRONT 20', CUL-DE-SAC FRONT 15', SIDE 5', CORNER SIDE 10', REAR 10'.
- BUILDING HEIGHT: NO STRUCTURE SHALL EXCEED 42' IN HEIGHT OR 3 STORIES WITHIN THIS DEVELOPMENT.
- ACCESS: THE DEVELOPMENT WILL HAVE (3) EVENTUAL ACCESS POINTS. ONE TO THE WEST ACCESSING FAIRGROUNDS ROAD, ONE TO THE EAST ACCESSING TODD DRIVE, AND ONE TO THE SOUTH ACCESSING MOCKINGBIRD LANE. ALL ACCESS POINTS TO SERVICE THE DEVELOPMENT ALONG THE FRONTAGE OF ALL LOTS.
- EASEMENTS: 30' DRAINAGE EASEMENT ALONG THE EASTERN PORTION OF PHASE 10 AND A PORTION OF PHASE 11 (BY SEPARATE INSTRUMENT).
- 20' DRAINAGE EASEMENT BETWEEN LOTS 18 AND 19, BLOCK 19 (PHASE 9).
- DEDICATED STORMWATER DRAINAGE BASINS WITHIN COMMON AREA "L" LOCATED DIRECTLY WEST OF TODD ROAD.
- UTILITIES: PUBLIC UTILITIES WILL SERVICE THE DEVELOPMENT FROM THE EXISTING ADJACENT INFRASTRUCTURE AND EXPANDED ON AND OFFSITE INFRASTRUCTURE PROPOSED AS A REQUIRED COMPONENT OF THIS DEVELOPMENT. PUBLIC UTILITIES WILL BE ROUTED WITHIN THE RIGHT-OF-WAY THROUGHOUT THE DEVELOPMENT AND ALL PUBLIC UTILITIES WILL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF MIDLAND STANDARDS AND SPECIFICATIONS.
- DRAINAGE: STORM WATER RUNOFF WILL BE DETAINED SO AS NOT TO INCREASE EXISTING RUNOFF IN COMPLIANCE WITH THE APPROVED DRAINAGE REPORT TO BE FILED WITH THE APPROVED PRELIMINARY PLAT.

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK ENG" UNLESS NOTED
- DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK ENG" UNLESS NOTED
- DENOTES SET "PK" NAIL
- DENOTES CURVATURE/INTERSECTION
- DENOTES MAG NAIL FOUND
- DENOTES BOUNDARY LINE
- DENOTES EXISTING ADJACENT PROPERTY LINES
- DENOTES PROPOSED EASEMENT
- DENOTES SECTION
- DENOTES PLAT RECORDS, MIDLAND CO., TX
- DENOTES OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
- DENOTES DEED RECORDS, MIDLAND CO., TX
- DENOTES SECTION NUMBER

P.R.M.C.T.
O.P.R.M.C.T.
D.R.M.C.T.

LOT CLASS TABULATION

Product Class		Smallest Lot	Smallest Lot Depth	Phase #									Percent of Total
		Area SF	LF	4	5	6	7	8	9	10	11		
Core	30-45'	4236	85'		27	18	23		20	24	12		17.8%
	30-50'	4404	86'		59	33	80		55	70	27		46.6%
Reserve	40-50'	5750	95'	26				19					6.5%
	40-60'	6250	90'	42				52					13.5%
	75'	9387	125'					8					1.2%
	85'	11418	85'					2					0.4%
Cottages	30-50'	4173	81'		33				23		42		14.1%
PHASE TOTAL				68	119	51	103	81	98	94	81		100%
OVERALL TOTAL				695									

MOCKINGBIRD RIDGE

PDHD SITE PLAN

BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734 T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

May 9, 2023

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
309 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0999
www.Maverick-Eng.com

PACKET
MIDLAND, TEXAS

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-23-0326

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Betenbough Homes		Phone ( ) Email	
Address 6305 82nd St	City Lubbock	State TX	Zip 79424

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: NA County Rd 40

Legal Description
Lot: Block: 38 T-1-S Subdivision:

Current Zoning: In Part: SF3, TH, SF2, MF16, SF1, 2F, RR	**Proposed Zone:** PDHD *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To advance the proposed housing development associated with this request

Present Use of Property: vacant

Proposed Use of Property: residential

How would this zone change affect the public health, safety and welfare? This development will contribute to the housing inventory of the City of Midland, adding needed options to the housing makeup of the community

Describe how conditions affecting the property have changed since present zoning designation: No change since original zoning

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: 3/21/23
Applicant (printed): RONNIE WALLACE	
Property Owner (signature): See Applicant	Date: 3/21/23
Property Owner (printed) :	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Bettenbaugh Homes, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 21st day of March, 2023, to certify which witness my hand and seal of office.

Kelsey Ann Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Kelsey Ann Lewis
My Commission Expires
2/19/2026
Notary ID
131456388

FOR OFFICE USE ONLY

RECEIVED
MAR 22 2023
BY: .....

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 4105
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)

Received By: James Reber | Date: 3/22/23

Application will not be considered for scheduling until reviewed by applicant.

MAVERICK
ENGINEERING • SURVEY • WATER RESOURCES
1909 West Wall Street, Suite K • Midland, TX 79701
Tel: 432.262.0999 • Fax: 432.262.0989 • maverick-eng.com
ENGINEER FIRM #: F-15089 | SURVEY FIRM #:10194514

FIELD NOTE DESCRIPTION OF A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH, ABSTRACT NUMBER 734, GLO FILE NUMBER 66103, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY. TEXAS, AND BEING A PORTION OF THAT CALLED 340.49 TRACT DESCRIBED IN DOCUMENT NUMBER 2021-35675 OF THE OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING *AT N.(Y):10719693.07, E.(X):1764462.90, A FIVE EIGHTHS INCH IRON ROD FOUND IN THE NORTH LINE OF SECTION 20, SAME BLOCK, FOR THE SOUTH COMMON CORNER OF SECTION 17, SAME BLOCK AND SAID SECTION 18, FROM WHICH A SIX INCH STEEL FENCE POST CALLED THE NORTHWEST CORNER OF A CALLED 244.4 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2017-34694, OF SAID OFFICIAL PUBLIC RECORDS, BEARS N.63°31'14"W., 44.34 FEET, AND A 2 INCH IRON PIPE CALLED THE SOUTHWEST CORNER OF A CALLED 316.39 ACRE TRACT IN DOCUMENT NUMBER 2011-8666 OF SAID OFFICIAL PUBLIC RECORDS BEARS N.82°07'34"W., 36.64 FEET, AND BEING THE SOUTHEAST CORNER HEREOF;*

THENCE *S.75°43'57"W., ALONG THE LINE COMMON TO SAID SECTIONS 20 AND 18, AT 75.80 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT OR NEAR THE NORTH COMMON CORNER OF SAID SECTION 20 AND SECTION 19, SAME BLOCK, CONTINUING ALONG SAID COMMON LINE, AT 572.95 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF TRACTS 2 AND 3 AS DESCRIBED IN DOCUMENT NUMBER 2018-20726, OF SAID OFFICIAL PUBLIC RECORDS, AT 1981.61 FEET PASSING A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF SAID TRACT 2 AND A CALLED "TRACT 3" IN DOCUMENT NUMBER 2018-2268, OF SAID OFFICIAL PUBLIC RECORDS, AT 3801.97 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID TRACT 3, BEING THE NORTHEAST CORNER OF A TRACT CALLED 12.3 ACRES IN VOLUME 867 ON PAGE 35 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AT 3951.98 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID CALLED 12.3 ACRE TRACT, BEING THE NORTHEAST CORNER OF A CALLED TRACT 1, IN SAID DOCUMENT NUMBER 2018-2268, IN ALL 4132.38 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#10194514" (RPC) SET FOR THE SOUTHWEST CORNER HEREOF;*

THENCE *N.14°07'10"W., 419.64 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *S.75°52'50"W., 28.10 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;*

THENCE *N. N.14°07'10"W., 2069.30 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *N.22°36'06"W., 80.28 FEET TO A POINT OF DEFLECTION RIGHT AND A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF N.57°59'24"E., 142.96 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 143.11 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 1950.00 FEET AND A CHORD BEARING AND DISTANCE OF N.77°01'32"E., 1554.60 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 1599.03 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF S.88°33'08"E., 349.94 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 351.41 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION LEFT;*

THENCE *N.07°37'18"W., 115.00 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.78°25'37"E., 137.13 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 137.24 FEET TO AN "RPC" SET AT THE POINT OF TANGENCY;*

THENCE *N.72°23'25"E., 72.42 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.51°36'34"E., 637.86 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 649.32 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT;*

THENCE *S.57°05'08"E., 115 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF N.30°10'44"E., 105.95 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 105.99 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT, FOR AN EXTERIOR CORNER HEREOF;*

THENCE *THE FOLLOWING 11 COURSES AND DISTANCES, ALL TO AN "RPC" FOR ANGLE POINTS IN THE BOUNDARY HEREOF;*

1. N.70°45'27"E., 112.51 FEET;
2. S.66°30'04"E., 115.00 FEET;
3. N.77°16'15"E., 15.51 FEET;
4. N.14°39'08"W., 46.14 FEET;
5. N.69°08'15"E., 114.62 FEET;
6. N.81°18'37"E., 60.27 FEET;
7. N.75°20'52"E., 115.00 FEET;
8. N.14°25'02"W., 7.06 FEET;
9. N.75°20'52"E., 115.00 FEET;
10. N.80°51'01"E., 60.26 FEET;
11. N.75°20'52"E., 487.58 FEET TO AN "RPC" SET ON THE WEST LINE OF A CALLED 632.79 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2011-8666 OF SAID DEED RECORDS, ON THE LINE COMMON TO SAID SECTIONS 17 AND 18, FOR THE NORTHWEST CORNER HEREOF;

THENCE *S.14°30'16"E., ALONG THE COMMON LINE OF SAID SECTIONS 17 AND 18, AT 1623.59 FEET PASSING A ONE HALF INCH IRON ROD FOR THE NORTHWEST CORNER OF A CALLED 22.368 ACRE TRACT IN DOCUMENT NUMBER2014-5886 OF SAID OFFICIAL PUBLIC RECORDS, BEARING S.75°32'01"W., 15.87 FEET, AT 2815.90 FEET PASSING SAID 6 INCH STEEL FENCE POST BEARING S.75°29'44"W., 33.47 FEET, IN ALL 2844.98 FEET TO THE* ***POINT OF BEGINNING****, CONTAINING 258.87 ACRES OF LAND.*

BASIS OF BEARING, DISTANCE, COORDINATES AND AREA ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FOOT, HAVING A CONVERGENCE ANGLE (theta) OF -0°53'04.89" AND A COMBINED SCALE FACTOR OF 0.999925027 AT THE POINT OF BEGINNING.



MARCH 20, 2023

Gregory W. Shoults
www.maverick-eng.com
Texas RPLS - No. 5356
Maverick Engineering (FIRM – No. 10194514)



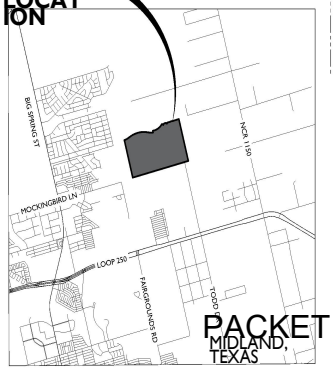
DIMENSIONAL NOTES

- ALL INTERIOR ROAD RIGHT-OF-WAYS TO THIS DEVELOPMENT ARE 60' WIDE, ALL CUL-DE-SACS ARE A 60' RADIOS. FIREWHEEL ROAD IS A PROPOSED 80' WIDE.
- RIGHT-OF-WAY WITH ROUNDABOUT.
- ALL SIDEWALKS WILL BE 5' IN WIDTH ALONG ALL PUBLIC RIGHT-OF-WAYS.
- ALL CORNER CLIPS ARE 20'x20' (TYP.) UNLESS OTHERWISE NOTED.

GREENSPACE NOTES

- DEVELOPMENT CONTAINS 258.87 ACRES. OF WHICH 102.42 ACRES ARE ELIGIBLE NON-DEVELOPED GREENSPACE FOR A TOTAL PERCENTAGE OF 39.5%

SITE LOCATION



VICINITY MAP



DEVELOPMENT NOTES

- GENERAL: SITE PLAN IS FOR A PROPOSED 495 LOT RESIDENTIAL SUBDIVISION WITH A PROPOSED DEDICATED STORMWATER DETENTION BASIN SITUATED WITHIN AN HOA-MAINTAINED COMMON AREA GREEN SPACE, ALL BEING OUT OF A 258.87 ACRE DEVELOPMENT SITE. DEVELOPMENT WILL CONSIST OF A SINGLE FAMILY RESIDENTIAL AND LOT CLASSIFICATION.
- LOT CLASSIFICATION: SEE INCLUDED LOT CLASSIFICATION FOR THE OVERALL LOT MATRIX.
- SETBACKS: PROPOSED SETBACKS ON THE RESIDENTIAL COMPONENT OF THE SUBDIVISION ARE AS FOLLOWS: FRONT 20', CUL-DE-SAC FRONT 15', SIDE 5', CORNER SIDE 10', REAR 10'.
- BUILDING HEIGHT: NO STRUCTURE SHALL EXCEED 42' IN HEIGHT OR 3 STORIES WITHIN THIS DEVELOPMENT.
- ACCESS: THE FOLLOWING ACCESS POINTS ARE PLANNED TO SERVICE THE DEVELOPMENT: ALONG THE FRONTAGE OF ALL LOTS AND A PORTION OF PHASE 11 (BY SEPARATE INSTRUMENT).
- 20' DRAINAGE EASEMENT BETWEEN LOTS 10 AND 11, BLOCK 19 (PHASE 9) DEDICATED STORMWATER DRAINAGE BASINS WITHIN COMMON AREA LOT 1, LOCATED DIRECTLY WEST OF TODD ROAD
- UTILITIES: PUBLIC UTILITIES WILL SERVICE THE DEVELOPMENT FROM THE EXISTING ADJACENT INFRASTRUCTURE AND EXPANDED ON AND OFFSITE INFRASTRUCTURE PROPOSED AS A REQUIRED COMPONENT OF THIS DEVELOPMENT. PUBLIC UTILITIES WILL BE ROUTED WITHIN THE RIGHT-OF-WAY THROUGHOUT THE DEVELOPMENT AND WITHIN EASEMENTS AS NECESSARY IN COMPLIANCE WITH THE CITY OF MIDLAND UTILITIES REQUIRED BY THE CITY OF MIDLAND STANDARDS AND CODES.
- DRAINAGE: STORM WATER RUNOFF WILL BE DETAINED SO AS NOT TO INCREASE RUNOFF IN COMPLIANCE WITH THE APPROVED DRAINAGE REPORT TO BE FILED WITH THE APPROVED PRELIMINARY PLAT.

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK ENG" UNLESS NOTED
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES CALCULATED POINT
- DENOTES CURVATURE/INTERSECTION
- DENOTES MAG NAIL FOUND
- DENOTES BOUNDARY LINE
- DENOTES EXISTING ADJACENT PROPERTY LINES
- DENOTES PROPOSED EASEMENT
- DENOTES SECTION
- P.R.M.C.T. DENOTES PLAT RECORDS, MIDLAND CO., TX
- O.P.R.M.C.T. DENOTES OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
- D.R.M.C.T. DENOTES DEED RECORDS, MIDLAND CO., TX
- DENOTES SECTION NUMBER

LOT CLASS TABULATION

Product Class		Smallest Lot	Smallest Lot Depth	Phase #									Percent of Total
		Area SF	LF	4	5	6	7	8	9	10	11		
Core	30-45'	4236	85'		27	18	23		20	24	12		17.8%
	30-50'	4404	86'		59	33	80		55	70	27		46.6%
Reserve	40-50'	5750	95'	26				19					6.5%
	40-60'	6250	90'	42				52					13.5%
	75'	9387	125'					8					1.2%
	85'	11418	85'					2					0.4%
Cottages	30-50'	4173	81'		33				23		42		14.1%
PHASE TOTAL				68	119	51	103	81	98	94	81		100%
OVERALL TOTAL				695									

MOCKINGBIRD RIDGE

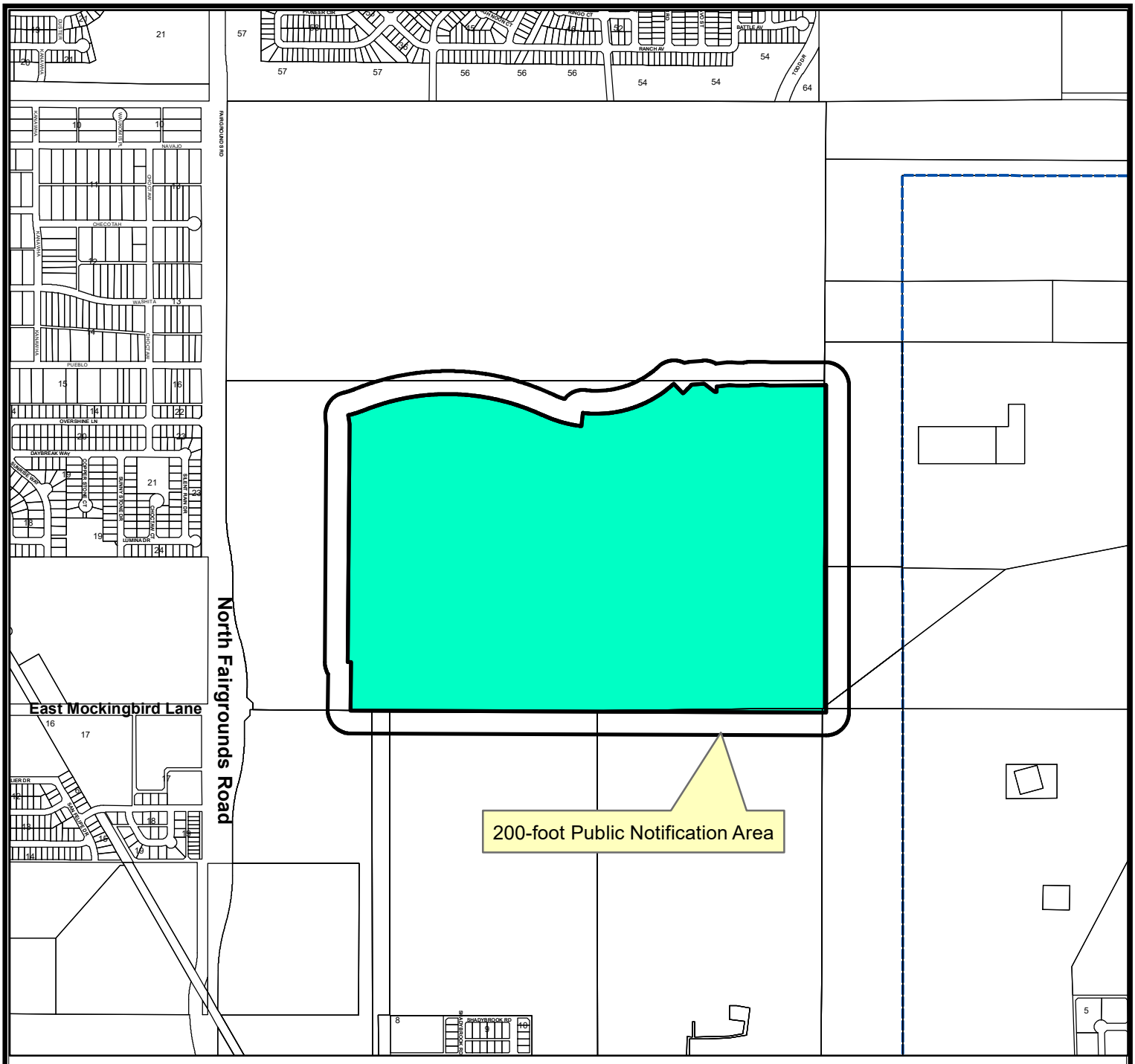
PDHD SITE PLAN

BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734 T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

PACKET

May 9, 2023

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LOCATION MAP

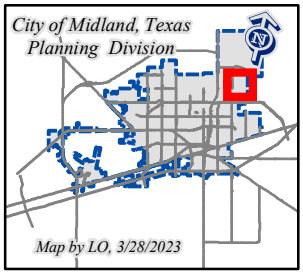
Z-23-0326 **Scale: 1" = 14,899'**

Consider a request by Betenbough Homes for a zone change from, PD, Planned Development District for Housing Development to PD, Planned Development District for Housing Development out of a 258.87-acre tract of land, in Section 18, Block 38, T-I-S, A-734, T&P RY. CO. Survey, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of North Fairgrounds and East Mockingbird Road. (Council District 1)

LEGEND

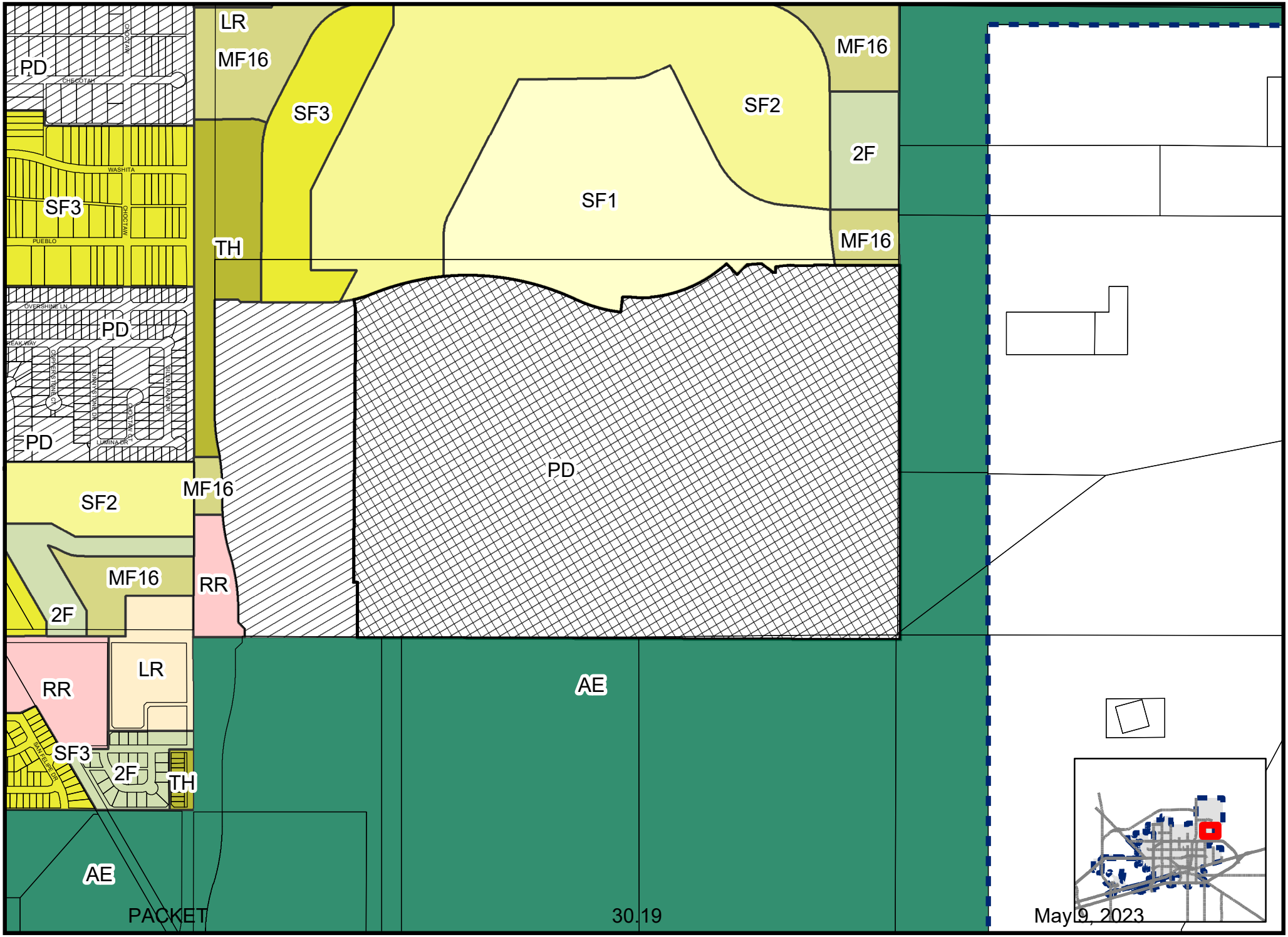
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By LO, 3/30/2023

Z-23-0326

Scale: 1" = 10,978'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




PRIVATE
PROPERTY





ORDINANCE NO. 10344

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 317.56-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH FAIRGROUNDS AND EAST MOCKINGBIRD ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 317.56-acre tract of land out of Section 18, Block 38, 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 PD, Planned Development District for a Housing Development 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 SF-1, Single-Family Dwelling District, in part,

SF-2, Single-Family Dwelling District, in part, SF-3, Single-Family Dwelling District, in part, TH, Townhouse (Attached) Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, MF-16, Multiple-Family Dwelling District, in part, and RR, Regional Retail District, in part to PD, Planned Development District for a Housing Development.

SECTION TWO. That the base zoning districts to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, are as follows:

A. For the portions of the Property identified as "COMMERCIAL TRACT" in Exhibit "B", which is attached hereto and incorporated herein for all purposes, LR, Local Retail District;

B. For the portions of the Property identified as "45' FRONT WIDTH - CORE", "50' FRONT WIDTH - CORE", "50' FRONT WIDTH - COTTAGE", "50' FRONT WIDTH - RESERVE", "60' FRONT WIDTH - RESERVE", "75' FRONT WIDTH - RESERVE" and "80' FRONT WIDTH - RESERVE" in Exhibit "B", SF-3, Single-Family Dwelling District; and

C. For the portions of the Property identified as "30' FRONT WIDTH - TOWNHOME" in Exhibit "B", TH, Townhouse (Attached) Dwelling 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 each lot identified as "50' FRONT WIDTH - COTTAGE" in Exhibit "B" shall have:

1. A minimum lot width of 50 feet;
2. A minimum lot depth of 77 feet; and
3. A minimum lot area of 4,200 square feet.

C. That each lot identified as "45' FRONT WIDTH - CORE" in Exhibit "B" shall have a minimum lot width of 45 feet.

D. That each lot identified as "30' FRONT WIDTH - TOWNHOME" in Exhibit "B" shall be allowed to have a one-car garage; provided, however, that each lot shall have two additional off-street parking spaces.

E. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

F. 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 October, A.D., 2022; and passed to second reading

on motion of Council member Ladd, seconded by Council member Poole, by the following vote:

Council members voting "AYE": Corrales, Poole, Blong, 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 Poole, seconded by Council member Dufford, on the 25th day of October, A.D., 2022, at a regular meeting of the City Council:

Council members voting "AYE": Corrales, Poole, Blong, Payton, Dufford, Norman

Council members voting "NAY": None

PASSED AND APPROVED THIS 25th day of October, A.D., 2022.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services



APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

STATE OF TEXAS §
COUNTY OF MIDLAND §

SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH,
TEXAS and PACIFIC RAILWAY COMPANY SURVEY
MIDLAND COUNTY, TEXAS.

FIELD NOTE DESCRIPTION OF A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH, ABSTRACT NUMBER 734, GLO FILE NUMBER 66103, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, AND BEING A PORTION OF THAT CALLED 340.49 TRACT DESCRIBED IN DOCUMENT NUMBER 2021-35675 OF THE OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(Y):10719693.07, E.(X):1764462.90, A FIVE EIGHTHS INCH IRON ROD FOUND IN THE NORTH LINE OF SECTION 20, SAME BLOCK, FOR THE SOUTH COMMON CORNER OF SECTION 17, SAME BLOCK AND SAID SECTION 18, FROM WHICH A SIX INCH STEEL FENCE POST CALLED THE NORTHWEST CORNER OF A CALLED 244.4 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2017-34694, OF SAID OFFICIAL PUBLIC RECORDS, BEARS N.63°31'14"W., 44.34 FEET, AND A 2 INCH IRON PIPE CALLED THE SOUTHWEST CORNER OF A CALLED 316.39 ACRE TRACT IN DOCUMENT NUMBER 2011-8666 OF SAID OFFICIAL PUBLIC RECORDS BEARS N.82°07'34"W., 36.64 FEET, AND BEING THE SOUTHEAST CORNER HEREOF;

THENCE S.75°43'57"W., ALONG THE LINE COMMON TO SAID SECTIONS 20 AND 18, AT 75.80 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT OR NEAR THE NORTH COMMON CORNER OF SAID SECTION 20 AND SECTION 19, SAME BLOCK, CONTINUING ALONG SAID COMMON LINE, AT 572.95 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF TRACTS 2 AND 3 AS DESCRIBED IN DOCUMENT NUMBER 2018-20726, OF SAID OFFICIAL PUBLIC RECORDS, AT 1981.61 FEET PASSING A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF SAID TRACT 2 AND A CALLED "TRACT 3" IN DOCUMENT NUMBER 2018-2268, OF SAID OFFICIAL PUBLIC RECORDS, AT 3801.97 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID TRACT 3, BEING THE NORTHEAST CORNER OF A TRACT CALLED 12.3 ACRES IN VOLUME 867 ON PAGE 35 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AT 3951.98 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID CALLED 12.3 ACRE TRACT, BEING THE NORTHEAST CORNER OF A CALLED TRACT 1, IN SAID DOCUMENT NUMBER 2018-2268, IN ALL 4984.62 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#10194514" (RPC) SET AT THE SOUTHEAST CORNER OF A CALLED 22.96 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2019-3532 OF SAID OFFICIAL PUBLIC RECORDS, FROM WHICH A ONE HALF INCH IRON ROD WITH A GREEN PLASTIC CAP MARKED "ASB 5689" BEARS S.75°43'57"W., 388.28 FEET AND A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "PSC RPLS 6453" BEARS S.75°08'25"W., 392.12, FOR THE SOUTHWEST CORNER HEREOF;

THENCE THE FOLLOWING NINE COURSES AND DISTANCES ALONG THE EAST LINE OF SAID CALLED 22.96 ACRE TRACT FOR THE WEST LINE HEREOF;

1. N.14°23'29"W., 60.57 FEET TO A POINT;
2. N.58°53'33"W., 71.33 FEET TO A POINT;
3. N.14°23'29"W., 82.07 FEET TO THE POINT OF CURVATURE FOR A CURVE TO THE LEFT;
4. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1490.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.22°49'41"W., 436.87 FEET, AN ARC DISTANCE OF 438.35 FEET TO THE POINT OF REVERSE CURVATURE;
5. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 1360.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.22°49'41"W., 398.75 FEET, AN ARC DISTANCE OF 400.19 FEET TO A MAG NAIL FOUND THE POINT OF TANGENCY;
6. N.14°23'53"W., 99.99 FEET TO A MAG NAIL FOUND AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT;
7. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1500.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.20°18'24"W., 308.82 FEET, AN ARC DISTANCE OF 309.37 FEET TO A MAG NAIL FOUND AT THE POINT OF REVERSE CURVATURE;
8. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 1350.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.20°18'24"W., 277.95 FEET, AN ARC DISTANCE OF 278.44 FEET TO A MAG NAIL FOUND THE POINT OF TANGENCY;
9. N.14°24'01" W., 859.28 FEET TO AN "RPC" SET IN SAID EAST LINE FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°43'57"E., 95.07 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;

THENCE N.74°47'34"E., 79.96 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;

THENCE S.59°20'03"E., 28.32 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE N.75°43'57"E., 651.20 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF N.64°37'59"E., 354.21 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 356.44 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 1950.00 FEET AND A CHORD BEARING AND DISTANCE OF N.77°01'32"E., 1554.60 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 1599.03 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF S.88°33'08"E., 349.94 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 351.41 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION LEFT;

THENCE N.07°37'18"W., 115.00 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.78°25'37"E., 137.13 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 137.24 FEET TO AN "RPC" SET AT THE POINT OF TANGENCY;

THENCE N.72°23'25"E., 72.42 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.51°36'34"E., 637.86 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 649.32 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT;

THENCE S.57°05'08"E., 115 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF N.30°10'44"E., 105.95 FEET;

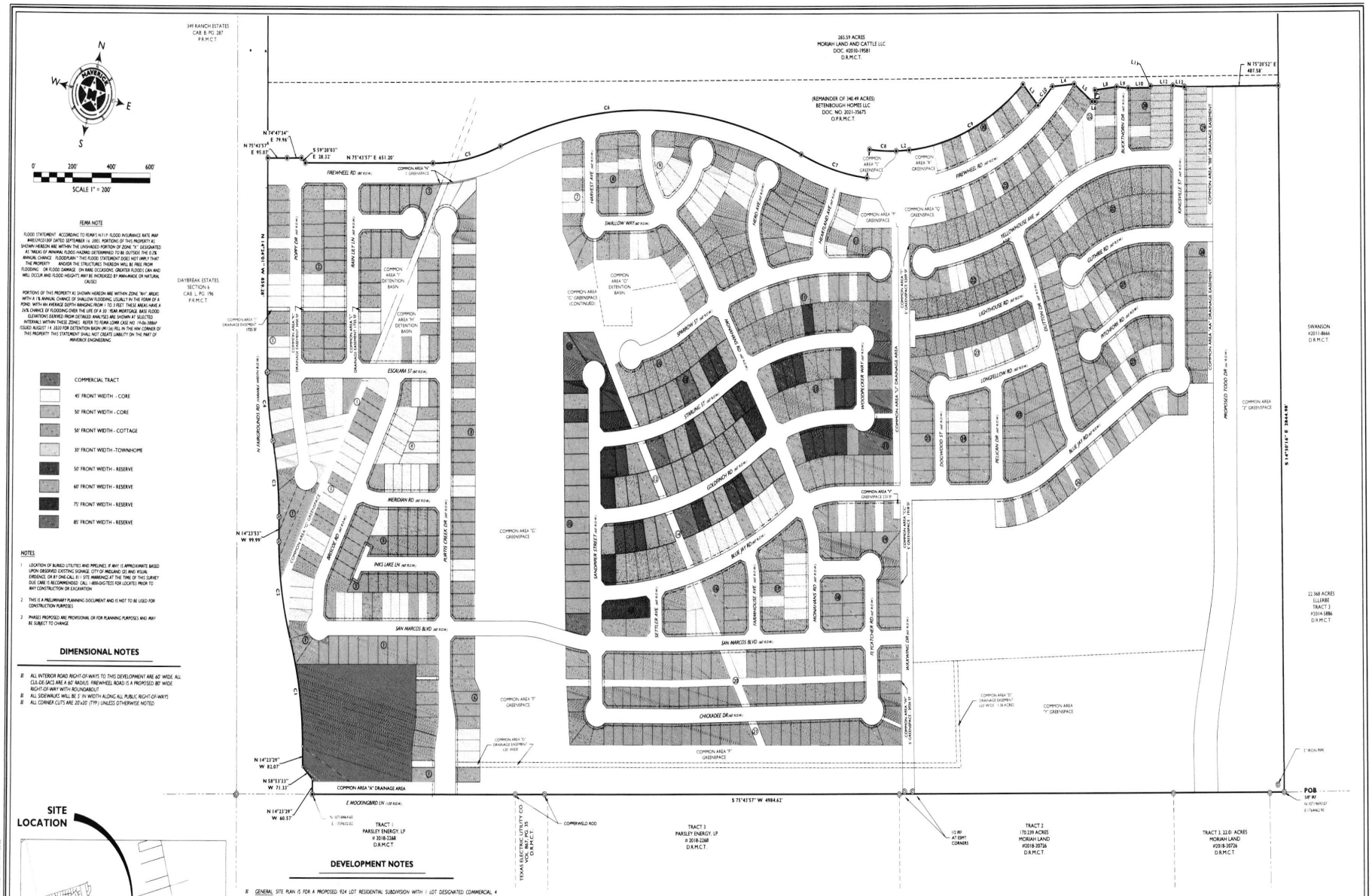
THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 105.99 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT, FOR AN EXTERIOR CORNER HEREOF;

THENCE THE FOLLOWING 11 COURSES AND DISTANCES, ALL TO AN "RPC" FOR ANGLE POINTS IN THE BOUNDARY HEREOF;

1. N.70°45'27"E., 112.51 FEET;
2. S.66°30'04"E., 115.00 FEET;
3. N.77°16'15"E., 15.51 FEET;
4. N.14°39'08"W., 46.14 FEET;
5. N.69°08'15"E., 114.62 FEET;
6. N.81°18'37"E., 60.27 FEET;
7. N.75°20'52"E., 115.00 FEET;
8. N.14°25'02"W., 7.06 FEET;
9. N.75°20'52"E., 115.00 FEET;
10. N.80°51'01"E., 60.26 FEET;
11. N.75°20'52"E., 487.58 FEET TO AN "RPC" SET ON THE WEST LINE OF A CALLED 632.79 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2011-8666 OF SAID DEED RECORDS, ON THE LINE COMMON TO SAID SECTIONS 17 AND 18, FOR THE NORTHWEST CORNER HEREOF;

THENCE S.14°30'16"E., ALONG THE COMMON LINE OF SAID SECTIONS 17 AND 18, AT 1623.59 FEET PASSING A ONE HALF INCH IRON ROD FOR THE NORTHWEST CORNER OF A CALLED 22.368 ACRE TRACT IN DOCUMENT NUMBER2014-5886 OF SAID OFFICIAL PUBLIC RECORDS, BEARING S.75°32'01"W., 15.87 FEET, AT 2815.90 FEET PASSING SAID 6 INCH STEEL FENCE POST BEARING S.75°29'44"W., 33.47 FEET, IN ALL 2844.98 FEET TO THE **POINT OF BEGINNING**, CONTAINING 317.56 ACRES OF LAND.

BASIS OF BEARING, DISTANCE, COORDINATES AND AREA ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FOOT, HAVING A CONVERGENCE ANGLE (theta) OF -0°53'04.89" AND A COMBINED SCALE FACTOR OF 0.999925027 AT THE POINT OF BEGINNING.



FEMA NOTE

FLOOD STATEMENT: ACCORDING TO FEMA'S N.F.I.P. FLOOD INSURANCE RATE MAP #48329C0150F DATED SEPTEMBER 26, 2008, PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN THE UNSHADED PORTION OF ZONE "X" DESIGNATED AS "AREAS OF MINIMAL FLOOD HAZARD DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN." THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES.

PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN ZONE "AH" AREAS WITH A 1% ANNUAL CHANCE OF SHALLOW FLOODING, USUALLY IN THE FORM OF A POND, WITH AN AVERAGE DEPTH RANGING FROM 1 TO 3 FEET. THESE AREAS HAVE A 26% CHANCE OF FLOODING OVER THE LIFE OF A 30 YEAR MORTGAGE. BASE FLOOD ELEVATIONS DERIVED FROM DETAILED ANALYSES ARE SHOWN AT SELECTED INTERVALS WITHIN THESE ZONES. REFER TO FEMA LOMR CASE NO. 19-06-2886P ISSUED AUGUST 14, 2020 FOR DETENTION BASIN (#1 (A) FILL IN THE NW CORNER OF THIS PROPERTY. THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF MAVERICK ENGINEERING.

- COMMERCIAL TRACT
- 45' FRONT WIDTH - CORE
- 50' FRONT WIDTH - CORE
- 50' FRONT WIDTH - COTTAGE
- 30' FRONT WIDTH -TOWNHOME
- 50' FRONT WIDTH - RESERVE
- 60' FRONT WIDTH - RESERVE
- 75' FRONT WIDTH - RESERVE
- 85' FRONT WIDTH - RESERVE

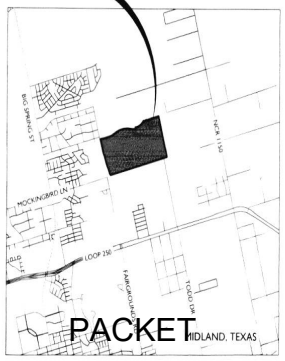
NOTES

1. LOCATION OF BURIED UTILITIES AND PIPELINES, IF ANY, IS APPROXIMATE BASED UPON OBSERVED EXISTING SIGNAGE, CITY OF MIDLAND GIS AND VISUAL EVIDENCE, OR BY ONE-CALL (811) SITE MARKINGS AT THE TIME OF THIS SURVEY. DUE CARE IS RECOMMENDED. CALL 1-800-DIG-TESS FOR LOCATES PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
2. THIS IS A PRELIMINARY PLANNING DOCUMENT AND IS NOT TO BE USED FOR CONSTRUCTION PURPOSES.
3. PHASES PROPOSED ARE PROVISIONAL OR FOR PLANNING PURPOSES AND MAY BE SUBJECT TO CHANGE.

DIMENSIONAL NOTES

- ALL INTERIOR ROAD RIGHT-OF-WAYS TO THIS DEVELOPMENT ARE 60' WIDE. ALL CUL-DE-SACS ARE A 60' RADIUS. FIREWHEEL ROAD IS A PROPOSED 80' WIDE RIGHT-OF-WAY WITH ROUNDABOUT.
- ALL SIDEWALKS WILL BE 5' IN WIDTH ALONG ALL PUBLIC RIGHT-OF-WAYS.
- ALL CORNER CUTS ARE 20'x20' (TYP.) UNLESS OTHERWISE NOTED.

SITE LOCATION



MIDLAND, TEXAS

VICINITY MAP

N.T.S.

DEVELOPMENT NOTES

- GENERAL SITE PLAN IS FOR A PROPOSED 924 LOT RESIDENTIAL SUBDIVISION WITH 1 LOT DESIGNATED COMMERCIAL, 4 PROPOSED DEDICATED STORMWATER DETENTION BASINS SITUATED WITHIN A NETWORK OF HOA-MAINTAINED COMMON AREA GREEN SPACES. ALL BEING OUT OF A 317.56 ACRE TRACT OF LAND SITUATED IN SECTION 18, BLOCK 38, T-1-S, T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS. THE PROPOSED DEVELOPMENT AREA CURRENTLY SHOWS OVERLYING ZONES OF MF-6, TH, SF2, SF1, AND AR.
- DEVELOPMENT: THE DEVELOPMENT WILL CONSIST OF PRIMARILY SINGLE FAMILY RESIDENTIAL DETACHED LOTS OF MIXED CLASSIFICATION. SINGLE FAMILY ATTACHED TOWNHOMES, AND ONE COMMERCIAL LOT. SEE INCLUDED LOT CLASS TABULATION FOR THE OVERALL LOT MAKEUP.
- SETBACKS: PROPOSED SETBACKS ON THE RESIDENTIAL COMPONENT OF THE SUBDIVISION ARE AS FOLLOWS: FRONT 20', CUL-DE-SAC FRONT 15', SIDE 5', CORNER SIDE 10', REAR 10'. SETBACKS ON CALLED COMMERCIAL LOT WILL CONFORM TO THE RR REGIONAL RETAIL SETBACK REQUIREMENTS.
- BUILDING HEIGHT: NO STRUCTURE SHALL EXCEED 42' IN HEIGHT OR 3 STORIES WITHIN THIS DEVELOPMENT.
- ACCESS: THE SITE IS PLANNED TO HAVE (4) EVENTUAL ACCESS POINTS. TWO TO THE NORTH ACCESSING FAIRGROUNDS ROAD AND TODD DRIVE, AND TWO TO THE SOUTH ACCESSING MOCKINGBIRD LANE. ALL ACCESS POINTS ARE PLANNED FOR BOTH INGRESS AND EGRESS.
- EASEMENTS: OUTSIDE OF EXISTING EASEMENT ESTATE ON THE PARENT TRACT, THE FOLLOWING EASEMENTS ARE PLANNED TO SERVICE THE DEVELOPMENT:
  - 10' GENERAL UTILITY EASEMENT ALONG THE FRONTAGE OF ALL LOTS.
  - DEDICATED STORMWATER DRAINAGE BASINS WITHIN COMMON AREAS I, H, Y, & G.
  - DEDICATED DRAINAGE CONVEYANCE EASEMENTS VIA COMMON AREAS D, J, K, & L.
- UTILITIES: PUBLIC UTILITIES WILL SERVICE THE DEVELOPMENT FROM THE EXISTING ADJACENT INFRASTRUCTURE AND EXPANDED ON AND OFFSITE INFRASTRUCTURE PROPOSED AS A REQUIRED COMPONENT OF THIS DEVELOPMENT. PUBLIC UTILITIES WILL BE ROUTED WITHIN THE RIGHT-OF-WAY THROUGHOUT THE INTERIOR OF THIS SUBDIVISION AND NEW WATER AND SEWER TAPS WILL BE REQUIRED.
- REFUSE: TRASH COLLECTION WILL BE IN COMPLIANCE WITH THE CITY OF MIDLAND REQUIREMENTS. COLLECTED BY THE CITY OF MIDLAND UTILIZING SIDE LOADING TRUCKS.
- DRAINAGE: STORM WATER RUNOFF WILL BE DETAINED SO AS NOT TO INCREASE EXISTING PEAK RUNOFF IN COMPLIANCE WITH THE APPROVED DRAINAGE REPORT TO BE FILED WITH THE APPROVED PRELIMINARY PLAT.

LEGEND

- DENOTES SET 1/2-INCH IRON ROD WIRED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES POINT OF CURVATURE/INTERSECTION
- DENOTES MAG NAIL FOUND
- DENOTES BOUNDARY LINE
- DENOTES EXISTING ADJACENT PROPERTY LINES
- DENOTES EASEMENT LINE
- DENOTES SECTION LINE
- P.R.M.C.T. DENOTES PLAT RECORDS, MIDLAND CO., TX
- O.P.R.M.C.T. DENOTES OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
- D.R.M.C.T. DENOTES DEED RECORDS, MIDLAND CO., TX
- (#) DENOTES SECTION NUMBER

LOT CLASS TABULATION

Product Class		Phases									Percent of Total
		1	2	3	4	5	6	7	8	9	
Core	45'	49	17		15	23	30		31	19	19.9%
	50'	89	22		43	80	82		115	63	54.4%
Reserve	50'			14				12			4.3%
	60'			44		2		21			7.3%
	75'		5		3		1				1.0%
	85'		6				4				1.1%
Cottages						62			23		9.2%
Townhome 30' Lots		14								26	2.8%
PHASE TOTAL		138	53	69	58	179	112	38	169	108	100%
OVERALL TOTAL		924									

MOCKINGBIRD RIDGE

PDHD SITE PLAN

BEING A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

EXHIBIT "B"

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEERING FIRM #: 10194514
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

SHEET 1 OF 5

PACKET 30-32 May 9, 2023

☑ APPROVED

10344

City Council Meeting

Item Number: 20

Meeting Date: October 11, 2022

To: City Council / City Manager

From: Landon Ochoa, Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 317.56-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND RR, REGIONAL RETAIL DISTRICT, IN PART, TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH FAIRGROUNDS AND EAST MOCKINGBIRD ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Maverick Engineering, is requesting a zone change from SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and RR, Regional Retail District, in part, to PD, Planned Development District for Housing Development to allow for the development of multi-use site including single family housing, townhomes, cottage housing, retail, and greenspace/detention.

Recommended City Council Action:

Approve

Fiscal Impact:

This project will not require any City funds.

Current Zoning:

SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and RR, Regional Retail District, in part.

Surrounding Zoning and Land Use:

The property to the north is zoned SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and LR, Local Retail District, in part. The property to east and south is zoned AE, Agricultural Estate District. The properties to the west are zoned SF-3 Single-Family-Dwelling District, in part, PD, Planned Development District for Housing Development, in part, SF-2, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, MF-16, Multiple-Family Dwelling District, in part, LR, Local Retail District.

Analysis:

The applicant, Maverick Engineering, who is representing Betenbough, is requesting approval of a zone change for the development of a multi-use site, including a mix of residential, commercial, and greenspace uses. This proposed subdivision will have a total of nine hundred and twenty-four (924) residential lots, one approximately 6.235-acre local retail lot, and approximately 72.91 acres of greenspace/detention pond that is composed of parks, trails, common areas, and drainage ponds.

The current zoning is SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and RR, Regional Retail District, in part, and the location of vacant lots. The proposed development will consist of a variety of uses but will predominantly be a residential development. The proposed residential districts include, SF, Single Family Dwelling District lots, and TH, Townhouse (Attached) Dwelling District lots. The applicant is also proposing to provide a local retail zoning area along the northeast corner of the intersection of E. Mockingbird Lane and N. Fairgrounds Road. Throughout the proposed development is a greenspace/detention that will be a new concept to Midlander's.

The applicant is proposing the development to be executed in nine (9) phases. The lots width will vary from either 45, 50, 60, 75, or 85 feet and the minimum depth would be 77 feet. The properties that fall in the minimum lot depth is less than 1%. Below is a chart with the lot class tabulation, representing them by phases and percentage by lot widths.

LOT CLASS TABULATION

Product Class		Phases									Percent of Total
		1	2	3	4	5	6	7	8	9	
Core	45'	49	17		15	23	30		31	19	19.9%
	50'	89	22		43	89	82		115	63	54.4%
Reserve	50'			14				12			4.3%
	60'			44		2		21			7.3%
	75'			5		3		1			1.0%
	85'			6				4			1.1%
Cottages						62			23		9.2%
Townhome 30' Lots			14							26	2.8%
PHASE TOTAL		138	53	69	58	179	112	38	169	108	100%
OVERALL TOTAL				924							

The site plan introduces a new housing prototype called Cottages. These homes will have an underlying zoning of SF-3, Single Family Dwelling District but with the following amendments.

1. A minimum lot Width shall be 50 feet;
2. A minimum lot Depth be 77 feet; and
3. A minimum lot Area shall be 4,200 square feet

The site plan also introduces a new housing prototype called Core, that split into two front widths. These homes will have an underlying zoning of SF-3, Single Family Dwelling District. However, the 45' Front Width Core will have an underlying zoning of SF-3, Single Family Dwelling District but with the following amendment.

1. A minimum lot Width shall be 45 feet.

Furthermore, the site plan also shows housing prototype called Townhomes. These homes will have an underlying zoning of TH, Townhouse Dwelling but with the following amendments.

1. A one-car garage, provided, that each lot shall have two additional off-street parking.

As mentioned before this development will consist of a variety of uses but will predominantly be a residential development. The proposed residential districts include:

- 687 - Core (SF-3, Single Family Dwelling District lots);
- 112 - Reserve (SF-3, Single Family Dwelling District lots);
- 26 – Townhomes (TH, Townhouse Dwelling District lots);
- 99 – Cottages (SF-3, Single Dwelling District lots);

The proposed density for each district is as followed:

- Core (SF-3): 4.56 units per acre
- Cottage (SF-3): 6.6 units per acre
- Townhouse (TH-Attached): 8.3 units per acre
- Reserve (SF-3): 3.9 units per acre

The appropriate setbacks and maximum height of future development must meet the regulations as described in Section 5.04 Residential Zoning District Dimensional Regulations chart. The proposed lots meet or exceed these requirements.

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, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Code: (Approved)

Phase I, page1 -The Plugged and Abandoned well Stimson Burley #18 #2- API 329-31184 is identified being in the street. Phase 6 page 2 – the Stinson-Burley B #2 API 329-31044 is identified with a 135 ft radius as requested for a non-City permitted well. Phase I Page 3- the non-city permitted Stimson Burley #1M API 329-31751 has the required 135 ft. Phase 8, page 3 -the non-City permitted Stimson Burley B #3 API 32--31045 is identified on plat with the required 135 ft. radius and noted to be P&A well. No building permits are allowed in the 135 ft radius of existing well until it is P&A. In addition, the City permitted Endeavor operated Willow Lakes 19 #191 (located south of Mockingbird Lane) is identified with a 500 ft. radius that is located below Mockingbird Lane. The occupied residential/commercial building permits inside the 500 ft. radius will require a variance to the permitted well from the City Council. The variance request would need to be made thru the Building Official. Informational: Please note

if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures.

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". However, the area is classified as Urban Residential-Low, in part, which calls for restrictive land use, emphasizing single-family detached development. The area is also classified as Urban Medium which calls for a mix of complementary uses, including single-family housings, multi-family housing, schools, mid-sized parks and churches, commercial and mixed use. The plan also calls for a parkway that would run through the property which is identified on the site plan.

The Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, "Development Policy Areas" labels this area as part of the "Current Development Area" which seeks to address the compatibility of uses, "specifically between different housing intensities," As shown in the proposed site plan, the applicant is planning to create a gradual transition from existing housing developments at the western edge of the property in question.

Principle 4 of Chapter 3 of the Tall City Tomorrow Plan seeks to increase the diversity of the housing stock in Midland specifically including the need of smaller lot homes. This proposal works in compliance since the development will be introducing a neighborhood with a mix of housing intensities to include smaller townhouse sized lots as well as larger single-family lots. Additionally, Principle 8 of the Chapter 3 requests that land use policies and regulations support the creation of more balanced neighborhoods, which include "a variety of housing options, access to open space, and contain activity centers such as parks…" The applicant is proposing to develop more specifically delineated park space and trails in the development which will help give the residents a diversity of recreation allowing for a more balance feel.

Principle 5 of Chapter 3 requests planning for community amenities such as parks and open space to support "community activity, personal interaction a sense of place, and ultimately a sense of ownership in the community." The applicant is proposing to include a park, greenspace, and trails all of which will contribute to creating a sense of place for new residents.

This request was recommended for approval at the August 15, 2022, Planning and Zoning Commission Meeting.

The base zoning districts to which the use and development of the Property shall conform, except as modified by conditions listed below, are as follows:

A. **That the portions of the Property identified as "Commercial" in Exhibit A, LR, Local Retail District;**

B. **That the portions of the Property identified as "Core" in Exhibit A, SF-3, Single-Family Dwelling District;**

C. **That the portions of the Property identified as "Cottages" in Exhibit A, SF-3, Single-Family Dwelling District;**

D. **That the portions of the Property identified as "Townhomes" in Exhibit A, TH, Townhouse Dwelling District;**

E. **That the portions of the Property identified as "Reserve" in Exhibit A, SF-3, Single-Family Dwelling District;**

If this Zone Change from SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and RR, Regional Retail District, in part. to PD, Planned Development District for Housing Development, is approved, staff recommends that is should be subject to conditions A through F.

Conditions:

A. **That the Property shall significantly conform to the site plan attached hereto as Exhibit "A & B".**

B. **That each lot identified as Exhibit "A" as "Cottage" is subject to the following conditions and regulation:**

    1. **The minimum lot Width shall be 50 feet.**

    2. **The minimum lot Depth be 77 feet.**

    3. **The minimum lot Area shall be 4,200 square feet**

C. **That each lot identified as Exhibit "A" as "45' Front Width - Core" is subject to the following condition and regulation:**

    1. **The minimum lot Width shall be 45 feet.**

D. **That each lot identified as Exhibit "A" as "Townhomes" is subject to the following condition and regulation:**

    1. **A one-car garage and off-street parking for two vehicles.**

E. That the landscaping shown in Exhibit "A" shall be considered illustrative. The landscape shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

F. That the signs on the property shall conform to the regulations set in Title XI, Chapter 7a.

Letters of Objection:

Staff has not received any letters of objection as of September 29, 2022.

Attachments:

Application
Sit Plan (Exhibit A)
Metes and Bounds (Exhibit B)
Detail Site Plan 1
Detail Site Plan 2
Detail Site Plan 3
Open Space Concept
Entry Concept
Rendering of Cottage Homes
Maps

.

Morris William Jr.

City Manager's Office

EXHIBIT "A"

STATE OF TEXAS §
COUNTY OF MIDLAND §

SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH,
TEXAS and PACIFIC RAILWAY COMPANY SURVEY
MIDLAND COUNTY, TEXAS.

FIELD NOTE DESCRIPTION OF A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH, ABSTRACT NUMBER 734, GLO FILE NUMBER 66103, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, AND BEING A PORTION OF THAT CALLED 340.49 TRACT DESCRIBED IN DOCUMENT NUMBER 2021-35675 OF THE OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(Y):10719693.07, E.(X):1764462.90, A FIVE EIGHTHS INCH IRON ROD FOUND IN THE NORTH LINE OF SECTION 20, SAME BLOCK, FOR THE SOUTH COMMON CORNER OF SECTION 17, SAME BLOCK AND SAID SECTION 18, FROM WHICH A SIX INCH STEEL FENCE POST CALLED THE NORTHWEST CORNER OF A CALLED 244.4 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2017-34694, OF SAID OFFICIAL PUBLIC RECORDS, BEARS N.63°31'14"W., 44.34 FEET, AND A 2 INCH IRON PIPE CALLED THE SOUTHWEST CORNER OF A CALLED 316.39 ACRE TRACT IN DOCUMENT NUMBER 2011-8666 OF SAID OFFICIAL PUBLIC RECORDS BEARS N.82°07'34"W., 36.64 FEET, AND BEING THE SOUTHEAST CORNER HEREOF;

THENCE S.75°43'57"W., ALONG THE LINE COMMON TO SAID SECTIONS 20 AND 18, AT 75.80 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT OR NEAR THE NORTH COMMON CORNER OF SAID SECTION 20 AND SECTION 19, SAME BLOCK, CONTINUING ALONG SAID COMMON LINE, AT 572.95 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF TRACTS 2 AND 3 AS DESCRIBED IN DOCUMENT NUMBER 2018-20726, OF SAID OFFICIAL PUBLIC RECORDS, AT 1981.61 FEET PASSING A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF SAID TRACT 2 AND A CALLED "TRACT 3" IN DOCUMENT NUMBER 2018-2268, OF SAID OFFICIAL PUBLIC RECORDS, AT 3801.97 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID TRACT 3, BEING THE NORTHEAST CORNER OF A TRACT CALLED 12.3 ACRES IN VOLUME 867 ON PAGE 35 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AT 3951.98 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID CALLED 12.3 ACRE TRACT, BEING THE NORTHEAST CORNER OF A CALLED TRACT 1, IN SAID DOCUMENT NUMBER 2018-2268, IN ALL 4984.62 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#10194514" (RPC) SET AT THE SOUTHEAST CORNER OF A CALLED 22.96 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2019-3532 OF SAID OFFICIAL PUBLIC RECORDS, FROM WHICH A ONE HALF INCH IRON ROD WITH A GREEN PLASTIC CAP MARKED "ASB 5689" BEARS S.75°43'57"W., 388.28 FEET AND A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "PSC RPLS 6453" BEARS S.75°08'25"W., 392.12, FOR THE SOUTHWEST CORNER HEREOF;

THENCE THE FOLLOWING NINE COURSES AND DISTANCES ALONG THE EAST LINE OF SAID CALLED 22.96 ACRE TRACT FOR THE WEST LINE HEREOF;

1. N.14°23'29"W., 60.57 FEET TO A POINT;
2. N.58°53'33"W., 71.33 FEET TO A POINT;
3. N.14°23'29"W., 82.07 FEET TO THE POINT OF CURVATURE FOR A CURVE TO THE LEFT;
4. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1490.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.22°49'41"W., 436.87 FEET, AN ARC DISTANCE OF 438.35 FEET TO THE POINT OF REVERSE CURVATURE;
5. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 1360.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.22°49'41"W., 398.75 FEET, AN ARC DISTANCE OF 400.19 FEET TO A MAG NAIL FOUND THE POINT OF TANGENCY;
6. N.14°23'53"W., 99.99 FEET TO A MAG NAIL FOUND AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT;
7. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1500.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.20°18'24"W., 308.82 FEET, AN ARC DISTANCE OF 309.37 FEET TO A MAG NAIL FOUND AT THE POINT OF REVERSE CURVATURE;
8. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 1350.00 FEET WITH A CHORD BEARING AND DISTANCE OF N.20°18'24"W., 277.95 FEET, AN ARC DISTANCE OF 278.44 FEET TO A MAG NAIL FOUND THE POINT OF TANGENCY;
9. N.14°24'01" W., 859.28 FEET TO AN "RPC" SET IN SAID EAST LINE FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°43'57"E., 95.07 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;

THENCE N.74°47'34"E., 79.96 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;

THENCE S.59°20'03"E., 28.32 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE N.75°43'57"E., 651.20 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF N.64°37'59"E., 354.21 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 356.44 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 1950.00 FEET AND A CHORD BEARING AND DISTANCE OF N.77°01'32"E., 1554.60 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 1599.03 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF S.88°33'08"E., 349.94 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 351.41 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION LEFT;

THENCE N.07°37'18"W., 115.00 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.78°25'37"E., 137.13 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 137.24 FEET TO AN "RPC" SET AT THE POINT OF TANGENCY;

THENCE N.72°23'25"E., 72.42 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.51°36'34"E., 637.86 FEET;

THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 649.32 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT;

THENCE S.57°05'08"E., 115 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF N.30°10'44"E., 105.95 FEET;

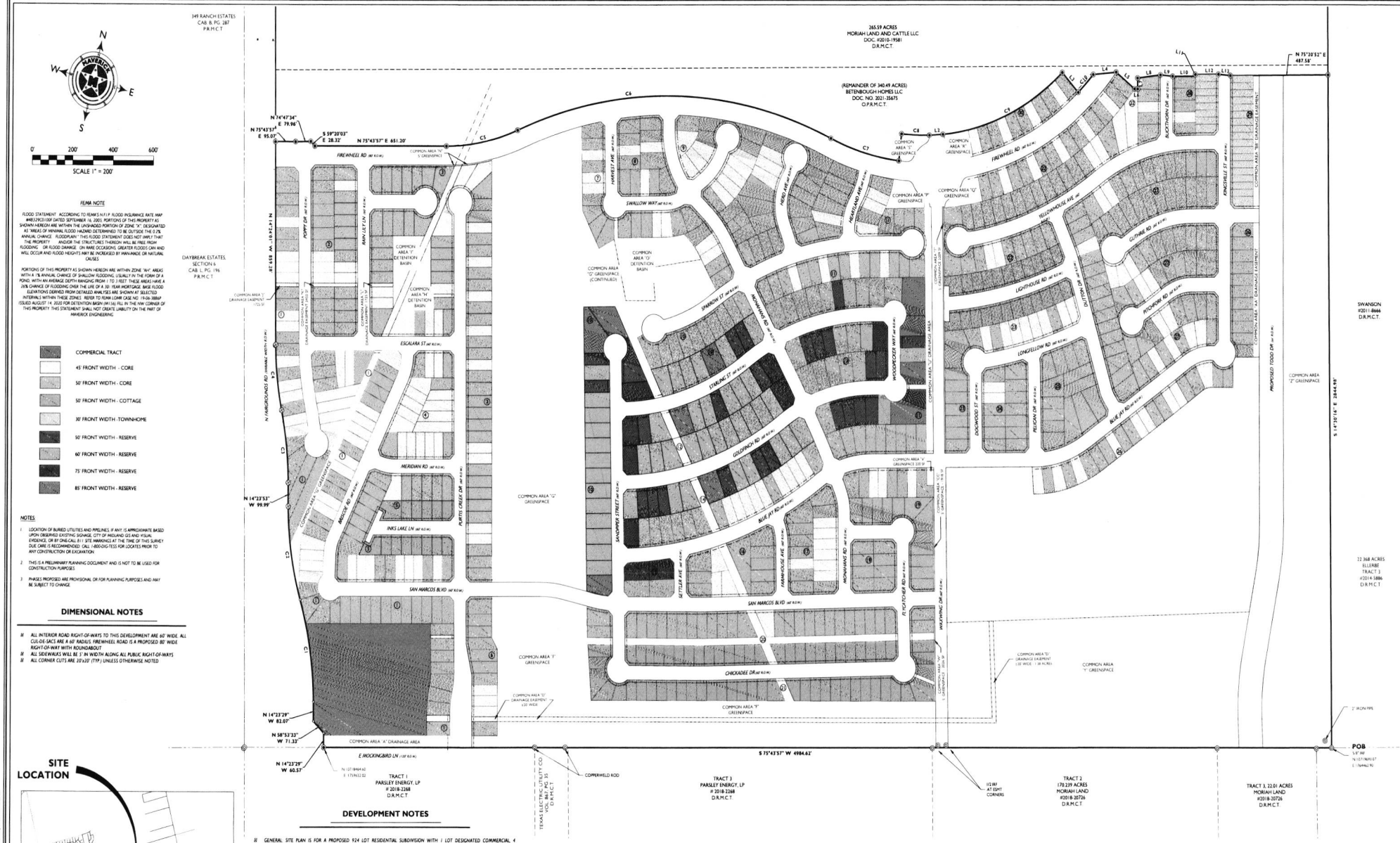
THENCE ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 105.99 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT, FOR AN EXTERIOR CORNER HEREOF;

THENCE THE FOLLOWING 11 COURSES AND DISTANCES, ALL TO AN "RPC" FOR ANGLE POINTS IN THE BOUNDARY HEREOF;

1. N.70°45'27"E., 112.51 FEET;
2. S.66°30'04"E., 115.00 FEET;
3. N.77°16'15"E., 15.51 FEET;
4. N.14°39'08"W., 46.14 FEET;
5. N.69°08'15"E., 114.62 FEET;
6. N.81°18'37"E., 60.27 FEET;
7. N.75°20'52"E., 115.00 FEET;
8. N.14°25'02"W., 7.06 FEET;
9. N.75°20'52"E., 115.00 FEET;
10. N.80°51'01"E., 60.26 FEET;
11. N.75°20'52"E., 487.58 FEET TO AN "RPC" SET ON THE WEST LINE OF A CALLED 632.79 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2011-8666 OF SAID DEED RECORDS, ON THE LINE COMMON TO SAID SECTIONS 17 AND 18, FOR THE NORTHWEST CORNER HEREOF;

THENCE S.14°30'16"E., ALONG THE COMMON LINE OF SAID SECTIONS 17 AND 18, AT 1623.59 FEET PASSING A ONE HALF INCH IRON ROD FOR THE NORTHWEST CORNER OF A CALLED 22.368 ACRE TRACT IN DOCUMENT NUMBER2014-5886 OF SAID OFFICIAL PUBLIC RECORDS, BEARING S.75°32'01"W., 15.87 FEET, AT 2815.90 FEET PASSING SAID 6 INCH STEEL FENCE POST BEARING S.75°29'44"W., 33.47 FEET, IN ALL 2844.98 FEET TO THE **POINT OF BEGINNING**, CONTAINING 317.56 ACRES OF LAND.

BASIS OF BEARING, DISTANCE, COORDINATES AND AREA ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, NORTH AMERICAN DATUM OF 1983, U.S. SURVEY FOOT, HAVING A CONVERGENCE ANGLE (theta) OF -0°53'04.89" AND A COMBINED SCALE FACTOR OF 0.999925027 AT THE POINT OF BEGINNING.



0' 200' 400' 600'

SCALE 1" = 200'

FEMA NOTE

FLOOD STATEMENT ACCORDING TO FEMA'S N.F.I.P. FLOOD INSURANCE RATE MAP #48329C0100F DATED SEPTEMBER 16, 2005, PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN THE UNSHADED PORTION OF ZONE "X", DESIGNATED AS "AREAS OF MINIMAL FLOOD HAZARD DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN." THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES.

PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN ZONE "AH" AREAS WITH A 1% ANNUAL CHANCE OF SHALLOW FLOODING, USUALLY IN THE FORM OF A POND, WITH AN AVERAGE DEPTH RANGING FROM 1 TO 3 FEET. THESE AREAS HAVE A 26% CHANCE OF FLOODING OVER THE LIFE OF A 30 - YEAR MORTGAGE. BASE FLOOD ELEVATIONS DERIVED FROM DETAILED ANALYSES ARE SHOWN AT SELECTED INTERVALS WITHIN THESE ZONES. REFER TO FEMA LOMR CASE NO. 19-06-3886P ISSUED AUGUST 14, 2020 FOR DETENTION BASIN (M156). FILL IN THE NW CORNER OF THIS PROPERTY. THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF MAVERICK ENGINEERING.

- COMMERCIAL TRACT
- 45' FRONT WIDTH - CORE
- 50' FRONT WIDTH - CORE
- 50' FRONT WIDTH - COTTAGE
- 30' FRONT WIDTH - TOWNHOME
- 50' FRONT WIDTH - RESERVE
- 60' FRONT WIDTH - RESERVE
- 75' FRONT WIDTH - RESERVE
- 85' FRONT WIDTH - RESERVE

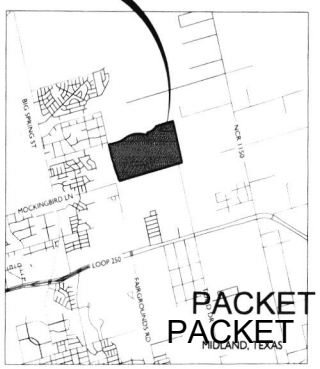
NOTES

1. LOCATION OF BURIED UTILITIES AND PIPELINES, IF ANY, IS APPROXIMATE BASED UPON OBSERVED EXISTING SIGNAGE, CITY OF MIDLAND GIS AND VISUAL EVIDENCE, OR BY ONE-CALL 811 SITE MARKINGS AT THE TIME OF THIS SURVEY. DUE CARE IS RECOMMENDED. CALL 1-800-DIG-TESS FOR LOCATES PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
2. THIS IS A PRELIMINARY PLANNING DOCUMENT AND IS NOT TO BE USED FOR CONSTRUCTION PURPOSES.
3. PHASES PROPOSED ARE PROVISIONAL OR FOR PLANNING PURPOSES AND MAY BE SUBJECT TO CHANGE.

DIMENSIONAL NOTES

- ALL INTERIOR ROAD RIGHT-OF-WAYS TO THIS DEVELOPMENT ARE 60' WIDE. ALL CUL-DE-SACS ARE A 60' RADIUS. FIREWHEEL ROAD IS A PROPOSED 80' WIDE RIGHT-OF-WAY WITH ROUNDABOUT.
- ALL SIDEWALKS WILL BE 5' IN WIDTH ALONG ALL PUBLIC RIGHT-OF-WAYS
- ALL CORNER CUTS ARE 10'x10' (TYP.) UNLESS OTHERWISE NOTED

SITE LOCATION



VICINITY MAP

N.T.S.

DEVELOPMENT NOTES

- GENERAL SITE PLAN IS FOR A PROPOSED 924 LOT RESIDENTIAL SUBDIVISION WITH 1 LOT DESIGNATED COMMERCIAL, 4 PROPOSED DEDICATED STORMWATER DETENTION BASINS SITUATED WITHIN A NETWORK OF HOA-MAINTAINED COMMON AREA GREEN SPACES. ALL BEING OUT OF A 317.56 ACRE TRACT OF LAND SITUATED IN SECTION 18, BLOCK 38, T-1-S, T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS. THE PROPOSED DEVELOPMENT AREA CURRENTLY SHOWS OVERLYING ZONES OF MF-1-A, TH, SF-2, SF-3, AND RR.
- DEVELOPMENT. THE DEVELOPMENT WILL CONSIST OF PRIMARILY SINGLE FAMILY RESIDENTIAL DETACHED LOTS OF MIXED CLASSIFICATION; SINGLE FAMILY ATTACHED TOWNHOMES, AND ONE COMMERCIAL LOT. SEE INCLUDED LOT CLASS TABULATION FOR THE OVERALL LOT MAKEUP.
- SETBACKS. PROPOSED SETBACKS ON THE RESIDENTIAL COMPONENT OF THE SUBDIVISION ARE AS FOLLOWS: FRONT 20', CUL-DE-SAC FRONT 15', SIDE 5', CORNER SIDE 10', REAR 10'. SETBACKS ON CALLED COMMERCIAL LOT WILL CONFORM TO THE RR REGIONAL RETAIL SETBACK REQUIREMENTS.
- BUILDING HEIGHT. NO STRUCTURE SHALL EXCEED 42' IN HEIGHT OR 3 STORIES WITHIN THIS DEVELOPMENT.
- ACCESS. THE SITE IS PLANNED TO HAVE (4) EVENTUAL ACCESS POINTS. TWO TO THE NORTH ACCESSING FAIRGROUNDS ROAD AND TODD DRIVE, AND TWO TO THE SOUTH ACCESSING MOCKINGBIRD LANE. ALL ACCESS POINTS ARE PLANNED FOR BOTH INGRESS AND EGRESS.
- EASEMENTS. OUTSIDE OF EXISTING EASEMENT ESTATE ON THE PARENT TRACT, THE FOLLOWING EASEMENTS ARE PLANNED TO SERVICE THE DEVELOPMENT.
  - 10' GENERAL UTILITY EASEMENT ALONG THE FRONTAGE OF ALL LOTS.
  - DEDICATED STORMWATER DRAINAGE BASINS WITHIN COMMON AREAS I, M, Y, & G.
  - DEDICATED DRAINAGE CONVEYANCE EASEMENTS VIA COMMON AREAS D, J, K, & L.
- UTILITIES. PUBLIC UTILITIES WILL SERVICE THE DEVELOPMENT FROM THE EXISTING ADJACENT INFRASTRUCTURE AND EXPANDED ON AND OFFSITE INFRASTRUCTURE PROPOSED AS A REQUIRED COMPONENT OF THIS DEVELOPMENT. PUBLIC UTILITIES WILL BE ROUTED WITHIN THE RIGHT-OF-WAY THROUGHOUT THE INTERIOR OF THIS SUBDIVISION AND NEW WATER AND SEWER TAPS WILL BE REQUIRED.
- REFUSE. TRASH COLLECTION WILL BE IN COMPLIANCE WITH THE CITY OF MIDLAND REQUIREMENTS, COLLECTED BY THE CITY OF MIDLAND UTILIZING SIDE LOADING TRUCKS.
- DRAINAGE. STORM WATER RUNOFF WILL BE DETAINED SO AS NOT TO INCREASE EXISTING PEAK RUNOFF IN COMPLIANCE WITH THE APPROVED DRAINAGE REPORT TO BE FILED WITH THE APPROVED PRELIMINARY PLAT.

LEGEND

- DENOTES SET 1/2-INCH IRON ROD WIRED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES POINT OF CURVATURE/INTERSECTION
- DENOTES MAG NAIL FOUND
- DENOTES BOUNDARY LINE
- DENOTES EXISTING ADJACENT PROPERTY LINES
- DENOTES EASEMENT LINE
- DENOTES SECTION LINE
- P.R.M.C.T. DENOTES PLAT RECORDS, MIDLAND CO., TX
- O.P.R.M.C.T. DENOTES OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
- D.R.M.C.T. DENOTES DEED RECORDS, MIDLAND CO., TX
- (#) DENOTES SECTION NUMBER

LOT CLASS TABULATION

Product Class		Phases 1	2	3	4	5	6	7	8	9	Percent of Total
Core	45'	49	17		15	23	30		31	19	19.9%
	50'	89	22		43	89	82		115	63	54.4%
Reserve	50'		-	14				12			4.3%
	60'			44		2		21			7.3%
	75'			5		3		1			1.0%
	85'			6				4			1.1%
Cottages						62			23		9.2%
Townhome 30' Lots			14							26	2.8%
PHASE TOTAL		138	53	69	58	179	112	38	169	108	100%
OVERALL TOTAL		924									

MOCKINGBIRD RIDGE

PDHD SITE PLAN

BEING A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

EXHIBIT "B"

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
309 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

SHEET 1 OF 5

PACKET
PACKET
20.15
30.43
October 25, 2022
May 9, 2023

Drawing: F:\2021\21013\BETENBOUGH-RANCH TRACT\DRAWINGS\SITE PLAN\21013 - PD SITE PLAN.DWG - Last Saved By: Pabolin on 7/28/22

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-22-0299

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Betenbough Homes		Phone ( ) Email	
Address	City	State	Zip

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: NA County Rd 40

Legal Description
Lot: Block: 38 T-1-S Subdivision:

Current Zoning: In Part: SF3, TH, SF2, MF16, SF1, 2F, RR

Proposed Zone: PDHD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To advance the proposed housing development associated with this request

Present Use of Property: vacant

Proposed Use of Property: residential

How would this zone change affect the public health, safety and welfare? This development will contribute to the housing inventory of the City of Midland, adding needed options to the housing makeup of the community

Describe how conditions affecting the property have changed since present zoning designation: No change since original zoning

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): Chris Berry	Date: 7-18-2022
Applicant (printed): Chris Berry	
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.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Miller who, being by me duly sworn, upon oath says: That (s)he is authorized by Bitterbough Homes, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L Miller
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 20th day of July, 2022, to certify which witness my hand and seal of office.

Kelsey Ann Lewis
My Commission Expires
2/19/2026
Notary ID
131456388

Kelsey Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

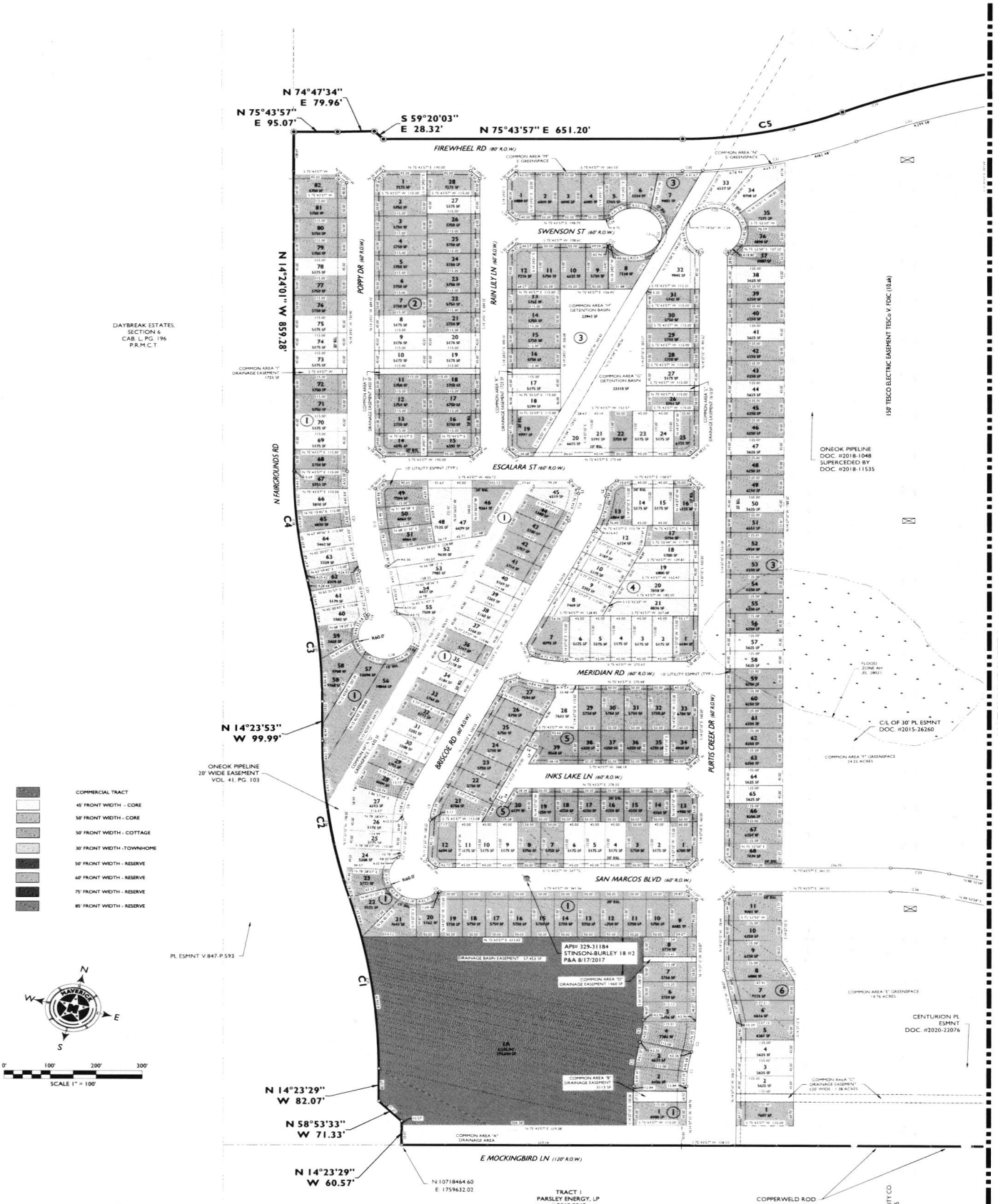
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # 3818	
Received By: KM	Date: 7-20-22

****Application will not be considered for scheduling until reviewed by a planner.**

MOCKINGBIRD RIDGE

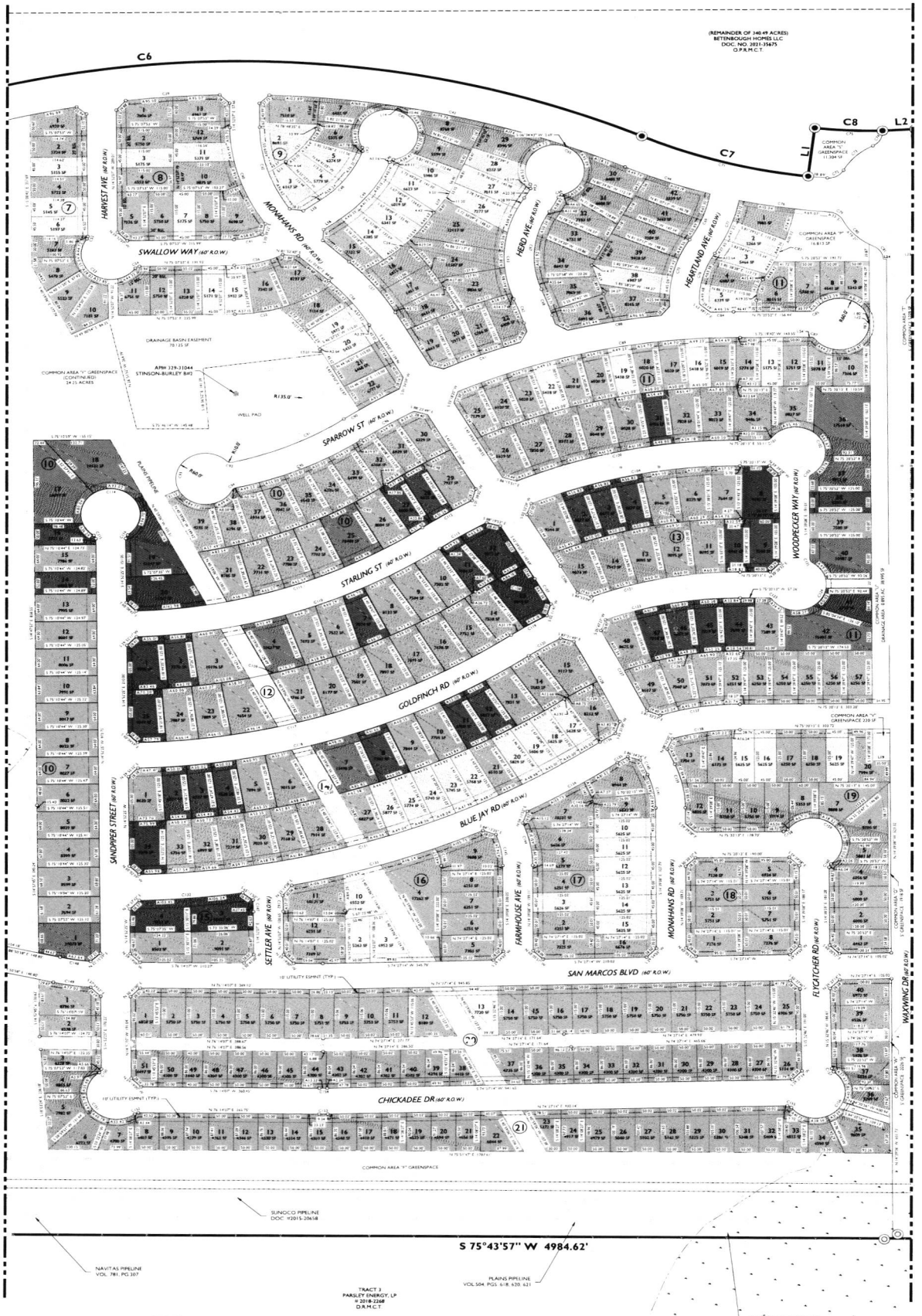
DETAIL SHEET #1

BEING A 317.56 ACRE TRACT OF LAND, SITUATED IN
SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO.
SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS



MAVERICK
ENGINEERING / SURVEY / WATER RESOURCES
1909 West Wall
Midland, Texas 79701
ENGINEER FIRM # 10194514
SURVEY FIRM # 10194514
Tel: (432) 262-0999
Fax: (432) 262-0989
www.Maverick-Eng.com

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MOCKINGBIRD RIDGE

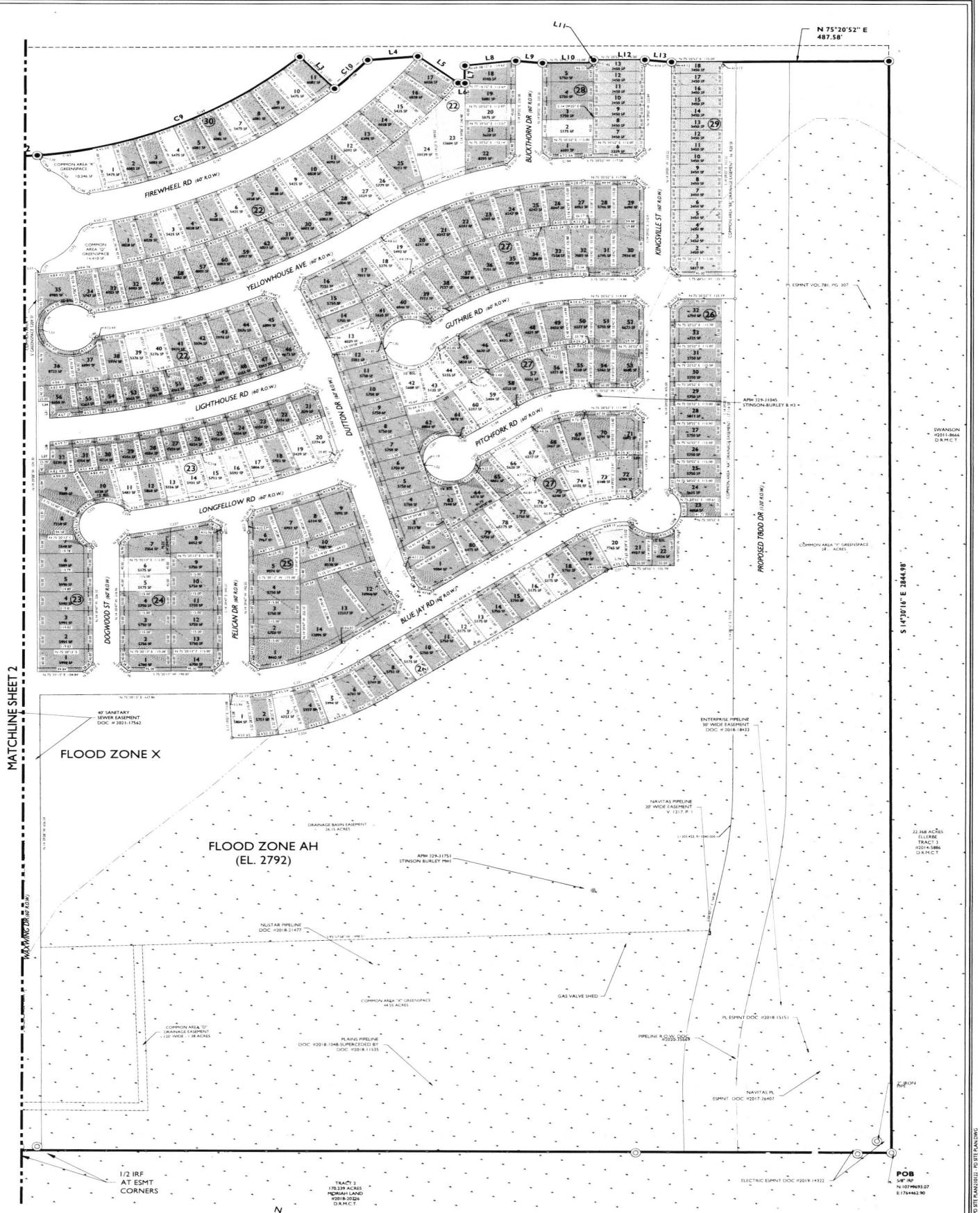
DETAIL SHEET #2

BEING A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, COUNTY OF MIDLAND, TEXAS

MAVERICK
ENGINEERING / SURVEY / WATER RESOURCES
1909 West Wall Street, Suite 'A'
Midland, Texas 79701
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F:\2021\21012\BETTENBOUGH-BRANDT TRACT\DRAWINGS\PO SITE PLAN\21012 - PO SITE PLAN.DWG



MOCKINGBIRD RIDGE

DETAIL SHEET #3

BEING A 317.56 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, MIDLAND COUNTY OF MIDLAND, TEXAS

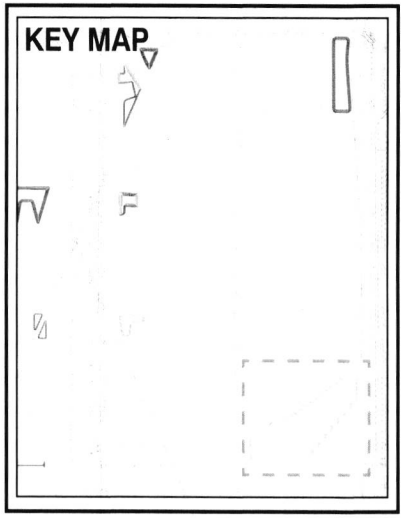
MAVERICK ENGINEERING / SURVEY / WATER RESOURCES
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-2999

SHEET 4 OF 5

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PACKET 2020 October 25, 2022
PACKET 30.48 May 9, 2023

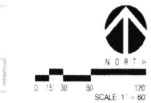




SCALE: NOT TO SCALE

LEGEND

- A ACTIVITY LAWN
- B PLAYGROUND + PAVILLION
- C DOG PARK + PAVILLIONS
- D EVENT PAVILLION
- E SPORTS FIELD
- F TRAIL SYSTEM



MOCKINGBIRD RIDGE

MIDLAND, TX

OPEN SPACE CONCEPT

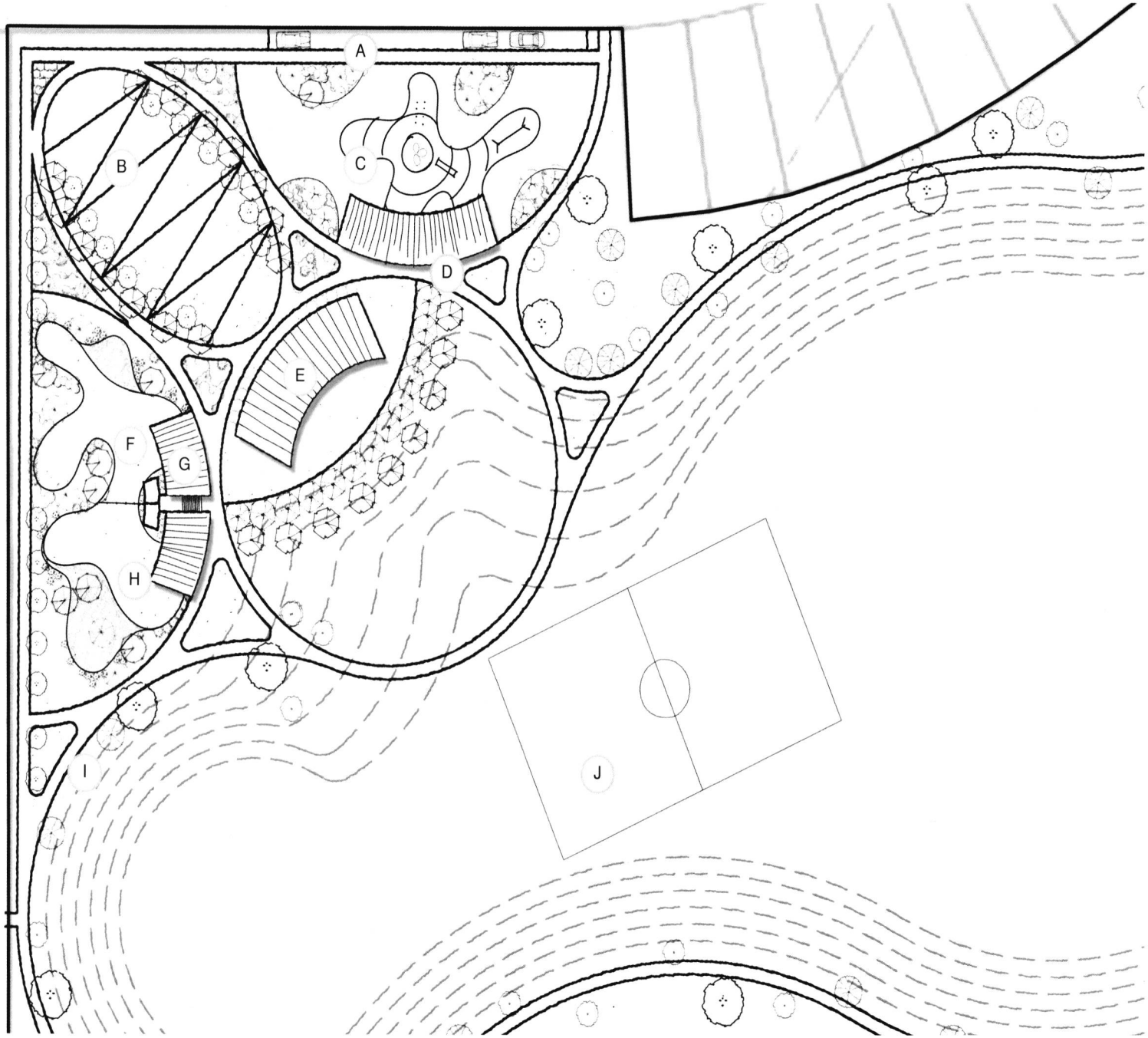
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BETENBOUGH HOMES

Kimley»Horn

6/28/2022

PACKET
PACKET
20.21
30.49
October 25, 2022
May 9, 2023



LEGEND

- A ON STREET PARKING
- B ACTIVITY LAWN WITH FESTOON LIGHTING
- C "THE NEST" ALL AGES PLAYGROUND
- D SHADE & PICNIC PAVILLION
- E ACTIVITY PAVILLION
- F SMALL DOG PARK
- G DOG PARK ENTRY WITH COVERED SEATING AREAS
- I TRAIL SYSTEM
- J SPORTS FIELD

NORTH

SCALE: 1" = 30'

MOCKINGBIRD RIDGE

MIDLAND, TX

OPEN SPACE CONCEPT

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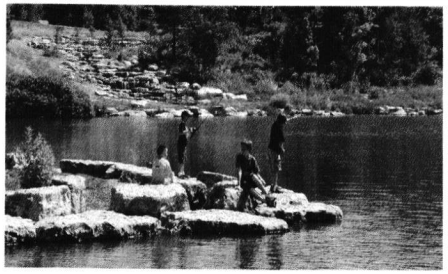
BETENBOUGH HOMES

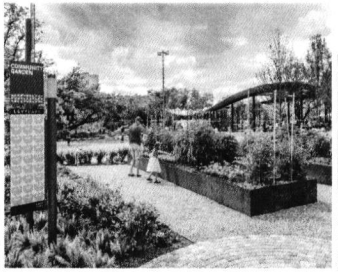
Kimley»Horn

6/28/2022

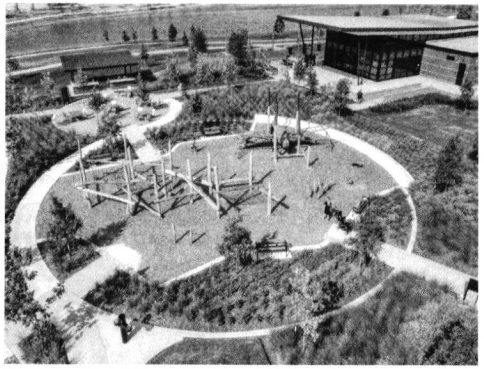






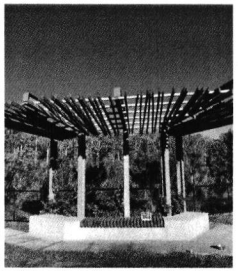



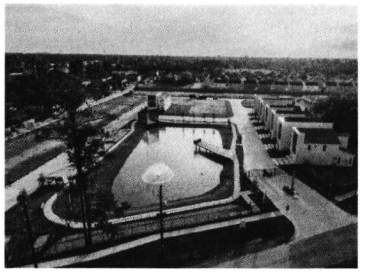










PACKET
PACKET

20.23
30.51

October 25, 2022
May 9, 2023

MOCKINGBIRD RIDGE

MIDLAND, TX

OPEN SPACE CONCEPT

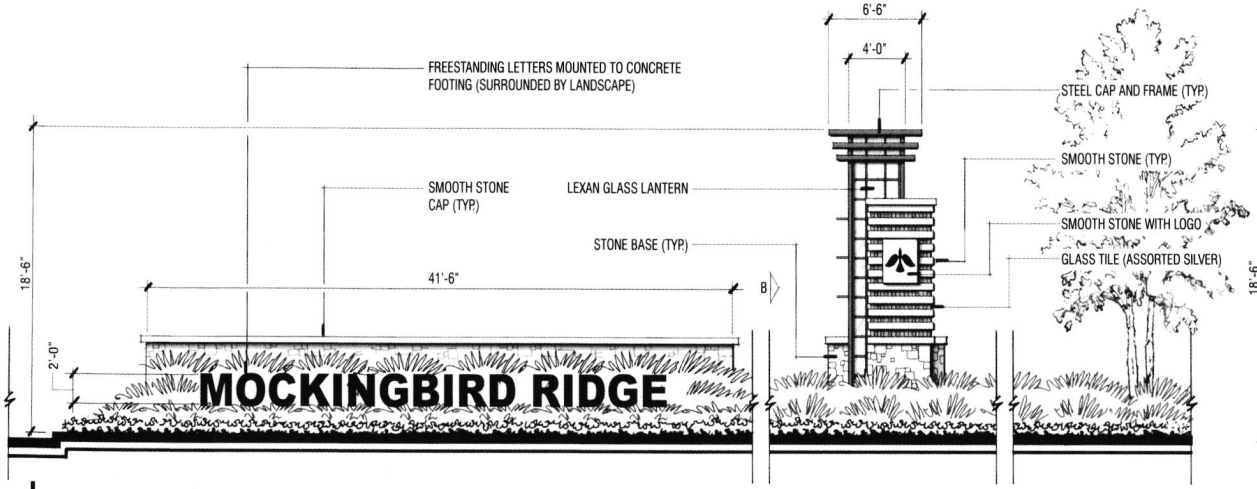
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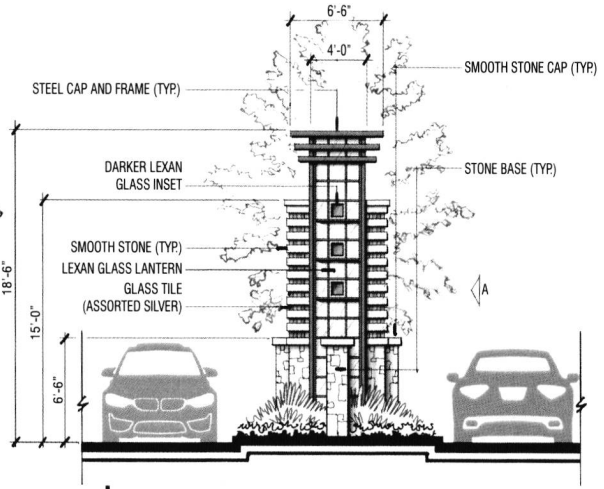
BETENBOUGH HOMES

Kimley»Horn

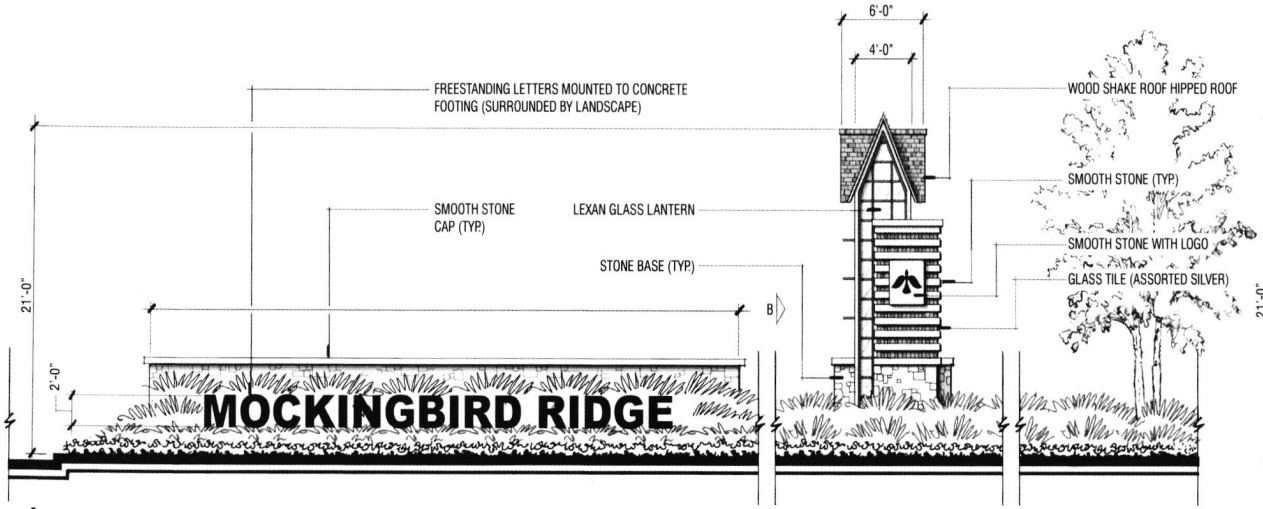
6/28/2022



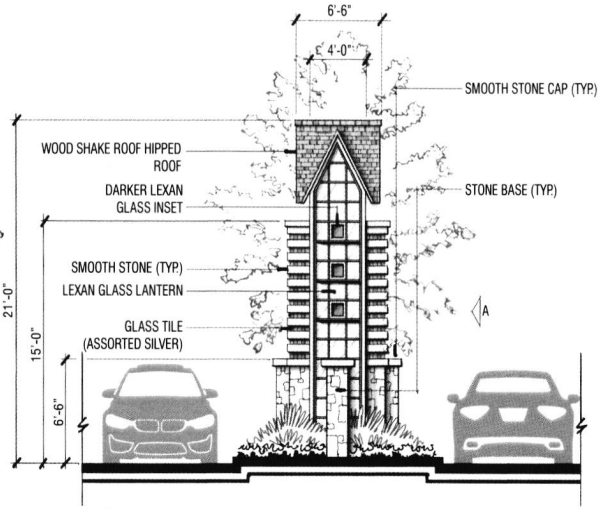
A OPTION 2 (SIDE ELEVATION)
SCALE: 1/4" = 1'-0"



B OPTION 2 (FRONT ELEVATION)
SCALE: 1/4" = 1'-0"



A OPTION 1 (SIDE ELEVATION)
SCALE: 1/4" = 1'-0"



B OPTION 1 (FRONT ELEVATION)
SCALE: 1/4" = 1'-0"

COMMUNITY ENTRY SCHEMATIC DESIGN

MOCKINGBIRD RIDGE

PACKET
PACKET

20.24
30.52

October 25, 2022
May 9, 2023

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FEBRUARY 15, 2022

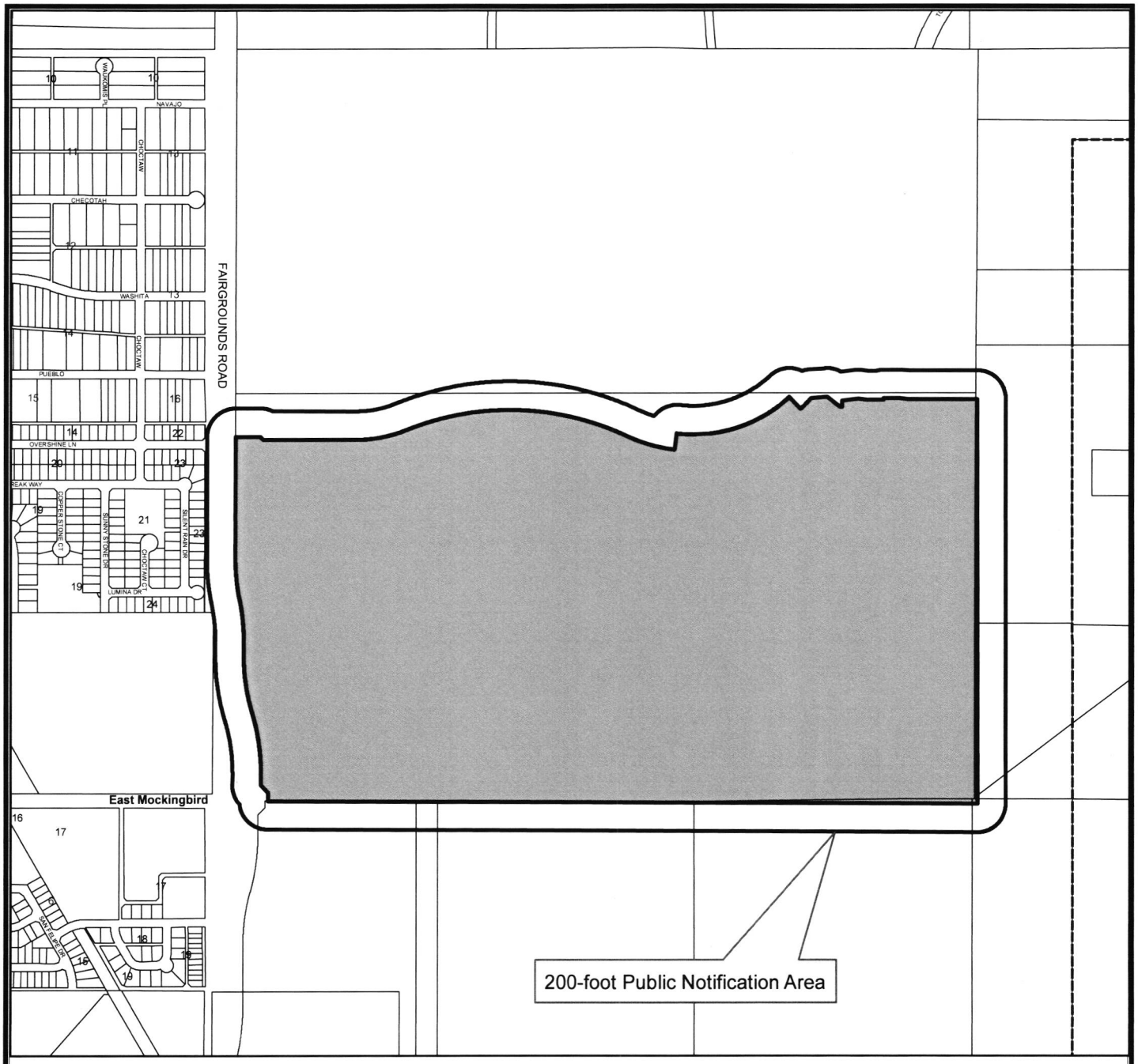
Renderings of Cottage Homes:

The April Plan: 3/2 w 1,109 SQ FT



The Annabeth Plan: 3/2 w 1,231 SQ FT





LOCATION MAP

Z-22-0299 **Scale: 1" = 12,044'**

Consider a request by Maverick Engineering for a zone change from, SF-3, Single-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, SF-1, Single-Family Dwelling District, in part, 2F, Two-Family Dwelling (Duplex) District, in part, and RR, Regional Retail District, in part, to PD, Planned Development District for Housing Development out of a 317.56-acre tract of land, in Section 18, Block 38, T-I-S, A-734, T&P RY. CO. Survey, City and County of Midland, Texas.

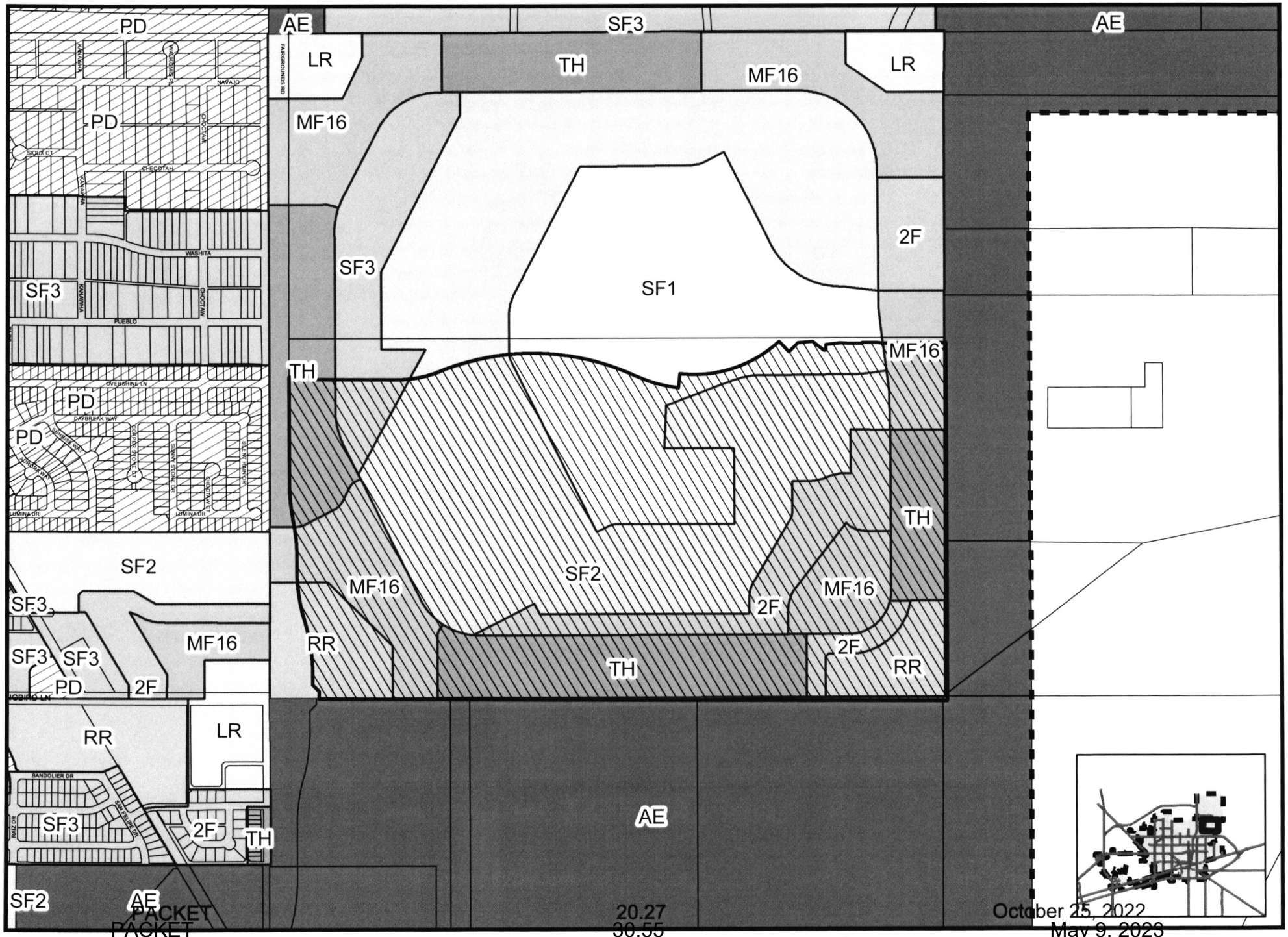
Generally located on the northeast corner of the intersection of North Fairgrounds and East Mockingbird Road. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
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PACKET 20.27 October 25, 2022
PACKET 30.55 May 9, 2023

Map By LO, 7/29/2022

Z-22-0299

Scale: 1" = 11,434'

ZONING MAP

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PACKET 20.28 October 25, 2022

PACKET 30.56 May 9, 2023

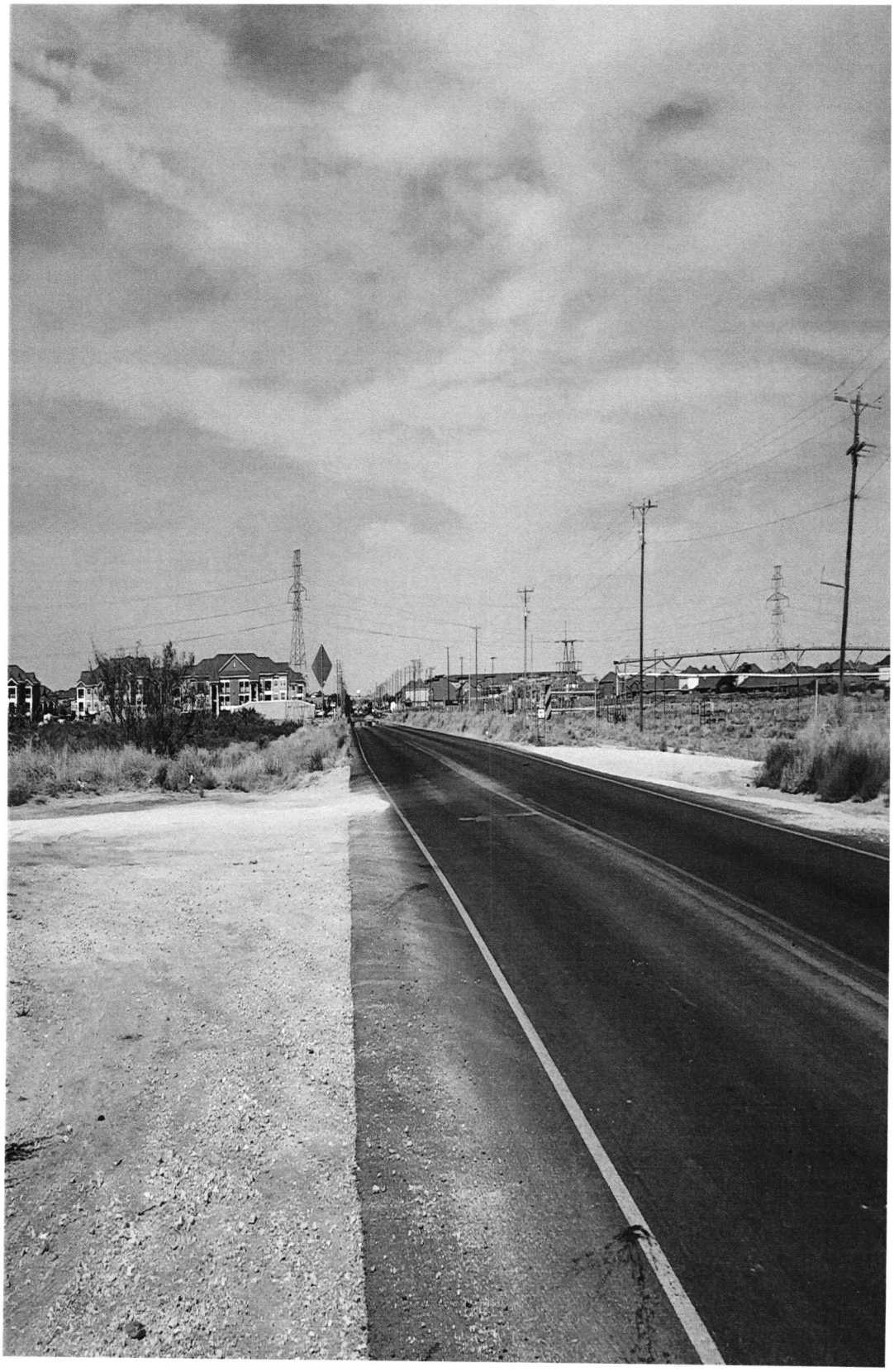


PACKET 20.29 October 25, 2022

PACKET 30.57 May 9, 2023



PACKET	20.30	October 25, 2022
PACKET	30.58	May 9, 2023



City Council Meeting

Item Number: 31

Meeting Date: May 9, 2023

To: City Council / City Manager

From: James Reber, Planner

Subject: MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF MOCKINGBIRD RIDGE, BEING A PLAT OF A 258.87-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST MOCKINGBIRD LANE, APPROXIMATELY 900 FEET EAST OF NORTH FAIRGROUNDS ROAD) (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting a 258.87-acre tract of land, situated in Section 18, Block 38, T-1-S, A-734, T&P RY. CO. Survey, City of Midland, Midland County, Texas. The applicant is platting to allow for the development of multi-use site including single family housing, townhomes, cottage housing, retail, and greenspace/detention. On October 3, 2022, the Planning and Zoning Commission approved a preliminary plat for 317.56 acres. The revised preliminary plat is only for the east 258.87 acres identified as Phases 4-11 on the new plat. The 58.69 acres to the west, not part of this plat for Phases 1-3, will remain in full force and effect as part of the original preliminary plat. The revised preliminary plat for Phases 4-11 passed its Planning and Zoning appearance on April 17, 2023.

Current Zoning:

TH, Townhouse (Attached) Dwelling District, SF-3, Single-Family Dwelling District, SF-2, Single-Family Dwelling District, SF-1, Single-Family Dwelling District, 2F, Two-Family Dwelling District, TH, Townhouse Dwelling District, MF-16, Multiple-Family Dwelling District, and RR, Regional Retail District.

This request has been routed to all respective departments for internal review. The comments are below.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Discussion:

BUILDING 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, 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.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Okay as shown. [For the Applicant's information only.]

ROW: Ok as shown. [For the Applicant's information only.]

PAVING: Internal paving improvements have not been submitted/accepted. Construct roads shown to City Standards for entire platted frontage. Per City code, the developer is required for 1/3 the cost/construction of Fairgrounds, based on maximum 20-meters (68-foot) width including C & G arterial construction standards.
[Reference City Code Section 11-2-3(G)1 & 11-2-4(A)2(a)]

WATER: Water improvements have not been submitted/accepted. Construct to City standards along the entire platted frontage, serving all lots with a looped system. [Reference City Code Section 11-2-3(G)1]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test.

PRO RATA: None.
SEWER: Sewer improvements have not been submitted/accepted. Construct to City standards along the entire platted frontage, serving all lots within the subdivision and to adjacent lot lines along exterior roadways. [Reference City Code Section 11-2-3(G)1]

DRAINAGE: Amend the Mockingbird Ridge preliminary drainage report to show the phase and locations of the basin locations. [For Applicant's Information Only.]
For Drainage Easements granted with this plat, provide the following language to the plat face:

1. The maintenance of any stormwater facility in this easement is the responsibility of the property owner. Property owner agrees to maintain the facility in working order, with inspections and corrective action made at least annually. Reports of such inspections and maintenance shall be kept for inspection by the City of Midland Stormwater Administrator on request, or may be forwarded to the City Engineer's office.

2. The City of Midland shall have the right to mitigate deficiencies in the function of the stormwater facility, and to be reimbursed by the property owner, if the City finds it necessary for public health and safety.

3. The City of Midland and its employees, contractors, agents, successors, and assigns, shall have the free and uninterrupted right of passage in, on, upon, over, under, across, along and through the property described herein for the purpose of establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, altering, operating, maintaining, accessing, inspecting, repairing, relocating and removing said facilities, including but not limited to, the right to cut and trim bushes and trees, together with the right of ingress, egress and regress for such purposes in, on, upon, over, under, across, along and through the property described herein.

4. Developer may not use any part of the property described herein if such use will damage, destroy, injure, and/or unduly interfere with the City of Midland's use of the property. Developer expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that no building, roadways, or curbs and gutters of any kind will be placed on the property described herein. Written permission for above ground appurtenances must be obtained from the City of Midland, prior to installation.

EASEMENTS: Show existing and proposed. [For Applicant's Information Only.]

SIDEWALKS: Required with building permit. [For Applicant's Information Only.]

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved with Conditions)

STREET NAME AND TRAFFIC CONTROL SIGN FEE – Fees shall be assessed based on the number of intersections at Final Plat. [Reference City Code Section 11-2-5(C)3(t).]

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

No objections to plat. [For the Applicant's information only.]

FIRE: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

CODE COMPLIANCE: (Approved)

Phase I, page1 -The Plugged and Abandoned (P&A) well Stimson Burley #18 #2- API 329-31184 was identified being in the street. Phase 6 page 2 – (High Country Ct.) the Stinson-Burley B #2 API 329-31044 is identified with a 135 ft radius as requested for a non-City permitted well notes it will be P&A (No building permits inside 135 ft. radius till P&A). Phase 11 Page 3- the non-city permitted Stimson Burley #1M API 329-31751 is identified and has the required 135 ft radius as requested. Phase 11, page 3 -the non-City permitted Stimson Burley B #3 API 32--31045 is identified on plat with the required 135 ft. radius and noted to be P&A well (No building permits inside 135 ft. radius till P&A). No building permits are allowed in the 135 ft radius of existing well until it is actually P&A with a W-3 permit per RRC. In addition, the City permitted Endeavor operated Willow Lakes 19 #191 (located south of Mockingbird Lane) is identified with a 500 ft. radius that is located below Mockingbird Lane. The occupied residential/commercial building permits inside the 500 ft. radius will require a variance to the permitted well from the City Council. The variance request would need to be made thru the Building Official. For information: Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures.

GIS: (Approved)

Steve's Comments:
On this plat Lone Ranger Rd, existing street Lone Ranger Ln map index C-43 in Lone Star Trails 2 11.
On this plat High Noon Ln, existing street High Noon Ct map index D-41 in Lone Star Trails 2 6.
On this plat Sundance St, existing street Sundance Ct map index Q-14 in Grassland 11.
On this plat Sundance Pl, existing street Sundance Pl map index q-12 in Grassland 7.

General Comments:
Issues with interior calls of subdivision. (Marked up PDF will be provided.)

PLANNING: (Approved with Conditions)

Plat description should read, "Being a 258.87-acre tract of land, situated in Section 18, Block 38, T-1-S, A-734, T&P RY. CO. Survey, City and County of Midland, Texas."

Plat exceeds 25-acres and will need to appear before City Council. [Informational]

This item was approved by the Planning and Zoning Commission on April 17, 2023.

Staff recommends approval of the Preliminary Plat of Mockingbird Ridge subject to conditions A and B.

Condition:

A. **Approval of this preliminary plat is conditioned upon public improvements being completed prior to the approval of a final plat by the City or with an exception when waived or deferred by the Council. Midland City Code 11-2-3(G)1 & 11-2-4(A)2(a).**

B. **All plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas.**

Attachments:

Proposed Preliminary Plat
Maps
Application

Morris William Jr.

City Manager's Office

MIDLAND
Planning Division

Preliminary Plat Application

Project Number: SUB-22-0537
Case Number: P-23-1585

Proposed Subdivision Plat Name: Mockingbird Ridge

Legal Description (attached sealed Metes and Bounds): Being a 258.87 Acre Tract of Land, Situated in Section 18, Block 38, T-1-S, A-734, T&P RY. Co. Survey, City of Midland, Midland County, Texas

Property Owner Printed Name: Betenbough Homes		Phone (432) 262-0999 Email	
Address 6305 82nd St	City Lubbock	State TX	Zip 79424

Developer *(if different than Owner)* Printed Name:		Phone (432) 262-0999 Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)* 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

Current Zoning: SF3, TH, SF2, MF16, SF1, 2F, RR

Reason for Platting: ownership purposes

Plat Information	Total Acreage:	258.87

Type: ■ Single-Family Residential ☐ Multi-Family Residential
☐ Commercial ☐ Extraterritorial Jurisdiction (ETJ)

Number of Lots: 695 | Number of Multi-family Dwelling Units:

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ■ No
If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved,*** or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature *(by property owner only – authorized agent must sign affidavit below)*

Property Owner (signature):	Date: _____

Property Owner (printed) : _____

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Mellen who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by Betenbough Homes the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 21st day of March, 2023, to certify which witness my hand and seal of office.

Kelsey Ann Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Kelsey Ann Lewis
My Commission Expires
2/19/2026
Notary ID
131456388

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ 1 Copy of Dimensioned Plat	☑ Plat in Digital Format (PDF/JPEG)
☑ Application Fee	☑ 1 Copy of Plat (11x17)	

MAR 22 2023

Check # 4103

BY: .....

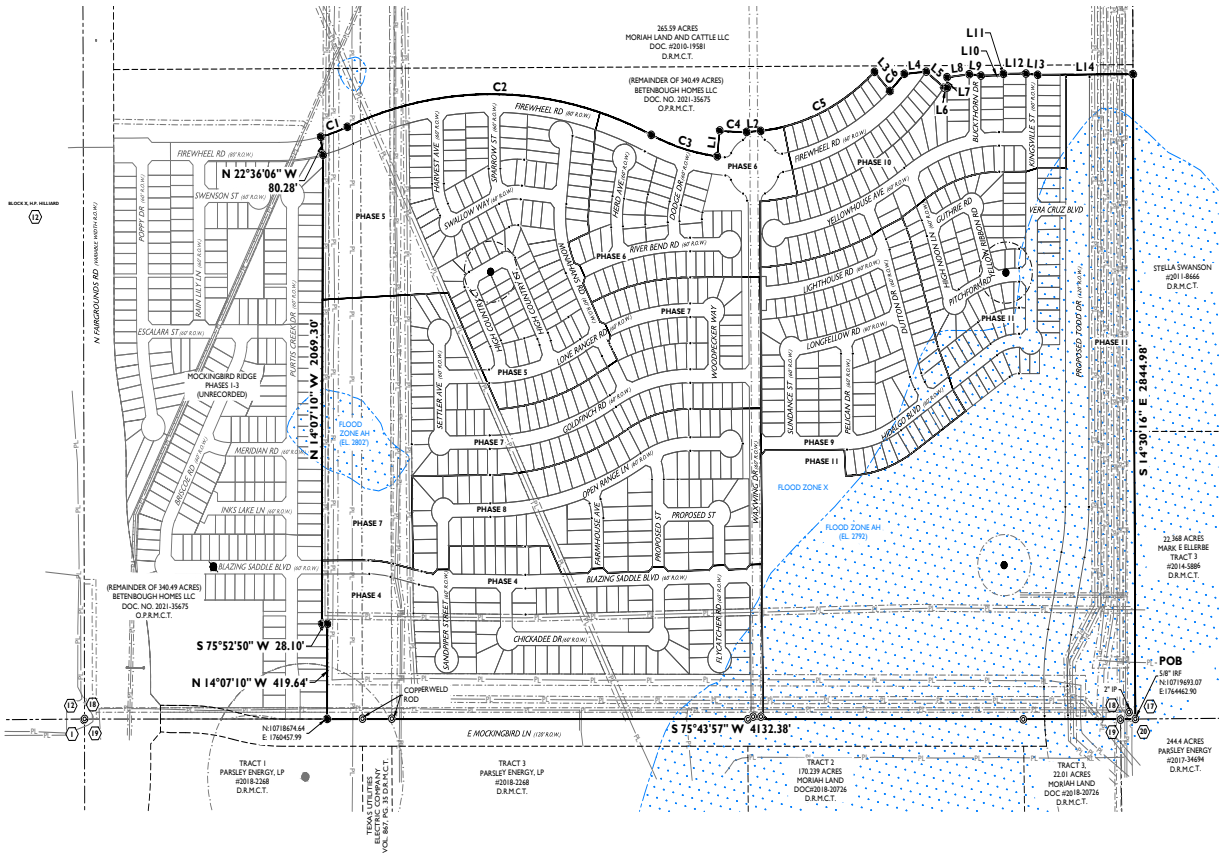
Received By: James Rider	Date: 4/22

****Application will not be considered for scheduling until reviewed by a planner.****

PRELIMINARY PLAT

MOCKINGBIRD RIDGE

BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.



LEGEND

	DENOTES BOUNDARY LINE
	DENOTES EXISTING ADJACENT PROPERTY LINES
	DENOTES EXISTING EASEMENT
	DENOTES PROPOSED EASEMENT
PL	DENOTES EXISTING BURIED PIPELINE
	DENOTES SECTION LINE
	DENOTES FLOOD ZONES
P.R.M.C.T.	DENOTES PLAT RECORDS, MIDLAND CO., TX
O.P.R.M.C.T.	DENOTES OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
D.R.M.C.T.	DENOTES DEED RECORDS, MIDLAND CO., TX
(#)	DENOTES SECTION NUMBER
	DENOTES SET 1/2-INCH IRON ROD WIRED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
	DENOTES 1/2" IRF, UNLESS OTHERWISE NOTED
	DENOTES POINT OF CURVATURE/INTERSECTION
	DENOTES MAG NAIL FOUND
	DENOTES EXISTING OIL WELL (PRODUCING)
	DENOTES EXISTING OIL WELL (PLUGGED AND ABANDONED)

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, NAD 83, U.S. SURVEY FOOT HAVING A CONVERGENCE ANGLE (theta) OF -0°53'04.89" AND A COMBINED SCALE FACTOR OF 0.999925027 AT THE POINT OF BEGINNING
2. 1/2" IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" SET AT ALL LOT CORNERS UNLESS OTHERWISE SPECIFIED.
3. SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.
4. LOCATION OF BURIED UTILITIES AND PIPELINES, IF ANY, IS APPROXIMATE BASED UPON OBSERVED EXISTING SIGNAGE, CITY OF MIDLAND GIS AND VISUAL EVIDENCE, OR BY ONE-CALL 811 SITE MARKINGS AT THE TIME OF THIS SURVEY. DUE CARE IS RECOMMENDED. CALL 1-800-DIG-TESS FOR LOCATES PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
5. THIS IS A PROVISIONAL PRELIMINARY PLAT, THIS IS NOT TO BE RECORDED OR USED FOR CONSTRUCTION PURPOSES. SET MONUMENTS SHOWN HEREON ARE ALSO PRELIMINARY AND SHALL ONLY BE PLACED IN ACCORDANCE WITH A FINAL SURVEY SEALED BY THE SURVEYOR OF RECORD.

PACKET

UTILITY COMPANY'S CERTIFICATE

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

ATMOS ENERGY
BY: _____

AT&T
BY: _____

OPTIMUM
BY: _____

ASTOUND BROADBAND
BY: _____

ONCOR ELECTRIC DELIVERY
BY: _____

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

THAT I, GREGORY W. SHOULTS, A REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY LOCATED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

GREGORY W. SHOULTS RPLS#5356
MAVERICK ENGINEERING (TX FIRM #10194514)
1909 W. WALL STREET, SUITE K
MIDLAND, TX 79701

PRELIMINARY - THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS BETENBOUGH HOMES, LLC, IS THE RECORD OWNER OF A TRACT OF LAND SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT BETENBOUGH HOMES, LLC, BEING THE OWNER OF THE LAND SHOWN ON THIS PLAT DESIGNATED AS MOCKINGBIRD RIDGE, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND WHOSE NAME IS SUBSCRIBED HERETO, DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEYS, AND EASEMENTS SHOWN THEREON; AND DO HEREBY GIVE AN EASEMENT OF INGRESS AND EGRESS TO THE CITY OF MIDLAND FOR GARBAGE COLLECTION, UTILITY FACILITY ACCESS AND MAINTENANCE, LOCATION AND MAINTENANCE OF TRASH CONTAINERS AND ACCESS THERETO, AND CONDITION SAID EASEMENT THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT OR LOTS UNTIL THE EXACT LOCATION OF SAID CONTAINERS THEREWITH HAS BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.

WITNESS MY HAND AT _____, _____.

THE _____ DAY OF _____, 2023.

_____
BY: BETENBOUGH HOMES, LLC

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF MIDLAND

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED _____ KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE WAS ACTING AS OWNER, AND THAT HE EXECUTED THE SAME 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 _____, 2023.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

CERTIFICATE OF APPROVAL

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF MOCKINGBIRD RIDGE, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE CITY OF MIDLAND, TEXAS ON THIS

_____ DAY OF _____, 2023.

_____
LUCY SISNIEGA, CHAIRMAN

_____
ELIZABETH SHAUGHNESSY, SECRETARY

FEMA NOTE

FLOOD STATEMENT: ACCORDING TO FEMA'S N.F.I.P. FLOOD INSURANCE RATE MAP #48329C0100F DATED SEPTEMBER 16, 2005,

PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN THE UNSHADED PORTION OF ZONE "X", DESIGNATED AS "AREAS OF MINIMAL FLOOD HAZARD DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN." THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES.

PORTIONS OF THIS PROPERTY AS SHOWN HEREON ARE WITHIN ZONE "AH", AREAS WITH A 1% ANNUAL CHANCE OF SHALLOW FLOODING, USUALLY IN THE FORM OF A POND, WITH AN AVERAGE DEPTH RANGING FROM 1 TO 3 FEET. THESE AREAS HAVE A 26% CHANCE OF FLOODING OVER THE LIFE OF A 30 YEAR MORTGAGE. BASE FLOOD ELEVATIONS DERIVED FROM DETAILED ANALYSES ARE SHOWN AT SELECTED INTERVALS WITHIN THESE ZONES. REFER TO FEMA LOMR CASE NO. 19-06-3884P ISSUED AUGUST 14, 2020 FOR DETENTION BASIN (M156) FILL IN THE NW CORNER OF THIS PROPERTY.

THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF MAVERICK ENGINEERING.

DEVELOPMENT NOTES

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. THE INSTALLATION OF IMPROVEMENTS MAY BE REQUIRED BY THE CITY OF MIDLAND AS SUCH TIME AS:
   (1) THE REPRESENTED LOTS ARE REPLATTED FOR SUBDIVISION INTO MORE THAN ONE LOT OR :
   (2) THE PROPERTY IS REZONED FOR A MORE INTENSIVE USE.
4. DECLARATION OF RESTRICTIVE COVENANTS REGARDING THIS DEVELOPMENT FILED IN INSTRUMENT NO. __ - _____ DATED, ____/____/____, MIDLAND COUNTY, TEXAS.
5. IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS, IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASED.
6. PHASES PROPOSED ARE PROVISIONAL OR FOR PLANNING PURPOSES AND MAY BE SUBJECT TO CHANGE.
7. PROPOSED SETBACKS THROUGHOUT THE SUBDIVISION ARE AS FOLLOWS: FRONT 20' (CUL-DE-SAC 15'), SIDE 5', CORNER SIDE 10', REAR 10'.

DRAINAGE EASEMENT DEDICATED WITH THIS PLAT

1. THE CITY OF MIDLAND AND ITS EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS, SHALL HAVE THE FREE AND UNINTERRUPTED RIGHT OF PASSAGE IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF ESTABLISHING, LAYING, CONSTRUCTING, RECONSTRUCTING, INSTALLING, REALIGNING, MODIFYING, REPLACING, IMPROVING, ALTERING, OPERATING, MAINTAINING, ACCESSING, INSPECTING, REPAIRING, RELOCATING AND REMOVING DRAINAGE IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO, THE RIGHT TO CUT AND TRIM BUSHES AND TREES, TOGETHER WITH THE RIGHT OF INGRESS, EGRESS AND REGRESS FOR SUCH PURPOSES IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN.
2. DEVELOPER MAY NOT USE ANY PART OF THE PROPERTY DESCRIBED HEREIN IF SUCH USE WILL DAMAGE, DESTROY, INJURE, AND/OR UNDULY INTERFERE WITH THE CITY OF MIDLAND'S USE OF THE PROPERTY. DEVELOPER EXPRESSLY COVENANTS AND AGREES FOR ITSELF, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNS, THAT NO BUILDING, ROADWAYS, OR CURBS AND GUTTERS OF ANY KIND WILL BE PLACED ON THE PROPERTY DESCRIBED HEREON. WRITTEN PERMISSION FOR ABOVE GROUND APPURTENANCES MUST BE OBTAINED FROM THE CITY OF MIDLAND, PRIOR TO INSTALLATION.
3. THE CITY OF MIDLAND SHALL HAVE THE RIGHT TO MITIGATE DEFICIENCIES IN THE FUNCTION OF THE STORMWATER FACILITY, AND TO BE REIMBURSED BY THE PROPERTY OWNER, IF THE CITY FINDS IT NECESSARY FOR PUBLIC HEALTH AND SAFETY.
4. THE MAINTENANCE OF ANY STORMWATER FACILITY IN THIS EASEMENT IS THE RESPONSIBILITY OF THE PROPERTY OWNER. PROPERTY OWNER AGREES TO MAINTAIN THE FACILITY IN WORKING ORDER, WITH INSPECTIONS AND CORRECTIVE ACTION MADE AT LEAST ANNUALLY. REPORTS OF SUCH INSPECTIONS AND MAINTENANCE SHALL BE KEPT FOR INSPECTION BY THE CITY OF MIDLAND STORMWATER ADMINISTRATOR ON REQUEST, OR MAY BE FORWARDED TO THE CITY ENGINEER'S OFFICE.

PROPERTY OWNER

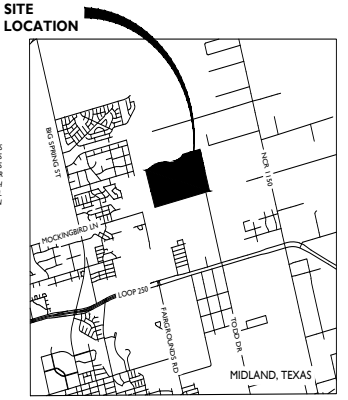
BETENBOUGH HOMES LLC
6305 82ND ST
LUBBOCK, TX 79424
DEED INSTRUMENT #2021-35675

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

NO. _____ CABINET _____

DATE _____ PAGE _____

SITE LOCATION



VICINITY MAP
N.T.S.



0' 300' 600' 900'
SCALE 1" = 300'

BOUNDARY CURVE TABLE					
CURVE	ARC LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	143.11'	920.00'	142.96'	N 57° 59' 24" E	8°54'44"
C2	1599.03'	1950.00'	1554.60'	N 77° 01' 32" E	46°59'00"
C3	351.41'	1110.00'	349.94'	S 88° 33' 08" E	18°08'20"
C4	137.24'	995.00'	137.13'	N 78° 25' 37" E	7°54'10"
C5	649.32'	995.00'	637.86'	N 51° 36' 34" E	37°23'25"
C6	105.99'	1110.00'	105.95'	N 30° 10' 44" E	5°28'16"

BOUNDARY LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 07°37'18" W	115.00'
L2	N 72°23'25" E	72.42'
L3	S 57°05'08" E	115.00'
L4	N 70°45'27" E	112.51'
L5	S 66°30'04" E	115.00'
L6	N 77°16'15" E	15.51'
L7	N 14°39'08" W	46.14'
L8	N 69°08'15" E	114.62'
L9	N 81°18'37" E	60.27'
L10	N 75°20'52" E	115.00'
L11	N 14°25'02" W	7.06'
L12	N 75°20'52" E	115.00'
L13	N 80°51'01" E	60.26'
L14	N 75°20'52" E	487.58'

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F- 15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

May 9, 2023

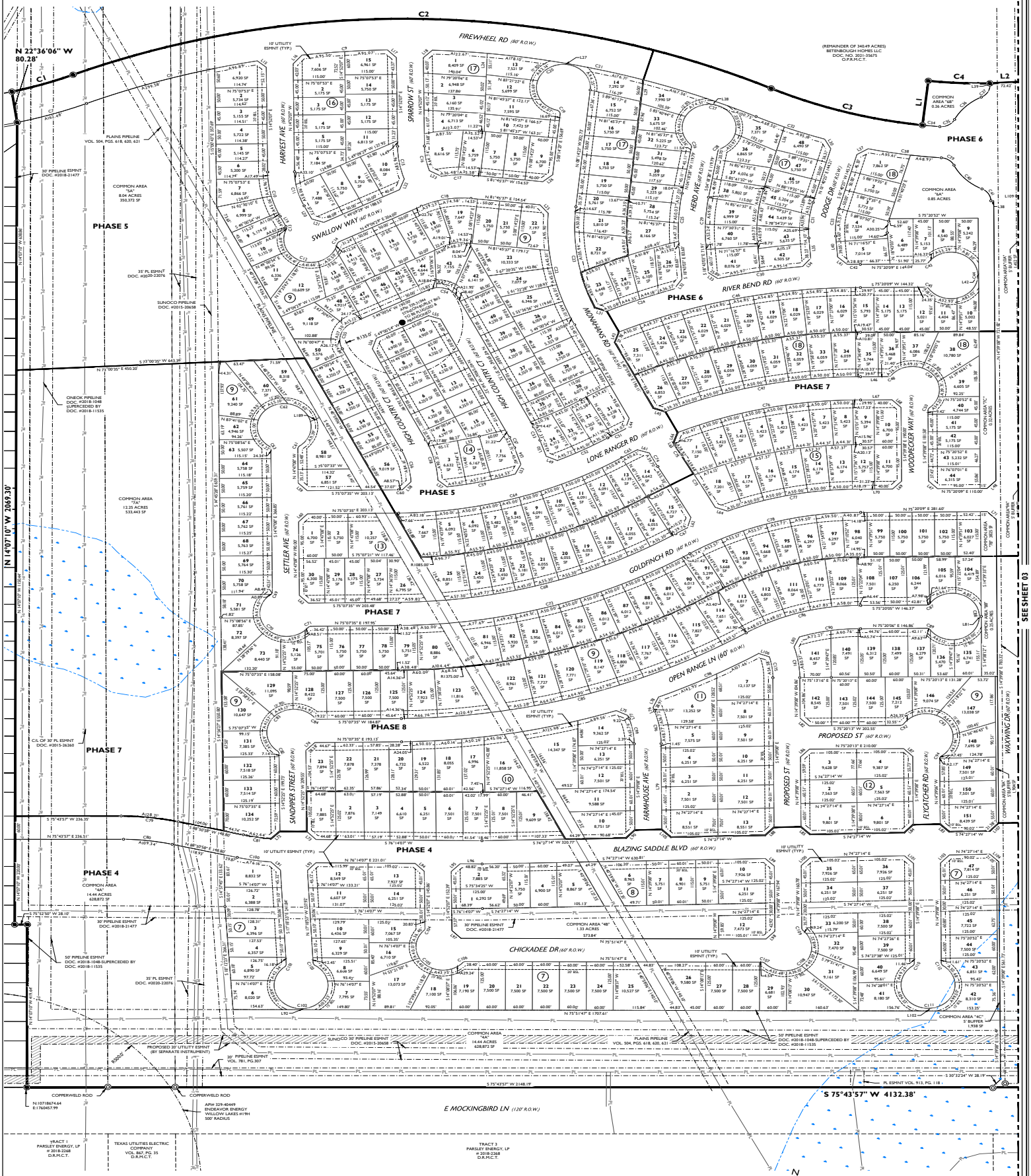
MOCKINGBIRD RIDGE

Drawing - P:\2021\210122-BETENBOUGH-BRANDT TRACT\DRAWINGS\PLAT\PRELIM - MASTER\2ND SUBMITTAL PRELIM PHASES 4-1 F\210122 MOCKINGBIRD PRELIM PLAT PHASES 4-11.DWG Last Saved By: ADevine on 3/15/23

PRELIMINARY PLAT

MOCKINGBIRD RIDGE

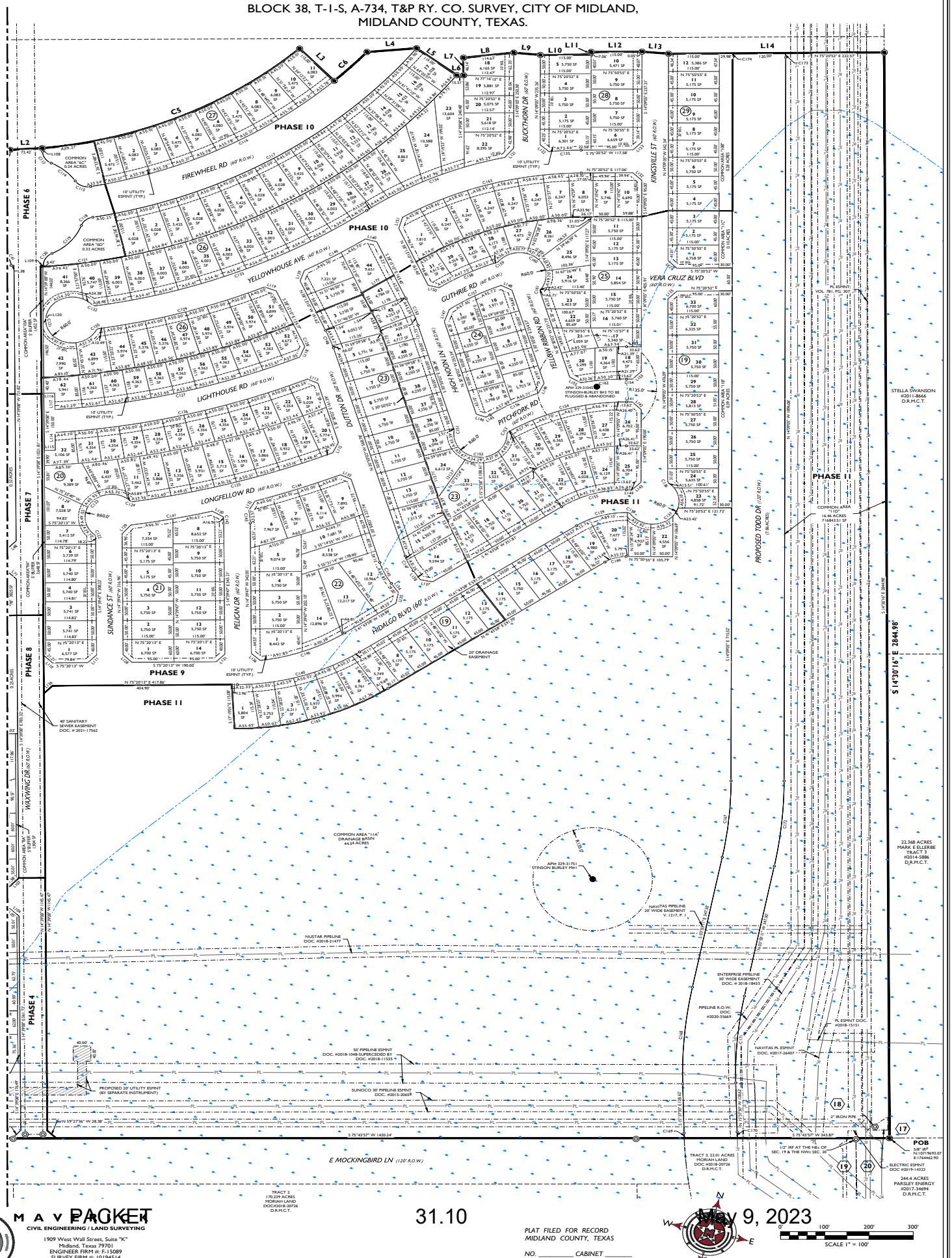
BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.


FIREWHEEL RD (80' R.O.W.)
SPARROW ST (60' R.O.W.)
HARVEST AVE (60' R.O.W.)
SWALLOW WAY (60' R.O.W.)
HERD AVE (60' R.O.W.)
DODGE DR (60' R.O.W.)
RIVER BEND RD (60' R.O.W.)
MOHAWK RD (60' R.O.W.)
HIGH COUNTY CT (60' R.O.W.)
LONE RANGER RD (60' R.O.W.)
WOODPECKER WAY (60' R.O.W.)
SETTLER AVE (60' R.O.W.)
GOLDFINCH RD (60' R.O.W.)
OPEN RANGE LN (60' R.O.W.)
PROPOSED ST (60' R.O.W.)
SANDPIPER STREET (60' R.O.W.)
FARMHOUSE AVE (60' R.O.W.)
BLAZING SADDLE BLVD (60' R.O.W.)
CHICKADEE DR (60' R.O.W.)
E MOCKINGBIRD LN (120' R.O.W.)
WAXWING DR (60' R.O.W.)
FLYCATCHER RD (60' R.O.W.)
PHASE 4
PHASE 5
PHASE 6
PHASE 7
PHASE 8
COMMON AREA "A" 8.04 ACRES 350,372 SF
COMMON AREA "A" 12.25 ACRES 533,443 SF
COMMON AREA "A" 14.44 ACRES 628,872 SF
COMMON AREA "48" 1.33 ACRES
COMMON AREA "68" 0.26 ACRES
COMMON AREA "6A" 0.85 ACRES
COMMON AREA "7C" 0.32 ACRES
COMMON AREA "98" 0.16 ACRES
COMMON AREA "4C" 1.938 SF
PLAINS PIPELINE VOL. 504, PGS. 618, 620, 621
30' PIPELINE ESMNT DOC. #2018-21477
35' PL ESMNT DOC. #2020-22076
SUNOCO PIPELINE DOC. #2015-20658
ONEOK PIPELINE DOC. #2018-1048 (SUPERCEDED BY DOC. #2018-11535)
50' PIPELINE ESMNT DOC. #2018-1048-SUPERCEDED BY DOC. #2018-11535
20' PIPELINE ESMNT VOL. 781, PG 307
PROPOSED 20' UTILITY ESMNT (BY SEPARATE INSTRUMENT)
C/L OF 30' PL ESMNT DOC. #2015-26260
10' UTILITY ESMNT (TYP.)
(REMAINDER OF 340.49 ACRES) BETENBOUGH HOMES LLC DOC. NO. 2021-35675 O.P.R.M.C.T.
TRACT 1 PARSLEY ENERGY, LP # 2018-2268 D.R.M.C.T.
TRACT 3 PARSLEY ENERGY, LP # 2018-2268 D.R.M.C.T.
TEXAS UTILITIES ELECTRIC COMPANY VOL. 867, PG. 35 D.R.M.C.T.
COPPERWELD ROD N:1071867.64 E:1760457.99
APN# 329-40449 ENDEAVOR ENERGY WILLOW LAKES #1H 500' RADIUS
N 22°36'06" W 80.28'
N 14°07'10" W 2069.30'
N 71°00'35" E 450.20'
S 23°00'35" W 643.30'
S 75°43'57" W 4132.38'
S 75°43'57" W 2148.19'
S 75°32'50" W 28.10'
S 30°32'24" W 28.19'
N 75°20'09" E 144.24'
N 75°20'09" E 281.60'
N 75°20'09" E 110.00'
N 75°20'13" W 202.55'
N 75°20'13" E 210.00'
N 75°20'13" E 131.28'
N 75°20'06" E 146.86'
N 75°20'35" E 203.12'
N 75°20'35" E 197.95'
N 75°20'35" E 193.12'
N 75°20'35" E 184.87'
N 75°20'35" E 203.40'
N 75°07'21" W 117.46'
N 75°08'56" E 87.85'
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PRELIMINARY PLAT

MOCKINGBIRD RIDGE

BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.


PHASE 10
PHASE 6
PHASE 7
PHASE 8
PHASE 9
PHASE 11
PHASE 4
FIREWHEEL RD (60' R.O.W.)
YELLOWHOUSE AVE (60' R.O.W.)
LIGHTHOUSE RD (60' R.O.W.)
LONGFELLOW RD (60' R.O.W.)
GUTHRIE RD (60' R.O.W.)
HIGH NOON LN (60' R.O.W.)
DUTTON DR (60' R.O.W.)
BUCKTHORN DR (60' R.O.W.)
YELLOW RIBBON RD (60' R.O.W.)
PITCHFORK RD (60' R.O.W.)
VERA CRUZ BLVD (60' R.O.W.)
KINGSVILLE ST (60' R.O.W.)
PROPOSED TODD DR (120' R.O.W.)
HIDALGO BLVD (60' R.O.W.)
PELICAN DR (60' R.O.W.)
SUNDANCE ST (60' R.O.W.)
WAXWING DR (60' R.O.W.)
E MOCKINGBIRD LN (120' R.O.W.)
SEE SHEET 02
COMMON AREA "11A" DRAINAGE BASIN 44.54 ACRES
COMMON AREA "11C" 16.46 ACRES 716843 S.F.
22.368 ACRES MARK E ELLERBE TRACT 3 #2014-5886 D.R.M.C.T.
STELLA SWANSON #2011-8666 D.R.M.C.T.
TRACT 2 170.239 ACRES MORIAH LAND DOC#2018-20726 D.R.M.C.T.
TRACT 3, 22.01 ACRES MORIAH LAND DOC #2018-20726 D.R.M.C.T.
244.4 ACRES PARSLEY ENERGY #2017-34694 D.R.M.C.T.
APN# 329-31041 STINSON-BURLEY #3 TO BE PLUGGED & ABANDONED
APN# 329-31751 STINSON BURLEY MH1
NAVITAS PIPELINE 20' WIDE EASEMENT V. 1217, P. 1
NUSTAR PIPELINE DOC #2018-21477
ENTERPRISE PIPELINE 30' WIDE EASEMENT DOC. # 2018-18433
PIPELINE R.O.W. DOC. #2020-35669
NAVITAS PL ESMNT DOC. #2017-26407
PL ESMNT DOC #2018-15151
50' PIPELINE ESMNT DOC. #2018-1048-SUPERCEDED BY DOC. #2018-11535
SUNOCO 30' PIPELINE ESMNT DOC. #2015-2065
PROPOSED 20' UTILITY ESMNT (BY SEPARATE INSTRUMENT)
40' SANITARY SEWER EASEMENT DOC. # 2021-17562
20' DRAINAGE EASEMENT
10' UTILITY ESMNT (TYP.)
PL ESMNT VOL. 781, PG. 307
POB 5/8" REBAR N:10719693.07 E:1764462.90
1/2" IRF AT THE NE¢ OF SEC. 19 & THE NW¢ SEC. 20
ELECTRIC ESMNT DOC #2019-14322
2" IRON PIPE
S 14°30'16" E 2844.98'
S 75°43'57" W 1420.24'
S 75°43'57" W 343.80'
N 59°27'36" W 28.38'
N 75°20'13" E 417.86'
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PRELIMINARY PLAT

MOCKINGBIRD RIDGE

BEING A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, T-1-S, A-734, T&P RY. CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C7	162.48'	1000.00'	162.30'	N 58° 11' 19" E	9°18'34"
C8	396.47'	1870.00'	395.73'	N 59° 36' 28" E	12°08'52"
C9	190.56'	1870.00'	190.48'	N 71° 40' 58" E	5°50'19"
C10	118.51'	260.00'	117.49'	S 27° 55' 36" E	26°06'58"
C11	91.16'	200.00'	90.38'	N 27° 55' 36" W	26°06'58"
C12	200.49'	60.00'	119.40'	S 86° 07' 25" E	191°27'22"
C13	8.83'	10.00'	8.55'	S 15° 41' 25" E	50°35'21"
C14	8.90'	10.00'	8.61'	N 23° 39' 11" E	51°00'35"
C15	85.96'	260.00'	85.57'	S 24° 20' 24" E	18°56'33"
C16	64.74'	200.00'	64.46'	N 24° 08' 32" W	18°32'49"
C17	72.06'	260.00'	71.83'	S 73° 49' 14" W	15°52'46"
C18	113.80'	200.00'	112.27'	N 65° 27' 33" E	32°36'08"
C19	14.27'	10.00'	13.09'	S 49° 07' 59" E	81°47'12"
C20	274.14'	60.00'	90.71'	S 40° 52' 00" W	261°47'12"
C21	745.80'	1870.00'	740.86'	N 89° 05' 31" E	22°51'03"
C22	296.80'	560.00'	293.34'	S 25° 48' 05" E	30°22'01"
C23	266.42'	500.00'	263.28'	N 23° 30' 16" W	30°31'46"
C24	160.18'	1359.96'	160.09'	S 54° 45' 12" W	6°44'55"
C25	138.32'	550.00'	137.96'	N 11° 30' 45" W	14°24'35"
C26	9.63'	10.00'	9.26'	N 31° 52' 58" W	55°09'00"
C27	304.00'	60.00'	68.57'	N 85° 41' 32" E	290°18'01"
C28	9.63'	10.00'	9.26'	S 23° 16' 02" W	55°09'00"
C29	123.23'	490.00'	122.91'	S 11° 30' 45" E	14°24'35"
C30	191.11'	1359.96'	190.95'	N 66° 24' 51" E	8°03'06"
C31	92.53'	260.00'	92.04'	N 08° 31' 19" W	20°23'27"
C32	163.68'	1190.00'	163.55'	N 83° 25' 23" W	7°52'51"
C33	71.18'	200.00'	70.80'	S 08° 31' 19" E	20°23'27"
C34	38.89'	1110.00'	38.89'	S 81° 22' 29" W	2°00'26"
C35	39.89'	34.00'	37.64'	S 46° 45' 44" W	67°13'02"
C36	84.35'	131.00'	82.90'	S 31° 36' 01" W	36°53'36"
C37	38.39'	34.00'	36.38'	S 17° 41' 53" W	64°41'52"
C38	164.59'	1190.00'	164.45'	S 83° 51' 30" W	7°55'28"
C39	35.51'	34.00'	33.92'	N 70° 10' 52" W	59°50'45"
C40	89.40'	131.00'	87.67'	N 59° 48' 29" W	39°05'59"
C41	38.40'	34.00'	36.39'	N 47° 00' 16" W	64°42'25"
C42	28.89'	1359.96'	28.89'	N 75° 15' 45" E	1°13'02"
C43	9.63'	10.00'	9.26'	N 47° 45' 39" E	55°09'00"
C44	304.00'	60.00'	68.57'	S 14° 39' 51" E	290°18'01"
C45	9.63'	10.00'	9.26'	N 77° 05' 20" W	55°09'00"
C46	553.49'	1299.96'	549.32'	S 63° 41' 09" W	24°23'42"
C47	446.68'	1069.96'	443.44'	N 63° 58' 47" E	23°55'09"
C48	8.87'	10.00'	8.59'	N 49° 54' 50" E	50°50'39"
C49	200.66'	60.00'	119.38'	S 59° 42' 09" E	191°36'43"
C50	8.86'	10.00'	8.57'	S 10° 43' 32" W	50°45'21"
C51	45.43'	1069.96'	45.43'	S 45° 26' 53" W	2°25'58"
C52	126.58'	910.00'	126.48'	S 48° 13' 00" W	7°58'11"
C53	37.33'	260.00'	37.30'	N 36° 52' 19" W	8°13'34"
C54	78.54'	50.00'	70.71'	N 85° 59' 06" W	90°00'00"
C55	78.54'	50.00'	70.71'	S 04° 00' 54" W	90°00'00"
C56	84.61'	200.00'	83.98'	S 28° 51' 55" E	24°14'21"
C57	28.71'	200.00'	28.69'	N 36° 52' 19" W	8°13'34"
C58	108.09'	260.00'	107.31'	S 29° 04' 30" E	23°49'11"
C59	155.44'	910.00'	155.25'	N 63° 23' 38" E	9°47'13"
C60	8.57'	910.00'	8.57'	S 74° 51' 23" W	0°32'23"
C61	9.63'	10.00'	9.26'	N 12° 47' 22" E	55°09'00"
C62	304.00'	60.00'	68.57'	S 75° 12' 52" W	290°18'01"
C63	9.63'	10.00'	9.26'	S 42° 21' 39" E	55°09'00"
C64	523.04'	970.00'	516.72'	N 59° 40' 45" E	30°53'40"
C65	40.42'	1009.96'	40.42'	N 45° 22' 42" E	2°17'35"
C66	150.32'	4940.00'	150.32'	S 43° 38' 18" E	1°44'37"
C67	29.76'	779.96'	29.76'	S 45° 19' 30" W	2°11'11"
C68	647.05'	1200.00'	639.24'	S 59° 40' 45" W	30°53'40"
C69	9.37'	10.00'	9.03'	S 12° 03' 03" W	53°40'23"
C70	203.56'	60.00'	119.06'	S 58° 18' 15" E	194°22'58"
C71	8.84'	10.00'	8.55'	N 49° 48' 55" E	50°37'19"
C72	679.41'	1260.00'	671.21'	N 59° 40' 45" E	30°53'40"
C73	155.14'	5000.00'	155.14'	N 43° 37' 17" W	1°46'40"
C74	39.70'	530.00'	39.69'	S 42° 21' 52" E	4°17'30"
C75	28.92'	470.00'	28.91'	N 42° 44' 51" W	3°31'31"
C76	418.79'	1009.96'	415.80'	N 64° 04' 40" E	23°45'30"
C77	303.20'	778.97'	301.29'	S 64° 54' 22" W	22°18'05"
C78	400.09'	719.96'	394.96'	N 60° 09' 06" E	31°50'23"
C79	128.21'	560.00'	127.93'	S 82° 17' 27" W	13°07'02"
C80	114.47'	500.00'	114.22'	N 82° 17' 27" E	13°07'02"
C81	62.64'	440.00'	62.59'	S 84° 46' 15" W	8°09'26"
C82	9.00'	10.00'	8.70'	S 40° 40' 13" E	51°35'35"
C83	202.20'	60.00'	119.22'	S 30° 04' 33" W	193°05'07"
C84	8.99'	10.00'	8.69'	N 79° 07' 39" W	51°29'32"
C85	808.82'	1500.00'	799.05'	S 59° 40' 45" W	30°53'40"
C86	268.10'	479.96'	264.63'	S 60° 14' 03" W	32°00'18"
C87	9.63'	10.00'	9.26'	S 47° 45' 39" W	55°09'00"
C88	304.00'	60.00'	68.57'	N 14° 39' 51" W	290°18'01"
C89	9.63'	10.00'	9.26'	S 77° 05' 20" E	55°09'00"
C90	138.77'	419.96'	138.14'	N 66° 49' 57" E	18°55'58"

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C91	80.57'	260.00'	80.24'	N 23° 31' 46" W	17°45'15"
C92	9.63'	10.00'	9.26'	S 47° 45' 43" W	55°09'00"
C93	209.77'	60.00'	118.12'	N 59° 39' 28" W	200°18'40"
C94	9.63'	10.00'	9.26'	N 12° 55' 22" E	55°09'00"
C95	486.90'	1560.00'	484.92'	N 66° 11' 06" E	17°52'58"
C96	85.49'	260.00'	85.10'	N 24° 04' 18" W	18°50'20"
C98	250.39'	1560.00'	250.12'	N 48° 58' 19" E	9°11'47"
C99	65.76'	200.00'	65.46'	S 24° 04' 18" E	18°50'20"
C100	76.16'	500.00'	76.09'	N 84° 29' 09" E	8°43'39"
C101	9.63'	10.00'	9.26'	S 10° 15' 37" W	55°09'00"
C102	304.00'	60.00'	68.57'	N 72° 41' 07" E	290°18'01"
C103	9.63'	10.00'	9.26'	N 44° 53' 23" W	55°09'00"
C104	7.88'	10.00'	7.68'	S 07° 43' 11" W	45°10'36"
C105	189.96'	60.00'	119.99'	S 60° 23' 36" E	181°24'10"
C106	8.20'	10.00'	7.97'	N 52° 23' 03" E	46°57'28"
C107	8.20'	10.00'	7.97'	S 80° 39' 29" E	46°57'28"
C108	192.33'	60.00'	119.94'	N 30° 59' 29" E	183°39'32"
C109	8.06'	10.00'	7.84'	N 37° 44' 43" W	46°11'09"
C110	9.63'	10.00'	9.26'	S 12° 55' 22" W	55°09'00"
C111	304.00'	60.00'	68.57'	N 75° 20' 52" E	290°18'01"
C112	9.63'	10.00'	9.26'	N 42° 13' 38" W	55°09'00"
C113	38.40'	34.00'	36.39'	S 47° 00' 27" E	64°42'47"
C114	72.59'	131.00'	71.67'	S 63° 29' 21" E	31°44'57"
C115	39.89'	34.00'	37.64'	S 81° 13' 24" E	67°13'03"
C116	730.84'	1110.00'	717.71'	N 46° 18' 20" E	37°43'28"
C117	875.31'	1190.00'	855.71'	N 44° 34' 15" E	42°08'39"
C118	35.51'	34.00'	33.92'	S 35° 43' 12" W	59°50'45"
C119	101.19'	131.00'	98.69'	S 27° 55' 30" W	44°15'21"
C120	38.40'	34.00'	36.39'	S 17° 42' 04" W	64°42'14"
C121	194.36'	1305.00'	194.19'	S 67° 29' 25" W	8°32'01"
C122	8.46'	10.00'	8.21'	S 38° 54' 22" E	48°29'10"
C123	190.91'	60.00'	119.98'	S 28° 00' 17" W	182°18'28"
C124	9.14'	10.00'	8.82'	N 87° 00' 47" W	52°20'36"
C125	469.53'	1940.00'	468.38'	S 59° 52' 54" W	13°52'01"
C126	590.27'	1740.00'	587.44'	N 61° 56' 52" E	19°26'12"
C127	573.24'	1680.00'	570.47'	S 61° 45' 33" W	19°33'01"
C128	20.30'	500.00'	20.30'	S 37° 03' 23" E	2°19'34"
C129	390.50'	1480.00'	389.37'	N 59° 30' 27" E	15°07'04"
C130	9.43'	10.00'	9.09'	N 40° 02' 51" E	54°02'17"
C131	303.99'	60.00'	68.58'	S 21° 49' 45" E	290°17'04"
C132	9.83'	10.00'	9.44'	N 84° 50' 30" W	56°18'33"
C133	668.00'	1420.00'	661.86'	S 53° 31' 38" W	26°57'12"
C134	344.08'	840.00'	341.68'	S 51° 47' 07" W	23°28'10"
C135	72.66'	840.00'	72.64'	S 72° 52' 11" W	4°57'22"
C136	8.91'	10.00'	8.62'	N 39° 40' 44" W	51°03'19"
C137	205.46'	60.00'	118.80'	N 32° 53' 36" E	196°12'00"
C138	9.00'	10.00'	8.70'	S 74° 47' 05" E	51°33'22"
C139	121.89'	200.00'	120.01'	N 59° 11' 31" E	34°55'05"
C140	293.25'	500.00'	289.07'	N 58° 32' 06" E	33°36'15"
C141	188.13'	2000.00'	188.06'	N 64° 34' 01" E	5°23'22"
C142	16.96'	100.00'	16.94'	S 19° 31' 22" E	9°43'10"
C143	32.57'	160.00'	32.51'	N 20° 29' 39" W	11°39'44"
C144	204.95'	2000.00'	204.86'	N 56° 04' 17" E	5°52'17"
C145	60.85'	200.00'	60.62'	S 39° 33' 02" E	17°25'59"
C146	206.04'	440.00'	204.16'	S 55° 08' 53" W	26°49'49"
C147	42.60'	140.00'	42.43'	N 39° 33' 02" W	17°25'59"
C148	49.54'	560.00'	49.52'	N 35° 41' 07" W	5°04'06"
C149	161.20'	1480.00'	161.12'	N 44° 57' 21" E	6°14'26"
C150	74.64'	460.26'	74.55'	S 35° 28' 46" E	9°17'27"
C151	4.25'	10.00'	4.22'	S 18° 39' 22" E	24°21'20"
C152	195.63'	60.00'	119.79'	N 80° 06' 57" E	186°48'42"
C153	9.83'	10.00'	9.44'	N 14° 52' 52" E	56°20'34"
C154	280.48'	490.00'	276.66'	N 59° 27' 02" E	32°47'46"
C155	154.81'	260.00'	152.54'	S 58° 47' 27" W	34°06'57"
C156	123.60'	550.00'	123.34'	S 48° 10' 16" W	12°52'35"
C157	133.38'	520.00'	133.01'	N 47° 23' 55" E	14°41'45"
C158	146.93'	578.97'	146.53'	S 48° 50' 21" W	14°32'24"
C159	5.49'	10.00'	5.42'	S 40° 16' 22" W	31°26'21"
C160	185.27'	60.00'	119.96'	N 66° 59' 06" W	176°55'25"
C161	9.13'	10.00'	8.82'	N 04° 40' 43" W	52°18'39"
C162	103.85'	550.00'	103.69'	S 70° 26' 22" W	10°49'06"
C163	425.16'	780.00'	419.92'	N 59° 43' 56" E	31°13'51"
C164	43.91'	375.26'	43.89'	N 36° 58' 38" W	6°42'18"
C165	368.33'	615.00'	362.85'	N 58° 53' 26" E	34°18'55"
C166	50.61'	85.00'	49.87'	N 58° 47' 27" E	34°06'57"
C167	201.45'	1040.00'	201.14'	S 08° 36' 08" E	11°05'54"
C168	254.53'	1160.00'	254.02'	S 09° 20' 20" E	12°34'20"
C169	13.71'	1160.00'	13.71'	S 15° 57' 49" E	0°40'38"
C170	16.55'	1040.00'	16.55'	N 16° 04' 52" W	0°54'43"
C171	228.20'	1040.00'	227.74'	N 09° 20' 20" W	12°34'20"
C172	224.70'	1160.00'	224.35'	N 08° 36' 08" W	11°05'54"
C173	11.44'	2376.57'	11.44'	N 14° 16' 46" W	0°16'33"
C174	10.39'	2440.00'	10.39'	S 14° 16' 24" E	0°14'38"
C175	54.58'	200.00'	54.41'	S 22° 28' 11" E	15°38'05"

LINE TABLE

LINE	BEARING	DISTANCE
L15	S 64°26'25" E	25.94'
L16	N 26°47'39" E	29.88'
L17	S 59°58'48" E	28.23'
L18	N 31°14'44" E	27.73'
L19	S 40°59'06" E	29.54'
L20	N 40°59'06" W	37.73'
L21	N 85°54'49" W	28.32'
L22	S 06°34'17" W	29.45'
L23	N 76°18'09" W	30.63'
L24	S 12°22'57" E	60.14'
L25	S 53°55'02" E	28.62'
L26	S 36°45'37" W	28.28'
L27	N 08°14'23" W	2.77'
L28	N 04°18'28" W	9.45'
L29	N 08°14'23" W	61.06'
L30	N 43°05'09" W	28.40'
L31	N 84°28'41" W	28.50'
L32	S 19°54'57" W	31.25'
L33	S 68°22'30" E	25.89'
L34	N 26°04'19" E	28.39'
L35	N 18°43'03" W	52.32'
L36	N 01°40'25" E	61.88'
L37	S 44°59'16" W	29.10'
L38	S 75°20'52" W	6.50'
L39	S 15°31'27" E	4.78'
L40	S 18°43'03" E	53.65'
L41	S 62°14'33" E	29.00'
L42	N 75°20'52" E	1.79'
L43	S 05°01'53" W	27.78'
L44	S 03°06'27" W	28.73'
L45	S 84°45'01" E	28.89'
L46	N 75°20'09" E	61.07'
L47	S 59°39'29" E	28.28'
L48	N 30°20'31" E	28.29'
L49	N 79°57'50" W	27.18'
L50	N 32°45'32" W	43.42'
L51	S 59°46'15" W	60.00'
L52	N 63°07'02" E	50.02'
L53	N 12°33'22" E	28.13'
L54	N 32°45'32" W	45.40'
L55	N 85°59'06" W	28.28'
L56	S 04°00'54" W	28.28'
L57	S 63°53'30" E	27.18'
L58	S 28°38'31" W	28.13'
L59	N 59°41'52" W	28.20'
L60	N 30°10'13" E	28.31'
L61	S 86°56'47" E	27.87'
L62	S 02°15'04" W	28.33'
L63	N 59°49'47" W	28.26'
L64	N 84°47'28" W	29.64'
L65	N 40°59'06" W	6.77'
L66	N 05°19'23" E	27.63'
L67	N 75°20'09" E	69.95'
L68	S 59°39'29" E	28.28'
L69	S 30°20'31" W	28.29'
L70	S 75°20'09" W	71.23'
L71	S 59°39'29" E	28.28'
L72	S 32°15'29" W	27.21'

LINE TABLE

LINE	BEARING	DISTANCE
L73	N 59°19'09" W	28.56'
L74	N 30°07'35" E	28.28'
L75	S 78°18'27" E	28.37'
L76	N 33°29'28" W	10.37'
L77	S 33°29'28" E	9.22'
L78	N 10°13'24" E	28.91'
L79	N 14°39'08" W	221.48'
L80	N 10°41'44" E	28.13'
L81	N 75°21'48" E	4.44'
L82	N 59°39'37" W	28.28'
L83	N 60°05'56" W	28.06'
L84	S 29°54'03" W	28.50'
L85	N 60°05'57" W	28.06'
L86	N 30°20'42" E	28.29'
L87	S 59°39'28" E	28.28'
L88	S 29°54'03" W	28.50'
L90	S 29°54'03" W	28.50'
L91	S 59°10'10" E	29.79'
L92	S 17°18'53" E	3.01'
L93	N 29°27'37" E	27.39'
L94	S 59°19'00" E	28.56'
L95	S 30°41'00" W	28.01'
L96	S 76°14'07" W	48.82'
L97	S 59°30'10" E	28.46'
L98	N 30°36'20" E	28.16'
L99	N 60°05'57" W	28.06'
L100	N 29°54'03" E	28.50'
L101	S 60°05'57" E	28.06'
L102	S 14°08'13" E	6.95'
L103	N 29°54'03" E	28.50'
L104	S 60°05'57" E	28.06'
L105	N 60°05'57" W	28.06'
L106	S 84°00'35" E	25.25'
L107	N 29°54'03" E	28.50'
L108	S 19°41'43" E	8.53'
L109	S 75°20'52" W	6.50'
L110	N 59°39'28" W	28.28'
L111	S 30°20'13" W	28.28'
L112	S 10°54'34" W	29.85'
L113	S 79°28'01" E	26.44'
L114	N 14°39'08" W	46.63'
L115	N 75°20'52" E	25.00'
L116	S 75°20'52" W	25.00'
L117	N 14°39'08" W	43.24'
L118	S 08°26'52" W	29.16'
L119	S 83°19'44" E	28.23'
L120	S 75°20'52" W	6.04'
L121	S 25°01'31" W	31.01'
L122	N 62°13'15" W	26.73'
L123	S 30°35'53" W	28.41'
L124	N 59°24'07" W	28.16'
L125	N 30°35'53" E	28.41'
L126	N 30°20'32" E	28.29'
L128	N 59°39'47" W	28.28'
L129	N 26°26'33" E	30.14'
L130	S 73°09'03" E	28.15'
L131	S 30°20'13" W	28.28'
L132	N 15°29'36" E	28.87'

LINE TABLE

LINE	BEARING	DISTANCE
L133	S 78°59'32" E	26.68'
L134	S 48°16'02" E	29.00'
L135	S 03°16'02" E	28.28'
L136	N 62°23'56" W	26.90'
L137	S 86°43'58" W	28.28'
L138	N 48°16'02" W	29.00'
L139	N 05°07'19" E	29.09'
L140	S 87°55'11" E	26.30'
L141	N 75°50'55" E	13.62'
L142	S 59°09'05" E	28.28'
L143	S 30°50'55" W	28.28'
L144	S 75°50'55" W	13.62'
L145	S 41°43'58" W	10.35'
L146	N 84°33'02" W	23.67'
L147	N 05°39'45" E	33.32'
L148	S 77°29'34" E	27.45'
L149	S 12°24'31" W	29.14'
L150	N 90°00'00" W	25.54'
L151	N 02°34'53" E	30.28'
L152	S 59°24'07" E	28.16'
L153	S 30°50'55" W	28.28'
L154	S 75°50'55" W	13.62'
L155	N 73°25'22" W	29.45'
L156	N 20°35'13" W	85.00'
L157	N 22°22'59" W	85.00'
L158	N 24°10'45" W	85.00'
L159	N 25°58'31" W	85.00'
L160	N 27°46'17" W	85.00'
L161	N 29°34'03" W	85.00'
L162	N 31°21'49" W	85.00'
L163	N 33°09'35" W	85.00'
L164	N 34°57'22" W	85.00'
L165	N 36°45'08" W	85.00'
L166	N 36°16'14" W	85.00'
L167	N 34°37'26" W	85.00'
L168	N 32°58'39" W	85.00'
L169	N 31°19'52" W	85.00'
L170	N 29°41'05" W	85.00'
L171	N 28°02'17" W	85.00'
L172	N 26°23'30" W	85.00'
L173	N 24°44'43" W	85.00'
L174	N 23°05'56" W	85.00'
L175	N 21°27'09" W	85.00'
L176	N 19°48'21" W	85.00'
L177	S 43°22'19" W	85.92'
L178	S 51°46'50" W	85.00'
L179	S 51°46'50" W	85.22'
L180	N 59°09'58" E	85.00'
L181	S 14°09'05" E	85.63'
L182	S 14°09'05" E	85.06'
L183	S 75°50'55" W	33.62'
L184	N 33°11'29" W	55.02'
L185	S 44°12'32" E	85.00'
L186	S 39°25'58" E	85.00'
L187	S 38°18'31" E	85.15'
L188	S 30°33'43" E	73.47'
L189	S 49°00'54" W	22.62'

BOUNDARY CURVE TABLE

CURVE	ARC LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	143.11'	920.00'	142.96'	N 57° 59' 24" E	8°54'44"
C2	1599.03'	1950.00'	1554.60'	N 77° 01' 32" E	46°59'00"
C3	351.41'	1110.00'	349.94'	S 88° 33' 08" E	18°08'20"
C4	137.24'	995.00'	137.13'	N 78° 25' 37" E	7°54'10"
C5	649.32'	995.00'	637.86'	N 51° 36' 34" E	37°23'25"
C6	105.99'	1110.00'	105.95'	N 30° 10' 44" E	5°28'16"

BOUNDARY LINE TABLE

LINE	BEARING	DISTANCE
L1	N 07°37'18" W	115.00'
L2	N 72°23'25" E	72.42'
L3	S 57°05'08" E	115.00'
L4	N 70°40'27" E	112.51'
L5	S 66°30'04" E	115.00'
L6	N 77°16'15" E	15.51'
L7	N 14°39'08" W	46.14'
L8	N 69°08'15" E	114.62'
L9	N 81°18'37" E	60.27'
L10	N 75°20'52" E	115.00'
L11	N 14°25'02" W	7.06'
L12	N 75°20'52" E	115.00'
L13	N 80°51'01" E	60.26'
L14	N 75°20'52" E	487.58'

LEGAL DESCRIPTION

FIELD NOTE DESCRIPTION OF A 258.87 ACRE TRACT OF LAND, SITUATED IN SECTION 18, BLOCK 38, TOWNSHIP 1 SOUTH, ABSTRACT NUMBER 734, GLO FILE NUMBER 66103, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, AND BEING A PORTION OF THAT CALLED 340.49 TRACT DESCRIBED IN DOCUMENT NUMBER 2021-35675 OF THE OFFICIAL PUBLIC RECORDS OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING *AT N (Y) 10179693.07, E(X) 1764462.90, A FIVE EIGHTHS INCH IRON ROD FOUND IN THE NORTH LINE OF SECTION 20, SAME BLOCK, FOR THE SOUTH COMMON CORNER OF SECTION 17, SAME BLOCK AND SAID SECTION 18, FROM WHICH A SIX INCH STEEL FENCE POST CALLED THE NORTHWEST CORNER OF A CALLED 244.4 ACRE TRACT AS DESCRIBED IN DOCUMENT NUMBER 2017-34694, OF SAID OFFICIAL PUBLIC RECORDS, BEARS N 63°31'14"W, 44.34 FEET, AND A 2 INCH IRON PIPE CALLED THE SOUTHWEST CORNER OF A CALLED 316.39 ACRE TRACT IN DOCUMENT NUMBER 2011-8666 OF SAID OFFICIAL PUBLIC RECORDS BEARS N 82°07'34"W, 36.64 FEET, AND BEING THE SOUTHEAST CORNER HEREOF;*

THENCE *S 75°43'57"W, ALONG THE LINE COMMON TO SAID SECTIONS 20 AND 18, AT 75.80 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT OR NEAR THE NORTH COMMON CORNER OF SAID SECTION 20 AND SECTION 19, SAME BLOCK, CONTINUING ALONG SAID COMMON LINE, AT 572.95 FEET PASSING NEAR A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF TRACTS 2 AND 3 AS DESCRIBED IN DOCUMENT NUMBER 2018-20726, OF SAID OFFICIAL PUBLIC RECORDS, AT 1981.61 FEET PASSING A ONE HALF INCH IRON ROD AT THE NORTH COMMON CORNER OF SAID TRACT 3 AND A CALLED "TRACT 3" IN DOCUMENT NUMBER 2018-2268, OF SAID OFFICIAL PUBLIC RECORDS, AT 3801.97 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID TRACT 3, BEING THE NORTHEAST CORNER OF A TRACT CALLED 12.3 ACRES IN VOLUME 867 ON PAGE 35 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, AT 3951.98 FEET PASSING A COPPERWELD ROD WITH CAP AT THE NORTHWEST CORNER OF SAID CALLED 12.3 ACRE TRACT, BEING THE NORTHEAST CORNER OF A CALLED TRACT 1, IN SAID DOCUMENT NUMBER 2018-2268, IN ALL 4132.38 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM#1019451" (RPC) SET FOR THE SOUTHWEST CORNER HEREOF,*

THENCE *N 14°07'10"W, 419.64 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *S 75°52'50"W, 28.10 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;*

THENCE *N 14°07'10"W, 2069.30 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;*

THENCE *N 22°36'06"W., 80.28 FEET TO A POINT OF DEFLECTION RIGHT AND A POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 920.00 FEET AND A CHORD BEARING AND DISTANCE OF N.57°59'24"E., 142.96 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 143.11 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 1950.00 FEET AND A CHORD BEARING AND DISTANCE OF N.77°01'32"E., 1554.60 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 1599.03 FEET TO AN "RPC" SET AT THE POINT OF REVERSE CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF S.88°33'08"E., 349.94 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 351.41 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION LEFT;*

THENCE *N.07°37'18"W., 115.00 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.78°25'37"E., 137.13 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 137.24 FEET TO AN "RPC" SET AT THE POINT OF TANGENCY;*

THENCE *N.72°23'25"E., 72.42 FEET TO AN "RPC" SET AT THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 995.00 FEET AND A CHORD BEARING AND DISTANCE OF N.51°36'34"E., 637.86 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONCAVE TO THIS TRACT, 649.32 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT;*

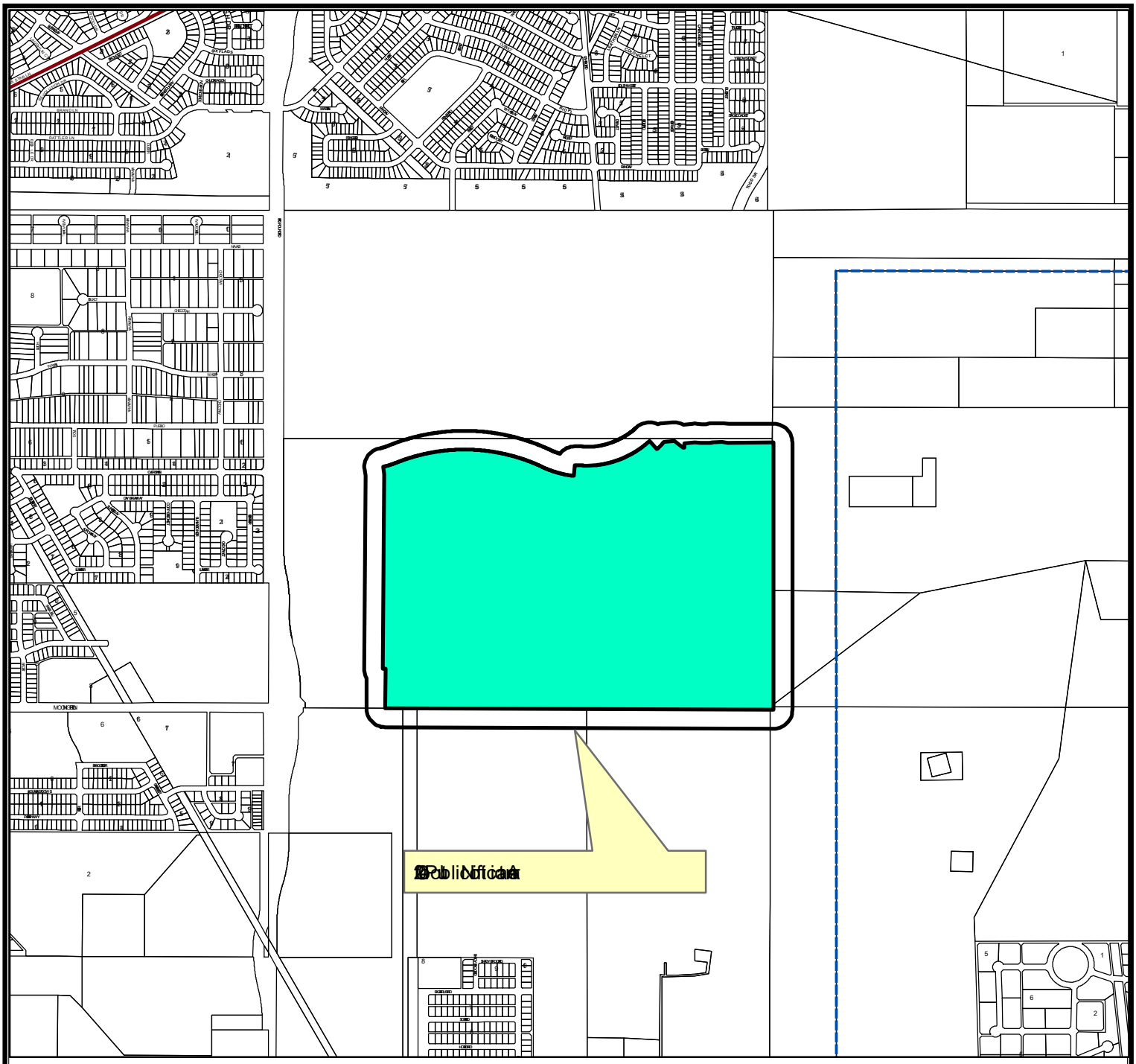
THENCE *S.57°05'08"E., 115 FEET TO A POINT OF INTERSECTION AT THE POINT OF CURVATURE ON A CURVE TO THE NORTHEAST, HAVING A RADIUS OF 1110.00 FEET AND A CHORD BEARING AND DISTANCE OF N.30°10'44"E., 105.95 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE, BEING CONVEX TO THIS TRACT, 105.99 FEET TO AN "RPC" SET AT A POINT OF INTERSECTION RIGHT, FOR AN EXTERIOR CORNER HEREOF;*

THENCE *THE FOLLOWING 11 COURSES AND DISTANCES, ALL TO AN "RPC" FOR ANGLE POINTS IN THE BOUNDARY HEREOF;*

1. *N.70°45'27"E., 112.51 FEET;*
2. *S.66°30'04"E., 115.00 FEET;*
3. *N.77°16'15"E., 15.51 FEET,*
4. *N.14°39'08"W., 46.14 FEET;*
5. *N.69°08'15"E., 114.62 FEET;*
6. *N.81°18'37"E., 60.27 FEET,*
7. *N.75°20'52"E., 115.00 FEET;*
8. *N.14°25'02"W., 7.06 FEET;*
9. *N.75°20'52"E., 115.00 FEET;*
10. *N.80°51'01"E., 60.26 FEET;*
11. *N.75°20'52"E., 487.58 FEET TO AN "RPC" SET ON THE WEST LINE OF A CALLED 632.79 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 2011-8666 OF SAID DEED RECORDS, ON THE LINE COMMON TO SAID SECTIONS 17 AND 18, FOR THE NORTHWEST CORNER HEREOF;*

THENCE *S.14°30'16"E., ALONG THE COMMON LINE OF SAID SECTIONS 17 AND 18, AT 1623.59 FEET PASSING A ONE HALF INCH IRON ROD FOR THE NORTHWEST CORNER OF A CALLED 22.368 ACRE TRACT IN DOCUMENT NUMBER2014-5886 OF SAID OFFICIAL PUBLIC RECORDS, BEARING S.75°52'01"W., 15.87 FEET, AT 2815.90 FEET PASSING SAID 6 INCH STEEL FENCE POST BEARING S.75°29'44"W., 33.47 FEET, IN ALL 2844.98 FEET TO THE* ***POINT OF BEGINNING****, CON



LOCATION MAP

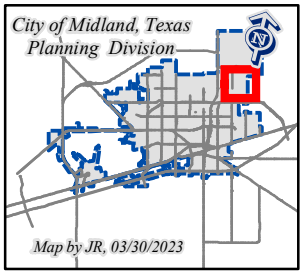
P-23-1585 **Scale: 1" = 200'**

Proposed preliminary plat of Mockingbird Ridge, being a plat of a 258.87-acre tract of land, situated in Section 18, Block 38, T-1-S, A-734, T&P RY Co. Survey, City of Midland, Midland County, Texas.

Generally located north of East Mockingbird Lane, approximately 900 feet east of North Fairgrounds Road. (Council District 1)

LEGEND

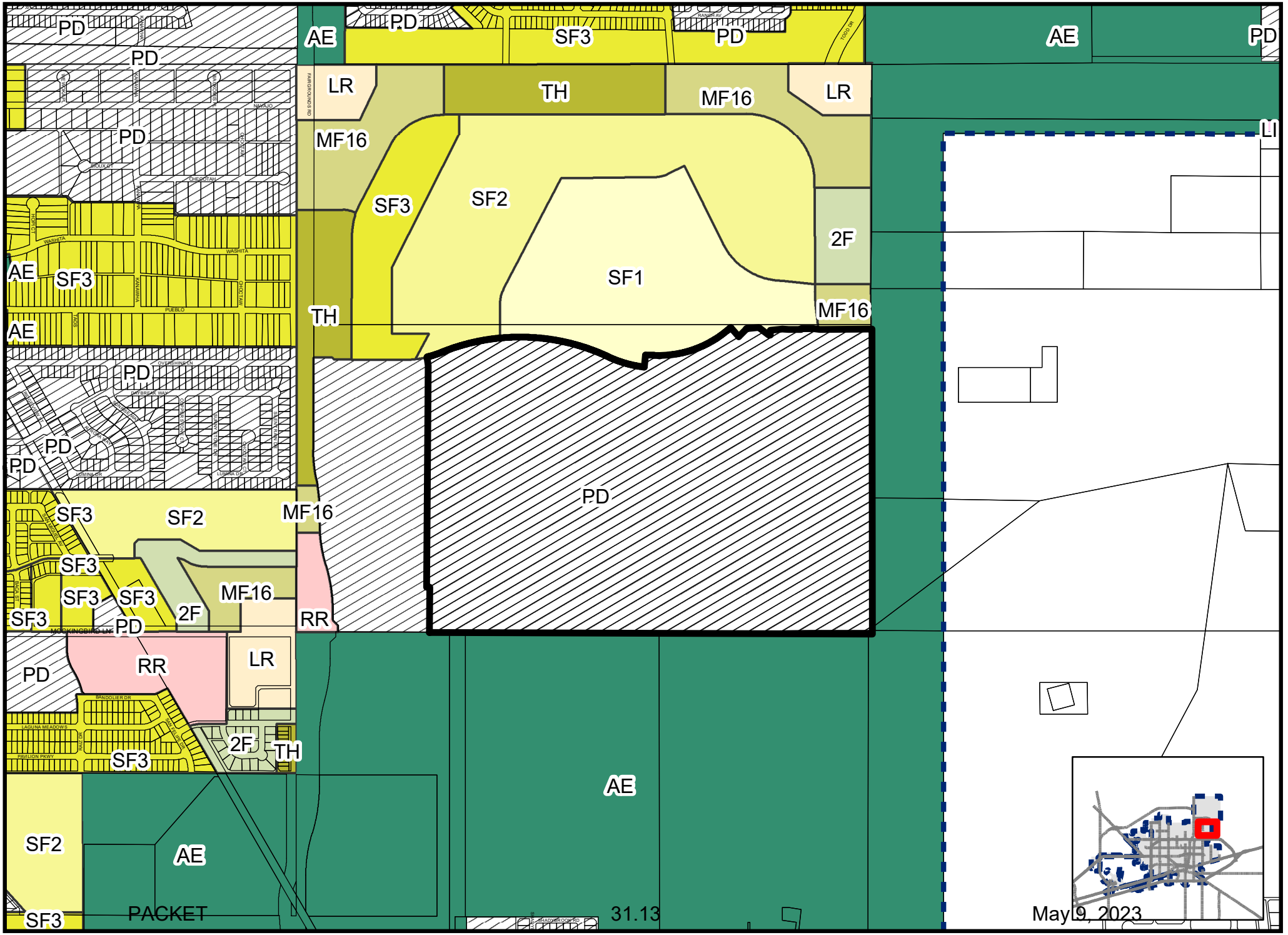
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By JR, 4/10/2023

P-23-1585

Scale: 1" = 1,150'

ZONING MAP

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City Council Meeting

Item Number: 32

Meeting Date: May 9, 2023

To: City Council / City Manager

From: Christy Weakland, Director

Subject: DISCUSSION AND CONSIDERATION OF ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF "CITY OF MIDLAND, TEXAS GENERAL OBLIGATION BONDS, SERIES 2023" INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH BONDS, ESTABLISHING PARAMETERS FOR THE SALE AND ISSUANCE OF SUCH BONDS AND DELEGATING CERTAIN MATTERS TO AN AUTHORIZED OFFICIAL OF THE CITY (DISTRICT: NONE) (FINANCE)

Purpose:

Adoption of an ordinance to issue the City of Midland, Texas General Obligation Bonds, Series 2023.

Recommended City Council Action:

Approve

Fiscal Impact:

Total issuance size for the City of Midland, Texas General Obligation Bonds, Series 2023 is a not-to-exceed $25 million. Fees incidental to the sale of the bonds will be paid for from bond proceeds.

Discussion:

This ordinance provides for the Delegation of Authority to the Pricing Officer, the Interim City Manager or the Finance Director, allowing for the City to take the most advantageous pricing to fulfill the obligations of the ordinance. The term of the ordinance is 6 months from May 9, 2023 to issue the bonds.

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE authorizing the issuance of "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2023"; levying a continuing direct annual ad valorem tax for the payment of said bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said bonds; establishing procedures for the sale and delivery of said bonds; and delegating matters relating to the sale and issuance of said bonds to an authorized City official; enacting provisions incident and related to the purposes and subject of this ordinance; and providing an effective date.

WHEREAS, the City Council (the "Council") of the City of Midland, Texas (the "City") hereby finds and determines that it is in the best interests of the City to issue bonds to pay the costs of making permanent public improvements authorized by the voters of the City at a bond election held on November 7, 2017 (the "Election"), and that the Pricing Officer be authorized to determine, from such voted authorization, the purposes and amounts for which such bonds shall be issued in accordance with the parameters specified herein, such determination to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer (hereinafter defined), all in accordance with the provisions of Chapters 1331 and 1371, Texas Government Code, as amended, and now, therefor,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND:

Section 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation bonds of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2023", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds (1) to make various permanent public improvements for the City, to wit: (i) designing, acquiring, constructing, maintaining, renovating, improving, repairing, extending, expanding, and enhancing streets, thoroughfares, alleys, sidewalks, bridges, intersections, screening walls, and other public ways, including participation in joint projects with federal, state and local public entities and agencies, computerized signalization and monitoring equipment and other traffic controls, grade separations, street lighting, necessary or incidental utility relocation, and drainage improvements in connection with the foregoing and the purchase of land, easements, rights-of-way, and other real property interests necessary therefor and (ii) designing, constructing, improving, and extending, the City's waterworks and sewer system, and the purchase of land, easements, rights-of-way, and other real property interests necessary therefor and (2) to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Election and the Constitution and laws of the State of Texas, including Chapters 1331 and 1371, Texas Government Code, as amended. The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

Section 2. Fully Registered Obligations – Terms. The Bonds shall be issued as fully registered obligations, without coupons, and the Bonds (other than the Initial Bond(s) referenced in Section 8 hereof) shall be in denominations of $5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years and in amounts (the "Stated Maturities") and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the applicable Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the applicable Pricing Certificate.

Section 3. Delegation of Authority to Pricing Officer. (a) As authorized by Section 1371.053, Texas Government Code, as amended, the Interim City Manager or the Director of Finance of the City (either, the "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Bonds, in one or more series, and carrying out the other procedures specified in this Ordinance, including determining the purposes and amounts of the Bonds to be issued to fund public improvements authorized at the Election, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 29 hereof as may be required by the purchasers of the Bonds in connection with any amendments to the Rule (hereinafter defined), and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed $25,000,000;

(ii) the maximum true interest cost for the Bonds shall not exceed 5.75%; and

(iii) the maximum maturity date of the Bonds shall not exceed March 1, 2049.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to make the selection of the municipal bond insurance company for the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year of the date of the adoption of this Ordinance. The Pricing Officer may exercise such delegation on more than one occasion during such time period. The Bonds shall be

sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

Section 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar to serve as paying agent/registrar for the Bonds (the "Paying Agent/Registrar") shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer or the Mayor and City Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices as provided in the Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest due on the Bonds shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest

payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for other Bonds having the same maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such

new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

Section 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

Section 7. Execution – Registration. The Bonds shall be executed on behalf of the City by the Mayor or the Mayor Pro Tem under the City's seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201 of the Texas Government Code, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public

Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

Section 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of like kind and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bonds shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS

GENERAL OBLIGATION BOND
SERIES 2023

Bond Date:	Interest Rate:	Stated Maturity:	CUSIP No.:
_____, 20__	_____%	_____, 20__	_____

Registered Owner:

Principal Amount: DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Martin and Midland, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in _____, _____, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of $_____ (herein referred to as the "Bonds") for the purpose of providing funds (1) to make permanent public improvements for the City, to wit: (i) designing, acquiring, constructing, maintaining, renovating, improving, repairing, extending, expanding, and enhancing streets,

thoroughfares, alleys, sidewalks, bridges, intersections, screening walls, and other public ways, including participation in joint projects with federal, state and local public entities and agencies, computerized signalization and monitoring equipment and other traffic controls, grade separations, street lighting, necessary or incidental utility relocation, and drainage improvements in connection with the foregoing and the purchase of land, easements, rights-of-way, and other real property interests necessary therefor and (ii) designing, constructing, improving, and extending, the City's waterworks and sewer system, and the purchase of land, easements, rights-of-way, and other real property interests necessary therefor and (2) to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Chapters 1331 and 1371 of the Texas Government Code, as amended, and pursuant to a Pricing Certificate and an ordinance adopted by the governing body of the City (the "Bond Ordinance", and jointly with the Pricing Certificate, the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__		Term Bonds due _____, 20__	
Redemption Date	Principal Amount	Redemption Date	Principal Amount
_____, 20__		_____, 20__	
_____, 20__*		_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of $5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for

the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to

payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF MIDLAND, TEXAS

_____
Mayor

ATTEST

_____
City Secretary

(City Seal)

(c) The Initial Bond shall be in the respective form set forth therefor in subsection (b) of this Section, except as follows:

Heading and the first paragraph shall be amended to read as follows:

NO. T-1 $_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION BOND
SERIES 2023

Bond Date: _____, 20__

Registered Owner:

Principal Amount: DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Martin and Midland, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the registered owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on _____ in the years and in principal installments in accordance with the following schedule:

STATED MATURITY	PRINCIPAL AMOUNT	INTEREST RATE(S)

(Information to be inserted from Pricing Certificate)

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal installments hereof from the _____ at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____, 20__, and each _____ and _____ thereafter, until maturity or prior redemption. Principal installments of this Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by _____ (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in _____, _____, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located

are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

Section 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations by law prescribed, sufficient to pay the principal of and interest on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the City and shall be deposited in the "SPECIAL SERIES 2023 GENERAL OBLIGATION BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, City Manager, Interim City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, City Manager, Interim City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

Section 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the City and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and

delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

Section 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise provided in the Pricing Certificate, the term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, and (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

Section 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 29 hereof. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

(1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

Section 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Nonpurpose Investment*" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"*Rebate Amount*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Regulations*" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"*Yield*" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan: Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the City shall pay to the United States out of the general fund, other appropriate fund, or, if permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Interim City Manager and Director of Finance of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

(k) Qualified Tax-Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year in which the Bonds are issued will not exceed the applicable limitation.

Section 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the City to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City, as the act and deed of this Council, and to make a determination as to whether the terms are in the City's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the City's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;

8. The certain conditions to the obligations of the City under the Purchase Contract;

9. Termination of the Purchase Contract;

10. Particular covenants of the City;

11. The survival of representations made in the Purchase Contract;

12. The payment of any expenses relating to the Purchase Contract;

13. Notices; and

14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Pricing officer or the Mayor and City Secretary of the City are further authorized and directed to deliver for and on behalf of the City copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

Section 16. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the City shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Section 17. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be disbursed for payment of the costs of making permanent public improvements of the City, the costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written instructions from the City or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Section 18. Notices to Holders – Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 19. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

Section 20. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

Section 21. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

Section 22. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

Section 23. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance and the Pricing Certificate shall be and remain controlling as to the matters contained herein and therein.

Section 24. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 25. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 26. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

Section 27. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this

Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 28. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

Section 29. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"*Financial Obligation*" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"*MSRB*" means the Municipal Securities Rulemaking Board.

"*Rule*" means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

"*SEC*" means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within 270 days after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) if not provided as part of such financial information and operating data, audited financial statements of the City within twelve months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate. If audited financial statements are not available by the required time, the City will file unaudited financial statements within such twelve-month period and audited financial statements when and if such audited financial statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any

other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in immediately preceding items 15 and 16 to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 30. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

Section 31. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Interim City Manager, Director of Finance and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Interim City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any technical ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 32. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

Section 33. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

PASSED AND ADOPTED, this May 9, 2023.

CITY OF MIDLAND, TEXAS

_____
Mayor

ATTEST:

_____
City Secretary

[CITY SEAL]

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2023 (this "Agreement"), by and between _____ Bank, a ___ association duly organized and existing under the laws of the _____, or its successors (the "Bank") and the City of Midland, Texas (the "Issuer").

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of Midland, Texas General Obligation Bonds, Series 2023" (the "Securities"), dated _____, 2023, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2023; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE
APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) and Section 2274.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO
DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE
PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

_____ Bank
_____
_____
Attention: _____

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR
REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. The Bank represents and warrants that it will at all times have immediate access to the Security Register by electronic or other means and

will be capable at all times of producing a hard copy of the Security Register for use by the Issuer. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE
THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality

of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX
MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan or Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

_____ [BANK]

By:_____

Title: _____

Address: _____
_____

CITY OF MIDLAND, TEXAS

By: _____
_____ and Pricing Officer

Address: 300 N. Loraine
Midland, Texas 79701