



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

OPENING ITEMS

1. Invocation – Reverend Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - a. REGULAR CITY COUNCIL MEETING OF MAY 26, 2020
4. 2020-099 – RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A VIDEO BOARD AT GRANDE STADIUM WITH DAKTRONICS, INC., THROUGH BUYBOARD, AT A TOTAL COST OF \$277,243.00; AND APPROVING \$27,757.00 FOR CONTINGENCIES;(GENERAL SERVICES)
5. 2020-100 – RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, ON BEHALF OF THE CITY OF MIDLAND, AN INSTRUMENT GRANTING A UTILITY EASEMENT AND RIGHT-OF-WAY LOCATED IN A 0.503-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 1, LLANO COUNTRY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS TO ONCOR ELECTRIC DELIVERY COMPANY LLC (GENERAL SERVICES)
6. 2020-101 – RESOLUTION SUPPORTING THE TOP-TIER PRIORITIZATION OF CERTAIN TEXAS DEPARTMENT OF TRANSPORTATION PROJECTS; AND SUPPORTING THE EXPANSION OF THE TEXAS DEPARTMENT OF TRANSPORTATION PORTS-TO-PLAINS STUDY (ENGINEERING SERVICES)
7. 059-2020 – MOTION ON REQUEST BY MAVERICK ENGINEERING TO DEFER PUBLIC WASTEWATER, PAVING, AND SIDEWALK IMPROVEMENTS FOR COUNTRY SKY ADDITION, SECTION 26 AND TO WAIVE THE CORRESPONDING FINANCIAL SECURITY GUARANTEE VALUED AT \$134,596.00, AN AMOUNT EQUAL TO THE ESTIMATED COST TO CONSTRUCT THE PUBLIC INFRASTRUCTURE (ENGINEERING SERVICES)

8. 060-2020 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND MID-STATES OPERATING COMPANY, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4, 5, 9 AND 10, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
9. 061-2020 – MOTION AUTHORIZING THE EXECUTION OF SURFACE USE AGREEMENT WITH CROWNQUEST OPERATING, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS, 2, 4, 9, 11, 14, 16, AND 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS AND SECTIONS 19 AND 30, BLOCK 36, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)
10. 062-2020 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND CROWNQUEST OPERATING LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 2, 10, 13, 14, 20 AND 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (UTILITIES)

SECOND READINGS

11. 10086 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 12, BLOCK 30, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CARVER STREET AND EAST 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 (DEVELOPMENT SERVICES) (First reading held May 26, 2020)

PUBLIC HEARINGS

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

12. 063-2020 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO COG OPERATING LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MASK HZ UNIT NO.1007JH; MASK HZ UNIT NO. 1007SH; MASK HZ UNIT NO. 1008MH; AND MASK HZ UNIT NO. 1009JH; SAID WELLS BEING GENERALLY LOCATED BETWEEN 2,260 FEET AND 2,380 FEET EAST OF NORTH GARFIELD STREET EXTENSION AND 243 FEET NORTH OF GREEN TREE BOULEVARD EXTENSION (DEVELOPMENT SERVICES)
13. 064-2020 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PARSLEY ENERGY OPERATIONS, LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: HOGAN 1-24-E-2609H AND HOGAN 1-24-G-2613VH; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1900 FEET AND 1870 FEET NORTH OF EAST LOOP 250 NORTH AND 1,381 FEET WEST OF NORTH FAIRGROUNDS ROAD EXTENSION (DEVELOPMENT SERVICES)

14. 10087 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1,BLOCK 1, ROPER ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND NORTH COUNTY ROAD 1250); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION(DEVELOPMENT SERVICES)
15. 065-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2021 CDBG GRANT APPLICATION SUBMISSION AND THE FIVE YEAR CONSOLIDATED PLAN GOALS (DEVELOPMENT SERVICES)
16. 066-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2024 ANALYSIS OF IMPEDIMENTS TO FURTHERING FAIR HOUSING CHOICE (DEVELOPMENT SERVICES)

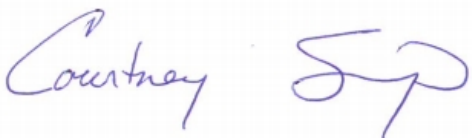
MISCELLANEOUS

17. 10088 – AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES”, OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (UTILITIES)

EXECUTIVE SESSION

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

Respectfully Submitted,



Courtney B. Sharp
City Manager
PACKET

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

**MIDLAND CITY COUNCIL
MINUTES
May 26, 2020**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., May 26, 2020.

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

Council Members absent: None

Staff members present: (Via Zoom) City Manager Courtney Sharp, City Attorney John Ohnemiller, Assistant City Manager Robert Patrick, Assistant City Manager Morris Williams

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

OPENING ITEMS

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

CONSENT AGENDA

Spencer Robnett moved to approve the consent agenda, excluding items 5, 8, 15 ; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

3. **MOTION APPROVING THE FOLLOWING MINUTES:**

- a. **REGULAR CITY COUNCIL MEETING OF MAY 12, 2020**

4. 2020-089 – RESOLUTION APPROVING A CONTRACT WITH TOMMY KLEIN CONSTRUCTION, INC., FOR EXTERIOR CONSTRUCTION WORK AT THE MARTIN LUTHER KING JR. COMMUNITY CENTER, THROUGH SOURCEWELL, AT A TOTAL COST OF \$103,122.00 (GENERAL SERVICES)
6. 2020-091 – RESOLUTION APPROVING THE SELECTION OF PARKHILL, SMITH & COOPER, INC., HDR ENGINEERING, INC., ENPROTEC / HIBBS & TODD, INC., FREESE AND NICHOLS, INC., JACOBS ENGINEERING GROUP INC., AND MAVERICK CIVIL & SURVEY, LLC D/B/A MAVERICK ENGINEERING, INC., AS RESPECTIVE FIRST CHOICES FOR PERFORMANCE OF ON-CALL ENGINEERING SUPPORT SERVICES FOR THE UTILITIES DEPARTMENT OVER THE NEXT FIVE (5) YEARS; AND PROVIDING THAT ANY AGREEMENT EXCEEDING \$100,000.00 SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (GENERAL SERVICES)
7. 2020-092 – RESOLUTION AWARDING A CONTRACT FOR TEMPORARY TRAFFIC CONTROL SERVICES TO FC TRAFFIC CONTROL, INC. OF AMARILLO, TEXAS, AT A TOTAL COST NOT TO EXCEED \$76,675.00; AND AUTHORIZING PAYMENT THEREFOR (GENERAL SERVICES)
9. 055-2020 – MOTION AUTHORIZING THE DIRECTOR OF AIRPORTS TO ADVERTISE A REQUEST FOR BIDS FOR THE MAF AIRFIELD PAVEMENT MARKING PROJECT (AIRPORT)
10. 056-2020 – MOTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$254,358.00 TO ASSIST THE CITY OF MIDLAND HEALTH AND SENIOR SERVICES DIVISION FOR ACTIVITIES IN SUPPORT OF CORONAVIRUS 2019 (COVID-19) RESPONSE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT THE FUNDS INTO THE GENERAL FUND (COMMUNITY SERVICES)
11. 2020-094 – RESOLUTION GRANTING VARIANCES FOR SIX OIL AND GAS WELLS TO BE LOCATED NO CLOSER THAN 226 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 862 FEET AND 2,050 FEET WEST OF RANKIN HIGHWAY, AND BETWEEN 590 FEET AND 620 FEET NORTH OF DAYTON ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)
12. 2020-095 – RESOLUTION GRANTING A VARIANCE FOR AN OIL AND GAS WELL TO BE LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,433 FEET WEST OF SOUTH GARFIELD STREET AND 320 FEET NORTH OF WEST COUNTY ROAD 111) BY ALLOWING SAID OIL AND GAS WELL TO BE NO CLOSER THAN 491 FEET OF AN

OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL SAID OIL AND GAS WELL WITHIN THE CITY LIMITS; AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)

13. 2020-096 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 590 FEET AND 591 FEET NORTH OF WEST INTERSTATE 20, AND BETWEEN 1,179 FEET AND 1,279 FEET EAST OF SOUTH MIDKIFF ROAD (DEVELOPMENT SERVICES)
14. 2020-097 – RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH ENDEAVOR ENERGY RESOURCES, L.P. REGARDING ITS APPLICATION TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DEVELOPMENT SERVICES)

The following items were pulled from Consent Agenda and considered individually.

5. 2020-090 – RESOLUTION AWARDED A CONTRACT TO 4X CONSTRUCTION GROUP, LLC, FOR THE LANDFILL CELLS FIVE AND SIX PROJECT FOR A TOTAL COST OF \$5,513,456.20; AND APPROPRIATING FUNDS FOR SAID PROJECT (GENERAL SERVICES)

Council Member Robnett noted there were quite a few bidders and wanted to understand the process of why a bidder from outside of Midland was not chosen.

Solid Waste Director Jeffrey Ahrlett reported they contracted with Parkhill Smith & Cooper (PSC) to design and run the bid process. The last cell they did was about half this size and the usual cost for the cells is around \$7 million. The low bid for this came in significantly cheaper at \$5.5 million.

Assistant City Manager Morris Williams reported that PSC was hired as the consultant and they vet the various companies to ensure that they can do the work without significant change orders coming in later.

Mr. Williams reported PSC does their due diligence to ensure there should not be any hidden costs and to ensure we are comparing apples to apples. General Services Director Regina Stephenson added there is no contingency in the contract so everything should be delivered as expected. When asked the difference between the lowest two bids, it was reported it was just under \$1 million.

Paul Iaquaniello, Vice President of Onyx, reported they were the second lowest bidder. He asked Council to consider that the lowest bid is 13% below the second lowest bid and the remaining bids were within 5% of each other. He felt the low bidder was missing something from their bid. They did not receive the bid to demolish the courthouse and the low bidder had a change order that made them the third lowest bidder. He is from Midland County and Onyx has been in Midland for over 20 years. He would like to see a local contractor

awarded the job. When asked if he had talked to PSC about his concerns, he reported he had, but PSC would be in a tough position to recommend the second lowest bidder that is \$900,000.00 higher.

City Attorney John Ohnemiller noted that change orders are capped at 25% of the contract. Because we go through a bid process, the City must have a legal reason to go with the second lowest bidder. There are two reasons: The first is the bidder was not responsive. Since PSC recommended this bidder that would be difficult. The second is for local bidder preference as outlined in State law. That does not apply because the difference is too great.

Council Member Blong asked if there would be consequences if this item was deferred. Assistant City Manager Morris Williams noted that PSC has already combed through the bid. This bid includes a lot of dirt work and there is not much opportunity for a change order. Their bid is just low.

Spencer Robnett moved to approve Resolution No. 2020-090 with the amendment to require any change orders to come back to City Council for approval ; seconded by Scott Dufford.

The motion passed by the following vote:

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

NAY: Trost

ABSTAIN: None

ABSENT: None

8. 2020-093 – RESOLUTION AUTHORIZING THE PROCUREMENT OF SERVICES NECESSARY TO FACILITATE THE EMERGENCY REPAIR OF DAMAGED STREET IMPROVEMENTS LOCATED AT OR ABOUT THE INTERSECTION OF GOLF COURSE ROAD AND MIDKIFF ROAD; APPROPRIATING AND ALLOCATING FUNDS; AND AUTHORIZING PAYMENT FOR SAID SERVICES IN AN AMOUNT NOT TO EXCEED \$850,000.00 (GENERAL SERVICES)

Council Member Ladd asked staff to share what was discussed last week. Engineering Services Director Jose Ortiz reported that sewer and storm drains were last improved in 1971. Normally, you can expect up to 35 years of service. There are areas that have far exceeded that number. There are 10 miles of corrugated pipes still in the ground and they are seeing an increase in failure to those pipes. About 80% of the infrastructure is past it's prime. They now have a source of income to address some of these issues with the implementation of storm drain fees.

Jack Ladd moved to approve Resolution No. 2020-093 ; seconded by Spencer Robnett.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

15. 2020-098 – RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INC., BOYS & GIRLS CLUBS OF THE PERMIAN BASIN, INC., SENIOR LIFE MIDLAND, INC., THE UNITED WAY OF MIDLAND, INC., AND WEST TEXAS FOOD BANK IN THE AMOUNT OF \$324,761.00; APPROPRIATING FUNDS FOR SAID CONTRACTS; AND APPROPRIATING \$150,000.00 TO THE CITY OF MIDLAND HEALTH DEPARTMENT (DEVELOPMENT SERVICES)

Council Member Blong asked how the specific parties were chosen. Community Development Block Grant Manager Isaac Garnett reported these are emergency funds received from HUD. The organizations selected were based on criteria. They have had a long relationship with the parties and felt comfortable moving forward with the recommendation. The parties will receive reimbursement for their expenses.

Spencer Robnett moved to approve Resolution No. 2020-098 ; seconded by Lori Blong.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

SECOND READINGS

16. 10082 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 2 AND 3, BLOCK 1, JADEN KATE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH ELKINS ROAD AND ARAPAHOE 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 (DEVELOPMENT SERVICES) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10082.

Patrick Brown, 212 Bayberry, reported he was available to answer questions.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10082 ; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

17. 10083 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2A, BLOCK 1, CORPORATE PLAZA, SECTION 20, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF CORPORATE DRIVE, APPROXIMATELY 550 FEET EAST OF NORTH BIG SPRING 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 (DEVELOPMENT SERVICES) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10083.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10083 ; seconded by Michael Trost.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

18. 10085 – AN ORDINANCE APPOINTING A NEW CITY OF MIDLAND MUNICIPAL COURT ASSOCIATE JUDGE EFFECTIVE MAY 26, 2020; AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH THE NEW ASSOCIATE JUDGE (CITY MANAGER'S OFFICE) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10085.

John Norman moved to approve the second and final reading of Ordinance No. 10085 ; seconded by Jack Ladd.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARINGS

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

19. 057-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2021 CDBG GRANT APPLICATION SUBMISSIONS AND THE FIVE YEAR CONSOLIDATED PLAN GOALS (DEVELOPMENT SERVICES)

CDBG Manager Isaac Garnett reported that every five years the City of Midland has to do a consolidated plan for projects needed for the next five years. Today we are here to solicit public comment and hold a public hearing. The plan is required to be submitted in August

along with the action plan. He reviewed staff recommendations for the plan noting they were recommending removing first time homebuyers program.

Mayor Payton opened the public hearing at 10:50 a.m.

Joey Hopkins, Habitat for Humanity, reported their clients are long time users of the home buyers assistance. The programs allows their clients to reduce their monthly mortgage payment over the life of the mortgage. It is a great program that serves their clients as well as MCDL and the public. This is an easy way for the City to help with affordable housing. They have built 160 homes valued today at \$23 million.

David Diaz, Midland Community Development Corporation, reported that just like Habitat for Humanity, they also rely on the first time home buyers program for their clients. They have generated over 150 homes that all pay taxes to the City. The program assures funding for the homebuyer and helps to move their families forward.

Council Member Trost asked about the flooring at MLK. Mayor Payton asked all Council Members to put any requests or suggestions in writing to Isaac.

Council consensus was to keep the first time homebuyers program.

There being no one else wishing to speak, the public hearing was closed at 11:00 a.m.

20. 10086 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 12, BLOCK 30, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CARVER STREET AND EAST 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 (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10086.

Council Member Robnett asked if Council needs to continue to see requests for zone changes for less restrictive zoning. City Attorney John Ohnemiller reported Council is required to review per state law.

Mayor Payton opened the public hearing at 11:03 a.m. There being no one else wishing to speak, the public hearing was immediately closed.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10086 ; seconded by Lori Blong.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

21. 058-2020 – MOTION AUTHORIZING THE CITY MANAGER TO DEVELOP AND IMPLEMENT TEMPORARY HOTEL OCCUPANCY TAX COLLECTION PAYMENT RULES AND REGULATIONS SO AS TO PERMIT HOTELS (AS DEFINED IN THE MIDLAND CITY CODE) TO MAKE SUCH COLLECTION PAYMENTS TO THE CITY OF MIDLAND IN AN UNTIMELY MANNER WITHOUT INCURRING PENALTIES OR INTEREST (CITY MANAGER'S OFFICE)

Mayor Payton noted this item was discussed at the last meeting and it was stated that the Governor has suspended penalties and interest on the collection of hotel/motel payments. That is not true. The last time he suspended payments was in 2017 for a period of two weeks and he allowed not charging the tax for families that had been displaced or for emergency workers in the region affected.

Council Member Trost stated this was a local issue and some hotels are in distress and their occupancy remains at 12-15%.

Interim Finance Director Jennifer Fung reported that 10 of the 48 hotels have not paid their first quarterly payment of Hotel Occupancy Tax. One paid 15% and was asking for a penalty waiver and delayed payment for the remainder due. According to their research, the Governor is considering requests on a case-by-case basis. The taxes have already been collected by the hotels from their clients. The penalty and interest is 15%. There are three hotels that have not paid their 4th quarter payment from 2019.

Mayor Payton asked Ms. Fung if she were an accountant counseling a hotel, would she recommend they use the HOT taxes they collected for another purpose. Ms. Fung reported she would not. Mayor Payton emphasized that delaying payments would be like giving an interest free loan. He asked Ms. Fung if any other industry is treated that way. Ms. Fung replied no.

Michael Trost moved to approve Motion No. 058-2020 ; seconded by Jack Ladd.

The motion failed by the following vote:

AYE: Trost, Norman, Ladd

NAY: Payton, Robnett, Dufford, Blong

ABSTAIN: None

ABSENT: None

It was noted, if approved, the City Manager would determine the terms and percentages.

22. RECEIVE A PRESENTATION FROM CURRENTMEDIA REGARDING THE PROMOTION OF THE 2020 CENSUS (DEVELOPMENT SERVICES)

CDBG Manager Isaac Garnett reported that last October the State and Federal Government entered into a contract for the promotion of the census. Christi Callicoatte is present to share what they have done.

Christi Callicoatte reviewed all of the programs they ran to promote the census noting that the local media partners were great in helping to stretch their dollars by running special

stories. The State of Texas has a 54.7% completion rate and Midland has a 54.6% rate. The national rate is 60%. More information can be found on the Facebook page Midland 2020 Census.

Charlene Romero McBride reported that due to COVID-19 many of their events were canceled. They are considering extending the date of entry to later in the year, but if approved, it would impact redistricting dates. She explained some of the remote programs they have been operating. She thanked Council for their support.

Mr. Garnett noted that each individual counted brings in \$150,000.00 over a ten-year period.

EXECUTIVE SESSION

Mayor Payton recessed the meeting to convene to Executive Session at 11:26 a.m.

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

a. Section 551.071, Consultation with the City Attorney

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

All the business at hand having been completed, the meeting adjourned at 11:45 a.m.

PASSED AND APPROVED June 9, 2020.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

City Council Meeting



Item Number: 4
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing

Approved for Agenda:
Morris Williams Jr.
City Manager's Office
2020-099

Subject: RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A VIDEO BOARD AT GRANDE STADIUM WITH DAKTRONICS, INC., THROUGH BUYBOARD, AT A TOTAL COST OF \$277,243.00; AND APPROVING \$27,757.00 FOR CONTINGENCIES (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a contract to Daktronics, Inc. for the purchase and installation of a video board to replace the damaged video board at Grande Stadium through BuyBoard contract 583-19 for a total cost of \$277,243.00 plus \$27,757.00 in contingencies for a total cost of \$305,000.00.

Recommended City Council Action:

Approve

Fiscal Impact:

\$305,000.00 is available in the 2020 Sports Complex Fund (620)

Discussion:

Staff recommends awarding a contract for the purchase and installation of a video board to replace the damaged video board at Grande Stadium from Daktronics, Inc. through BuyBoard contract #583-19. We are members of the Buyboard cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Last spring, on April 23, 2019, a devastating hailstorm damaged the video board at

Grande Stadium. An insurance check in the amount of \$252,291.13 has been received and deposited in the Sports Complex Fund (620). Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

Therefore, please consider a resolution awarding a contract to Daktronics, Inc. for the purchase and installation of a video board to replace the damaged video board at Grande Stadium through BuyBoard contract 583-19 for a cost of \$277,243.00 plus \$27,757.00 in contingencies for a total cost of \$305,000.00.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: May 27, 2020
To: Robert Patrick, Assistant City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase and Installation of Video Board replacement at Grande Stadium

Last spring, on April 23, 2019, a devastating hailstorm took a toll on the video board at Grande Stadium. After inspections by video board technicians and insurance adjusters, the Grande video board was deemed a total loss and needs to be replaced. An insurance check in the amount of \$252,291.13 has been received and deposited in the Sports Complex Fund (620).

Quotes for the replacement have been received, and staff recommends moving forward with the purchase of the video board from BuyBoard vendor Daktronics. The total cost for removal of the existing board and replacement of the new board is quoted at \$277,243. This quote includes a new video board, all electronic equipment and software, and a one-year parts and labor warrantee. In order to cover any unexpected costs that may arise during the installation, a 10% contingency is requested, bringing the total funding for the project to the amount of \$305,000.00. The balance of the requested funding is available in the 2020 Sports Complex operating budget.

Funds in the amount of \$252,291.13 will be appropriated from Unappropriated Fund Balance of the Scharbauer Sports Complex Fund (620) to the 2020 Capital Outlay budget for the same fund (620). The remaining balance of \$52,708.87 is available in the 2020 Sports Complex Fund (620).

RESOLUTION NO.

**RESOLUTION APPROVING A CONTRACT FOR THE
PURCHASE AND INSTALLATION OF A VIDEO BOARD
AT GRANDE STADIUM WITH DAKTRONICS, INC.,
THROUGH BUYBOARD, AT A TOTAL COST OF
\$277,243.00; AND APPROVING \$27,757.00 FOR
CONTINGENCIES**

WHEREAS, Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Daktronics, Inc., has submitted a total proposed cost to the City of \$277,243.00 for the purchase and installation of a video board at Grande Stadium, through Buyboard, as shown on the document attached hereto as Exhibit A, which is incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Daktronics, Inc., through Buyboard for said video board and associated work to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Daktronics, Inc., for said video board and associated work through Buyboard; and

WHEREAS, the City Council finds it to be in the public interest to approve \$27,757.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Daktronics, Inc., for the purchase and installation of a video board at Grande Stadium, through Buyboard, at a total cost of \$277,243.00. Said contract being attached hereto as Exhibit B and incorporated herein for all purposes.

SECTION TWO. That the sum of \$27,757.00 for contingencies is hereby approved for the purchase and installation of a video board at Grande Stadium.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Daktronics, Inc., pursuant to the terms of said contract, from funds available in the 2020 operating budget of the Sports Complex Fund (620).

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., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



DAKTRONICS SALES AGREEMENT

City of Midland Park and Rec Dept
2300 Butternut Ln
Midland, TX 79705

713501-1 REV 3
3-June-2020
Valid for 60 Days

RE: Grande Stadium Video Display Replacement - Buy Board #583-19

Dear Andy Cedillo,

Daktronics, Inc. ("Daktronics") appreciates the opportunity to provide a Sales Agreement to City of Midland Park and Rec Dept ("Purchaser").

Equipment and Services:

- DVX-15HD-312x672
- Control Equipment
- Installation
- Service: 1 Year Parts & Labor

(See attachments for additional details.)

TOTAL CONTRACT PRICE (EXCLUDING TAXES) \$277,243.
(amount in USD)

Delivery Terms: Equipment is quoted FCA Destination. Ship Date will be determined after execution of this Sales Agreement, shop drawings are approved, and down payment is received.

Thank you for allowing Daktronics to submit a Sales Agreement for this project. We appreciate your consideration and are excited about the possibility of working with you. If you have any questions please contact the following:

Scott Luce
Regional Sales
972-249-7130
Scott.Luce@Daktronics.com

or

Blayne Olson
Project Manager
605-641-3672
Blayne.Olson@Daktronics.com

www.daktronics.com

201 Daktronics Dr. Brookings, SD 57006
tel 800-325-8766 email: sales@daktronics.com
DD2527826 Rev 25-09-Sept-2019 Page 1 of
10 Sales Agreement 713501-1-3

PACKET

Exhibit A 4.16

June 9, 2020





THE CITY OF MIDLAND CONTRACT

Contract No. 20003337

THIS CONTRACT, effective the 10th day of June, 2020, by and between the City of Midland, hereinafter referred to as "City", and Daktronics, Inc., hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 277,243.00 DOLLARS
2. **Scope of Work:** Company shall perform all work described for Video Board Replacement at Grande Stadium in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

3. **City:** The words "City's Representative" or "representative" shall mean Tina Jauz or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by City to act in any particular capacity under this Contract.

4. **City's Representative:** City's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. City's representative will not be responsible for Company's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. Company shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing Company's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. Company will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by City to be done by Company to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. Company shall perform all extra work under the direction of City's Representative when presented with a written work order signed by City's Representative, subject, however, to the right of the Company to require written confirmation of such extra work order by City. Payment for extra work shall be as agreed in the work order.

7. **Safety:** Company shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR**

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

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

PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 75 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise available in any fiscal period for contract payments due under the contract, the contract shall be suspended until such time as funds are available for payment.

shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

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

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

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

16. **Payment:** After all work is completed by Company, including all Change Orders altering the original scope and amount of said contract are completed, and City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, City shall thereafter issue payment to Company in the amount of the contract and all Change Orders. City shall be the final judge of when the work is completed by Company. City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to City's requirements. City may make periodic payments to Company, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by Company and approved by City. For contracts exceeding \$25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No Third Party Beneficiary:** City's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

18. **WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION,**

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

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE 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 OF GOVERNMENTAL IMMUNITY.

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

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

Commercial General Liability (including Contractual liability):

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

Property Damage:	\$500,000.00 per occurrence
------------------	-----------------------------

PACKET

4.22

June 9, 2020

<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
<u>Workers' Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

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

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

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

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

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

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

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

21. **Assignment:** Company shall not, either directly or indirectly, assign all or any part of this Contract

PACKET

4-23

June 9, 2020

or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

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

23. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. 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. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

24. **Independent Contractor:** It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein 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 the City. Further, it is specifically understood and agreed that nothing in this Contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Company shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable, as such

independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of the Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Company or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one 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 Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the 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 reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if 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.

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

27. **Termination At Will:** City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to Company. The parties to this Contract understand and agree that it is in City's sole discretion to cancel the Contract during the term of the Contract without penalty to City. Company has no expectation and has received no guarantees that this Contract will not be

terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

29. To the extent that Tex. Gov't Code section 2270.002 applies to this Contract, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Contract. If Tex. Gov't Code section 2270.002 does not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

30. **Records Retention and Production of Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to City for the duration of the contract, (2) 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 (3) on completion of the Contract, either (i) provide at no cost to City all contracting information related to the Contract that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

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

32. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Contract and (ii) any of the provisions contained in Exhibit A, 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 Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

DAKTRONICS SALES AGREEMENT

EXHIBIT "A"

City of Midland Park and Rec Dept
2300 Butternut Ln
Midland, TX 79705

713501-1 REV 3
3-June-2020
Valid for 60 Days

RE: Grande Stadium Video Display Replacement

Dear Andy Cedillo,

Daktronics, Inc. ("Daktronics") appreciates the opportunity to provide a Sales Agreement to City of Midland Park and Rec Dept ("Purchaser").

Equipment and Services:

- DVX-15HD-312x672
- Control Equipment
- Installation
- Service: 1 Year Parts & Labor

(See attachments for additional details.)

TOTAL CONTRACT PRICE (EXCLUDING TAXES) \$277,243.
(amount in USD)

Delivery Terms: Equipment is quoted FCA Destination. Ship Date will be determined after execution of this Sales Agreement, shop drawings are approved, and down payment is received.

Thank you for allowing Daktronics to submit a Sales Agreement for this project. We appreciate your consideration and are excited about the possibility of working with you. If you have any questions please contact the following:



Scott Luce
Regional Sales
972-249-7130
Scott.Luce@Daktronics.com

or



Blayne Olson
Project Manager
605-641-3672
Blayne.Olson@Daktronics.com

DAKTRONICS SALES AGREEMENT

ACCEPTANCE

The "Contract Documents" are comprised of the following and will be the basis of our Sales Agreement:

- Attachments
 - o A [Equipment and Software](#)
 - o B [Purchase Price and Payment Schedule](#)
 - o C [Project Management, Engineering, and Site Support Services](#)
 - o D [Installation Responsibilities](#)
 - o E [Standard Warranty Service and Extended Services](#)

Purchaser hereby agrees to purchase the Equipment, peripherals, Services, and additional supplies as defined by the Contract Documents. By executing this agreement, Purchaser acknowledges that it has had opportunity and means to review the Contract Documents as provided, including any online documents.

The parties acknowledge and agree that Daktronics design and installation services meet the requirements of the building code in effect for the installation site as of the date of the Contract Documents, and is priced accordingly. In the event Daktronics is required at any time to conform its design or installation to a code with requirements greater than those required as of the date of the Contract Documents, the parties acknowledge and agree that Purchaser shall be fully responsible for all costs associated with such increased code requirements.

The parties agree that due to the volatile market for materials, including but not limited to steel, copper wire, electrical devices, and other related components, Daktronics reserves the right to adjust the contract price prior to execution of the Sales Agreement.

All notices required herein shall be given to Purchaser at the address indicated above unless otherwise directed by the Purchaser in writing. The delivery and installation shall be at the address indicated on page one unless otherwise provided below:

DAKTRONICS SALES AGREEMENT

Product Delivery Address

Customer:
Address:
City, State, Zip:
Contact:
Phone and E-mail:

Installation/End User Address

Customer:
Address:
City, State, Zip:
Contact:
Phone and E-mail:

The undersigned has actual authority to execute this document, and Daktronics is relying upon such authority.

ATTESTATION:

PURCHASER:

By: _____ Name/Title: _____ Date: _____
Signature Print or Type

DAKTRONICS, INC:

By: _____ Name/Title: _____ Date: _____
Signature Print or Type

By: _____ Name/Title: _____ Date: _____
Signature Print or Type

Estimated Delivery: Determined by order date and approval of shop drawings.
Estimated Date of Substantial Completion: Determined by order date.

DAKTRONICS SALES AGREEMENT

ATTACHMENT A | EQUIPMENT AND SOFTWARE

15HD - One (1) Outdoor Daktronics LED Video Display

- Daktronics Model: DVX-15HD-312x672
- Approximate Active Area: 15.60' high x 33.60' wide
- Pixel Pitch: 15HD
- Matrix: 312x672

Daktronics Integrated Control Solution includes the following:

- System Level Components
 - o One (1) 14-port Gigabit Network Router
 - o One (1) DSTI Rack-mounted server
 - o One (1) Venus® Control Suite - Prime Package - Locally Hosted
 - o One (1) Show Control Single Monitor User Station
 - o One (1) Show Control Software License
 - o One (1) Remote User Station; 22" LCD; one hundred (100) foot extension
 - o One (1) 14RU control rack with sliders
 - o One (1) 1000VA Uninterruptable Power Supply (UPS); 120VAC
- 15HD
 - o Independent content configuration
 - o One (1) DMP-8400 Daktronics Media Player
 - o One (1) VP-6000 Daktronics Video Processor
 - o Primary only configuration of components
 - o Output capable of controlling up to 1,850,000 pixels
 - o Supports up to four (4) external video sources (SDI)

Includes:

All Sport 5010 Control Kit

Sports Software

Installation

Project Management

Spare Parts Kit

Shipping to Site

One Year Parts & Labor

Content Package

Operator Training – Three (3) Days



DAKTRONICS SALES AGREEMENT

ATTACHMENT B | PURCHASE PRICE AND PAYMENT SCHEDULE

The Purchase Price shall be \$277,243.00 (Excluding Taxes).

"Purchase Price" shall also include any additions or deletions pursuant to any duly authorized Change Orders.

The Payment Schedule is as follows, subject to credit review:

- Progress Payments

Financing option available; consult your sales representative for additional information.

TAXES: No taxes have been included in the price. Purchaser will be assessed all taxes and other governmental charges in connection with the sale, purchase, transportation, delivery, or use, of any of the goods provided, with the exception of taxes based upon Daktronics' net income. If Purchaser is tax-exempt or purchasing for resale, a copy of Purchaser's tax-exempt certificate shall be required at time of order.

CHANGE ORDERS: Without voiding the contract, the parties may agree to change the scope, timing, or other aspect of the deliverables. Such changes shall be in accordance with Section 3 of Standard Terms and Conditions of Sale (http://www.daktronics.com/terms_conditions/SL-02375.pdf)

All Change Order work performed by Daktronics or a subcontractor of Daktronics will be performed at cost plus 20% overhead and profit.

DAKTRONICS SALES AGREEMENT

ATTACHMENT C | PROJECT MANAGEMENT, ENGINEERING AND SITE SUPPORT SERVICES

Our project management philosophy is focused on a smooth and uneventful experience for the Purchaser, and mitigating risk throughout the project to ensure there are no unexpected costs or delays. This philosophy includes a team tailored and dedicated to the unique needs of your project. Yet, understanding the need to have clear communication, your single point of contact will be our assigned project manager, who is familiar with your project and has completed jobs of similar scope and scale to yours.

Your project manager will collaborate with you and the entire project team to make sure every detail is covered and you have a clear understanding of what is happening during the course of the project.

Because our engineering capabilities are in-house, there is a reduction of risk in the possibility of issues arising. If there are items or discrepancies that come up, we can quickly address them to make sure problems do not compound. These engineering capabilities include mechanical, structural, electrical, and control systems to design and document the overall system.

Throughout the project, the project manager and the Purchaser will collaborate on many items. Some core functions of this process include:

- o Organizing the key project team members from all parts of the project to complete the services as defined on the Installation Responsibilities (Attachment D). The responsibilities checklist is provided to make sure all parties clearly understand the scope and expectations.
- o Establishing and managing the project timeline to meet the needs of your team.
- o Reviewing the preliminary and/or final project shop drawings as per scope. This includes an explanation of the drawings and key items to approve before production.
- o Coordinating shipments and deliveries to align with the established timeframes.
- o Communicating activities of the Daktronics project team to understand when staff will be on-site for specific duties such as equipment installation support, control room set-up, final connections, system testing and training.
- o Finalizing the project and securing project acceptance.

SUPPORT AND TRAINING

Daktronics support includes comprehensive training options, from technical training to learning how to use the software. We offer several different formats to suit your needs and schedule. Talk to your representative about what training is best for your needs.

DAKTRONICS CREATIVE SERVICES

- Daktronics will provide a media kit.
- Additionally, Daktronics will provide a basic content package. See www.daktronics.com/ContentRates for details.
- A Daktronics Creative Services Account Manager will work with Purchaser to fulfill all content packages. Quotes will be provided to the Purchaser detailing the scope of work and price chargeable at the then-current rate for services. Upon mutual agreement of the scope(s), Daktronics will furnish the content to Purchaser at no additional charge so



DAKTRONICS SALES AGREEMENT

long as the Purchaser has sufficient credit of creation services remaining. The content creation services credit for Basic and Bronze packages will expire one (1) year following the execution of the contract documents. All other packages will expire three (3) years following the execution of the contract documents unless otherwise noted. Any remaining credit at the end of this period shall become void.

Unless specifically outlined in the Contract Documents, this order does not include the following:

- Preventative maintenance
- Cable or conduit including labor
- Insurance costs
- Any additional site related costs
- Appropriate structure, footing, and engineering

DAKTRONICS SALES AGREEMENT

ATTACHMENT D | INSTALLATION RESPONSIBILITIES

Responsible Party		Description
Daktronics	Customer	
✓		1. Secure necessary construction permits.
	✓	2. Provide existing utility drawings.
✓		3. Removal of existing equipment.
✓		4. Disposal of existing equipment.
✓		5. Generate and issue site specific electrical and signal drawing submittals for video equipment.
✓		6. Generate and issue site specific equipment shop drawing and attachment detail submittals for video equipment.
	✓	7. Provide approval of all engineering drawings, electrical drawings, shop drawings, equipment locations, color renderings, and ad copy layouts.
	✓	8. Customer is responsible to ensure the existing structure/building is adequate, including any necessary modifications, for the installation of the Equipment, including but not limited to (i) obtaining certified engineer drawings to the extent required by law and (ii) providing Daktronics, upon reasonable request, documentation relating to the existing structure and modifications necessary for Daktronics perform its work.
	✓	9. Unobstructed access to equipment and control room installation site until display is 100%.
	✓	10. Landscaping to include all.
✓		11. Provide all landscape protection, track, sidewalk, path, site restoration, and/or sprinkler system repair work.
✓		12. Site clean-up after Daktronics work.
✓		13. Crating and shipping of all equipment to facility via common or independent carrier.
✓		14. Accept, lift, unload, and inspect all video equipment and control equipment from carrier.
	✓	15. Provide storage of video equipment and control equipment in a safe, dry, and secure location until installation.
✓		16. Fabricate and install substructure.
✓		17. Prime and paint substructure
✓		18. Lift and mount Equipment listed in this quotation.
	✓	19. Provide primary power feed up to and including demarcation point (to the base of the display) in the form of transformer and electrical disconnect with over current protection per all applicable electrical codes and regulations. Note: Maximum voltage of 120 volts line to neutral for all display systems.

DAKTRONICS SALES AGREEMENT

✓		20. Provide secondary power conduits, distribution panel, power cable and power hook-up from the demarcation point to all Daktronics supplied load centers/termination panel at/within the Equipment.
	✓	21. Provide and install signal cable conduit, with pull string, from control location to each equipment location. Conduit to be located five (5) feet off grade on the structure, as delineated in the electrical and signal drawings.
✓		22. Provide and install signal cable conduit, with pull string, from five (5) feet off grade on structure to Equipment signal termination points, as delineated in the electrical and signal drawings.
✓		23. Mount and install fiber patch panel as required by electrical and signal drawings.
	✓	24. Communication responsibility (DSL line, Network, Static IP address and associated monthly fees) as necessary for this system. Supply static IP address five (5) days prior to installation.
✓		25. Furnish signal cable as delineated on the quote.
✓		26. Labor to pull all new signal cable (and remove existing cable, if required).
✓		27. Terminate signal cable at control location and video Equipment.
	✓	28. Provide a climate controlled and secure control room for all control systems (on/off venue site). Control room is to be climate controlled by Customer. Normal operating temperature should be between 65 and 75 degrees Fahrenheit. Normal operating humidity should be less than 80 percent non-condensing. Storage temperature should be between 40 and 95 degrees Fahrenheit. Storage humidity should be less than 95 percent non-condensing.
	✓	29. Provide high speed internet connection to control room equipment.
	✓	30. Required power outlets on clean dedicated circuit(s) for all video and control equipment.
✓		31. Provide computer(s) for control software.
✓		32. Unpack, set-up, hook-up, and testing of control system.
	✓	33. Provide personnel for maintenance and operator training.
✓		34. Perform final systems testing and commissioning.
	✓	35. Final acceptance, per DF-1252.
✓	✓	36. Walk-thru inspection at Substantial Completion and identification of punch list items
✓		37. Completion of punch list items.

NOTE: All change order work performed by Daktronics or Daktronics subcontractor will be performed at cost plus 20% overhead and profit.

DAKTRONICS SALES AGREEMENT

ATTACHMENT E | STANDARD WARRANTY SERVICE AND EXTENDED SERVICES

STANDARD SERVICE:

One Year Platinum Warranty SL-04703 (<http://www.daktronics.com/platinum>) concurrent with Warranty and Limitation of Liability

ADDITIONAL YEARS OF EXTENDED SERVICE: None.

EXCLUSIONS

Third party systems, hoist systems, and any ancillary equipment is expressly excluded from any applicable Standard Service or Extended Service referenced above. Third party systems and ancillary equipment includes, but is not limited to, front end video control systems, audio systems, video processors and players, HVAC equipment, LCD screens, static advertising panels and displays. Daktronics will pass along any manufacturer's warranty. For a list of products commonly excluded from the Standard Service and Extended Service scope and to view the manufacturer's warranty, go to <http://www.daktronics.com/exclusions>.

SPARE PARTS PACKAGE

Adequate spare parts to support Daktronics' manufactured products with the quantities of each component included are based off well-trained engineers' and project managers' assessments of the custom display.

CUSTOMER SERVICE

- Service Coordination staff is available 8am-5pm Central Time.
- Technical Support is available 7:30am-10pm Central Time.
- Self service is available via Daktronics.com/support.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT

_____ of the City of

_____ of the County of _____ and State of Texas

as Principal, and _____, as Surety, are held and

firmly bound unto the City of Midland, Texas, as Oblige, in the amount of

_____ DOLLARS

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D - BUILDING WAGE RATES rev 09-14-18

General Decision Number: TX180311 09/14/2018 TX311

Superseded General Decision Number: TX20170311

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018
1	09/14/2018

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER.....	\$ 28.00	22.35

ENGI0178-005 06/01/2014		

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 29.00	10.60
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic		
Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 27.50	10.60

* IRON0084-011 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 23.77	7.12

PLUM0404-001 07/01/2016

	Rates	Fringes
PLUMBER.....	\$ 25.91	9.40

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER.....	\$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.76	0.00
ELECTRICIAN.....	\$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 11.80	0.00
LABORER: Mason Tender - Brick...	\$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58	0.00
LABORER: Pipelayer.....	\$ 12.49	2.13
LABORER: Roof Tearoff.....	\$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83	0.00
OPERATOR: Grader/Blade.....	\$ 13.37	0.00

OPERATOR: Loader.....	\$ 13.55	0.94
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 15.00	0.73
PIPEFITTER.....	\$ 25.80	8.55
ROOFER.....	\$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 19.50	0.00
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 14.74	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00	4.11

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO

is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION



Administration

RFQ

Purchase Order

Reports

Shopping Cart

Welcome Regina [Help Log Off]

Vendor Contract Information

[Back](#)

Searches:

[Search by Vendor](#)
[Browse Contracts](#)

Search:

- ☒ All
- ☐ Vendor Discounts Only
- ☐ Catalog Pricing Only

Refine Your Search:

Vendors
Daktronics, Inc.[X]

Price Range
Show all prices

Category
None Selected

Contract
None selected

Vendor Name: Daktronics, Inc.**Address:** 201 Daktronics Drive
Brookings, SD 57006**Phone Number:** (605) 697-4494**Extension:** 56669**Email:** lauren.cloud@daktronics.com**Website:** <http://www.daktronics.com>**Federal ID:** 46-0306862**Contact:** Lauren Cloud**Accepts RFQs:** Yes**Minority Owned:** No**Women Owned:** No**Service-Disabled Veteran Owned:** No**EDGAR Forms Received:** Yes**No Israel Boycott Certificate:** Yes**No Excluded Foreign Terrorist Orgs:** Yes**Contract Name:** Athletic, Physical Education, Gymnasium Supplies and Equipment and Heavy Equipment and Related Accessories**Contract#:** 583-19**Effective Date:** 04/01/2019**Expiration Date:** 03/31/2022**Payment Terms:** Net 30 days**Delivery Days:** 10**Shipping Terms:** Pre-paid and added to invoice**Freight Terms:** FOB Destination**Ship Via:** Common Carrier**Region Served:** All Texas Regions**States Served:** All States**Quote Reference Number:** 583-19**Return Policy:** Case by case basis, subject to a 20% restocking fee plus freight**Additional Dealers:** Daktronics, Inc. locations in: San Antonio TX, Houston TX

Additional Resources

Contract Documents

EDGAR Notice: [Click to view EDGAR Notice](#)**Proposal Documents:** [Click to view BuyBoard Proposal Documents](#)**Regulatory Notice:** [Click to view Bonding Regulatory Notice](#)**Proposal Files:** [Click to view Vendor Proposal Files Documents](#)**Renewal Notice/Letter:** [Click to view Vendor Renewal Notice/Letter Documents](#)

Contact us 800.695.2919

City Council Meeting



Item Number: 5
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing 2020-100
Subject: Resolution authorizing the City Manager to negotiate and execute, on behalf of the City of Midland, an instrument granting a utility easement and right-of-way located in a 0.503-acre tract of land out of Lot 1, Block 1, Llano Country Addition, City and County of Midland, Texas to Oncor Electric Delivery Company LLC (GENERAL SERVICES)

Purpose:

Approval of a resolution authorizing the City Manager to negotiate and execute, on behalf of the City of Midland, an instrument granting a utility easement and right-of-way located in a 0.503-acre tract of land out of Lot 1, Block 1, Llano Country Addition, City and County of Midland, Texas to Oncor Electric Delivery Company LLC.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required.

Discussion:

Resolution 2020-076 awarded a contract for the Fire Station 5 Project (900307) and the Fire Station 11, Fueling Station and Wash Bays Project (900335). The execution of the easement document will allow for an easement and right-of-way for overhead and/or underground electric supply and communications facilities, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits and all necessary or desirable appurtenances over, under, through, across and upon City property described as follows:

A 0.503-acre tract of land out of Lot 1, Block 1, Llano Country Addition, City and County of Midland, Texas also known as 6600 Briarwood Avenue.

Therefore, please consider a resolution authorizing the City Manager to negotiate and execute, on behalf of the City of Midland, an instrument granting a utility easement and right-of-way located in a 0.503-acre tract of land out of Lot 1, Block 1, Llano Country Addition, City and County of Midland, Texas to Oncor Electric Delivery Company LLC.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO NEGOTIATE AND EXECUTE, ON BEHALF OF THE
CITY OF MIDLAND, AN INSTRUMENT GRANTING A
UTILITY EASEMENT AND RIGHT-OF-WAY LOCATED
IN A 0.503-ACRE TRACT OF LAND OUT OF LOT 1,
BLOCK 1, LLANO COUNTRY ADDITION, CITY AND
COUNTY OF MIDLAND, TEXAS, TO ONCOR
ELECTRIC DELIVERY COMPANY LLC**

WHEREAS, the City of Midland owns a tract of land located in Lot 1, Block 1, Llano Country Addition, City and County of Midland, Texas; and

WHEREAS, the City Council finds it to be in the public interest to grant a utility easement and right-of-way located in a 0.503-acre tract of land out of the above-described City-owned tract of land (the “Easement”) to Oncor Electric Delivery Company LLC (“Grantee”), said Easement tract being more fully described in Exhibit “A”, which is attached hereto and incorporated herein;

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

THAT the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, an instrument granting the Easement to Grantee and to deliver said instrument to Grantee.

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., 2020, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Morris Williams, Assistant City Manager

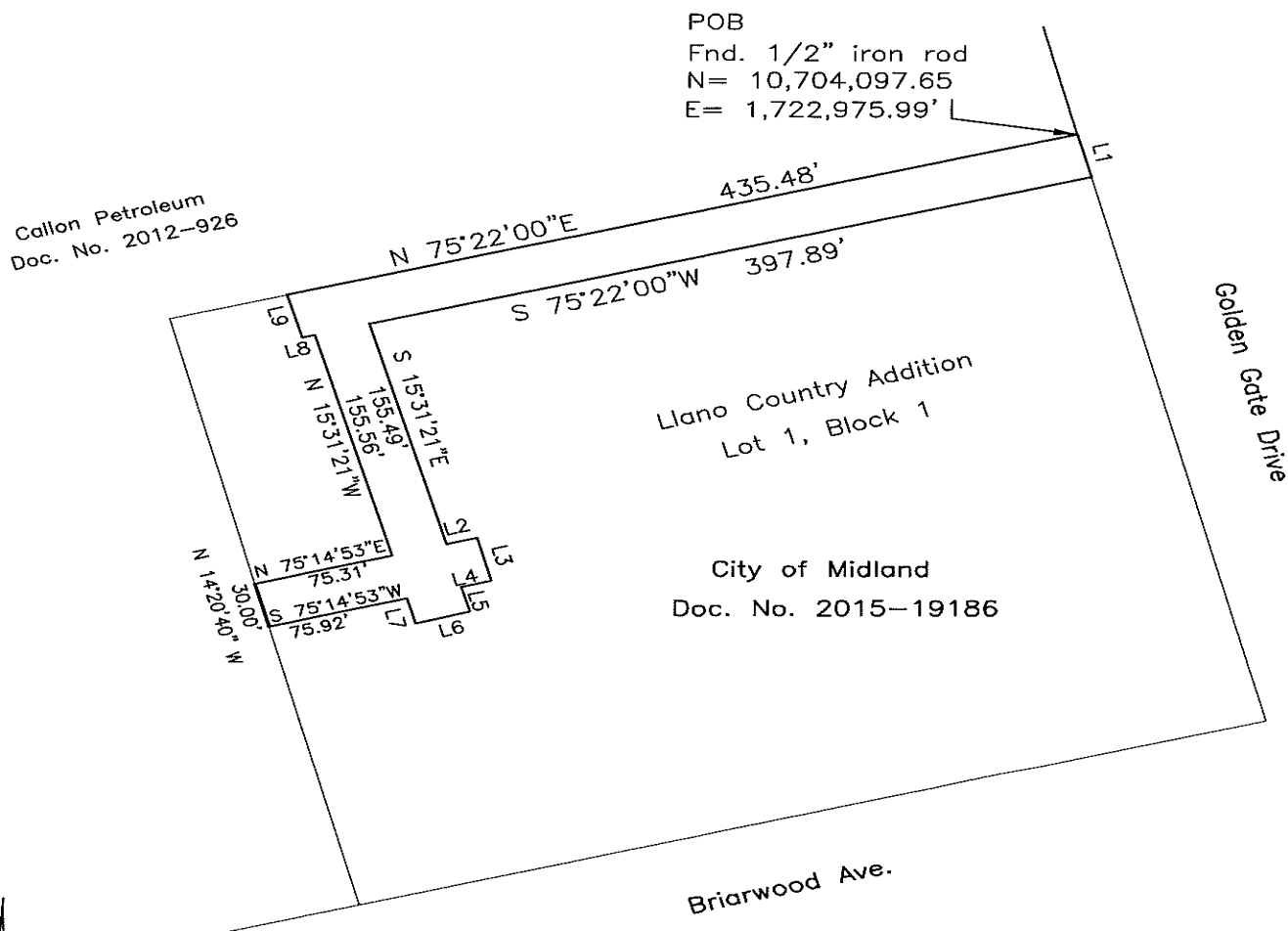
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Exhibit "A"

Exhibit showing a 30 ft. wide
electric easement being 0.503 acres located in
Llano Country Addition, Lot 1, Block 1
City and County of Midland, Texas



LINE	BEARING	DISTANCE
L1	S 14°20'40" E	30.00'
L2	N 75°14'53" E	17.12'
L3	S 14°45'07" E	30.00'
L4	S 75°14'53" W	16.72'
L5	S 15°31'21" E	17.39'
L6	S 74°28'39" W	30.00'
L7	N 15°31'21" W	17.79'
L8	S 75°22'00" W	6.97'
L9	N 15°31'21" W	30.00'

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

100 0 100 200 300

GRAPHIC SCALE - FEET

5.52

June 9, 2020

(Field Notes to accompany this exhibit)

EXHIBIT "A"

Description for a 30 ft. wide Electric Easement

For a 0.503 acre electric easement located in Lot 1, Block 1, Llano Country Addition, an addition to the City of Midland, Texas as recorded in Cabinet L, Page 169 of the Midland County Plat Records and conveyed to the City of Midland by deed as recorded in Doc. No. 2015-19186 of the Midland County Deed Records and being more fully described as follows;

Beginning at a found ½" diameter iron rod for the northeast corner of said Lot 1 in the west line of Golden Gate Drive and having a coordinate of N= 10,704,097.65 ft., E= 1,722,975.99 ft.,

Thence S 14° 20' 40" E along the west line of said Golden Gate Drive a distance of 30.00' to a point in same,

Thence S 75° 22' 00" W a distance of 397.89 ft. to a point,
Thence S 15° 31' 21" E a distance of 155.49 ft. to a point,
Thence N 75° 14' 53" E a distance of 17.12 ft. to a point,
Thence S 14° 45' 07" E a distance of 30.00 ft. to a point,
Thence S 75° 14' 53" W a distance of 16.72 ft. to a point,
Thence S 15° 31' 21" E a distance of 17.39 ft. to a point,
Thence S 74° 28' 39" W a distance of 30.00 ft. to a point,
Thence N 15° 31' 21" W a distance of 17.79 ft. to a point,
Thence S 75° 14' 53" W a distance of 75.92 ft. to a point in the west line of said Lot 1,
Thence N 14° 20' 40" W along the west line of said Lot 1 a distance of 30.00 ft. to a point,
Thence N 75° 14' 53" E a distance of 75.31 ft. to a point,
Thence N 15° 31' 21" W a distance of 155.56 ft. to a point,
Thence S 75° 22' 00" W a distance of 6.97 ft. to a point,
Thence N 15° 31' 21" W a distance of 30.00 ft. to a point in the north line of said Lot 1,
Thence N 75° 22' 00" E along the north line of said Lot 1 a distance of 435.48 ft. to the place of beginning and containing 0.503 acres.

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



R.A. Shelton 5-14-20
Richard A. Shelton, RPLS
City of Midland, Texas
432-685-7372

City Council Meeting



Item Number: 6
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Jose Ortiz, Director

Approved for Agenda:

City Manager's Office

2020-101

Subject: Resolution supporting the top-tier prioritization of certain Texas Department of Transportation projects; and supporting the expansion of the Texas Department of Transportation Ports-to-Plains Study (ENGINEERING SERVICES)

Purpose:

Consider a resolution supporting the top-tier prioritization of certain Texas Department of Transportation projects; and supporting the expansion of the Texas Department of Transportation Ports-to-Plains Study

Recommended City Council Action:

Approve

Fiscal Impact:

No Funding Required

Discussion:

This resolution will serve as a response to comments that Texas Department of Transportation ("TxDOT") requested as part of the public comment period for a public meeting held on May 13th, 2020. In summary this resolution is in support of the TxDOT Port-to-Plains Corridor feasibility study with the understanding that the placement of the roadway segments leading directly to Midland-Odessa (State Highway 349 from Lamesa to Midland and State Highway 158 from Midland to Sterling City) is in the top tier for prioritization in TxDOT's finalized study. The resolution also supports the placement of the Midland Reliever Route construction completion in the top tier for prioritization of TxDOT's finalized study.

RESOLUTION NO. _____

**RESOLUTION SUPPORTING THE TOP-TIER
PRIORITIZATION OF CERTAIN TEXAS
DEPARTMENT OF TRANSPORTATION PROJECTS;
AND SUPPORTING THE EXPANSION OF THE TEXAS
DEPARTMENT OF TRANSPORTATION PORTS-TO-
PLAINS STUDY**

WHEREAS, the Texas Department of Transportation (“*TxDOT*”) is currently conducting a feasibility study of the designated Ports-to-Plains Corridor, including segments from south of I-27 stretching from Lubbock to Laredo and north of I-27 from Amarillo to the Texas/Oklahoma/New Mexico borders, along the designated corridor; and

WHEREAS, the City Council views this effort as a continuation of the original Lubbock to I-10 Study that TxDOT undertook from 1993-1997, where multiple routes were studied and, ultimately, no route was identified for designation or build out to an interstate standard; and

WHEREAS, while the initial findings report included in the study are positive, it is important to remember that the Ports-to-Plains Corridor is only one of those original routes studied by TxDOT; and

WHEREAS, the current economic analysis within said study relies on impacts calculated using 69 counties located along the Ports-to-Plains Corridor; and

WHEREAS, said analysis is based significantly on the impact of the Permian Basin and the Midland-Odessa Combined Statistical Area (CSA); and

WHEREAS, said study shows that the Midland-Odessa CSA is the most significant metropolitan area for economic benefit and the majority savings and cost beneficiary from reduced vehicular crashes; and

WHEREAS, the State Highway 349 corridor from Lamesa to Midland was recommended in the original Lubbock to I-10 Study for build out as a four-lane divided highway; and

WHEREAS, the Permian Basin CSA and Central Permian comprise some of the most significant contributions to such economic and cost-saving factors, and the positive results of the initial draft warrant expansion of the project throughout the Permian Basin;

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

SECTION ONE. That the City Council supports the placement of the roadway segments leading directly to Midland-Odessa (State Highway 349 from Lamesa to Midland and State Highway 158 from Midland to Sterling City) in the top tier for prioritization in TxDOT's finalized study.

SECTION TWO. That the City Council supports the placement of the Midland Reliever Route construction completion in the top tier for prioritization in TxDOT's finalized study because the right-of-way for the State Highway 349 Reliever Route, from the junction of State Highway 349 and Business State Highway 349 to State Highway 191, has been acquired.

SECTION THREE. That the City Council supports the expansion of TxDOT's Ports-to-Plains Study (utilizing the same methodology as the current Ports-to-Plains Study and baseline economic data) to include all of the routes from the original Lubbock to I-10 Study and other viable routes (e.g., U.S. Highway 62/385) with a focus on the viability of connecting I-27 to I-20 or I-10, and ensure that any improvements result in the maximum outcome for the public and provide the greatest benefit for Texas taxpayers.

SECTION FOUR. That the City Council supports the inclusion of a county-by-county breakout of the economic, safety, and cost-benefit analysis in TxDOT's final report regarding the expanded Ports-to-Plains Study so that participants and the general public will have more transparency in the analysis and make the valuable data contained herein available for review and use by the people and entities within the 69 counties located along the Ports-to-Plains Corridor.

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., 2020, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



PORTS-TO-PLAINS CORRIDOR FEASIBILITY STUDY (HB 1079)

COMMENT CARD

Wednesday, May 13, 2020
Segment #2 Virtual Public Meeting

Thank you for participating in TxDOT's virtual public meeting. Please use the space below to submit written comments; attach additional pages if necessary. You may email to portstoplains@txdot.gov or mail to the address provided below. All written comments must be postmarked by Thursday, May 28, 2020. Thank you for your comments.

The Segment #2 Committee has identified the following preliminary recommended projects and studies. Please rank the recommendations with your priority for implementation.

1. Interstate Upgrade

Prioritize the preliminary recommendations.

	Short-Term (0-5 years)	Mid-Term (6-10 years)	Long-Term (11+ years)
Upgrade US 87 to Interstate: Lubbock to Tahoka	☐	☐	☒
Upgrade US 87 to Interstate: Tahoka to Lamesa	☐	☐	☒
Upgrade SH 349 to Interstate: Lamesa to Midland	☐	☒	☐
Upgrade US 87 to Interstate: Lamesa to Big Spring	☐	☐	☒
Upgrade US 87 to Interstate: Big Spring to Sterling City	☐	☐	☒
Upgrade SH 158 to Interstate: Midland to Sterling City	☐	☒	☐
Upgrade US 87 to Interstate: Sterling City to San Angelo	☐	☒	☐
Upgrade US 277 to Interstate: San Angelo to Christoval	☐	☐	☒
Upgrade US 277 to Interstate: Christoval to Sutton/Edwards Co. Line	☐	☐	☒

(Continued)

PORTS-TO-PLAINS CORRIDOR FEASIBILITY STUDY (HB 1079)

2. Relief Route Studies

Prioritize the preliminary recommendations.

	Short-Term (0-5 years)	Mid-Term (6-10 years)	Long-Term (11+ years)
Tahoka Relief Route Study around the city	☐	☐	☒
O'Donnell Relief Route Study around the city	☐	☐	☒
Lamesa Relief Route Study around the city	☐	☒	☐
Patricia Relief Route Study around the city	☐	☐	☒
Midland Relief Route Study around the city	☒	☐	☐
Garden City Relief Route Study around the city	☐	☒	☐
Sterling City Relief Route Study around the city	☐	☒	☐
Water Valley Relief Route Study around the city	☐	☐	☒
Carlsbad Relief Route Study around the city	☐	☐	☒
Christoval Relief Route Study around the city	☐	☐	☒
San Angelo Relief Route on the east side of the city (study underway)	☐	☒	☐
Eldorado Relief Route Study around the city	☐	☐	☒
Sonora Relief Route around the city (study underway)	☐	☐	☒

(Continued)

PORTS-TO-PLAINS CORRIDOR FEASIBILITY STUDY (HB 1079)

3. Recommended Safety and Operational Projects

Prioritize the preliminary recommendations.

	Short-Term (0-5 years)	Mid-Term (6-10 years)	Long-Term (11+ years)
I-27 and SH 289 (north end): Develop interchange	☐	☐	☒
I-27 and US 82: Develop interchange	☐	☐	☒
I-27 and US 62: Develop interchange	☐	☐	☒
I-27 and SH 289 (south end): Develop interchange	☐	☐	☒
Loop 88: Intersection (currently in development)	☐	☐	☒
US 87 and SH 41: Add grade separation	☐	☐	☒
US 87 and FM 211: Add grade separation	☐	☐	☒
US 87 and FM 1317: Add grade separation	☐	☐	☒
US 87 and FM 213: Add grade separation	☐	☐	☒
US 87 and FM 2053: Add grade separation	☐	☐	☒
I-20 at SH 158: Improve intersection	☒	☐	☐
SH 158 and SH 137: Add grade separation	☐	☒	☐
I-20 and Business 87: Improve intersection	☐	☐	☒
US 87 and US 67: Improve overpass	☐	☐	☒
US 87 at US 277 at LP 306: Improve intersection	☐	☐	☒
Along US 277: Study bridge over river and access on and off	☐	☐	☒
US 277 at FM 110: Add grade separation	☐	☐	☒
US 277 at RM 189: Study overpass	☐	☐	☒

(Continued)

PORTS-TO-PLAINS CORRIDOR FEASIBILITY STUDY (HB 1079)

4. Comments (Please Print)

The City of Midland will consider a resolution supporting the Texas Department of Transportation's Port-to-Plains Corridor Feasibility Study. The resolution will be presented to the Mayor and Council on June 9, 2020. A copy of the draft resolution has been attached as part of the City's response to comments.

Name: Courtney SP

Address: 300 N. Lorraine St. Midland, Texas 79701

Email: Csharp@midlandtexas.gov

Representing: City of Midland

Texas Transportation Code, §201.811(a)(5): check each of the following boxes that apply to you:

- ☐ I am employed by TxDOT
- ☐ I do business with TxDOT
- ☐ I could benefit monetarily from the project or other item about which I am commenting

Written comments submitted by mail must be postmarked by Thursday, May 28, 2020 and sent to

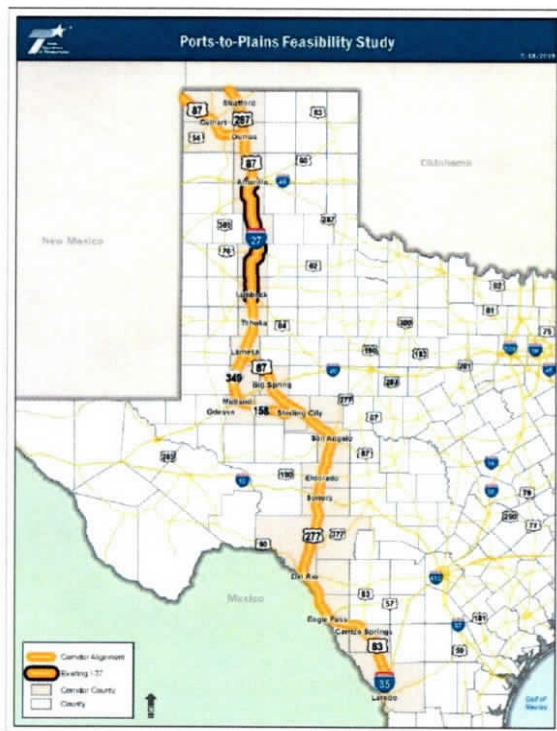
Texas Department of Transportation
c/o Ports-to-Plains Study Team
5835 Callaghan Road, Ste. 200
San Antonio, Texas 78228



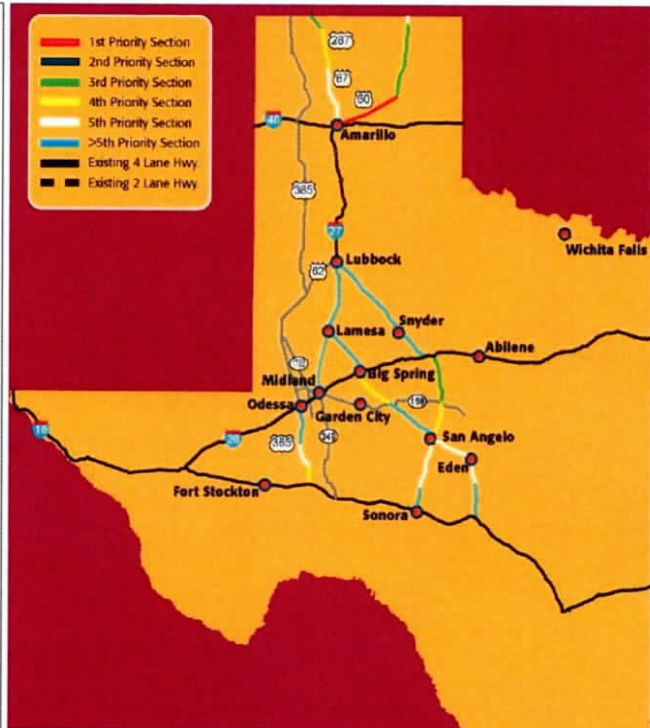
BACKGROUND:

The Texas Department of Transportation is currently conducting a study (HB 1079, passed during the 2019 Legislative Session) to determine the feasibility of a proposed extension of I-27 south from Lubbock to Laredo and north from Amarillo to the Texas/Oklahoma/New Mexico border, along the designated Ports to Plains corridor.

We view this effort as a continuation of the original Lubbock to I-10 Study the department undertook from 1993-1997 where multiple routes were studied. At the conclusion of that study, no route was identified for designation or build out to an interstate standard. While the initial findings reported during the recent meeting are very positive, it is important to remember, that the Ports to Plains corridor is just one of those original routes studied.



Ports to Plains Corridor (Current Study)



Segments Considered in Original Study (1993-1997)

There are 27 counties the Ports to Plains Corridor actually travels through, however, the economic analysis includes economic and demographic justification from 42 additional counties to make a positive case for the extension of I-27.

While the data being reported is for the overall corridor and the requisite segments, based on our review of data by counties, it appears that much of the positive economic review is contingent on the economic, population, and employment occurring in the Permian Basin.

Some of those key data points include:

- The Midland-Odessa CSA, alone, would account for 60% of the projected population growth for the 69 counties included in the entire corridor and 69% of that growth along segment 2.
- The three counties that comprise the Midland-Odessa CSA would account for just over 51% of the projected 2050 population on segment 2 and approximately 34% of the 2050 population for the 69 counties in the entire corridor study area.
- The Midland-Odessa CSA, accounts for 23% of the baseline for total employment for the 69 counties included in the entire corridor study area and 32.4% of all labor income in that same area.

OVERALL ANALYSIS

CORRIDOR	2020	2050	Diff 2020 to 2050	With I-27	Difference	
Employment	894,770	1,044,140	149,370	1,061,850	17,710	
Labor Income	95.0	161.8	66.8	163.1	1.4	(billions)
GDP	155.4	263.2	107.8	265.4	2.2	(billions)
Population	1,996,680	3,207,970	1,211,290	3,236,280	28,130	

SEGMENT 2	2020	2050	Diff 2020 to 2050	With I-27	Difference	
Employment	485,820	590,530	104,710	597,810	7,280	
Labor Income	61.6	107.8	46.2	108.4	0.6	(billions)
GDP	99.8	175.1	75.3	176.0	0.9	(billions)
Population	1,046,560	2,104,480	1,057,920	2,114,100	9,620	

MID/OD CSA	2020	2050	Diff 2020 to 2050	With I-27	Difference	
Employment	191,555					
Labor Income	(approximately 52% of segment 2 and 32% of the entire corridor 2020 base)					
GDP	49.4					(billions)
Population	354,644	1,080,477	725,833			

AREAS OF CONCERN AND PRIORITY RECOMMENDATIONS:

While the Midland-Odessa CSA (Combined Statistical Area) makes up a significant chunk of the economic justification, the corridors to our area are given less priority than other segments of US 87, that have less traffic and less safety benefits.

1) Due to the significance of the Midland-Odessa area on the overall study results, we would suggest that the corridors leading directly to Midland-Odessa (SH349 from Lamesa to Midland and SH 158 and

Midland to Sterling City) should be placed in the top priority tier. These are the only 2 segments from Dumas to San Angelo that are not a four lane divided roadway.

The SH 349 corridor from Lamesa to Midland was recommended in the original report (I-27 to I-10 Extension, 1993-97) for build out as 4 lane divided, however, while improvements were made to other corridors, the SH 349 segment has not been built to that same standard. The segment of SH 158 from Midland to Sterling City is part of a National High Priority Corridor and a designated Phase 1 Texas Trunk System Project. Much of the ROW along this corridor from Sterling City to the Glasscock/Sterling County line has already been acquired by TXDOT.

That report also called for construction of relief routes. The Midland Relief Route was only built to a two lane standard, as opposed to the build out of the Big Spring Reliever Route, and progress already underway in San Angelo. As such, we would also recommend: The Reliever Route which provides a connection between Midland and Odessa, is integral to ensuring that there is benefit for both communities.

2) Completing Construction of the existing Midland Reliever Route should also be include in the top tier of priority projects. ROW already exists for the SH 349 Reliever Route from the junction of SH 349/BS 349 north of Midland down to SH 191.

Current AADT and capacity constraints in the initial report also identified these projects as higher priorities than the other currently recommended projects. While public input and public opinion are vital parts of the process, we also believe that science and data should be a key factor, and the initial safety data we have reviewed, indicates that improvements to these segments of SH 349 and SH 158, comprise much of the safety benefit detailed in the report.

ADDITIONAL RECOMMENDATIONS:



The current economic and cost benefit analysis incorporates data from 69 counties, 27 of which are on the prescribed corridor outlined in HB 1079. Of those 27 counties, many have lost population, employment, and revenues over the last 30 years. In the State Data Center projections, 10 of those 27 counties directly on the corridor are projected to lose additional population between now and 2050, the target year listed in the report.

Further, over half of the baseline employment, labor income, GDP, and population used in the overall economic analysis are derived from Segment 2, and the percentage of those factors related to segment 2 increases dramatically by the 2050 target year.

Utilizing your economic analysis utilized in the current study, we found that extending I-27 to I-20 would produce between 70 to 80% of the economic benefit at roughly a third of the cost. After running economic data for the counties included in the study, both on the prescribed corridor and off, it also appears a higher direct benefit could be achieved by looking at a single route direct to Midland-Odessa (US 87, SH 349, FM 1788) or by looking at an

alternative route to Odessa-Midland (US 62/US 385/FM 1788). By comparison, without the Midland leg, the counties directly along the corridor in segment 2, only account for around 25% of GDP and 40% of labor income.

Because the possible US 62/US 385/FM 1788 route is not included in the study prescribed by HB 1079, we would encourage the department to look at it and other routes to achieve the best cost/benefit ratio for taxpayers and comply with the National Environmental Protection Act (NEPA).

Based on this review, we would make the additional recommendations:

1) Provide a breakout of the economic, safety, and cost benefit analysis, of the study by county, so that participants and the general public will have more transparency in the analysis to provide more constructive feedback regarding routing considerations, prioritization of improvements, and whether certain segments are more warranted than others, to provide the most prudent use of taxpayer dollars, as opposed to an all-or-nothing approach.

2) Based on the data available currently and achieving the best and highest use of taxpayer dollars the report being issued to state leaders, there should be a follow-up study of alternative routes that may be able to provide more benefit for Texas taxpayers. In addition, this is a massive undertaking and significant expenditure for the state. The current membership of the study only includes representation from the 27 counties directly on the route. However, because the study area encompasses 42 additional counties, additional efforts need to be undertaken that allow for public input and voting privileges for those affected communities as well, rather than allowing a process whereby representatives of 27 counties are allowed to make and implement recommendations that impact 69 counties.

CONCLUSION:

The original Lubbock to I-10 Study was a lengthy and thorough study that took nearly 4 years. As stated earlier, that effort did not result in the build out of a particular route to an interstate standard, but rather the Commission deciding to make improvements needed to bring all three routes to a four lane divided design and other ancillary improvements that would accomplish many of the same benefits listed in this report such as improved safety, time/travel savings, and economic opportunity. We believe that the results of this study warrants an expansion of this effort and would encourage the department to apply the same methodology developed in this Ports to Plains corridor study to all viable routes in the study area.

RESOLUTION NO. _____

**RESOLUTION SUPPORTING THE TOP-TIER
PRIORITIZATION OF CERTAIN TEXAS
DEPARTMENT OF TRANSPORTATION PROJECTS;
AND SUPPORTING THE EXPANSION OF THE TEXAS
DEPARTMENT OF TRANSPORTATION PORTS-TO-
PLAINS STUDY**

WHEREAS, the Texas Department of Transportation (“*TxDOT*”) is currently conducting a feasibility study of the designated Ports-to-Plains Corridor, including segments from south of I-27 stretching from Lubbock to Laredo and north of I-27 from Amarillo to the Texas/Oklahoma/New Mexico borders, along the designated corridor; and

WHEREAS, the City Council views this effort as a continuation of the original Lubbock to I-10 Study that TxDOT undertook from 1993-1997, where multiple routes were studied and, ultimately, no route was identified for designation or build out to an interstate standard; and

WHEREAS, while the initial findings report included in the study are positive, it is important to remember that the Ports-to-Plains Corridor is only one of those original routes studied by TxDOT; and

WHEREAS, the current economic analysis within said study relies on impacts calculated using 69 counties located along the Ports-to-Plains Corridor; and

WHEREAS, said analysis is based significantly on the impact of the Permian Basin and the Midland-Odessa Combined Statistical Area (CSA); and

WHEREAS, said study shows that the Midland-Odessa CSA is the most significant metropolitan area for economic benefit and the majority savings and cost beneficiary from reduced vehicular crashes; and

WHEREAS, the State Highway 349 corridor from Lamesa to Midland was recommended in the original Lubbock to I-10 Study for build out as a four-lane divided highway; and

WHEREAS, the Permian Basin CSA and Central Permian comprise some of the most significant contributions to such economic and cost-saving factors, and the positive results of the initial draft warrant expansion of the project throughout the Permian Basin; and

WHEREAS, the City Council finds it to be in the public interest to support the designation of an extension of Interstate 27 as a future interstate of Texas;

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

SECTION ONE. That the City Council supports the placement of the roadway segments leading directly to Midland-Odessa (State Highway 349 from Lamesa to Midland and State Highway 158 from Midland to Sterling City) in the top tier for prioritization in TxDOT's finalized study.

SECTION TWO. That the City Council supports the placement of the Midland Reliever Route construction completion in the top tier for prioritization in TxDOT's finalized study because the right-of-way for the State Highway 349 Reliever Route, from

the junction of State Highway 349 and Business State Highway 349 to State Highway 191, has been acquired.

SECTION THREE. That the City Council supports the expansion of TxDOT's Ports-to-Plains Study (utilizing the same methodology as the current Ports-to-Plains Study and baseline economic data) to include all of the routes from the original Lubbock to I-10 Study and other viable routes (e.g., U.S. Highway 62/385) with a focus on the viability of connecting I-27 to I-20 or I-10, and ensure that any improvements result in the maximum outcome for the public and provide the greatest benefit for Texas taxpayers.

SECTION FOUR. That the City Council supports the inclusion of a county-by-county breakout of the economic, safety, and cost-benefit analysis in TxDOT's final report regarding the expanded Ports-to-Plains Study so that participants and the general public will have more transparency in the analysis and make the valuable data contained herein available for review and use by the people and entities within the 69 counties located along the Ports-to-Plains Corridor.

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., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Agenda

Approved for Agenda:
RWPatrick
City Manager's Office

MEETING DATE: 6/9/2020

TO: City Council / City Manager

FROM: Matt Carr, City Engineer

SUBJECT: Motion on request by Maverick Engineering to defer public wastewater, paving, and sidewalk improvements for Country Sky Addition, Section 26 and to waive the corresponding financial security guarantee valued at \$134,596.00, an amount equal to the estimated cost to construct the public infrastructure.

Purpose:

Consider a motion on request by Maverick Engineering to defer public wastewater, paving, and sidewalk improvements for Country Sky Addition, Section 26 and to waive the corresponding financial security guarantee valued at \$134,596.00, an amount equal to the estimated cost to construct the public infrastructure.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Water Distribution	\$ 0.00
Wastewater Collection	\$8,095.00
Paving	\$ 111,462.00
Sidewalk	\$ 15,039.00
Drainage	<u>\$ 0.00</u>

Total Value of Deferral \$134,596.00

Discussion:

Country Sky Addition is a 3.972-acre property being subdivided into three 1.324-acre residential lots. The property is generally located on the west side of Roadrunner Trail, approximately 683-feet south of the intersection of Roadrunner Trail and West County Road located within Midland's City Limits.

Maverick Engineering, on behalf of the developer, Sanchez Diamond Homes Construction Inc., has requested to defer public wastewater, paving, and sidewalk improvements, and waive the corresponding financial security guarantee, which is equal to 100% of the developer's portion of the construction costs.

Wastewater:

The nearest existing gravity sewer line is an 18-inch line located at north east corner of Avalon Dr. and W. County Rd. 60 approximately 1,110 feet north east of this site. Country Sky Addition, Section 26 meets the conditions of a *"Non-accessible wastewater system", defined in Section 11-2-5 (A) 3-b-3 of the City Code by "In circumstances where the City health department has determined that there is sufficient area for each platted lot to permit installation of an individual disposal device in accordance with specifications of the department, and it is not anticipated that sanitary sewers will be accessible in the foreseeable future, the City may permit the subdivider to install such individual disposal systems for each lot in the subdivision in lieu of future provision for connection to public wastewater facilities."*

Paving & Sidewalk:

Country Sky Addition, Section 26 has approximately 413-feet of frontage along West County Road 44. There is no sidewalk installed in this area, with the nearest sidewalk at W.CR. 60 at the Bush Tennis Center approximately 0.70 miles east of this site. the current level of development is consistent with what is in the region. It seems unlikely that the City will wish to extend public paving and sidewalk to reach this site.

At this time the City is extending the sewer line along West County Road 60 (Briarwood Ave.) from Avalon Dr. toward HWY 158. The time frame that the City would extend public wastewater, paving and sidewalk improvements to City standards south towards this area may exceed the 10-year horizon beyond which the City is obligated to return any escrow deposits with interest. The development will be subject to all impact fees upon installation of water meters.

Appropriately, staff is recommending approval of the request for deferral of wastewater, paving, and sidewalk improvements within this subdivision. Staff also recommends approval of the request to waive the corresponding financial security guarantee for paving, wastewater, and sidewalk improvements.

The installation of public improvements may be required by the City of Midland at such time as: (1) the 3.972-acre tract is re-platted for subdivision into smaller lots, or (2) the property is rezoned for a more intensive use.

Attached are the deferral request, Opinion of Probable Cost and Preliminary Plat prepared by Maverick Engineering and a location map prepared by staff.



ENGINEERING DIVISION

REQUEST TO
DEFER

Wastewater Collection, Paving &
Sidewalks

Country Sky Addition, Section 26
Deferral Request

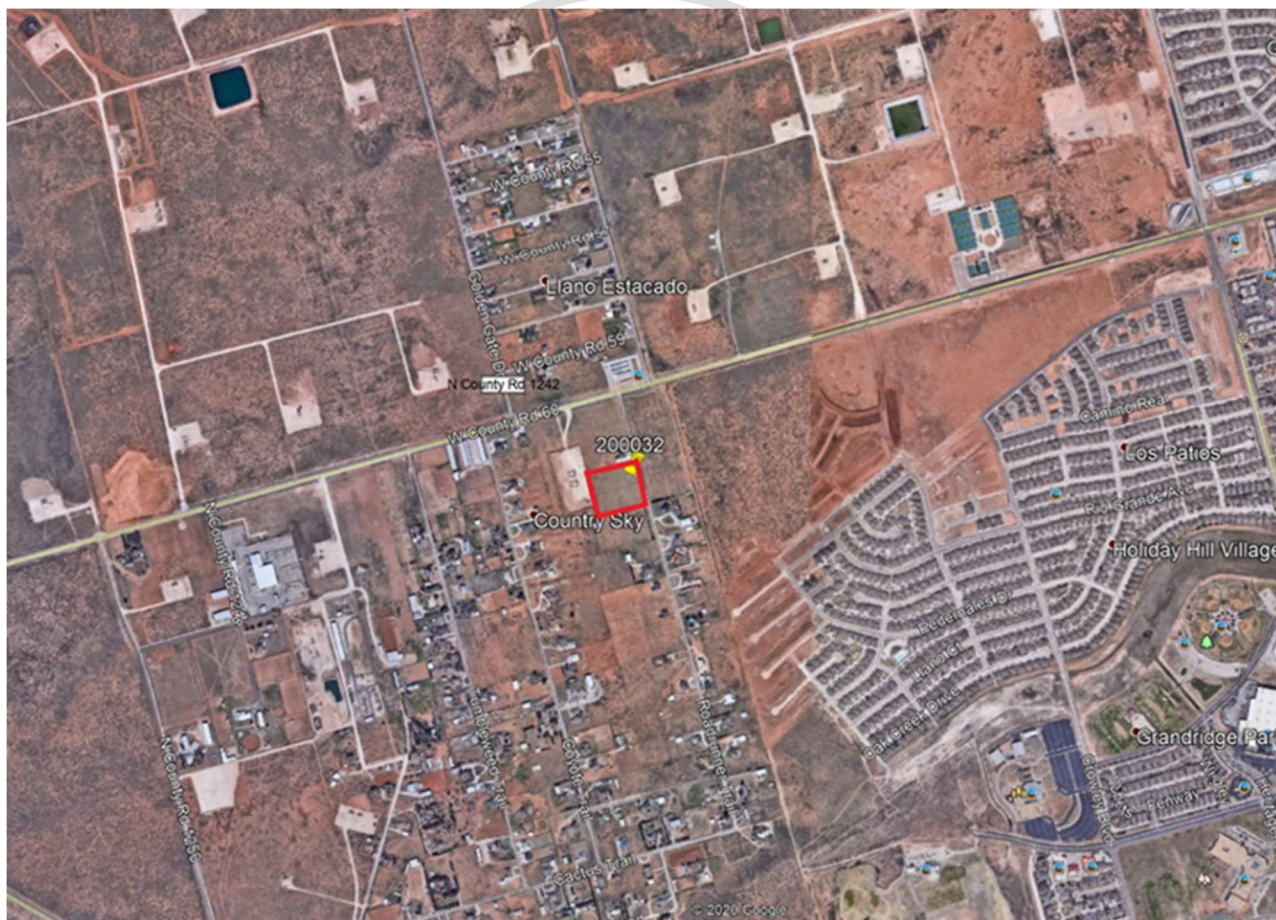
(Maverick Engineering)



MAVERICK ENGINEERING

REQUEST FOR DEFERRAL LETTER

MAVERICK JOB #: 200032



April 28, 2020

Jose Ortiz
Engineering Director
300 N. Loraine
P.O. Box 1152
Midland, Texas 79702

Re: Country Sky Addition, Section 26 - Request for Deferral

Mr. Ortiz:

Country Sky Addition, Section 26 being a re-plat of Lot 6F, Block 2, Country Sky Addition, Section 21 Midland County, Texas. The total area of the plat is 3.972-acres, which is subdivided into a three residential lot as follows:

- Lot 6G – 1.324 Acres
- Lot 6H – 1.324 Acres
- Lot 6I – 1.324 Acres

The site is generally located on the west side of Roadrunner Trail, approximately 683-feet south of the intersection of Roadrunner Trail and W. CR. 60.



VICINITY MAP

Sewer

The client is requesting to defer public wastewater collection improvements, and to waive the financial security guarantee associated with those improvements. The following reasons are cited as part of our request:

- Country Sky Addition, Section 26 meets the conditions of a “Non-accessible wastewater system”, defined in Section 11-2-5 (A) 3-b-3 of the City Code by *“In circumstances where the City health department has determined that there is sufficient area for each platted lot to permit installation of an individual disposal device in accordance with specifications of the department, and it is not anticipated that sanitary sewers will be accessible in the foreseeable future, the City may permit the subdivider to install such individual disposal systems for each lot in the subdivision in lieu of future provision for connection to public wastewater facilities.”*
- The nearest existing gravity sewer line is a 18-inch line located at north east corner of Avalon Dr. and W. County Rd. 60 approximately 1,110 feet north east of this site.

The property will be developed as a single residential lot. The owner will install an approved septic system to meet the sewer needs of the lot.

In summary, the City seems unlikely to extend service to this addition with a non-accessible wastewater system; therefore, we are requesting to defer public wastewater collection improvements, and to waive the financial security guarantee associated with those improvements.

The construction cost for wastewater line across the client’s frontage is estimated at approximately \$8,095 (please see attached cost estimate). This assumes an 8-inch line, medium depth excavation, and installation outside of pavement. The extension project as a whole would require manholes, deeper excavation, and possibly lift stations. The addition of any of these items dramatically swells construction costs.

Paving & Sidewalk

The client is requesting to defer public paving and sidewalk, and to waive the financial security guarantee associated with those improvements. The following reasons are cited as part of our request:

- Country Sky Addition, Section 26 has approximately 413-feet of frontage along West County Road 44.
- There is no sidewalk installed in this area, with the nearest sidewalk at W.CR. 60 at the Bush Tennis Center approximately 0.70 miles east of this site.

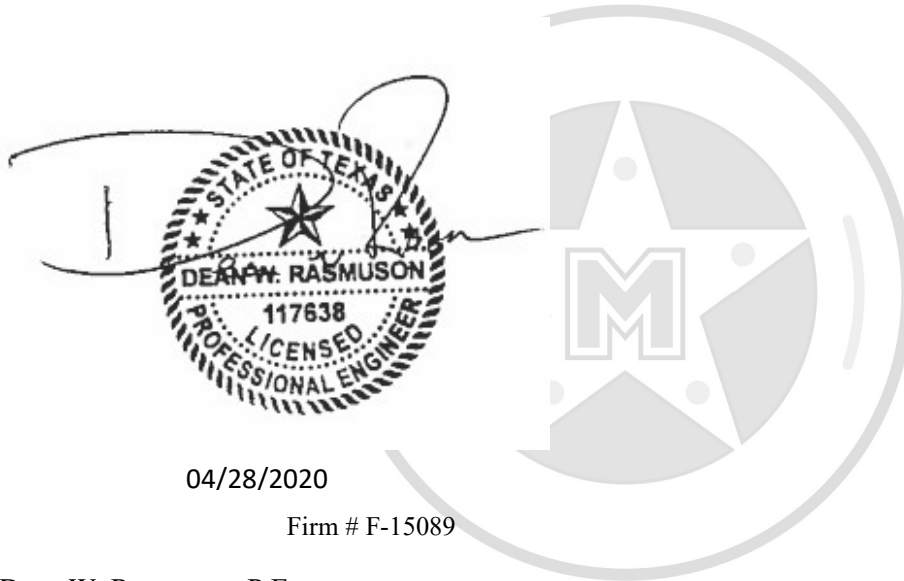
In summary, the current level of development is consistent with what is in the region. It seems unlikely that the City will wish to extend public paving and sidewalk to reach this site. Therefore, the client is requesting to defer sidewalk improvements, and to waive the financial security guarantee associated with those improvements. The Construction costs for paving and sidewalks for the client’s frontage is estimated at approximately \$126,596. Please see attached City of Midland spreadsheet.

Drainage

Drainage study is not required for single family residents per city comments.

If you have any questions or require additional information, please do not hesitate to contact me at (432) 262-0999 or email me at drasmuson@Maverick-eng.com

Sincerely,



04/28/2020

Firm # F-15089

Dean W. Rasmuson, P.E.
Maverick Engineering





Summary of Public Improvements - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
Engineer: Dean Rasmuson, Maverick Engineering

Summary	Total
Wastewater Collection Improvements	\$8,095.00
Water Distribution Improvements	\$0.00
Storm Sewer Improvements	\$0.00
Paving Improvements	\$111,462.00
Sidewalk Improvements	\$15,039.00
Construction Total	\$134,596.00



Wastewater Collection - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
 Engineer: Dean Rasmuson, Maverick Engineering

Wastewater Main Improvements -----	Quantity -----	Unit ----	Unit Price -----	Total -----
12" SDR 35 PVC	0	LF	25.00	0.00
8" SDR 35 PVC	413	LF	15.00	6,195.00
6" SDR 35 PVC	0	LF	13.00	0.00
Trenching/Backfill 0'-5'	0	LF	20.00	0.00
Length under paved surface:	0	LF		
Trenching/Backfill 5'-8'	0	LF	22.00	0.00
Length under paved surface:	0	LF		
Trenching/Backfill 8'-10'	0	LF	25.00	0.00
Length under paved surface:	0	LF		
Trenching/Backfill 10'-12'	0	LF	30.00	0.00
Length under paved surface:	0	LF		
Trenching 12'-14'	0	LF	35.00	0.00
Length under paved surface:	0	LF		
Imported Backfill Material	0.00	TN	15.00	0.00
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole	0	EA	5000.00	0.00
New Manhole	0	EA	3500.00	0.00
Remove Manhole	0	EA	1000.00	0.00
Manhole Extra Depth (MH>5')	0	VF	400.00	0.00
Connect to Existing MH	0	EA	500.00	0.00
24" Bore & Steel Encasement	0	LF	480.00	0.00
18" Bore & Steel Encasement	0	LF	360.00	0.00
12" Bore & Steel Encasement	0	LF	240.00	0.00
4" Wastewater Service	0	EA	550.00	0.00
6" Wastewater Service	0	EA	750.00	0.00
Volume, Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Length of Flowable Fill (Under Pavmt):	0.00	LF		
Length of Flowable Fill (Other Misc):	0.00	LF		
Depth of Flowable Fill (ft):	2.00	FT		

Construction Subtotal **\$6,195.00**



Wastewater Collection - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
 Engineer: Dean Rasmuson, Maverick Engineering

Wastewater Main Improvements -----	Quantity -----	Unit ----	Unit Price -----	Total -----
Construction Subtotal (from prev page)				\$6,195.00
Asphalt Pavement Repair	0	LF	20.00	0.00
Concrete Pavement Repair	0	LF	25.00	0.00
Erosion Protection (\$/100LF)	0	cLF	500.00	0.00
Trench Protection (Trenching > 5')	0	LF	2.00	0.00
Traffic Control / Job Site Safety	0	cLF	150.00	0.00
Construction Staking (\$/100LF)	0	cLF	250.00	0.00
Contingency (nearest \$100)	15	%	15%	900.00
Construction Total				\$7,095.00
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	1,000.00
Construction Administration	5	LS	5%	0.00
Engineering & Administration Total				\$1,000.00
TOTAL				\$8,095.00
 \$Cost / LF	 413	 LF		 19.60048426



Paving - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
 Engineer: Dean Rasmuson, Maverick Engineering

Paving Improvements -----	Quantity -----	Unit ----	Unit Price -----	Total -----
Paving Width (back-to-back)	36	FT		
Length of Paving	413	FT		
Base Rock Depth - Bott Lift (6" min - 8" max)	6	in		
Base Rock Depth - Top Lift (5", 6" or 8" max)	6	in		
Base Rock Unit Weight (95% Standard Proctor)	120	PCF		
Base Rock waste	5	%		
HMAC thickness (in)	4	in		
HMAC waste	5	%		

Paving Improvements -----	Quantity -----	Unit ----	Unit Price -----	Total -----
ROW Preparation	413	LF	10.00	4,130.00
24" Curb & Gutter	826	LF	15.00	12,390.00
Excavation	581.26	CY	5.00	2,906.30
Scarify / Shape / Compact Sub-grade	1743.78	SY	3.50	6,103.22
Base Rock - Bott Lift (Material Only)	494.36	TN	9.50	4,696.43
Base Rock - Top Lift (Material Only)	429.31	TN	9.50	4,078.48
Shape / Compact Base Rock - Bottom Lift	1743.78	SY	3.50	6,103.22
Shape / Compact Base Rock - Top Lift	1468.44	SY	3.50	5,139.56
Tack Coat	1468.44	SY	1.00	1,468.44
HMAC (Material Only)	296.81	TN	80.00	23,744.75
Installation of HMAC Surface Course	1468.44	SY	4.00	5,873.78
Erosion Protection (\$/100 LF)	4.13	LS	1000.00	4,130.00
Construction Staking (\$/100LF)	4.13	LS	500.00	2,065.00
Traffic Control / Job Site Safety (\$/100LF)	4.13	LS	250.00	1,032.50
Contingency (nearest \$100)	15	%	15%	12,600.00

Construction Total **\$96,461.67**



Paving - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
Engineer: Dean Rasmuson, Maverick Engineering

Paving Improvements -----	Quantity -----	Unit ----	Unit Price -----	Total -----
Construction Total (from prev page)				\$96,461.67
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	10,000.00
Construction Administration	5	LS	5%	5,000.00
Engineering & Administration Total				\$15,000.00
TOTAL				\$111,462.00
Developers Share				\$111,462.00
\$Cost / LF				269.8837772



Sidewalk - Opinion of Probable Cost

Location: Country Sky Addition, Section 26
Engineer: Dean Rasmuson, Maverick Engineering

Sidewalk Improvements -----	Quantity -----	Unit -----	Unit Price -----	Total -----
Sidewalk Width	5	Ft		
Length of Sidewalk	413	LF		
4" Concrete Sidewalks	2065	SF	6.75	13938.75
Construction Total				\$13,938.75
Engineering & Surveying	5	LS	5%	700.00
Construction Administration	3	LS	3%	400.00
Engineering & Administration Total				\$1,100.00
TOTAL				\$15,039.00



City Council Meeting



Item Number 8

Meeting Date: June 9, 2020

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Mid-States Operating Company, regarding city-owned property described as Sections 4, 5, 9 and 10, Block 38, Township 2 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Approved for Agenda:

City Manager's Office

060-2020

Purpose:

This motion will provide a Twenty foot (20) wide right of way in multiple sections of City Plant Farm property. In Section 4 the ROW lies approximately 550 feet East of the COM Police Firing Range. Total pipeline ROW on City property is 19,916.31 feet / 1,207.3 rods. This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

The following fees will be collected: Application fee (one time): \$1,000 Annual Lease Rate (1,210.39 rods x \$20/rod): \$24,207.80 Surface Damages: (1,207.3 rods x \$10/rod): \$12,103.90 Total Collected: \$37,311.70

Discussion:

This private use, SDR-11 poly construction water line will be twelve inches (12) in diameter and buried forty-eight inches (48) deep. The requested temporary Construction ROW will be thirty feet (30) and will terminate after construction. Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file. City Secretary to record completed License Agreement



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 5/12/2020

TO: City Council / City Manager

FROM: John Simmons, Right-of-Way Manager

SUBJECT: Consider a motion authorizing the execution of a right-of-way license between the City of Midland and Mid-States Operating Company, regarding city-owned property described as Sections 4, 5, 9 and 10, Block 38, Township 2 South, T&P RR Co. Survey, Midland County, Texas.

Purpose:

This motion will provide a Twenty foot (20) wide right of way in multiple sections of City Plant Farm property. In Section 4 the ROW lies approximately 550 feet East of the COM Police Firing Range. Total pipeline ROW on City property is 19,916.31 feet / 1,207.3 rods.

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The following fees will be collected:

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

Annual Lease Rate (1,210.39 rods x \$20/rod): \$24,207.80

Surface Damages: (1,207.3 rods x \$10/rod): \$12,103.90

Total Collected: \$37,311.70

Discussion:

This private use, SDR-11 poly construction water line will be twelve inches (12) in diameter and buried forty-eight inches (48) deep. The requested temporary Construction ROW will be thirty feet (30) and will terminate after construction.

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

City Secretary to record completed License Agreement



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2019

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 be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 15 Smith Road, Suite 6000 Midland TX 79705		CONTACT NAME: Lesa Sanchez PHONE (A/C No. Ext): 432-618-4570 FAX (A/C No): 432-618-4620 E-MAIL ADDRESS: lesa.sanchez@marshmma.com	
		INSURER(S) AFFORDING COVERAGE	
		NAIC #	
INSURED Mid-States Operating Co. 1607 W Texas Ave. Midland TX 79701		MIDOE	
		INSURER A: Berkley National Insurance Company	
		INSURER B: Berkley Regional Insurance Company	
		INSURER C: Texas Mutual Insurance Company	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1059778055

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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Pollution GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		EGL001416116	6/1/2019	6/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 S&A Pollution \$ 1,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS		ECA312749116	6/1/2019	6/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☒ RETENTION \$ 10,000 ☐ OCCUR ☐ CLAIMS-MADE		EUL001416216	6/1/2019	6/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	0001238386	6/1/2019	6/1/2020	☒ 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)

Additional Insured form #EGL1000 edition 10/14 applies to the General Liability policy
 Waiver of subrogation form #EGL1000 edition 10/14 applies to the General Liability policy.
 Primary & Non-Contributory General Liability form #EGL1000 edition 10/14.
 Notice of Cancellation form #EGL1000 edition 10/14 applies to the General Liability policy.

Additional Insured form #CA8309 edition 09/15 applies to the Automobile Liability policy.
 Waiver of subrogation form #CA8322 edition 10/13 applies to the Automobile Liability policy.
 Notice of Cancellation form #CA0244 edition 06/04 applies to the Automobile Liability policy
 See Attached...

CERTIFICATE HOLDER

CANCELLATION

City of Midland
 300 N. Loraine
 Midland TX 79701

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

AUTHORIZED REPRESENTATIVE

[Signature]



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Marsh & McLennan Agency LLC		NAMED INSURED Mid-States Operating Co. 1607 W Texas Ave. Midland TX 79701
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

Primary & Non-Contributory form applies to the Automobile Liability policy.
Broadened Pollution Endorsement form applies to the Automobile Liability policy.

Waiver of subrogation form #WC420304B edition 06/14 applies to the Workers Compensation policy.
Alternate Employer Form #WC000301 edition 01/94 applies to the Workers Compensation.

Follow Form #UEL6000 edition 10/14 applies to the Umbrella Liability.

The General Liability policy includes a blanket additional insured 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 policy contains an endorsement with "Primary and NonContributory" wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The General Liability policy contains a blanket waiver of subrogation endorsement that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Automobile Liability policy contains language that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The Automobile liability policy includes waiver of subrogation wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Worker's Compensation policy includes a waiver of subrogation endorsement that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Worker's Compensation policy includes an alternate employer endorsement.

The General Liability, Automobile Liability and Excess liability policies includes a blanket notice of cancellation to the certificate holder endorsement, providing for (60) days' advance written notice if the policy is canceled by the company, or 10 days' written notice before the policy is canceled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company. The endorsement does not provide for notice of cancellation to the certificate holder if the named insured requests cancellation.

The Umbrella policy is a follow form of the underlying General Liability, Automobile Liability and Employers Liability policies.

MID-STATES OPERATING COMPANY

PO BOX 10747
MIDLAND, TEXAS 79702
(432) 684-5881



5874

PAY TO THE ORDER OF

CITY OF MIDLAND

DATE April 27, 2020

\$ 1,000.00

DOLLARS

---One thousand and no/100---

Application for Right of Way on N.

Extension of Horton North Trunk Line

THIS CHECK IS DELIVERED FOR PAYMENT ON THE ACCOUNTS LISTED

VOID 90 DAYS AFTER CHECK DATE

breckman



Security Features

Details on back

⑈005874⑈ ⑆116312873⑆ 10226238⑈



5902



P.O. Box 3903 Midland, Texas 79702 432.262.1600

88-1287/1163



May 13, 2020

DATE

\$ 36,311.70

MID-STATES OPERATING COMPANY

PO BOX 10747
MIDLAND, TEXAS 79702
(432) 684-5881

CITY OF MIDLAND

**PAY
TO THE
ORDER OF**

8.92

-----Thirty-six thousand three hundred eleven and 70/100-----**DOLLARS**

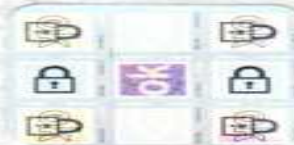
CCR120 right of way		
License fee	24,207.80	
Surface damage fee	12,103.90	

THIS CHECK IS DELIVERED FOR PAYMENT ON THE ACCOUNTS LISTED

VOID 90 DAYS AFTER CHECK DATE



[Signature]



⑈005902⑈ ⑆116312873⑆ 10226238⑈

June 9, 2020

PACKET

RIGHT OF WAY LICENSE

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

Date: June 10, 2020

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

Licensor's Representative: Robert Patrick, Assistant City Manager

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

Licensee: Mid-States Operating Company

Licensee's Representative: William Holmes

Licensee's Mailing Address: P.O. Box 10747, Midland, Texas 79702

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

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

WITNESSETH:

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

I. Term

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

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

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

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

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

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

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of TWENTY-FOUR THOUSAND TWO HUNDRED SEVEN and 80/100 Dollars (\$24,207.80) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Licensee shall pay a one-time surface damage fee to Licensor in the amount of TWELVE THOUSAND ONE HUNDRED THREE and 90/100 Dollars (\$12,103.90), payable on or prior to the Commencement Date.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of TWENTY-FOUR THOUSAND TWO HUNDRED SEVEN and 80/100 Dollars (\$24,207.80), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

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

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a SDR-11 poly construction pipeline, not to exceed twelve (12) inches in diameter, for the transportation of water, to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to twenty (20) feet after the pipeline is laid. **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 any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

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

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-eight (48) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

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

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct

streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

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

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

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

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

securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

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

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

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

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

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

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

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 Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

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 Licensors.

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 Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

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

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and

name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

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

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

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS

LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

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

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

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

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

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

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

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR,

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

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

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

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

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

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

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

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

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

**LICENSOR:
CITY OF MIDLAND, TEXAS**

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Robert Patrick, Assistant City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
MID-STATES OPERATING COMPANY

By: _____

Printed Name: William Holmes

Title: Partner

THE STATE OF Texas

§

§

COUNTY OF Midland

§

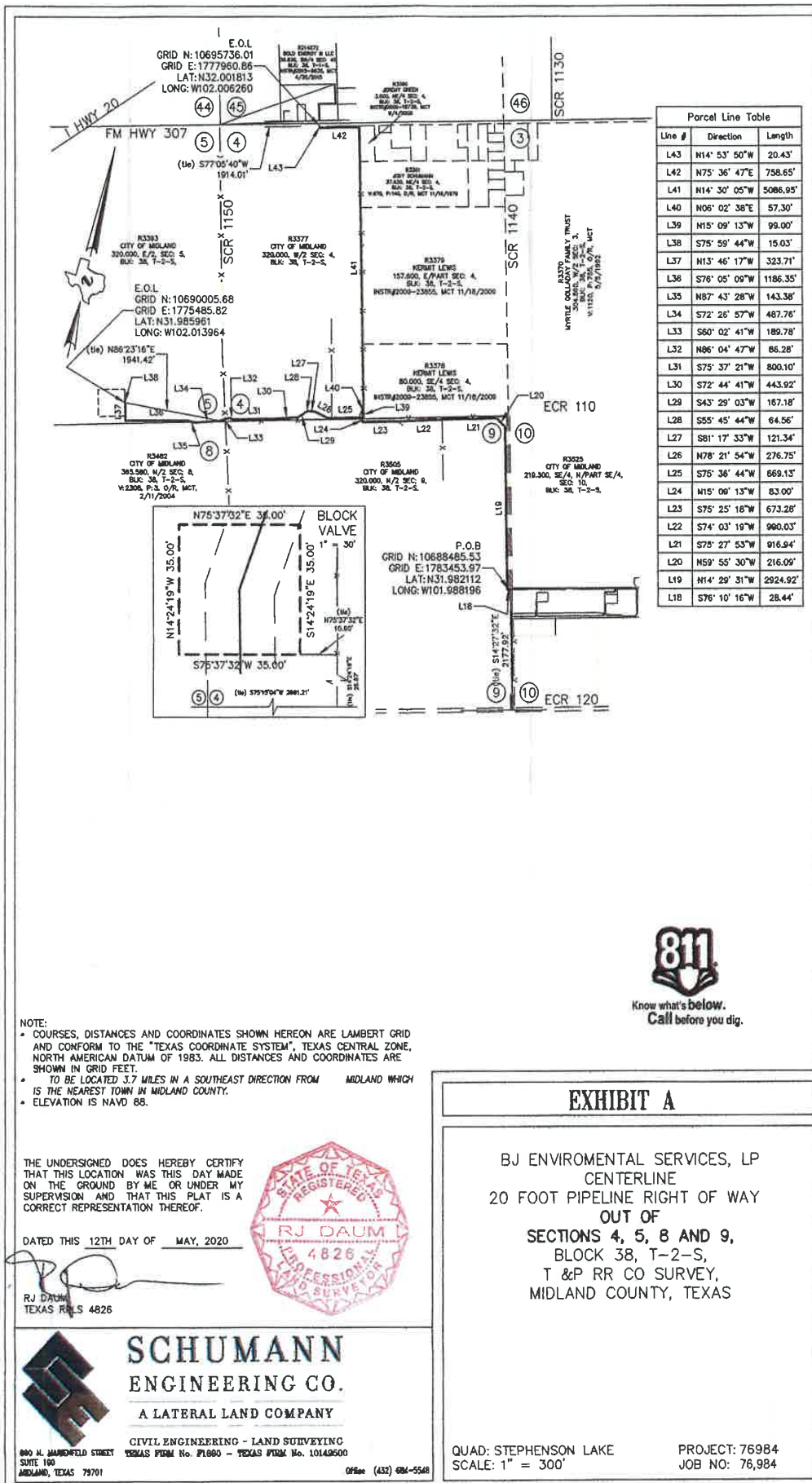
BEFORE ME, the undersigned authority, on this 13th day of May, 2020 personally appeared William Homes an officer of Mid-States Operating Company known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act 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 13th day of May, 2020.



Notary Public, State of Texas

Reference No. 20-329-014



FIELD NOTE DESCRIPTION OF THE SURVEY OF THE CENTERLINE OF A 20 FOOT RIGHT OF WAY LICENSE IN THE CITY OF MIDLAND TRACT FOR BJ ENVIRONMENTAL SERVICES , LP OUT OF THE T & P RR CO.SURVEY, SECTIONS 4,5,AND 9, BLOCK 38, T-2-S , MIDLAND COUNTY ,TEXAS AND BEING PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT (NORTHING:10688485.53, EASTING:1783453.97) IN THE WEST RIGHT OF WAY LINE OF SOUTH COUNTY 1140 FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 9 BEARS SOUTH 14° 27' 32" WEST 2177.92 FEET;

THENCE SOUTH 76° 10' 16" WEST CROSSING SECTION 9, 28.44 FEET TO CORNER;

THENCE NORTH 14° 29' 31" WEST CROSSING SECTION 9, 2924.92 FEET TO CORNER;

THENCE NORTH 59° 55'30"WEST CROSSING SECTION 9, 216.09 FEET TO CORNER;

THENCE SOUTH 75° 27' 53" WEST CROSSING SECTION 9, 916.94 FEET TO CORNER;

THENCE SOUTH 74° 03' 19" WEST CROSSING SECTION 9, 990.03 FEET TO CORNER;

THENCE SOUTH 75° 25' 18" WEST CROSSING SECTION 9, 673.28 FEET TO CORNER;

THENCE NORTH 15° 09' 13" WEST 83.00 FEET TO A POINT OF INTERSECTION AND T JUNCTION (NORTHING:10690827.43 EASTING:1779994.57) FOR CORNER IN SECTION 4;

THENCE SOUTH 75° 36' 44" WEST CROSSING SECTIONS 4, 669.13 FEET TO CORNER;

THENCE NORTH 78° 21' 54" WEST 276.75 FEET TO CORNER;

THENCE SOUTH 81° 17' 33" WEST 121.34 FEET TO CORNER;

THENCE SOUTH 55° 45' 44" WEST 64.56 FEET TO CORNER;

THENCE SOUTH 43° 29' 03" WEST 16718 FEET TO CORNER;

THENCE SOUTH 72° 44' 41" WEST 443.92 FEET TO CORNER;

THENCE SOUTH 75° 37' 21" WEST 800.10 FEET TO CORNER;

THENCE NORTH 86° 04' 47" WEST 86.28 FEET TO CORNER;

THENCE SOUTH 60° 02' 41" WEST 189.78 FEET TO CORNER;

THENCE SOUTH 72° 26' 57" WEST 487.76 FEET TO CORNER;

THENCE NORTH 87° 43' 28" WEST 143.38 FEET TO CORNER;

THENCE SOUTH 76° 05' 09" WEST 1186.35 FEET TO CORNER;

THENCE NORTH 13° 46' 37" WEST 323.19 FEET TO CORNER IN SECTION 5;

THENCE SOUTH 75° 59' 44" WEST 15.03 FEET FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 5 BEARS NORTH 86° 23' 16" EAST 1941.42 FEET;

BEGINNING AT A T JUNCTION (NORTHING:10690827.43 EASTING:1779994.57) FOR CORNER IN SECTION 4;

THENCE NORTH 15° 09' 13"WEST CROSSING SECTION 4, 99.00 FEET TO CORNER;

THENCE NORTH 06° 02' 38" EAST CROSSING SECTION 4, 57.30 FEET TO CORNER;

THENCE NORTH 14° 30' 05"WEST CROSSING SECTION 4, 5086.95 FEET TO CORNER;

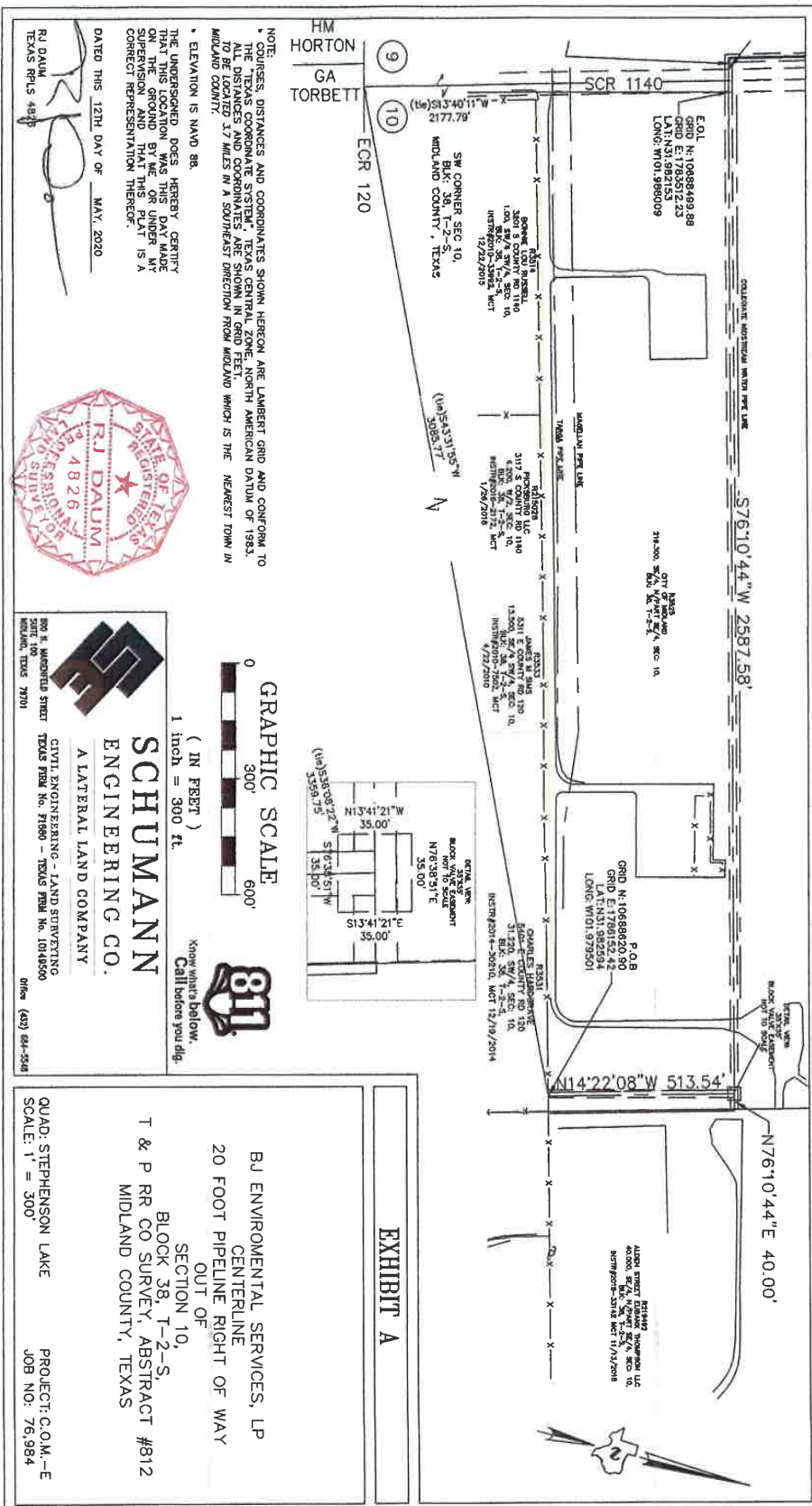
THENCE SOUTH 75° 36' 47" WEST CROSSING SECTION 4, 758.65 FEET TO CORNER;

THENCE NORTH 14° 53' 50" WEST 20.43 FEET (NORTHING:10695736.01, EASTING:1777960.86) FOR CORNER TO THE SOUTH RIGHT OF WAY LINE OF FM 307 FROM WHICH THE NORTHWEST CORNER OF SECTION 4 BEARS SOUTH 77° 05' 40" WEST 1914.01 FEET.

TOTAL: 16830.30 FEET = 1020.02 RODS
SECTION 4 8778.41 FEET = 532.02 RODS
SECTION 5 2050.77 FEET = 124.29 RODS
SECTION 8 193.68 FEET = 11.74 RODS
SECTION 9 5807.44 FEET = 351.97 RODS

JN 76984 REVISED MAY 12,2020
RJ Daum RPLS
Schumann Engineering
800 North Marienfeld Street, Suite 100
Midland, Texas 79701
<http://www.schumannonline.net>
rjdaum@schumannonline.net
432.684.5548 fax 432.684.6973





NOTE:
 * COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE TEXAS COORDINATE SYSTEM. TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
 * ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.
 * THE DISTANCE OF 2.7 MILES IN A SOUTHEAST DIRECTION FROM MIDLAND WHICH IS THE NEAREST TOWN IN MIDLAND COUNTY.
 * ELEVATION IS NAVD 83.
 * THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THE SAME IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 12TH DAY OF MAY, 2020

[Signature]
 RJ DAUM
 TEXAS REG. 4826

GRAPHIC SCALE

0 300' 600'

(IN FEET)
 1 inch = 300 ft.

SCHUMANN ENGINEERING CO.
 A LATERAL LAND COMPANY
 CIVIL ENGINEERING - LAND SURVEYING
 300 N. WINDMILL STREET
 SUITE 100
 MIDLAND, TEXAS 79701
 OFFICE (409) 684-5548

EXHIBIT A

BU ENVIRONMENTAL SERVICES, LP
 CENTERLINE
 20 FOOT PIPELINE RIGHT OF WAY
 OUT OF
 SECTION 10,
 BLOCK 38, T-2-S,
 T & P RR CO SURVEY, ABSTRACT #812
 MIDLAND COUNTY, TEXAS

QUAD: STEPHENSON LAKE
 SCALE: 1" = 300'

PROJECT: C.O.M. - E
 JOB NO: 76,984

FIELD NOTE DESCRIPTION OF THE SURVEY OF THE CENTERLINE OF A 20 FOOT RIGHT OF WAY LICENSE IN THE CITY OF MIDLAND TRACT FOR BJ ENVIRONMENTAL SERVICES , LP OUT OF THE T & P RR CO.SURVEY, SECTION 10,BLOCK 38, T-2-S , ABSTRACT 812 , MIDLAND COUNTY ,TEXAS AND BEING PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT (NORTHING:10688620.90, EASTING:1786152.42) AT THE HALF SECTION LINE OF SAID SECTION 10 FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 10 BEARS SOUTH 43° 31' 55" WEST 3085.77 FEET;

THENCE NORTH 14° 22' 08" WEST 513.54 FEET TO A POINT OF INTERSECTION OF A T JUNCTION FROM SAID JUNCTION NORTH 76° 10' 16" EAST 40.00 FEET;

THENCE SOUTH 76° 10' 16" WEST 2587.58 FEET FROM SAID JUNCTION (NORTHING:10688499.88, EASTING:1783512.23) WEST RIGHT OF WAY LINE OF SOUTH COUNTY ROAD 1140 TO THE END OF THE CITY OF MIDLAND TRACT OF LAND FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 10 BEARS SOUTH 13° 40' 11" 2177.79 FEET.

TOTAL: 3141.12 FEET = 190.37 RODS

JN 76984 REVISED MAY 12 ,2020

RJ Daum RPLS

Schumann Engineering

800 North Marienfeld Street, Suite 100

Midland, Texas 79701

<http://www.schumannonline.net>

rjdaum@schumannonline.net



FIELD NOTE DESCRIPTION OF THE SURVEY OF THE CENTERLINE OF A 20 FOOT RIGHT OF WAY LICENSE IN THE CITY OF MIDLAND TRACT FOR BJ ENVIRONMENTAL SERVICES , LP OUT OF THE T & P RR CO.SURVEY, SECTIONS 4,5,AND 9, BLOCK 38, T-2-S , MIDLAND COUNTY ,TEXAS AND BEING PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT (NORTHING:10688485.53, EASTING:1783453.97) IN THE WEST RIGHT OF WAY LINE OF SOUTH COUNTY 1140 FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 9 BEARS SOUTH 14°27' 32" WEST 2177.92 FEET;

THENCE SOUTH 76°10' 16" WEST CROSSING SECTION 9, 28.44 FEET TO CORNER;

THENCE NORTH 14°29' 31" WEST CROSSING SECTION 9, 2924.92 FEET TO CORNER;

THENCE NORTH 59°55'30" WEST CROSSING SECTION 9, 216.09 FEET TO CORNER;

THENCE SOUTH 75°27' 53" WEST CROSSING SECTION 9, 916.94 FEET TO CORNER;

THENCE SOUTH 74°03' 19" WEST CROSSING SECTION 9, 990.03 FEET TO CORNER;

THENCE SOUTH 75°25' 18" WEST CROSSING SECTION 9, 673.28 FEET TO CORNER;

THENCE NORTH 15°09' 13" WEST 83.00 FEET TO A POINT OF INTERSECTION AND T JUNCTION (NORTHING:10690827.43 EASTING:1779994.57) FOR CORNER IN SECTION 4;

THENCE SOUTH 75°36' 44" WEST CROSSING SECTIONS 4, 669.13 FEET TO CORNER;

THENCE NORTH 78°21' 54" WEST 276.75 FEET TO CORNER;

THENCE SOUTH 81°17' 33" WEST 121.34 FEET TO CORNER;

THENCE SOUTH 55°45' 44" WEST 64.56 FEET TO CORNER;

THENCE SOUTH 43°29' 03" WEST 16718 FEET TO CORNER;

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THENCE SOUTH 76°05' 09" WEST 1186.35 FEET TO CORNER;

THENCE NORTH 13°46' 37" WEST 323.19 FEET TO CORNER IN SECTION 5;

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THENCE SOUTH 75°36' 47" WEST CROSSING SECTION 4, 758.65 FEET TO CORNER;

THENCE NORTH 14°53' 50" WEST 20.43 FEET (NORTHING:10695736.01, EASTING:1777960.86) FOR CORNER TO THE SOUTH RIGHT OF WAY LINE OF FM 307 FROM WHICH THE NORTHWEST CORNER OF SECTION 4 BEARS SOUTH 77°05' 40" WEST 1914.01 FEET.

FIELD NOTE DESCRIPTION OF THE SURVEY OF THE CENTERLINE OF A 20 FOOT RIGHT OF WAY LICENSE IN THE CITY OF MIDLAND TRACT FOR BJ ENVIRONMENTAL SERVICES , LP OUT OF THE T & P RR CO.SURVEY, SECTION 10,BLOCK 38, T-2-S , ABSTRACT 812 , MIDLAND COUNTY ,TEXAS AND BEING PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT (NORTHING:10688620.90, EASTING:1786152.42) AT THE HALF SECTION LINE OF SAID SECTION 10 FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 10 BEARS SOUTH 43°31' 55" WEST 3085.77 FEET;

THENCE NORTH 14°22' 08" WEST 513.54 FEET TO A POINT OF INTERSECTION OF A T JUNCTION FROM SAID JUNCTION NORTH 76°10' 16" EAST 40.00 FEET;

THENCE SOUTH 76°10' 16" WEST 2587.58 FEET FROM SAID JUNCTION (NORTHING:10688499.88, EASTING:1783512.23) WEST RIGHT OF WAY LINE OF SOUTH COUNTY ROAD 1140 TO THE END OF THE CITY OF MIDLAND TRACT OF LAND FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 10 BEARS SOUTH 13°40' 11" 2177.79 FEET.

TOTAL: 3141.12 FEET = 190.37 RODS

JN 76984 REVISED MAY 12 ,2020

RJ Daum RPLS

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800 North Marienfeld Street, Suite 100

Midland, Texas 79701

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rdaum@schumannonline.net

City Council Meeting



Item Number: 9
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Carl Craig, Director

Approved for Agenda:

City Manager's Office

061-2020

Subject: Motion authorizing the execution of Surface Use Agreement with CrownQuest Operating, LLC regarding City-owned property described as Sections, 2,4,9,11,14,16, and 24, Block 37,T3S, T&P RR Co. survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas. (UTILITIES)

Purpose:

Consider a motion authorizing the execution of Surface Use Agreement with CrownQuest Operating, LLC regarding City-owned property described as Sections, 2,4,9,11,14,16, and 24, Block 37,T3S, T&P RR Co. survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Initial Fee collected \$6,000 Annual Fee collected \$1,000 New Well location fee of \$25,000 Tank Battery Fee of \$6,000

Discussion:

This agreement will give the operator the non-exclusive right of use to the surface premises to drill, complete, construct, install, operate, produce, repair, maintain, replace, abandon and/or remove certain wells, equipment, fixtures, structures, improvements, roads, pipelines, electric lines, and/or other facilities.

EXECUTION VERSION

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (this "Agreement") is made and entered into effective as of the ____ day of _____, 2020 (the "Effective Date"), by and between the **CITY OF MIDLAND, TEXAS**, a home rule municipal corporation, whose address is 300 N. Loraine, Midland, Texas, 79701 ("Surface Owner"), and **CROWNQUEST OPERATING, LLC**, a Texas limited liability company, whose address is 18 Desta Drive, Midland, Texas 79705 ("Operator").

WHEREAS, Surface Owner owns an undivided interest in the surface of property located in Midland County, Texas, being **Sections 2, 4, 9, 11, 14, 16, and 24, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas** (hereafter referred to as the "Surface Premises"); and

WHEREAS, Operator currently is, and subsequent to the Effective Date may be, a party to Oil, Gas and/or Mineral Leases covering mineral rights underlying all or portions of the Surface Premises (individually a "Lease", and collectively, the "Leases"), which cover, among other lands, the mineral rights underlying Sections 2, 4, 9, 11, 14, 24, 40 and 45, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas (such specifically described lands being hereafter referred to as the "Leased Premises"); and

WHEREAS, Surface Owner and Operator desire to enter into an agreement regarding Operator's use of the Surface Premises for its oil and gas operations thereon for the purpose of providing for the protection of the surface estate and water resources of the Surface Premises in connection with oil and gas exploration, development, and production under the Leases;

NOW, THEREFORE, in consideration of the premises and the covenants set forth below, Surface Owner and Operator agree as follows:

1. GRANT OF RIGHT TO USE SURFACE PREMISES:

(a) Surface Owner hereby grants to Operator the non-exclusive right of use to the Surface Premises to drill, complete, construct, install, operate, produce, repair, maintain, replace, abandon and/or remove, all in accordance with the terms of this Agreement, those certain wells, equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities enumerated, described and located as specifically set forth in **Exhibit A** attached hereto and made a part hereof for all purposes upon the Surface Premises for the purposes of drilling for, equipping, operating and producing oil, gas and other minerals from the Leased Premises (the "Well Plans"). Notwithstanding anything to the contrary contained in this Agreement, this Agreement is not a waiver for, nor does it grant permission for any future development not included in the Well Plans.

(b) Unless otherwise agreed to in writing by Surface Owner, except as specifically provided in the Well Plans, no other wells, equipment, fixtures, structures, improvements, roads,

pipelines, electric lines or other facilities, including, without limitation, tank batteries, heater treaters, dehydrators, compressors, or gas treatment facilities, shall be located on the Surface Premises.

(c) After the completion of any well under the terms of this Agreement, Operator agrees to notify in writing within thirty (30) days after such completion, Surface Owner and all applicable taxing authorities of the location of such well and to provide any and all information requested by such taxing authorities as to any taxes applicable to or to be assessed with respect to such well and/or the lands from which such well is producing.

(d) Surface Owner expressly reserves the full right to grant other licenses, easements and/or rights-of-way in, upon and across the Surface Premises. Surface Owner expressly reserves the right to use and to grant to third parties the right to use the Surface Premises and the subsurface below and airspace above the Surface Premises for any purpose, provided, however, no such use or grant shall unreasonably interfere with the rights granted herein to Operator. Without limiting the foregoing, (i) Operator shall not interfere with any activities of Surface Owner deemed by Surface Owner to be for legitimate public purposes on the Surface Premises, and (ii) Surface Owner expressly reserves the right to install in or on the Surface Premises any streets or alleys and all ancillary public uses usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures and public utilities, provided, however, such do not unreasonably interfere with or constitute a hazard to Operator's rights hereunder. Any and all utilities and appurtenances shall include, without limitation, pipelines, conduits, and pole lines, which may be installed on, above or below ground by Surface Owner to the extent such do not unreasonably interfere with or constitute a hazard to Operator's rights hereunder.

(e) Without limiting the provisions of subparagraph (a) above, Operator agrees that it shall not be entitled to use any more of the surface of the Surface Premises than is reasonably necessary and that all surface installations shall be kept to a reasonable minimum consistent with good operating practices.

2. TERM AND TERMINATION:

(a) This Agreement shall be for a term of fifteen (15) years (the "Initial Term"), commencing on the Effective Date of this Agreement, unless terminated earlier as provided hereafter. This Agreement shall renew at the end of the Initial Term for one (1) additional term of five (5) years (the "Extended Term"), upon the written request of Operator to the City Manager of the City of Midland, Texas ("City Manager") received not more than one (1) year and not less than ninety (90) days prior to the expiration of the Initial Term and subject to the express written consent of the City Manager. The granting of consent for the Extended Term is in the sole discretion of the City Manager, subject to any approval of the City Council of the City of Midland, Texas or other applicable governmental approval which may be required, but consent cannot be unreasonably withheld.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, subparagraph (a) above, in the event there exists a time in which all Leases in which Operator owned an interest aggregately have terminated or expired as to all of the

Leased Premises underlying the Surface Premises prior to the expiration or termination of the Initial Term or the Extended Term (if the Extended Term is in effect pursuant to subparagraph (a) above), this Agreement shall automatically terminate.

(c) Surface Owner may terminate this Agreement if Operator fails to pay, when due, any amount owing under this Agreement and that failure continues for sixty (60) days. Surface Owner may also terminate this Agreement if Operator commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this Agreement, and the breach or default continues for a period of thirty (30) days after Surface Owner delivers notice to Operator reasonably detailing the breach or default.

(d) Notwithstanding anything to the contrary contained in this Agreement, it is specifically provided that as an express condition of this Agreement, and not as a mere covenant, if the Surface Premises cease to be used by Operator for the purposes enumerated herein for any period of six (6) consecutive months or longer, then and in that event, this Agreement shall terminate at Surface Owner's option, as evidenced by Surface Owner's written notice to Operator of such termination.

(e) Notwithstanding anything to the contrary contained in this Agreement, upon termination of this Agreement, at its option, Surface Owner may either: (i) allow or require all portions (specified by Surface Owner) of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises that were used or constructed by Operator to remain; or (ii) require Operator to comply with the applicable provisions of subparagraph (g) below and Paragraphs 5(c), 5(d), 6(g), 7(b), 8(c), 9(b) and 24.

(f) If, upon termination of this Agreement, Surface Owner elects to allow or require all or portions (specified by Surface Owner) of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises that were used or constructed by Operator to remain, said equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities, or portions thereof specified by Surface Owner, shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign, to Surface Owner, its successors and assigns, said equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities, or portions thereof specified by Surface Owner, by such instruments in form and substance reasonably required by Surface Owner and Surface Owner shall assume all obligations and liabilities associated therewith, in each case arising and accruing only as to all time periods from and after the date of such assignment.

(g) Upon termination of this Agreement, as to all or any portions of the equipment, fixtures, structures, improvements, roads, pipelines, electric lines and/or other facilities on the Surface Premises that were used or constructed by Operator which Surface Owner elects not to allow or require to remain, then Operator shall comply with the applicable provisions of Paragraphs 5(c), 5(d), 6(g), 7(b), 8(c), 9(b) and 24. Except as specifically provided in such Paragraphs, Operator shall, at its sole cost and expense, restore the Surface Premises to its original condition, at the time of the execution of this Agreement, as nearly as reasonably practicable and

shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. If Operator fails to take such removal and restoration actions, Surface Owner may do so at the sole expense of Operator. Without limiting the foregoing, said work shall meet minimum requirements under all applicable local, state or federal laws, rules or regulations, and shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within ninety (90) days after the effective date of termination of this Agreement.

(h) All of the terms, provisions and requirements of subparagraphs (e), (f) and (g) immediately above and this subparagraph (h) shall survive the termination or expiration of this Agreement.

3. FINANCIAL CONSIDERATIONS:

As compensation for the surface use and operations of Operator during the term of this Agreement, Operator agrees to pay Surface Owner the following fees:

(a) **Initial Fee and Renewal Fee.** For the Initial Term, an initial fee (the "Initial Fee") in the amount of Six Thousand and No/100 Dollars (\$6,000.00) shall be due and payable on or prior to the Effective Date of this Agreement. At the end of the Initial Term of this Agreement, for any Extended Term consented to by the City Manager, a renewal fee (the "Renewal Fee") shall be payable by Operator to Surface Owner in such amount as may be agreed to between the parties, provided that the amount of such Renewal Fee shall not be more than twenty-five percent (25%) more than the Initial Fee paid for the Initial Term. The amount of such Renewal Fee shall be determined by Surface Owner if the parties are unable to agree on the amount of such Renewal Fee.

(b) **Surface Damage Fees.** Operator shall pay surface damage fees as provided in Paragraph 23 below.

(c) **Annual Fee.** During the Initial Term, Operator shall pay to Surface Owner an annual fee (the "Annual Fee") in the amount of One Thousand and No/100 Dollars (\$1,000.00), which shall be payable each year on or before the anniversary of the Effective Date of this Agreement. During any Extended Term consented to by the City Manager, Operator shall pay to Surface Owner each year on or before the anniversary of the Effective Date of this Agreement an Annual Fee in such amount as may be agreed to between the parties, provided that the Annual Fee payable during the Extended Term shall not be more than twenty-five percent (25%) more than the Annual Fee paid during the Initial Term. The amount of the Annual Fee payable during any Extended Term shall be determined by Surface Owner if the parties are unable to agree on such amount. Operator's failure to make the Annual Fee payment within thirty (30) days after the Annual Fee is due shall constitute a late payment and Operator shall pay Surface Owner interest thereon in the amount of (i) eighteen percent (18%) per annum from the date the Annual Fee is due, or (ii) the maximum amount of interest allowable by law, whichever is less.

(d) **Application Fee.** At the same time the Initial Fee is due, Operator shall pay a non-refundable one-time fee of One Thousand and No/100 Dollars (\$1,000.00) to Surface Owner. The fee shall be used to process the application for this Agreement.

(e) **New Well Location Fee.** At the same time the Initial Fee is due, Operator shall pay a one-time New Well Location Fee to Surface Owner in the applicable amount included in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, for each new well included in the Well Plans which is to be drilled on or after the Effective Date of this Agreement; provided, however, that notwithstanding the foregoing, the provisions of Paragraph 3(b), or anything else contained in this Agreement to the contrary, for each new well included in the Well Plans which is to be drilled on or after the Effective Date of this Agreement and which is (i) located on an off-lease surface location on Section 16, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas, or (ii) located on Section 4, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas but is producing hydrocarbons from Section 40 and/or Section 45, both in Block 37, T3S, T&P RR Co. Survey, Midland County, Texas, then at the same time the Initial Fee is due, Operator shall pay for each such new well a one-time New Well Location Fee to Surface Owner in an amount equal to the greater of (x) Twenty-Five Thousand and No/100 Dollars (\$25,000.00) per well or (y) the applicable amount included in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands for each such well.

(f) **Tank Battery Fee.** At the same time the Initial Fee is due, Operator shall pay a one-time Tank Battery Fee to Surface Owner in the amount of Six Thousand and No/100 Dollars (\$6,000.00) for each Tank Battery included in the Well Plans to be located on the Surface Premises and to be installed on or after the Effective Date of this Agreement for a total cumulative amount of Six Thousand and No/100 Dollars (\$6,000.00).

All payments due to Surface Owner under this Agreement shall be made to Surface Owner at the office of the City of Midland Right-of-Way Manager, P.O. Box 1152, Midland, Texas, 79702.

The payments required as part of this Agreement shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

4. NOTICE BETWEEN SURFACE OWNER AND OPERATOR:

(a) Prior to commencing any road, pipeline, electric line or other construction on the Surface Premises, Operator shall notify Surface Owner in writing of the specific activity that is to be conducted and the approximate date and location of such activity, such notice to be given no later than ten (10) days prior to the commencement of construction. Except as provided in Paragraph 6(c), Operator will provide to Surface Owner at least three (3) days' written notice prior to the arrival of any drilling equipment on the Surface Premises, except in an emergency situation in which case Operator will provide written notice as soon as reasonably available. Notice under this subparagraph

(a) shall be provided as specified in subparagraph (d) below, and to the City of Midland's Utilities Director at the contact information provided to Operator by Surface Owner.

(b) Operator shall provide to Surface Owner within ten (10) days after such filing is made or such document is prepared, as applicable, unless a different time period is specified below, copies of the following:

- (i) Groundwater Protection Determination Letter provided to the Texas Commission of Environmental Quality.
- (ii) Email notification of Form W-1, Applications to Drill, at the time the application is filed with the Texas Railroad Commission.
- (iii) Email notification of Form W-1, Approved Permit to Drill.
- (iv) Copy of the Spill Prevention Control and Countermeasure ("SPCC") Plan, including phone numbers of company personnel.
- (v) Any other documents filed with the Railroad Commission of Texas ("RRC") regarding the Surface Premises or the Leased Premises.

(c) Operator agrees to designate in writing the name of the person or persons with whom Surface Owner may communicate about the activities being conducted on the surface and with whom Surface Owner may resolve issues that arise.

(d) Except as otherwise provided in this Agreement, all communications by Operator to Surface Owner shall be directed to:

Name: John Simmons, Right-of-Way Manager
Address: P.O. Box 1152
Midland, Texas 79702
Phone: 432-685-7200
Email: jsimmons@midlandtexas.gov

5. ROADS, GATES, AND FENCES:

(a) Operator agrees to use existing gates and roadways where available, to enter, leave and cross the Surface Premises; provided that Operator shall not use any road marked "Closed to Oilfield Traffic." Operator and all persons entering or leaving the Surface Premises in connection with Operator's operations hereunder shall keep all outside and interior gates securely closed except during drilling and completion operations, plus a period of thirty (30) days after completion of such operations. Operator shall keep all outside gates, and all other gates designated by Surface Owner, securely locked except during drilling and completion operations, plus a period of thirty (30) days after completion of such operations. At any gate that is to be locked, Surface Owner may install its own lock in addition to Operator's lock.

(b) The location of all new roads installed by Operator shall be at mutually agreeable locations between Operator and Surface Owner. Except as to any new roads included in the Well Plans, Operator shall not commence to construct any new roads upon the Surface Premises without the prior written consent of Surface Owner, which consent cannot be unreasonably withheld. Once the road location is determined, all mesquite and cactus along the road location shall first be dozed or grubbed and then chipped or mulched and evenly scattered within the Surface Premises. Roads shall not exceed thirty (30) feet in width unless otherwise specified by Surface Owner. All roads constructed by Operator shall be topped and crowned with a minimum of nine (9) inches of caliche. All large rocks (having a diameter greater than three (3) inches) remaining from road construction shall be removed from the Surface Premises. While under construction, roads will be kept wet down to avoid excessive dust. Notwithstanding that Surface Owner may use all roads used by Operator for any and all purposes, Operator shall maintain all roads used by Operator in good repair, and all roads shall be maintained as all-weather caliche roads at all times. All holes and ruts in roads used by Operator shall be filled as soon as practical by Operator. Operator shall install adequate culverts wherever any road constructed by Operator crosses a natural drainage, and except as provided below all roads and any pipelines laid by Operator shall be so constructed and laid as not to interfere with the natural flow of surface waters or with drainage. Operator shall place water diversions along any road constructed by Operator as necessary to prevent excessive washing out of the road. All material for such diversions will be constructed using materials purchased from Surface Owner and Operator shall not use materials pushed up from the roadside, unless Surface Owner agrees otherwise. The maximum thirty (30) foot width of each road is to be measured from edge to edge of the caliche road surface, and shall be exclusive of any area adjacent to the roadway surface utilized as (i) ditches or other reasonable water diversions, or (ii) brush clearance along the roadway. Unless otherwise agreed by Surface Owner, such adjacent area shall not exceed a width of five (5) feet on each side of the roadway surface.

(c) Unless otherwise requested in writing by Surface Owner, within ninety (90) days of the cessation of use of any road upon the Surface Premises by Operator or the termination of this Agreement, whichever is earlier, Operator shall, at its sole cost and expense, restore the surface to its original condition as nearly as reasonably practicable, and shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. If Operator fails to take such removal and restoration action, Surface Owner may do so at the sole expense of Operator. The terms, provisions and requirements of this subparagraph (c) shall survive the termination or expiration of this Agreement.

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

provisions and requirements of this subparagraph (d) shall survive the termination or expiration of this Agreement.

6. DRILL SITE LOCATIONS; FACILITIES; WELLBORES:

(a) All drill site locations and pads shall be at such locations, of such maximum sizes and in accordance with such specifications, in each case as are included in the Well Plans. In the event Operator desires to drill a well which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such well, including, without limitation, as to the location, size and specifications therefor, which consent shall not be unreasonably withheld by the Surface Owner. In construction of such sites Operator agrees to first doze or grub all mesquite, brush and cactus and push such material to one side of the pad. All such mesquite, brush and cactus shall then be chipped or mulched and evenly scattered within the Surface Premises. Operator shall then remove and stack to the other side of the location, the first eight (8) inches of top soil, or if there is less than eight (8) inches of top soil at such location, such lesser depth of top soil, from the location.

(b) All casing, pipe and other materials used by Operator in the wells drilled in, on or under the Surface Premises (the "Subject Wells") shall be of a type and quality meeting Railroad Commission of Texas standards. In addition, the wellbores of the Subject Wells shall be constructed in accordance with the specifications set forth on **Exhibit B** attached hereto and such that no fresh water source will be contaminated. When total depth is reached in each Subject Well, Operator shall provide Surface Owner with bond logs as to the intervals through the intermediate casing stage promptly upon Operator's receipt of same showing that the Subject Well has been satisfactorily cemented and cemented in compliance with the terms of this Agreement and applicable governmental laws, rules and regulations.

(c) Operator shall provide to Surface Owner at least twenty-one (21) days' advance written notice of the scheduled drilling date of each Subject Well. In the event such scheduled drilling date changes, Operator shall provide notice of the rescheduled drilling date to Surface Owner as soon as possible.

(d) The locations and specifications for any and all fixtures, structures, improvements and/or other facilities, including, without limitation, tank batteries (collectively, "Facilities"), shall be included in the Well Plans. In the event Operator desires to construct or install any Facilities which are not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such Facilities, including, without limitation, as to the location, size and specifications therefor, which consent shall not be unreasonably withheld by Surface Owner. Without limiting the foregoing, any tank battery or batteries to be installed on the Surface Premises shall include (i) for fiberglass tanks, lightning protection using a static dissipation system reasonably acceptable to Surface Owner, (ii) gas control with Enardo Vent valves, (iii) a concrete or steel lined containment structure around the storage tanks, of a size sufficient to comply with RRC and Environmental Protection Agency ("EPA") requirements, (iv) SCADA electronic monitoring system, and (v) such other safeguards required by the RRC, EPA or Texas Commission on Environmental Quality ("TCEQ") and/or as reasonably requested by Surface Owner. Operator shall at all times maintain all equipment and permitted Facilities located on the Surface Premises in good repair and

condition, in a properly painted condition through use of paint color(s) approved by Surface Owner, and kept free of rust, stains, weeds and trash. All firewalls and retaining walls will be kept reasonably free of weeds and brush.

(e) In construction of any Facility location, Operator agrees to first doze or grub all mesquite, brush and cactus and push such material to one side of the location. All such mesquite, brush and cactus shall then be chipped or mulched and evenly scattered within the Surface Premises. Operator shall then remove and stack to the other side of the location, the first eight (8) inches of top soil, or if there is less than eight (8) inches of top soil at such location, such lesser depth of top soil, from the location. Within sixty (60) calendar days after construction of any Facilities, Operator will clean up the area surrounding such Facilities and remove any and all spills, junk materials, concrete platforms, pieces of iron, pipes, steel and other debris and foreign materials and will level all mounds, fill all temporary pits and other excavations (in accordance with any requirements set forth herein) and will remove all deleterious materials and substances that might cause injury to person, wildlife, or livestock. All such materials, trash, junk, etc. shall not be burned or buried on the Surface Premises or any other portion of Surface Owner's lands, but shall be removed therefrom.

(f) Operator shall provide trash trailers at drilling sites while drilling, completion and workover operations are in progress.

(g) Unless otherwise requested in writing by Surface Owner and subject to Paragraph 24, within ninety (90) days after abandonment of any well drilled on the Surface Premises, abandonment of any Facility, or the termination of this Agreement, whichever is earlier, Operator shall, at its sole cost and expense, (i) remove all caliche from the applicable drill site(s) and/or Facility location(s), (ii) level the applicable drill site(s) and/or Facility location(s), (iii) spread uniformly over the drill site location(s) and/or Facility location(s) the top soil which was previously removed and stacked, (iv) plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition, and (v) clean the drill site(s) and/or Facility location(s) and remove all oil and/or gas waste materials, junk, pieces or iron, pipes and other debris. The terms, provisions and requirements of this subparagraph (g) shall survive the termination or expiration of this Agreement.

(h) All producing well locations and pits will be fenced with reasonable fencing as required by Surface Owner. Permanent internal combustion engines on pumping units (artificial lift equipment) are expressly prohibited from use on the Surface Premises, and Operator shall install an electric motor to operate any pumping unit placed by Operator on the Surface Premises to produce any well; provided, however, that an internal combustion engine on a pumping unit (artificial lift equipment) may be used for a period not exceeding one hundred twenty (120) consecutive days, such period being measured from the date such engine is placed on the Surface Premises through the date it is removed from the Surface Premises.

(i) Drilling rigs and pulling unit rigs shall not be painted, steam cleaned or cleaned with solvents while on the Surface Premises unless provisions have been made to collect the effluent(s) of the operation for disposal off the Surface Premises. All rig waste shall be removed from the Surface Premises. Demobilization operations shall commence promptly for any drilling

rig or workover rig (in no event later than fourteen (14) days after the drilling or workover operations have been completed, except in the event of a heavy rain event that prevents the removal of said rig) unless the rig is to be used to drill or workover another well located on the Leased Premises within thirty (30) days following the completion of its use on a prior operation.

7. RESERVE PITS AND DISPOSAL OF DRILLING FLUIDS AND MUD:

(a) Each reserve pit, mud circulation pit, completion pit, workover pit, or other pit shall be at such locations, of such maximum sizes and in accordance with such specifications, in each case as are included in the Well Plans, and, without limiting the foregoing, shall be lined with a non-permeable liner prior to use. In the event Operator desires to construct a pit which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such pit, including, without limitation, as to the location, size and specifications therefor, which consent cannot be unreasonably withheld.

(b) Within sixty (60) days of cessation of the use of any such pit, the liquids shall be removed and disposed of off the Surface Premises by Operator, and the pit allowed to dry. Within ninety (90) days of cessation of the use of such pit, weather permitting, Operator shall, at its sole cost and expense, (i) comply with all applicable RRC requirements with respect to the liner and the remaining dried solid wastes, (ii) backfill, compact and level the pit, and the top soil, which was previously removed and stacked, shall be spread uniformly over the pit location, and (iii) plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition.

(c) Unless otherwise required by Surface Owner, the only wastes authorized to be stored in the pits are (i) drilling fluids, (ii) drill cuttings, sands, and silts separated from the circulating drilling fluids, (iii) wash water used for cleaning drill pipe and other equipment at the well site, (iv) drill stem test fluids, and (v) blowout preventer test fluids.

(d) Except as authorized by this Agreement, there shall be no landfarming or disposal of drilling fluids or muds or other wastes from oil and gas operations on the Surface Premises or into any wellbore located on the Surface Premises without prior written consent of Surface Owner, which consent shall be in the sole discretion of Surface Owner.

8. PIPELINES:

(a) All pipelines and flowlines on the Surface Premises shall be at such locations, of such maximum diameters and in accordance with such specifications, in each case as are included in the Well Plans. Within twenty (20) days of the completion of installation of any pipeline or flowline on the Surface Premises Operator (i) shall furnish to Surface Owner, in accordance with Paragraph 4(d), such records of such installation as may be reasonably acceptable to Surface Owner, including, without limitation, as-built plats of such pipelines and plats of such flowlines, with the locations of all such pipelines clearly marked on such as-built plats and the locations of all such flowlines clearly marked on such plats, and (ii) shall report the locations of all such pipelines and all underground flowlines to Texas 811. In the event Operator desires to construct or install any pipeline or flowline

which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such pipeline or flowline, including, without limitation, as to the location, size and specifications therefor, which consent shall not be unreasonably withheld by Surface Owner. All pipelines and flowlines on the Surface Premises shall be buried at least forty-eight (48) inches below the surface unless otherwise agreed in writing by Surface Owner and the location of such lines shall be properly marked by Operator with signage approved by Surface Owner. Once the route for any pipeline or flowline has been determined, Operator shall doze or grub and pile all mesquite, brush and cactus along the route. All mesquite, brush and cactus shall then be chipped or mulched and evenly scattered within the Surface Premises. All trash and debris from construction of pipelines and flowlines shall be removed from the Surface Premises.

(b) During any construction, repair, removal or other operations, all ditching or trenching shall be done in such a manner so that the top soil will be separated from the balance of the dirt removed in making the ditch or trench. In backfilling after any such operation, the top soil first removed shall be used as cover soil in such a manner as to result in it being returned to the top of the ditch as top soil. The top soil which was previously removed and stacked shall be spread uniformly over the pipeline location, then leveled and Operator shall plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. All large rocks (any rock over three (3) inches in diameter) removed from any ditch or trench by Operator shall be buried in such ditch or trench or otherwise removed from the Surface Premises. The pipeline or flowline located on the Surface Premises shall be adequately marked at all times by Operator at all road or fence crossings and as required by applicable laws.

(c) Except with respect to temporary water lines used in the drilling and completion of any oil and/or gas wells on the Surface Premises, if Operator constructs any pipeline or flowline on the Surface Premises, Operator agrees that before the abandonment or removal of any such pipeline or flowline, or upon the termination of this Agreement, whichever occurs first, it will offer the same to Surface Owner, without compensation. If Surface Owner elects to accept such pipeline or flowline, said pipeline or flowline shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign, or shall cause all such appropriate parties to surrender and assign, to Surface Owner, its successors and assigns, said pipeline or flowline by such instruments in form and substance reasonably required by Surface Owner and Surface Owner shall assume all obligations and liabilities associated therewith, in each case arising and accruing only as to all time periods from and after the date of such surrender and assignment. If Surface Owner elects not to accept any such pipeline or flowline, then Operator shall, at its sole cost and expense, remove such pipeline or flowline promptly following abandonment in accordance with the applicable provisions of subparagraph (b) immediately above. A pipeline or flowline shall be deemed to be abandoned for purposes of this Agreement if it has not been used to transport products for a period of six (6) consecutive months. If Operator fails to remove any pipeline or flowline within ninety (90) days of the first to occur of abandonment of such pipeline or flowline or upon the termination of this Agreement, Surface Owner may do so at the sole expense of Operator. Notwithstanding anything to the contrary contained herein, Operator shall remove any and all temporary water lines utilized in the drilling and/or completion of any oil and/or gas wells on the Surface Premises within sixty (60) days after completion of the applicable well(s), and if Operator

fails to remove any such temporary water line, Surface Owner may do so at the sole expense of Operator. The terms, provisions and requirements of this subparagraph (c) shall survive the termination or expiration of this Agreement.

(d) Unless otherwise agreed to in writing by Surface Owner, no pipeline may be constructed hereunder that will carry any oil, gas, water or other substances which are not produced from the Leased Premises.

(e) Notwithstanding anything to the contrary in this Agreement, Surface Owner hereby grants Operator a temporary easement and right-of-way to lay temporary fresh water supply lines ("Fast Lines"), at the Operator's sole expense, across the Surface Premises, provided that: (a) Operator has received prior written consent from Surface Owner for the routes of such Fast Lines, which consent shall not be unreasonably withheld; (b) Operator has paid Surface Owner a sum equal to the then-applicable per-rod charge for temporary surface lines under the Rate and Damage Schedule set forth by The University of Texas System, University Lands for the length of each Fast Line; and (c) no Fast Line shall remain in place for more than one hundred eighty (180) days.

(f) In connection with the construction and installation of pipelines and Facilities on the Surface Premises, Operator shall install at its cost and expense such flow and pressure surveillance devices to constantly monitor any discharged pressure and/or volume changes leaving the Facilities and/or within the pipelines on a real-time basis. Without limiting the foregoing, (i) any pressure and/or volume changes within the pipelines shall be monitored by a SCADA electronic monitoring system using high resolution data with readings taken no less frequently than once per minute; (ii) pressure transmitters shall be installed by Operator to monitor discharge pressure into each pipeline regardless of the length of such pipeline; (iii) Operator shall install meters or obtain meter readings at each entrance and exit point to Operator's pipeline system located on the Surface Premises; (iv) in connection with such monitoring Operator shall immediately notify Surface Owner at the phone number and email address set forth in Paragraph 4(d) of any readings indicating low pressure and/or sudden and abnormal changes in pressure or volume within the pipeline system; (v) Operator shall perform liquid balances monthly or when sudden or abnormal changes in pressure or volume readings are indicated; (vi) Operator shall install cathodic protection in accordance with the highest industry standards on all of Operator's welded steel or alloy crude oil carrying pipelines and flowlines on the Surface Premises and shall inspect such cathodic protection at least once per calendar quarter to ensure that such pipeline and flowline system is fully operational and that such pipelines and flowlines are protected from external corrosion; and (vii) all steel or alloy crude oil carrying pipelines and flowlines shall be designed to allow pigging to ensure that no internal corrosion is present, and Operator shall inspect all such pipelines and flowlines at least once per calendar quarter to ensure that no internal corrosion is present in such pipeline and flowline system.

9. ELECTRIC LINES:

(a) All electric lines on the Surface Premises shall be at such locations and in accordance with such specifications, in each case as are included in the Well Plans. In the event Operator desires to construct or install any electric line which is not included in the Well Plans, Operator must obtain the prior written consent of Surface Owner for such electric line, including, without limitation, as to the location and specifications therefor, which consent shall not be

unreasonably withheld by Surface Owner. Once any electric line route has been determined, Operator shall doze or grub and pile all mesquite and cactus along the route. All mesquite, brush and cactus shall then be chipped or mulched and evenly scattered within the Surface Premises.

(b) If Operator constructs any electric line on the Surface Premises, Operator agrees that before abandonment or removal of any such electric line or upon the termination of this Agreement, whichever occurs first, it will offer the same to Surface Owner, without compensation. If Surface Owner elects to accept such electric line, said electric line shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign or shall cause all such appropriate parties to surrender and assign to Surface Owner, its successors and assigns, said electric line by such instruments in form and substance reasonably required by Surface Owner and Surface Owner shall assume all obligations and liabilities associated therewith, in each case arising and accruing only as to all time periods from and after the date of such assignment. If Surface Owner elects not to accept such electric line, then Operator shall, at its sole cost and expense, remove such electric line and plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. An electric line shall be deemed to be abandoned for purposes of this Agreement if it has not been used to deliver electricity for a period of six (6) consecutive months. If Operator fails to remove any electric line within ninety (90) days of the first to occur of abandonment of such electric line or upon the termination of this Agreement, Surface Owner may do so at the sole expense of Operator.

(c) Unless otherwise agreed to in writing by Surface Owner, electric lines may only be constructed hereunder for the purpose of providing electricity to Operator's wells, permitted Facilities and equipment located on the Surface Premises.

10. STORAGE OF MACHINERY AND EQUIPMENT:

Operator shall not use any part of the Surface Premises to store any machinery, rigs, equipment, pipe, tanks or other property of Operator, or for any other purpose not expressly contemplated by this Agreement.

11. HOUSING OF EMPLOYEES:

Operator shall not use any part of the Surface Premises to house employees or other personnel except temporarily at well sites during drilling or completion operations.

12. USE OF WATER:

Unless otherwise agreed to in writing by Surface Owner, (i) Operator may not use water located on or under the Surface Premises, including, without limitation, in any existing wells or tanks located on the Surface Premises, and (ii) Operator shall not drill water wells on the Surface Premises. In the event Surface Owner consents to Operator's use of water located on the Surface Premises and/or to Operator's drilling of water wells on the Surface Premises, which consent shall be in the sole discretion of Surface Owner, (x) any and all fresh water wells that may be drilled by Operator on the

Surface Premises shall be at mutually agreeable locations between Operator and Surface Owner, shall be cased, gravel packed and left intact for Surface Owner's use when such is not being used by Operator in drilling, completing or reworking wells drilled under the provisions of the Leases, and shall be drilled in compliance with such specifications required by Surface Owner in its sole discretion, and (y) whether Operator utilizes an existing well of Surface Owner or drills a water well, Operator shall meter at the water well all such water used and shall pay to Surface Owner the reasonable going rate in the area (but in no event less than the rate set forth in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands) for any such water so used.

13. DISPOSAL OF SALT WATER:

Operator shall not dispose of salt water or other produced substances on or into the Surface Premises without the prior written consent of Surface Owner. In the event Operator seeks to complete a salt water disposal well or wells on the Surface Premises, Surface Owner may consent in its sole discretion; provided, that if Surface Owner does consent, such consent shall be subject to Surface Owner and Operator entering into a mutually agreed upon form of Produced Water Disposal Site Lease Agreement, or similar agreement.

14. TRASH:

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

15. CALICHE:

Operator shall not mine any sand, gravel, caliche or similar material in or on the Surface Premises without the express prior written consent of Surface Owner. In the event Surface Owner so consents, which consent shall be in Surface Owner's sole discretion, Operator shall pay Surface Owner for such materials based on the rate set forth in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands. All caliche shall be taken from a location or locations designated by Surface Owner. Operator shall properly dress all caliche excavation sites used by Operator on the Surface Premises.

16. HUNTING, FISHING AND ALCOHOL PROHIBITED:

No agent, employee, representative, contractor or subcontractor of Operator or any other person allowed to enter the Surface Premises by Operator shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Surface Premises, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Surface Premises at any time. Violations of this provision

shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Surface Owner shall have the right to expel and permanently ban from the Surface Premises any person observed on the Surface Premises in violation of this provision.

17. SEISMIC OPERATIONS:

Operator may conduct seismic operations on the Surface Premises only with the prior written consent of Surface Owner, which consent shall not be unreasonably withheld by Surface Owner. Any such permitted seismic operations shall be conducted by Operator at date(s) and time(s) mutually agreeable between Operator and Surface Owner. In conducting seismic operations there shall be no holes drilled in the ground and there shall be no explosive charges. No seismic operations shall be conducted during wet conditions. In conducting seismic operations Operator will not use or allow the use of a dozer, grader or similar equipment without express written permission from Surface Owner, and then only to the extent of such approval. If Operator encounters a fence while conducting any seismic operations, it shall pass through the nearest gate to resume its operations. Fracking operations shall not be considered a "seismic operation" as it relates to the provisions of this paragraph.

18. LOCATION AND CONDUCT OF OPERATIONS:

Notwithstanding anything herein to the contrary, Operator and Surface Owner acknowledge and agree that:

(a) without express written permission from Surface Owner, no well location, new road, pipeline, electric line, or permitted Facility shall be located, nor shall any operation of any kind be conducted, within five hundred (500) feet of any standing barn or residence located on the Surface Premises at the time of such operation; and

(b) Operator shall comply in all its operations with all applicable ordinances, laws, rules and regulations of each governmental, municipal and/or regulatory authority having jurisdiction over such operations.

19. NOXIOUS VEGETATION:

Operator shall take all reasonable precautions to keep the Surface Premises free of bitterweed, African rue, tumbleweeds, cockleburs and other noxious vegetation (being native and non-native toxic plants). In the event any such noxious vegetation is encountered around any of Operator's equipment or permitted Facilities, Operator agrees to promptly spray herbicide to eliminate such vegetation. If Operator fails to take such action, Surface Owner may have such vegetation sprayed at the sole expense of Operator. At the request of Surface Owner, Operator shall weedwash all vehicles and equipment entering upon the Surface Premises at the entrance to the Surface Premises prior to their entry thereon.

20. SPEED LIMIT:

Except as to roads upon which a speed limit has been posted by the applicable governmental authorities, a speed limit of twenty-five (25) miles per hour on the Surface Premises will be observed by Operator and its agents, employees, representatives, contractors, subcontractors and invitees. At the request of Surface Owner, Operator shall place speed limit signs approved by Surface Owner at entrances onto the Surface Premises. Surface Owner shall have the right to expel and permanently ban from the Surface Premises any person observed exceeding any applicable speed limit.

21. PORTABLE TOILET FACILITIES:

Operator or its contractors shall provide its employees with portable toilet facilities during drilling, completion, reworking, pipeline construction, seismic survey operations and any other similar or related operations.

22. LANDSCAPING AND IRRIGATION:

At the election of Surface Owner, prior to the commencement of any operations on the Surface Premises, Operator and Surface Owner shall develop and mutually agree upon an ongoing plan for reasonable and appropriate landscaping and irrigation of the Surface Premises in order to minimize the impact of Operator's operations upon the appearance of the Surface Premises and upon the flow and drainage of water across the Surface Premises in order to maintain the Surface Premises to as close to as reasonably possible its original condition at the time of the execution of this Agreement. Without limiting the foregoing, Surface Owner shall reasonably approve such plan for landscaping and irrigation of the Surface Premises if it provides for landscaping and irrigation of the Surface Premises generally consistent with that of the immediately surrounding area. All costs of the installation and maintenance of such landscaping and irrigation shall be paid by Operator, and unless otherwise agreed by Surface Owner, Operator shall be responsible for the installation and maintenance of all such landscaping and irrigation in accordance with such plan until the termination of this Agreement.

23. DAMAGE TO PROPERTY IN GENERAL AND DAMAGE SCHEDULE:

Operator agrees to pay for actual damages resulting to the Surface Premises, improvements thereon and to personal property thereon caused by Operator's operations. To the extent such damages are of a type covered by the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, compensation for such damages to property shall be calculated and paid in accordance with the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, including, without limitation, in connection with the following items:

- Well location (new location and re-entry)
- Caliche sales
- Geophysical permits
- Roads
- Pipelines

- Utility line easements
- Fresh water frac pit site
- Temporary fresh water lines

Solely for purposes of calculating damages under the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, (i) the Leased Premises and the Surface Premises shall be classified as “University Lands” under such Schedule, (ii) any road, pipeline, or utility line used or constructed by Operator on the Surface Premises after the effective date of this Agreement shall be classified under such Schedule as requiring a “new” easement, and (ii) any flowlines (other than and excluding temporary surface pipelines) installed by Operator on the Surface Premises after the effective date of this Agreement shall be classified as “pipelines” under such Schedule.

Compensation for all other damages to property shall be based on the prevailing market rates for similar damages in the area at the time the damage occurs.

24. ABANDONMENT OF WELLS:

As to any oil and/or gas well drilled by Operator on the Surface Premises, Operator agrees that before the abandonment or removal of any such wellbore, or upon the termination of this Agreement, whichever occurs first, it will offer such wellbore to Surface Owner, without compensation. If Surface Owner elects to accept such well, it shall be and become the property of Surface Owner, its successors and assigns, and Operator shall surrender and assign or shall cause all such appropriate parties to surrender and assign to Surface Owner, its successors and assigns, said wellbore, by such instruments in form and substance reasonably required by Surface Owner, and Surface Owner shall assume any and all plugging liability in connection with such wellbore and shall further assume all obligations and liabilities associated therewith, in each case arising and accruing only as to all time periods from and after the date of such assignment.

If, however, Surface Owner elects not to accept such wellbore, then Operator, at its sole expense, may draw and remove all casing and shall plug such well within ninety (90) days after such election by Surface Owner in accordance with all requirements of the Railroad Commission of Texas and Operator shall, at its sole cost and expense, restore the Surface Premises surrounding such wellbore to its original condition as nearly as reasonably practicable. Operator agrees to plant the disturbed area with the type and quantity of grass or other reasonable landscaping designated by Surface Owner so that the disturbed area shall be generally restored to its original condition. If Operator fails to take such removal, plugging and restoration actions, Surface Owner may do so at the sole expense of Operator. Without limiting the foregoing, said work shall meet minimum requirements under all applicable local, state or federal laws, rules or regulations, and shall be subject to the approval the City Manager, which approval shall not be unreasonably withheld. The terms, provisions and requirements of this Paragraph 24 shall survive the termination or expiration of this Agreement.

25. INDEMNIFICATION AND ENVIRONMENTAL PROTECTION:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OPERATOR, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS SURFACE OWNER AND SURFACE OWNER'S REPRESENTATIVES, AGENTS, ATTORNEYS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, 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 AGREEMENT, OPERATOR'S USE OF OR ACTIVITIES ON THE SURFACE PREMISES, OR ANY ACT OR OMISSION OF OPERATOR, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED, IN PART, TO THE NEGLIGENCE OF ANY INDEMNITEE. OPERATOR SHALL PROMPTLY ADVISE SURFACE OWNER OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THIS INDEMNIFICATION MAY APPLY, AND OF WHICH OPERATOR HAS RECEIVED NOTICE, AND OPERATOR, AT OPERATOR'S EXPENSE, SHALL ASSUME ON BEHALF OF SURFACE OWNER (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL REASONABLY SATISFACTORY TO SURFACE OWNER; PROVIDED, HOWEVER, THAT ANY INDEMNITEE SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY OPERATOR TO ASSUME THE DEFENSE OF SURFACE OWNER IN ACCORDANCE WITH THIS INDEMNIFICATION, SURFACE OWNER, AT ITS OPTION, AND WITHOUT RELIEVING OPERATOR OF ITS OBLIGATION HEREUNDER, MAY ASSUME SUCH DEFENSE, AFTER WRITTEN NOTICE THEREOF TO OPERATOR AND OPERATOR'S FAILURE TO RESPOND THERETO WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE (SAID TEN (10) DAY PERIOD SHALL NOT APPLY IN ANY CASE WHERE IMMEDIATE ANSWERS, RESPONSES, OR OTHER AFFIRMATIVE ACTION IS REQUIRED TO PRESERVE THE RIGHTS OF SURFACE OWNER) BUT ALL REASONABLE COSTS AND EXPENSES SO INCURRED BY SURFACE OWNER IN THAT EVENT SHALL BE REIMBURSED BY OPERATOR TO SURFACE OWNER, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE WAS PAID BY SURFACE OWNER UNTIL REIMBURSED BY OPERATOR,

AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAWS OF THE STATE OF TEXAS.

WITHOUT LIMITING THE ABOVE PARAGRAPH, OPERATOR, ITS SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY, DEFEND AND HOLD INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, 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 OPERATOR, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, THE "INDEMNIFYING PARTIES"), TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY INDEMNIFYING PARTY'S OPERATIONS OR ACTIVITIES ON THE SURFACE PREMISES, OR (ii) ANY INDEMNIFYING PARTY'S HANDLING, STORING, RELEASING OR TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE SURFACE PREMISES OR ANY OTHER LANDS OF SURFACE OWNER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE PROVISIONS OF THIS INDEMNIFICATION SHALL APPLY TO AND PROTECT EACH INDEMNITEE FROM THE CONSEQUENCES OF STRICT LIABILITY IMPOSED OR THREATENED TO BE IMPOSED ON SUCH INDEMNITEE, AS WELL AS FROM THE CONSEQUENCES OF THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS PARAGRAPH 25.

THE TERMS, PROVISIONS, REQUIREMENTS AND OBLIGATIONS OF THIS PARAGRAPH 25 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT, AND SHALL NOT BE LIMITED BY OR TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.

26. INSURANCE:

At all times during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement, Operator shall maintain adequate insurance to cover any and all damages arising in connection with its operations pursuant to the Leases and this Agreement, and Operator shall in any event maintain insurance meeting the following minimum requirements:

Comprehensive General Liability (including Contractual liability):

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

Business Automobile Liability: \$1,000,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$10,000,000.00 each occurrence
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Operator shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name Surface Owner as an additional insured. All insurance required pursuant to this Agreement, including Workers' Compensation Insurance, shall provide for a waiver of subrogation as to Surface Owner.

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

“The City of Midland is included as an additional insured on all policies except for Workers’ Compensation. Operator and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance.”

Operator shall cause its insurance provider(s) to provide written notice to Surface Owner not later than thirty (30) days prior to any reduction or termination of such coverage. Surface Owner shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Operator shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Surface Owner and policies that name Surface Owner as an additional insured (except workers’ compensation). Operator certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Operator shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Operator.

27. WAIVER; GOVERNMENTAL IMMUNITY:

No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Likewise, the failure of Surface Owner to enforce any provision of this Agreement shall not be deemed nor shall constitute a waiver of the right of Surface Owner to enforce such provision.

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

28. ENFORCEMENT:

Except as otherwise specifically provided for herein, in the event Operator fails to take the actions required under this Agreement, Surface Owner may notify Operator and Operator shall have thirty (30) days to remedy such failure. If Operator fails to remedy such failure and Surface Owner conducts the required action on behalf of Operator, Operator agrees to pay all reasonable costs incurred by Surface Owner related to such required action within thirty (30) days of receipt of an invoice for such action. Any amount not paid within said thirty (30) day period shall bear interest at a rate of eighteen (18) percent per annum or the highest interest rate allowed by law, whichever is less, from its due date until paid.

29. ATTORNEY'S FEES:

SHOULD SURFACE OWNER BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS AGREEMENT, OR ANY OF ITS RIGHTS UNDER THIS AGREEMENT, SURFACE OWNER SHALL BE ENTITLED TO REIMBURSEMENT FROM OPERATOR FOR SURFACE OWNER'S ATTORNEYS' FEES. OPERATOR SHALL REIMBURSE SURFACE OWNER FOR SURFACE OWNER'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS AGREEMENT, SUCH FEES IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS AGREEMENT NOT TO EXCEED \$10,000.

BY EXECUTING THIS AGREEMENT, OPERATOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST SURFACE OWNER REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, OPERATOR SPECIFICALLY AGREES THAT IF OPERATOR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT OR TO THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, OPERATOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OPERATOR MIGHT OTHERWISE BE ENTITLED.

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

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

30. RELEASE:

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES SURFACE OWNER AND SURFACE OWNER'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF

ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, 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 SURFACE OWNER'S NEGLIGENCE.

31. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:

Without limiting the provisions of Paragraph 30 of this Agreement, as a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Operator or Operator's legal representative, shall give the City Manager, or any other reasonable official of Surface Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred 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 Operator will settle, the physical and mailing addresses of Operator at the time and date the claim was presented and the physical and mailing addresses of Operator for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Operator relies to establish its claim; and a failure to so notify the City Manager or other such official of Surface Owner within the time and manner provided herein shall exonerate, excuse and except Surface Owner from any liability whatsoever. Surface Owner is under no obligation to provide notice to Operator that Operator's notice is insufficient. Surface Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

32. NO WAIVER OF GOVERNMENTAL IMMUNITY; CHAPTER 271, TEX. LOC. GOV'T CODE:

The parties hereto agree that this Agreement does not constitute a "Contract" for providing goods and/or services to Surface Owner as set forth in Subchapter I of Chapter 271 of the Texas Local Government Code, and Surface Owner does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Surface Owner expressly does not consent to be sued or be liable. To the maximum extent allowed by law, nothing in this Agreement constitutes a waiver of Surface Owner's governmental immunity and the parties hereto expressly agree that this Agreement shall not constitute, nor be interpreted as a waiver of Surface Owner's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be

interpreted as a waiver of Surface Owner's governmental immunity for the benefit of any third party lacking privity to this Agreement.

This Agreement does not obligate Operator to use the Surface Premises to construct, repair, operate, replace, or maintain equipment, structures, improvements, and/or facilities associated with Operator's activities described herein, rather, it merely prohibits Operator from using the Surface Premises for any other purpose. This Agreement restricts the use of the Surface Premises to a specific purpose but does not require the use of property for a specific purpose. Operator is not providing a service to Surface Owner. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Operator's use of the Surface Premises in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Surface Owner's governmental immunity.

33. THIRD-PARTY BENEFICIARY:

Except as provided in Paragraph 25 with respect to Indemnitees, this Agreement is intended solely for the use and benefit of the parties hereto and shall not constitute or be construed as a contract for the benefit of any third party.

34. SUCCESSORS AND ASSIGNS:

The provisions of this Agreement shall inure to the benefit of and be binding upon Surface Owner and Operator, their respective heirs, successors, representatives and permitted assigns. Operator shall not have the right to assign any of its rights or obligations under this Agreement without the prior written consent of Surface Owner, which consent shall not be unreasonably withheld by Surface Owner. Any permitted assignee shall expressly assume all of Operator's covenants, responsibilities and obligations under this Agreement in writing. Without limiting the foregoing, no permitted assignment of Operator's interests in this Agreement shall be effective until Operator has notified Surface Owner of the assignment and identified the assignee's name, address and contact information. Upon assignment hereof in whole or in part by Operator, Operator shall remain fully liable for any breach of any obligation hereunder accruing prior to such assignment. Surface Owner shall be furnished a true and correct copy of any permitted assignment within thirty (30) days after the execution thereof.

35. COVENANTS RUNNING WITH THE LAND:

The covenants and obligations of the parties under this Agreement shall be binding upon and shall run with the land and burden the Surface Premises.

36. COUNTERPART EXECUTION:

This Agreement may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

37. GOVERNING LAW AND VENUE:

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

38. NO RELEASE OF LIABILITY:

Notwithstanding anything to the contrary contained in this Agreement, the termination or expiration of this Agreement shall not relieve Operator of any liability, duty or obligation under this Agreement, nor shall it preclude Surface Owner from asserting any right to specific performance, damages or any other rights or remedies to which Surface Owner may be entitled. Upon termination or expiration of this Agreement for any reason, Operator shall execute and deliver a recordable release of this Agreement to Surface Owner in form and substance satisfactory to Surface Owner.

39. TEXAS HISTORICAL COMMISSION SURVEY:

Operator agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this Agreement, Operator represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Operator commences operations on the Surface Premises, as contemplated herein. Operator agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Surface Premises if the Commission so requests and deliver the same to Surface Owner. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this Agreement, Operator will immediately notify Surface Owner and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Surface Owner or the Commission.

40. CONSIDERATION:

The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

41. MEMORANDUM OF SURFACE USE AGREEMENT:

Surface Owner and Operator have executed a Memorandum of Surface Use Agreement in the form attached hereto as Exhibit C, dated of even date herewith, for recording in the records of the County in which the Surface Premises are situated, to give record notice of this Surface Use Agreement. This Surface Use Agreement shall not be recorded except with the prior written consent of Surface Owner.

42. COMPLIANCE:

Operator agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this Agreement. Operator agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this Agreement.

43. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between Surface Owner and Operator concerning the subject matter hereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter hereof, including, but not limited to, those certain Surface Use Agreements, Right of Way Licenses and amendments thereto listed on Schedule 1 attached hereto and made a part hereof for all purposes, together with any and all other previous surface use agreements, right of way licenses or similar agreements between Operator and Surface Owner pertaining to all or any portion of the Surface Premises. This Agreement may only be amended by written instrument executed by Surface Owner and Operator.

[Remainder of page intentionally left blank; signature pages follow.]

EXECUTED by each party hereto as of the date indicated underneath its respective signature, to be effective for all purposes as of the Effective Date.

SURFACE OWNER:

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

Date: _____

ATTEST:

Amy M. Turner, City Secretary

[Signature Page Follows]

OPERATOR:

CROWNQUEST OPERATING, LLC

By: _____

Name: Robert W. Floyd

Title: President

Date: _____

STATE OF TEXAS §

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COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 2020, by Robert W. Floyd, President of CrownQuest Operating, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public – State of Texas

SCHEDULE 1

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
CrownQuest Operating, LLC, as “Operator”

Existing Agreements

1. Surface Use Agreement by and between CrownQuest Operating, LLC, as Operator, and the City of Midland, Texas, as the City, dated effective July 26, 2017, covering Section 16, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Surface Use Agreement by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective February 28, 2018.
2. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective June 24, 2015, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
3. Surface Use Agreement by and between CrownQuest Operating, LLC, as Operator, and the City of Midland, Texas, as the City, dated effective September 13, 2017, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
4. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective December 16, 2015, covering Section 19, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas.
5. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective November 18, 2015, covering Section 30, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 15, 2016, and as further amended by Second Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 28, 2017.
6. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective October 12, 2016, covering Section 11, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License between CrownQuest Operating, LLC, and the City of Midland, Texas, dated effective June 14, 2017, which Amendment adds Section 14, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas to the Right of Way License.

EXHIBIT A

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
CrownQuest Operating, LLC, as “Operator”

Well Plans

(see attached)

EXHIBIT B

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
CrownQuest Operating, LLC, as “Operator”

Wellbore Specifications

(see attached)

EXHIBIT C

Attached to that certain Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
CrownQuest Operating, LLC, as “Operator”

MEMORANDUM OF SURFACE USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This Memorandum of Surface Use Agreement (this “Memorandum”) is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein “Surface Owner”) and CROWNQUEST OPERATING, LLC, whose address is 18 Desta Drive, Midland, Texas 79705, Attention: Land Manager (herein “Operator”), covering the surface estate of **Sections 2, 4, 9, 11, 14, 16, and 24, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas** (herein the “Surface Premises”).

WITNESSETH:

Surface Owner and Operator have entered into that certain Surface Use Agreement dated effective as of _____, 20__ (the “Surface Use Agreement”) which provides for protection of the surface estate and water resources of the Surface Premises in connection with oil and gas exploration, development and production of mineral rights underlying Sections 2, 4, 9, 11, 14, 24, 40 and 45, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas (the “Leased Premises”).

Surface Owner and Operator are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Surface Owner and/or Operator of the existence of the Surface Use Agreement and of the rights and obligations contained therein. Surface Owner and Operator give notice that the Surface Use Agreement may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Surface Use Agreement, the terms of the Surface Use Agreement shall control.

The Surface Use Agreement constitutes the entire agreement between Surface Owner and Operator concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof, including, but not limited to, those certain Surface Use Agreements, Right of Way Licenses and amendments thereto listed on Schedule 1 attached hereto and made a part hereof for all purposes, together with any and

all other previous surface use agreements, right of way licenses or similar agreements between Operator and Surface Owner pertaining to all or any portion of the Surface Premises.

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__.

SURFACE OWNER:

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

OPERATOR:

CROWNQUEST OPERATING, LLC

By: _____

Name: Robert W. Floyd

Title: President

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 2020, by Robert W. Floyd, President of CrownQuest Operating, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public – State of Texas

SCHEDULE 1

Attached to that certain Memorandum of Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”

and

CrownQuest Operating, LLC, as “Operator”

Existing Agreements

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2. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective June 24, 2015, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
3. Surface Use Agreement by and between CrownQuest Operating, LLC, as Operator, and the City of Midland, Texas, as the City, dated effective September 13, 2017, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
4. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective December 16, 2015, covering Section 19, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas.
5. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective November 18, 2015, covering Section 30, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 15, 2016, and as further amended by Second Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 28, 2017.
6. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective October 12, 2016, covering Section 11, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License between CrownQuest Operating, LLC, and the City of Midland, Texas, dated effective June 14, 2017, which Amendment adds Section 14, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas to the Right of Way License.

MEMORANDUM OF SURFACE USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This Memorandum of Surface Use Agreement (this “Memorandum”) is made and entered into by and between the CITY OF MIDLAND, TEXAS, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right of Way Manager (herein “Surface Owner”) and CROWNQUEST OPERATING, LLC, whose address is 18 Desta Drive, Midland, Texas 79705, Attention: Land Manager (herein “Operator”), covering the surface estate of **Sections 2, 4, 9, 11, 14, 16, and 24, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas** (herein the “Surface Premises”).

WITNESSETH:

Surface Owner and Operator have entered into that certain Surface Use Agreement dated effective as of _____, 20__ (the “Surface Use Agreement”) which provides for protection of the surface estate and water resources of the Surface Premises in connection with oil and gas exploration, development and production of mineral rights underlying Sections 2, 4, 9, 11, 14, 24, 40 and 45, Block 37, T3S, T&P RR Co. Survey, Midland County, Texas and Sections 19 and 30, Block 36, T3S, T&P RR Co. Survey, Midland County, Texas (the “Leased Premises”).

Surface Owner and Operator are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing with Surface Owner and/or Operator of the existence of the Surface Use Agreement and of the rights and obligations contained therein. Surface Owner and Operator give notice that the Surface Use Agreement may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Surface Use Agreement, the terms of the Surface Use Agreement shall control.

The Surface Use Agreement constitutes the entire agreement between Surface Owner and Operator concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof, including, but not limited to, those certain Surface Use Agreements, Right of Way Licenses and amendments thereto listed on Schedule 1 attached hereto and made a part hereof for all purposes, together with any and all other previous surface use agreements, right of way licenses or similar agreements between Operator and Surface Owner pertaining to all or any portion of the Surface Premises.

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

SCHEDULE 1

Attached to that certain Memorandum of Surface Use Agreement
between the City of Midland, Texas, as “Surface Owner”
and
CrownQuest Operating, LLC, as “Operator”

Existing Agreements

1. Surface Use Agreement by and between CrownQuest Operating, LLC, as Operator, and the City of Midland, Texas, as the City, dated effective July 26, 2017, covering Section 16, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Surface Use Agreement by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective February 28, 2018.
2. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective June 24, 2015, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
3. Surface Use Agreement by and between CrownQuest Operating, LLC, as Operator, and the City of Midland, Texas, as the City, dated effective September 13, 2017, covering Section 9, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas.
4. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective December 16, 2015, covering Section 19, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas.
5. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective November 18, 2015, covering Section 30, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 15, 2016, and as further amended by Second Amendment to the Right of Way License by and between CrownQuest Operating, LLC, as the Company, and the City of Midland, Texas, as the City, dated effective June 28, 2017.
6. Right of Way License by and between the City of Midland, Texas, as Licensor, and CrownQuest Operating, LLC, as Licensee, dated effective October 12, 2016, covering Section 11, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas, as amended by Amendment to the Right of Way License between CrownQuest Operating, LLC, and the City of Midland, Texas, dated effective June 14, 2017, which Amendment adds Section 14, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas to the Right of Way License.

City Council Meeting



Item Number: 10
Meeting Date: June 9, 2020
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way

Approved for Agenda:

City Manager's Office

062-2020

Subject: Motion authorizing the execution of a right-of-way license between the City of Midland and Crownquest Operating LLC, regarding city-owned property described as Sections 2, 10, 13, 14, 20 and 24, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas. (UTILITIES) (UTILITIES)

Purpose:

This motion will provide a Thirty-Five foot (35) wide right of way in multiple sections of City Spraberry Farm property. Proposed Right of Ways are in support of the Surface use Agreement. Total pipeline ROW covered by this License on City property is 18,668.63 feet / 1,131.42 rods. This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): \$1,000 Annual Lease Rate \$21,734.00 Surface Damages: collected with concurrent Surface Use Agreement Total Collected: \$28,734.00

Discussion:

All lines including the gas line will be SDR eleven (11) poly pipelines and described as one (1) pipeline,

not to exceed eighteen (18) inches in diameter for the transportation of gas products, one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of oil products, and one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of produced water. All pipelines shall be buried no less than forty-two (42) inches deep. Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file. City Secretary to record completed License Agreement



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 6/9/2020

TO: City Council / City Manager

FROM: John Simmons, Right-of-Way Manager

SUBJECT: Consider a motion authorizing the execution of a right-of-way license between the City of Midland and Crownquest Operating LLC, regarding city-owned property described as Sections 2, 10, 13, 14, 20 and 24, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas.

Purpose:

This motion will provide a Thirty-Five foot (35) wide right of way in multiple sections of City Spraberry Farm property. Proposed Right of Ways are in support of the Surface use Agreement. Total pipeline ROW covered by this License on City property is 18,668.63 feet / 1,131.42 rods.

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The following fees will be collected:

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

Annual Lease Rate \$21,734.00

Surface Damages: collected with concurrent Surface Use Agreement

Total Collected: \$37,311.70

Discussion:

All lines including the gas line will be SDR eleven (11) poly pipelines and described as one (1) pipeline, not to exceed eighteen (18) inches in diameter for the transportation of gas products, one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of oil products, and one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of produced water. All pipelines shall be buried no less than forty-two (42) inches deep.

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

City Secretary to record completed License Agreement

RIGHT OF WAY LICENSE

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

Date: _____, 2020

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

Licensor's Representative: Robert Patrick, Assistant City Manager

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

Licensee: CrownQuest Operating, LLC

Licensee's Representative: Matt Ritchey

Licensee's Mailing Address: 18 Desta Drive
Midland, Texas 79701

Property: As described in Article III below.

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 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 fifteen(15) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years (the "Extended Term"), upon the written request of Licensee received by Licensor not more than one (1) year and not less than one hundred twenty (120) days

prior to the expiration of the Initial Term then in effect. The granting of consent for the Extended Term is in the sole discretion of the applicable governing body and/or officials of Licensor, but consent cannot be unreasonably withheld.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License in full or in part upon giving at least three hundred sixty-five (365) days' written notice to Licensee. In connection with any such termination Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the License being terminated. To the extent reasonably possible, Licensor will use commercially reasonable efforts to grant Licensee a new pipeline right-of-way on other property owned by Licensor in order to allow Licensee to reroute Licensee's pipelines affected by any such termination of this License. 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 pipelines, facilities, equipment and structures associated with the undertakings contemplated by this License. After removal of all pipelines, facilities, 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 first year's license fee in the amount of Twenty-One Thousand Seven Hundred Thirty-Four and No/100 Dollars (\$21,734.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee").

B. Surface Damage Fees. Licensee shall pay surface damage fees in accordance with the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands, for all damages to the City of Midland property.

C. Annual Fee. Licensee shall pay to Licensor an annual fee ("Annual Fee") in the amount of Twenty-One Thousand Seven Hundred Thirty-Four and No/100 Dollars (\$21,734.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of One Thousand and No/100 Dollars (\$1,000.00) to Licensors 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.

E. Fee Adjustment. Prior to commencement of any Extended Term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided that any increase in the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. 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 such 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.

G. 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 (i) to enter upon certain property owned by Licensor in Midland County, Texas, being seventeen and one-half (17.5) feet on each side of the centerline of the pipeline locations as shown on Exhibit A attached hereto and incorporated herein together with an additional seven and one-half (7.5) feet on each side of the centerline of said pipeline locations during the construction of such pipelines (the "Property"), for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, one (1) pipeline, not to exceed eighteen (18) inches in diameter for the transportation of gas products, one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of oil products, and one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of produced water, and (ii) of ingress and egress over and across the Property and the right to access the Property at such locations, if any, on Licensor's land as may be designated by Licensor on Exhibit A attached hereto or as may otherwise be designated to Licensee in writing by Licensor, for such purposes. All lines including the gas line will be SDR eleven (11) poly pipelines. In the event Licensee desires to construct or install within the Property additional pipelines and/or pipelines with diameters different than those listed immediately above for the respective pipeline type, Licensee must obtain the prior written consent of Licensor as to the number, location, size and specifications therefor, which consent shall be in the sole discretion of Licensor. Except during the construction of the pipelines and/or with the prior written consent of Licensor, which consent shall be at Licensor's sole discretion, no facilities, structures or equipment shall be located upon the surface of the Property. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and permitted facilities described herein. The parties agree that Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and permitted 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 are restored to their original condition as nearly as reasonably practical.

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. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-two (42) inches in depth. All backfill used in burying such pipelines shall be compacted to a density of ninety percent (90%), except where such pipeline(s) 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(s) intersects with a City of Midland utility line location, the pipeline(s) 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 PIPELINES, CASING, OR OTHER PERMITTED FACILITIES, STRUCTURES OR EQUIPMENT, ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF LICENSOR, ITS EMPLOYEES, OFFICERS, REPRESENTATIVES OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor

requires Licensee to remove, alter, change, adapt, or conform Licensee's pipelines or permitted facilities or structures 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, provided, however, such grants or rights do not unreasonably interfere with or constitute a hazard to the right granted Licensee herein.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event 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 in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, alter, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her 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 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 to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed". Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

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

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

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

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee for any purpose not expressly permitted by this License.

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 and Umbrella Liability policies shall include sudden and accidental pollution coverage. The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

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 Licensors.

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 Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

All insurance required pursuant to this License, except for Worker's Compensation Insurance, shall name Licensors 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 Licensors. 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. Licensors shall determine, under its reasonable discretion, whether such requirements have been satisfied.

Licensors 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. Licensors 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 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(S), CASING SYSTEM, 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 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(S), CASING SYSTEM, 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 (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS PARAGRAPH IV (B.).

THE TERMS, PROVISIONS, REQUIREMENTS AND OBLIGATIONS OF THIS PARAGRAPH 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 shall not be unreasonably withheld by Licensor.

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. Licensors do not have the power to direct the order in which the work is done. Licensors 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, SUCH FEES IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS LICENSE NOT TO EXCEED \$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.

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 Paragraph 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 Paragraph 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 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 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. No 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 pipelines, 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. 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 County 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. Enforcement. Except as otherwise specifically provided for herein, in the event Licensee fails to take the actions required under this License, Licensor may notify Licensee and Licensee shall have thirty (30) days to remedy such failure. If Licensee fails to remedy such failure and Licensor conducts the required action on behalf of Licensee, Licensee agrees to pay all reasonable costs incurred by Licensor related to such required action within thirty (30) days of receipt of an invoice for such action. Any amount not paid within said thirty (30) day period shall bear interest at a rate of eighteen (18) percent per annum or the highest interest rate allowed by law, whichever is less, from its due date until paid.

S. Counterpart Execution. This License may be executed in several counterparts, and any such agreement shall be deemed an original for all intents and purposes.

T. 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.

U. 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 including, but not limited to, that certain Right-of-Way License dated effective November 5, 2014 by and between Licensor and Licensee. This License may only be amended by written instrument executed by Licensor and Licensee.

[Signature Page Follows]

LICENSOR:

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Robert Patrick, Assistant City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:

CROWNQUEST OPERATING, LLC

By: _____
Name: Robert W. Floyd
Title: President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2020, this instrument was acknowledged by Robert W. Floyd, President of CrownQuest Operating, LLC, a Texas limited liability company, on behalf of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2020.

Notary Public, State of Texas

EXHIBIT A

Attached to that certain Right of Way License
between the City of Midland, Texas, as “Licensor”
and
CrownQuest Operating, LLC, as “Licensee”

Property

(see attached)

EXHIBIT B

Attached to that certain Right of Way License
between the City of Midland, Texas, as "Licensor"
and
CrownQuest Operating, LLC, as "Licensee"

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 CROWNQUEST OPERATING, LLC, whose address is 18 Desta Drive, Midland, Texas 79705, Attention: Land Manager (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 (i) to enter upon certain property owned by Licensor in Midland County, Texas, being seventeen and one-half (17.5) feet on each side of the centerline of the pipeline locations as shown on Exhibit A attached hereto and incorporated herein together with an additional seven and one-half (7.5) feet on each side of the centerline of said pipeline locations during the construction of such pipelines (the "Property"), for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, one (1) pipeline, not to exceed eighteen (18) inches in diameter for the transportation of gas products, one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of oil products, and one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of produced water, and (ii) of ingress and egress over and across the Property and the right to access the Property at such locations, if any, on Licensor's land as may be designated by Licensor on Exhibit A attached hereto or as may otherwise be designated to Licensee in writing by Licensor, 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, including, but not limited to, that certain Right of Way License dated effective November 5, 2014 by and between Licensor and

Licensee.

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: _____
Courtney Sharp, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 2020, by _____ of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

LICENSEE:

CROWNQUEST OPERATING, LLC

By: _____

Name: Robert W. Floyd

Title: President

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2020, this instrument was acknowledged by Robert W. Floyd, President of CrownQuest Operating, LLC, a Texas limited liability company, on behalf of said limited liability company.

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

CrownQuest Operating, LLC, as “Licensee”

Property

[Add Description]

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 CROWNQUEST OPERATING, LLC, whose address is 18 Desta Drive, Midland, Texas 79705, Attention: Land Manager (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 (i) to enter upon certain property owned by Licensor in Midland County, Texas, being seventeen and one-half (17.5) feet on each side of the centerline of the pipeline locations as shown on Exhibit A attached hereto and incorporated herein together with an additional seven and one-half (7.5) feet on each side of the centerline of said pipeline locations during the construction of such pipelines (the “Property”), for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, one (1) pipeline, not to exceed eighteen (18) inches in diameter for the transportation of gas products, one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of oil products, and one (1) pipeline, not to exceed twelve (12) inches in diameter, for the transportation of produced water, and (ii) of ingress and egress over and across the Property and the right to access the Property at such locations, if any, on Licensor’s land as may be designated by Licensor on Exhibit A attached hereto or as may otherwise be designated to Licensee in writing by Licensor, 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, including, but not limited to, that certain Right of Way License dated effective November 5, 2014 by and between Licensor and Licensee.

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: _____
Courtney Sharp, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me this ____ day of _____, 2020, by _____, _____ of the City of Midland, Texas, a home rule municipal corporation, on behalf of said entity.

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

CrownQuest Operating, LLC, as “Licensee”

Property

(see attached)

City Council Meeting

Item Number 11

Meeting Date: June 9, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: Consider an ordinance on second reading on a request by Jose Ramos for a Zone Change from MF-22, Multiple-Family Dwelling District, to SF-3, Single Family Dwelling District, on Lot 12, Block 30, Moody Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of S. Carver Street and E. Wall Street. Council District 2)



Approved for Agenda:

City Manager's Office

Purpose:

The applicant, Jose Ramos, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District, to SF-3, Single Family Dwelling District, on Lot 12, Block 30, Moody Addition, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The properties to the north, south, and west are zoned MF-22, Multiple-Family Dwelling District, and are the locations of Carver Elementary, a vacant lot, and a residence, respectively. The property to the east is zoned SF-3, Single Family Dwelling District, and is the location of a residence.

The property is located at 101 S. Carver Street and is currently vacant. The applicant is proposing to build a home at this location. Per the previous zoning ordinance, single-family detached dwellings were allowed in this zoning district. As of July 1, 2019, the new zoning ordinance does not allow the use of single-family detached dwellings within MF-22, Multiple-Family Dwelling District. The planning department has researched the surrounding neighborhood and based on the existing characteristics of the area, the zone change request to allow for a single-family detached dwelling would be appropriate. The dimensions of the property are approximately 50 feet by 140 feet and would not meet the dimensional regulations of corner lots in the SF-3, Single Family Dwelling District. However, per the Zoning Ordinance section 4.08.D, "Any existing vacant lot platted prior to the zoning ordinance effective date that was legally conforming shall be deemed a conforming lot." The property was platted prior to the effective date of the zoning ordinance; therefore, the lot would be suitable for the development of a home.

This proposed zone change has been circulated to and reviewed by respective City departments 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 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. Our staff has examined the FEMA flood map and it appears that this property lies partially within Zone AE and Zone X Shaded, which is a Special Flood Hazard Area subject to inundation by the 1% and 0.2% annual chance flood. An elevation certificate based off of construction drawings will be required to get a building permit to show compliance to the 1 foot of freeboard above the base flood elevation for residential structures. An elevation certificate based off of finish construction will be required for the Certificate of Occupancy.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban-Residential Low. Potential zoning for this area includes Single-Family Dwelling Districts; therefore, this zone change is in compliance with the Future Land Use plan. This request also supports the integrated Land Use Vision Development principal of supporting appropriate infill development, which the plan believes will support the economic value of Midland's existing neighborhoods and makes full use of the existing infrastructure. The Eastside Infill Area analysis states that vacant lots are considered opportunities for new investment in the area, while noting the success that has been seen in this area with past infill development. As the surrounding lots consist of vacant lots and residences, this zone change will follow the existing characteristics of the surrounding neighborhood and provide additional housing for residents of the City of Midland.

The Planning and Zoning Commission recommended approval of this request at the April 20, 2020 meeting. This request was deferred at the May 12, 2020 City Council meeting but approved at the May

26, 2020 City Council meeting.

Staff recommends approval of the zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District, subject to condition A.

Conditions:

- A. That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.

Letters of Objection:

Staff has not received any letters of objection as of May 20, 2020.

Attachments:

Application
Maps

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 12, BLOCK 30, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CARVER STREET AND EAST 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

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 12, Block 30, Moody Addition, City and County of Midland, Texas (the “Property”) to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from 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., 2020; 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., 2020, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-20-0176

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Jose Ramos

Phone (432) 634-7417

Email Jose9120@gmail.com

Address 35 E. Oak

City Midland

State TX

Zip 79705

Property Owner

Printed Name: Jose Ramos

Phone (432) 634-7417

Email Jose9120@gmail.com

Address _____

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:

101 S. Carver Midland TX 79705

Legal Description

Lot: 12 Block: 30 Subdivision: Moody

Current Zoning:

RMF22

Proposed Zone:

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Single family build

Present Use of Property: Vacant

Proposed Use of Property: Single family Home

How would this zone change affect the public health, safety and welfare? NO

Describe how conditions affecting the property have changed since present zoning designation: Vacant

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): Jose Ramos

Date: 3-16-20

Applicant (printed):

Property Owner (signature): Jose Ramos

Date: 3-16-20

Property Owner (printed): Jose Ramos

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.

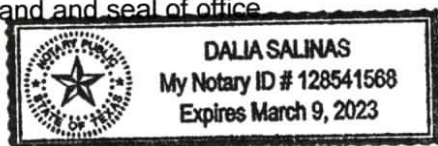
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Jose A. Ramos who, being by me duly sworn, upon oath says: That (s)he is the owner of 101 S. Carver 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.

Jose Ramos
Authorized Agent (signature)

Subscribed and sworn to before me, this 16 day of March, 2020, to certify which witness my hand and seal of office



Dalia Salinas
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☐ Dimensioned Site Plan

☒ Application Fee

☐ Plans in Digital Format (PDF/JPEG)

Check # _____

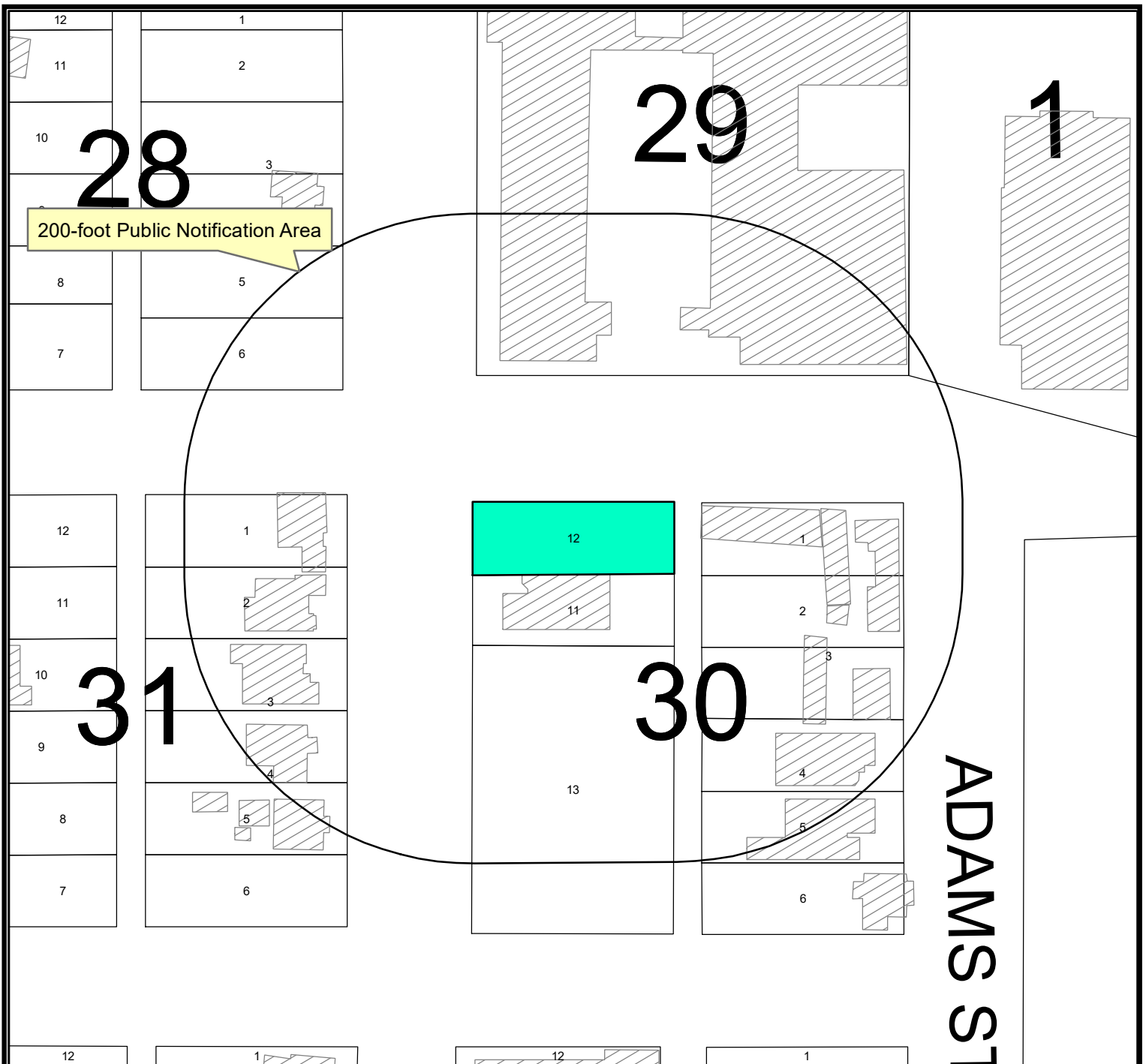
Received By: Jim

Date:

RECEIVED
MAR 19 2020

BY: Jim

PAC Application will not be considered for scheduling until reviewed by a planner** June 9, 2020



LOCATION MAP

Z-20-0176

Scale: 1" = 100'

Consider a request by Jose Ramos for a Zone Change from MF-22, Multiple-Family Dwelling District, to SF-3, Single Family Dwelling District, on Lot 12, Block 30, Moody Addition, City and County of Midland, Texas. Generally located on the southeast corner of the intersection of S. Carver Street and E. Wall Street. (Council District 2)

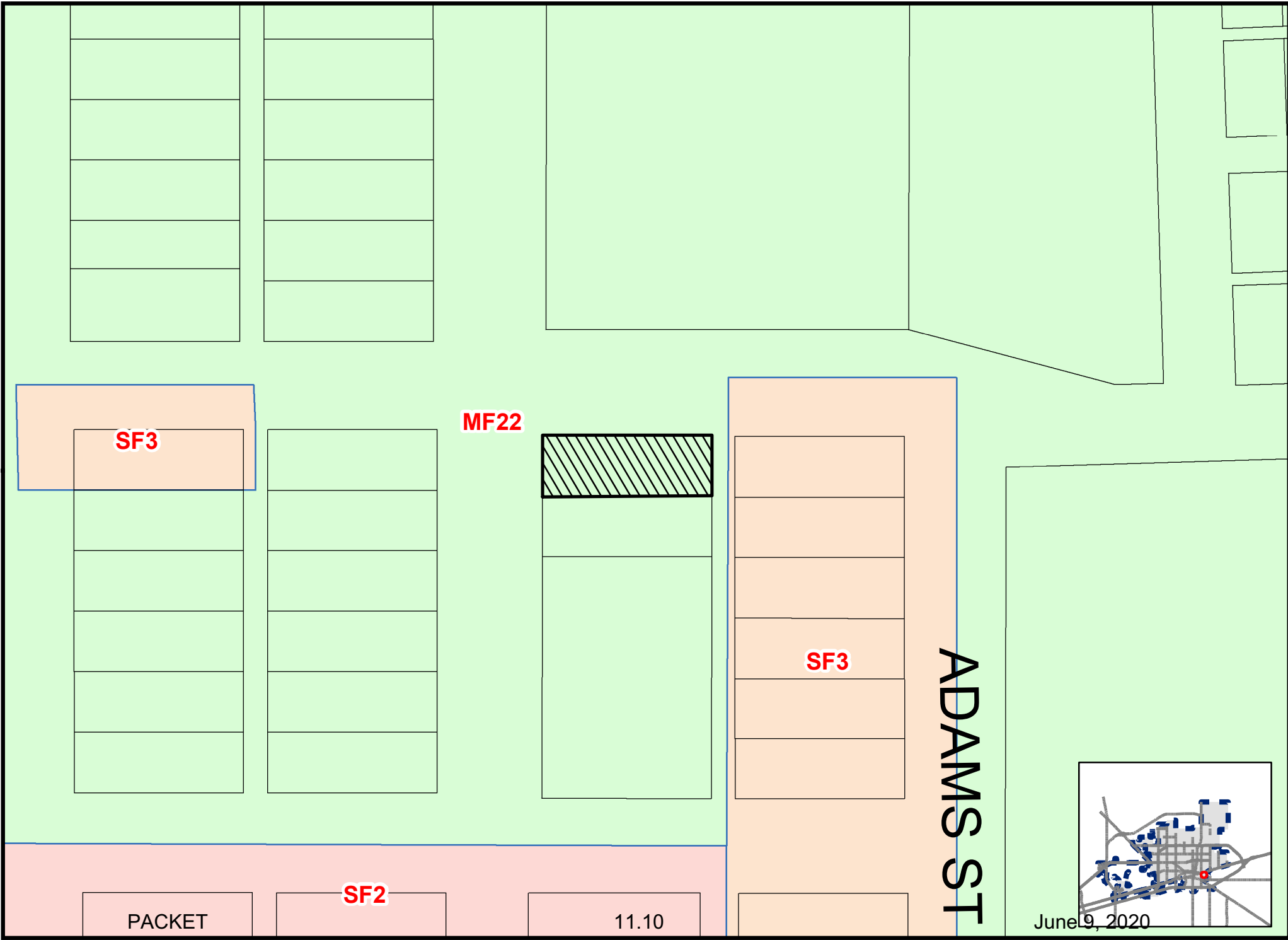
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



June 9, 2020

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING OR IS IT DESIGNED TO BE USED AS A SURVEY 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.











PACKET

11.14

June 9, 2020

City Council Meeting



Item Number: 12
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Ron Jenkins, Oil and Gas Coordinator

Approved for Agenda:

City Manager's Office

063-2020

Subject: The proposed granting of oil and gas well permits to COG Operating LLC for the drilling of the following oil and gas wells: Mask HZ Unit No.1007JH; Mask HZ Unit No. 1007SH; Mask HZ Unit No. 1008MH; and Mask HZ Unit No. 1009JH; said wells being generally located between 2,260 feet and 2,380 feet east of North Garfield Street Extension and 243 feet north of Green Tree Boulevard Extension. District 1 (DEVELOPMENT SERVICES)

Purpose:

COG Operating LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. 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:

DirectionalInformational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed these well sites in detail and recommends approval noting an update of two exhibits. Exhibits have been updated. COG Operating LLC does have a

surface agreement with the surface owner. COG will be using a 24 ft. tall sound barrier along the West, South, and East borders of the drill site during drilling and completion. No quiet frac type system is being used. Multiple wells have been permitted on both sides of these well locations. Receiving support of the Oil & Gas Advisory Committee, COG Operating LLC is requesting the following variances: (1) Request variance to the Road Repair Agreement due to no city streets will be used. (2) Request variance to allow for twenty-four-hour fracing operations. (3) Request a variance to a larger reserve pit being 425 ft. X 160 ft. for the drilling of four wells.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location;



City Council Agenda

MEETING DATE: June 9, 2020

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Coordinator

SUBJECT: Hold a public hearing regarding the proposed granting of oil and gas well permits to COG Operating LLC for the drilling of the following oil and gas wells: Mask HZ Unit No.1007JH; Mask HZ Unit No. 1007SH; Mask HZ Unit No. 1008MH; and Mask HZ Unit No. 1009JH; said wells being generally located between 2,260 feet and 2,380 feet east of North Garfield Street Extension and 243 feet north of Green Tree Boulevard Extension. District 1

Purpose:

COG Operating LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. 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

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed these well sites in detail and recommends approval noting an update of two exhibits. Exhibits have been updated. COG Operating LLC does have a surface agreement with the surface owner. COG will be using a 24 ft. tall sound barrier along the West, South, and East borders of the drill site during drilling and completion. No quiet frac type system is being used. Multiple wells have been permitted on both sides of these well locations. Receiving support of the Oil & Gas Advisory Committee, COG Operating LLC is requesting the following variances:

- (1) Request variance to the Road Repair Agreement due to no city streets will be used.
- (2) Request variance to allow for twenty-four-hour fracing operations.
- (3) Request a variance to a larger reserve pit being 425 ft. X 160 ft. for the drilling of four wells.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location;



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/1/2020	Operator Name (must match W-1) COG Operating LLC	Operator Address 600 W. Illinois Ave. Midland, TX 79701
Representative Name Aaron Hunter	Representative Address (within Midland City Limits) 600 W. Illinois Ave. Midland, TX 79701	Rep. Tele. (432) 221-0376 Rep. Fax (432) 221-9802
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.): (432)253-4500 (HSE) No. 2 (Tele.): (432)818-2260 (Operations Manager)		
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. See Exhibit "C"		
2.		
3.		
ATTACHED AS EXHIBIT C is (a <i>Title Opinion</i> by _____, a <i>licensed Texas Attorney</i> ; <i>Title Commitment</i> by Abstract _____, a <i>licensed Texas Attorney</i> ; <i>Take-off</i> from Adam Altenhofen, a <i>Certified Petroleum Landman</i> ; or an <i>opinion letter</i> from _____, a <i>licensed Texas Attorney</i>) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Surface use: Undeveloped Rangeland with plans for a future residential subdivision. Surface ownership. See Exhibit "D"		
ATTACHED AS EXHIBIT D is (a <i>Title Opinion</i> by _____, a <i>licensed Texas Attorney</i> ; <i>Take-off</i> from _____, a <i>Certified Petroleum Landman</i> ; <i>Current Tax Roll</i> 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/plot/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/plot/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: Mask Hz Unit № 1007JH

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: 258.0' FNL & 2,380.0' FWL Section 10, BHL: 10.0' FSL & 2,577.0' FEL Section 3
Block X, H.P. Hilliard 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 is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. *Option (if applicable):* Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. *Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

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

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

- (1) **Drilling:** None
- (2) **Operations:** Oncon

Description of water source to be used during Drilling:

Water to be piped from surface owner's water wells, a third parties water wells from the surrounding area, or trucked from commercial sources to the well site

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)]: See Exhibit "O"

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

V. Additional Required Exhibits

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

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

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

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

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

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

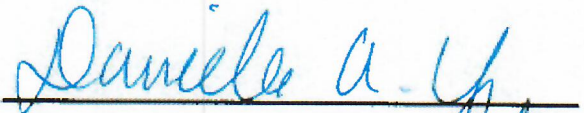
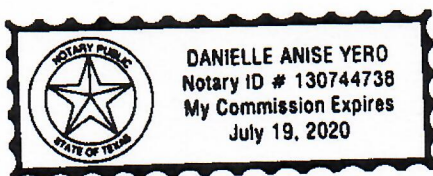


Aaron Hunter
Vice President of Midland Basin
COG Operating LLC

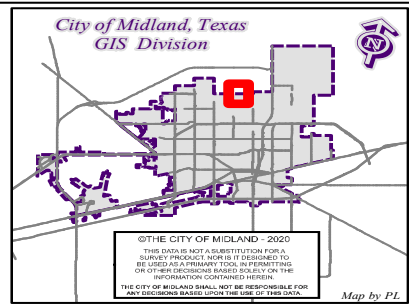
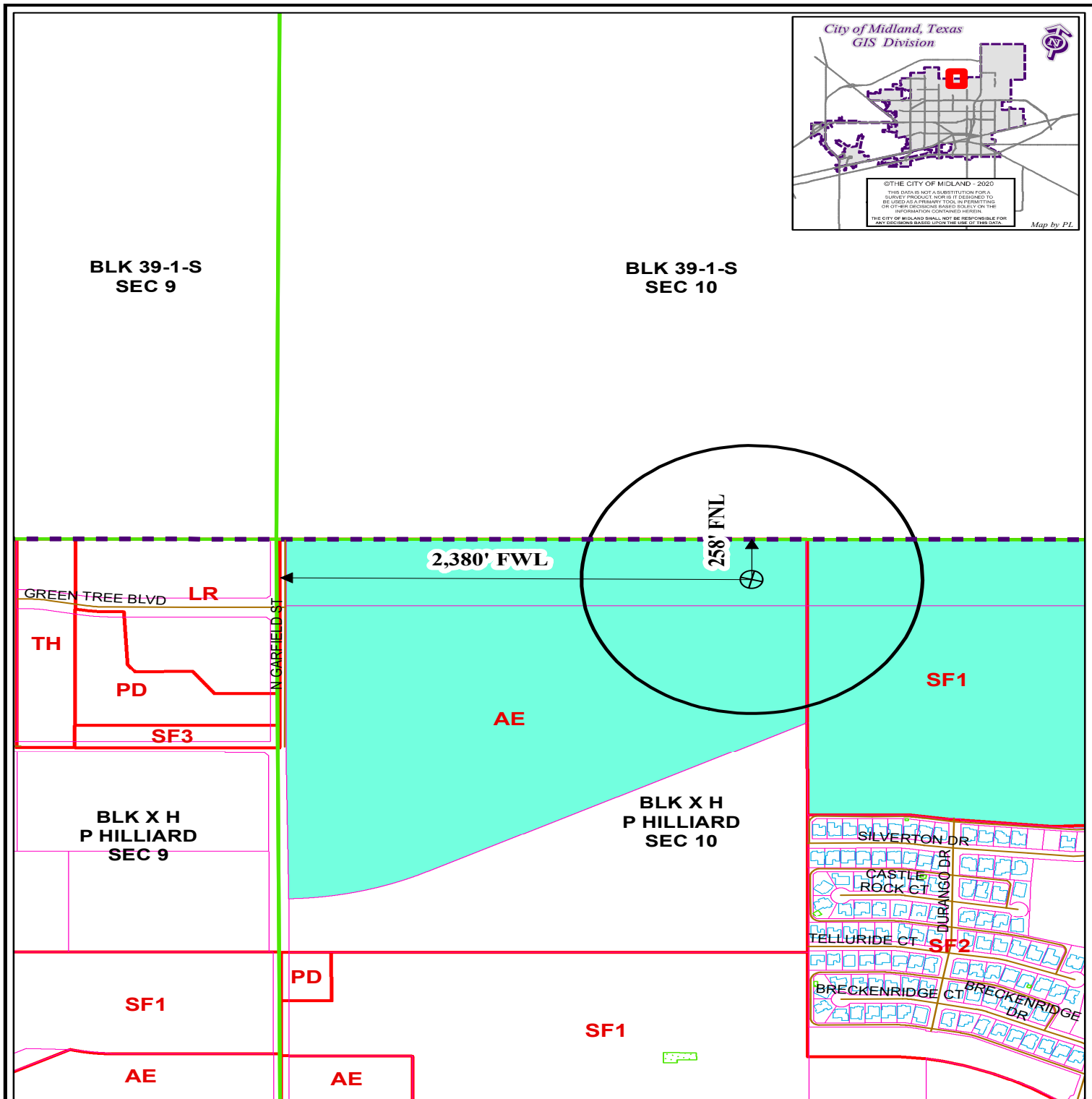
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me this 28th day of March, 2020, by Aaron Hunter, Vice President of Midland Basin, of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.



NOTARY PUBLIC-STATE OF TEXAS



LOCATION AND ZONING MAP

Oil - 024694 - 2020 **Scale: 1" = 700'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 258' FNL and 2,380' FWL, Section 10, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 2,380 feet east of North Garfield Street Extension and 258 feet north of Green Tree Boulevard Extension.

Mask Hz Unit No 1007JH

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	LR1, LR2, LR3	RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

June 9, 2020



2903 NORTH BIG SPRING • MIDLAND, TEXAS 79705
TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
WWW.TOPOGRAPHIC.COM

Texas FIRM Registration NO. 10042500

CD_MASK_HZ_UNIT_1007AH_PADS_AERIAL_REV1



MASK HZ UNIT PADs

LOCATION DESCRIPTION:

SECTION 10, BLOCK X, H. P. HILLARD SURVEY,
MIDLAND COUNTY, TEXAS

- LEGEND**
- Section Line
 - Block Line
 - Powerline
 - = = = = Lease Road
 - Pipeline
 - Monument
 - Calculated Corner

PACKET 04/17/19

ORIGINAL DOC. SIZE: 8.5"x11"

COGO: 724-108888

REV: 1(MV) 03/16/2020

Drawn By: IG; 04/22/19

June 9, 2020



TOPOGRAPHIC
LOYALTY INNOVATION LEGACY

2903 NORTH BIG SPRING • MIDLAND, TEXAS 79705
TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
WWW.TOPOGRAPHIC.COM

Texas FIRM Registration NO. 10042500

FILE NAME: CD_MASK_HZ_UNIT_1007JH_AERIAL



CONCHO
OPERATOR: COG OPERATING LLC

MASK HZ UNIT 1007JH

LOCATION DESCRIPTION:

SECTION 10, BLOCK X, H.P. HILLIARD SURVEY A-1276
MIDLAND COUNTY, TEXAS

LEGEND

- Section Line
- Tract Line
- Block Line
- Found Monument
- Calculated Corner

June 9, 2020

PACKET 12/20/19

COGO: 724-108888

ORIGINAL DOC. SIZE: 8.5"x11"

Drawn By: IG; 02/19/20



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/1/2020	Operator Name (must match W-1) COG Operating LLC	Operator Address 600 W. Illinois Ave. Midland, TX 79701
Representative Name Aaron Hunter	Representative Address (within Midland City Limits) 600 W. Illinois Ave. Midland, TX 79701	Rep. Tele. (432) 221-0376 Rep. Fax (432) 221-9802
Fee: \$4,000.00 Rec'd Yes ☐ No ☐	NOTE: All attachments need to be 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.): (432) 253-4500 (HSE) No. 2 (Tele.): (432) 818-2260 (Operations Manager)		
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. See Exhibit "C"		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Adam Altenhofen, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Surface use: Undeveloped Rangeland with plans for a future residential subdivision.		
Surface ownership: See Exhibit "D"		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/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/plot/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 lot/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: Mask Hz Unit № 1007SH

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: 258.0' FNL & 2,340.0' FWL Section 10, BHL: 10.0' FSL & 2,340.0' FWL Section 3
Block X, H.P. Hilliard 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)].

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

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

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

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

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

- (1) **Drilling:** None
- (2) **Operations:** Oncor

Description of water source to be used during Drilling:

Water to be piped from surface owner's water wells, a third parties water wells from the surrounding area, or trucked from commercial sources to the well site.

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)]: See Exhibit "O"

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

V. Additional Required Exhibits

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

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

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

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

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



Aaron Hunter
Vice President of Midland Basin
COG Operating LLC

STATE OF TEXAS

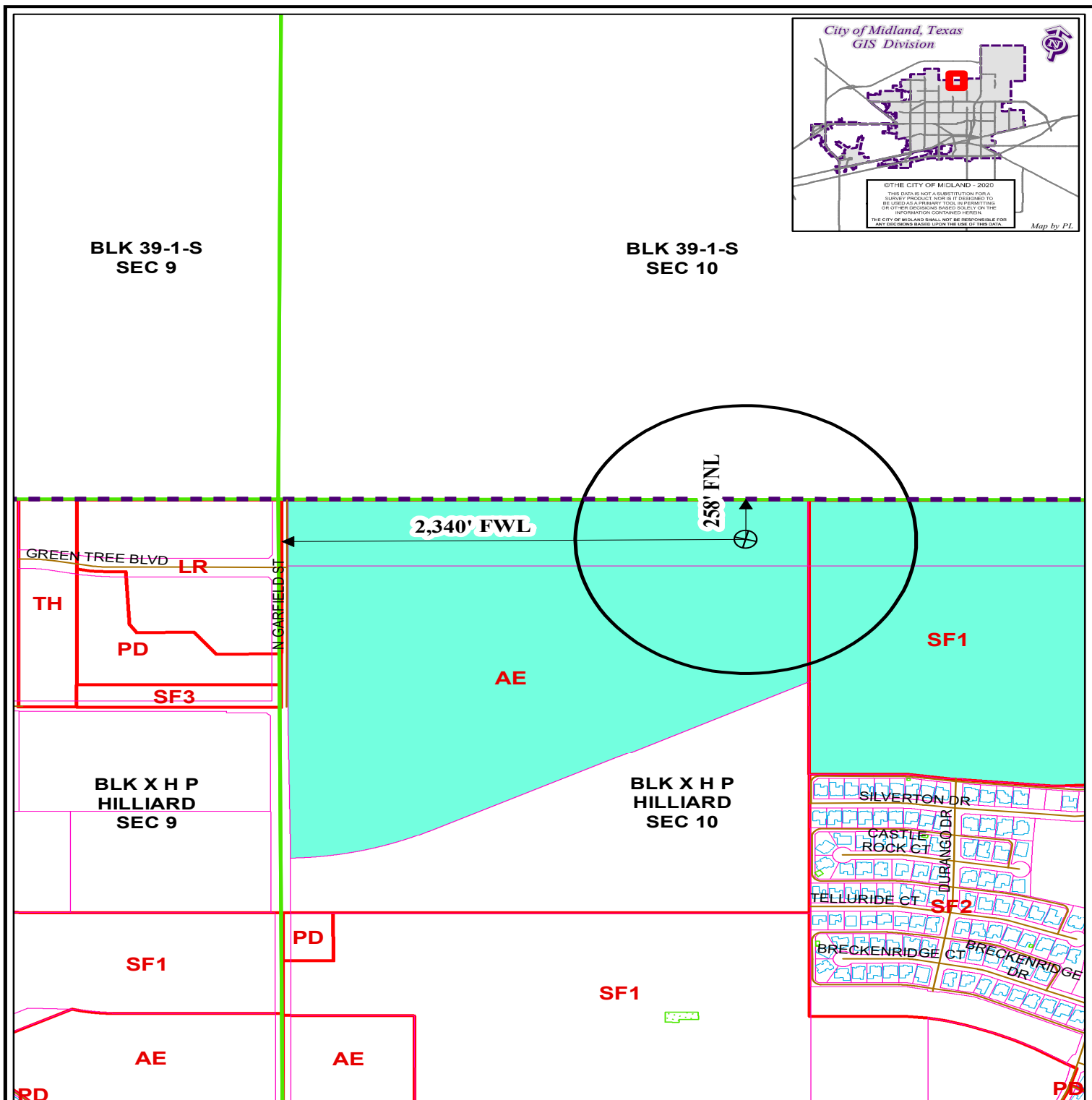
COUNTY OF MIDLAND

§
§
§

This instrument was acknowledged before me this 28th day of March, 2020, by Aaron Hunter, Vice President of Midland Basin, of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.



NOTARY PUBLIC-STATE OF TEXAS



LOCATION AND ZONING MAP

Oil - 024698 - 2020

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 258' FNL and 2,340' FWL, Section 10, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 2,340 feet east of North Garfield Street Extension, 258 feet north of Green Tree Boulevard Extension.

Mask Hz Unit No 1007SH

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

12.14

June 9, 2020



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TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
WWW.TOPOGRAPHIC.COM

Texas FIRM Registration NO. 10042500

FILE NAME: CD_MASK_HZ_UNIT_1007SH_AERIAL



CONCHO
OPERATOR: COG OPERATING LLC

MASK HZ UNIT 1007SH

LOCATION DESCRIPTION:

SECTION 10, BLOCK X, H.P. HILLIARD SURVEY A-1276
MIDLAND COUNTY, TEXAS

LEGEND

- Section Line
- Tract Line
- Block Line
- Found Monument
- Calculated Corner

SPACED 12/20/19

COGO: 724-108888

ORIGINAL DOC. SIZE: 8.5"x11"

Drawn By: IG; 02/19/20

June 9, 2020



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/1/2020	Operator Name (must match W-1) COG Operating LLC	Operator Address 600 W. Illinois Ave. Midland, TX 79701
Representative Name Aaron Hunter	Representative Address (within Midland City Limits) 600 W. Illinois Ave. Midland, TX 79701	Rep. Tele. (432) 221-0376 Rep. Fax (432) 221-9802
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.): (432)253-4500 (HSE) No. 2 (Tele.): (432)818-2260 (Operations Manager) 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. See Exhibit "C" 2. 3. ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a Licensed Texas Attorney/Title Commitment by Abstract Company's Take-off from Adam Altenhofen, a Certified Petroleum Landman/an opinion letter from _____, a Licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
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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: Mask Hz Unit № 1008MH

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: 258.0' FNL & 2,300.0' FWL Section 10, BHL: 10.0' FSL & 2,080.0' FWL Section 3
Block X, H.P. Hilliard Survey, Midland County, Texas

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

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

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- (2) **Operations:** Oncor

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Water to be piped from surface owner's water wells, a third parties water wells from the surrounding area, or trucked from commercial sources to the well site

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See Exhibit "N"

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

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

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)].

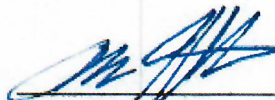
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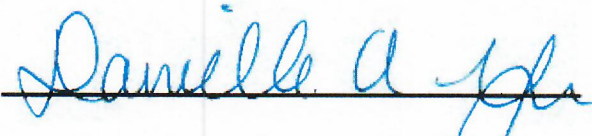
Aaron Hunter
Vice President of Midland Basin
COG Operating LLC

STATE OF TEXAS

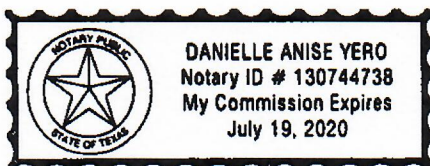
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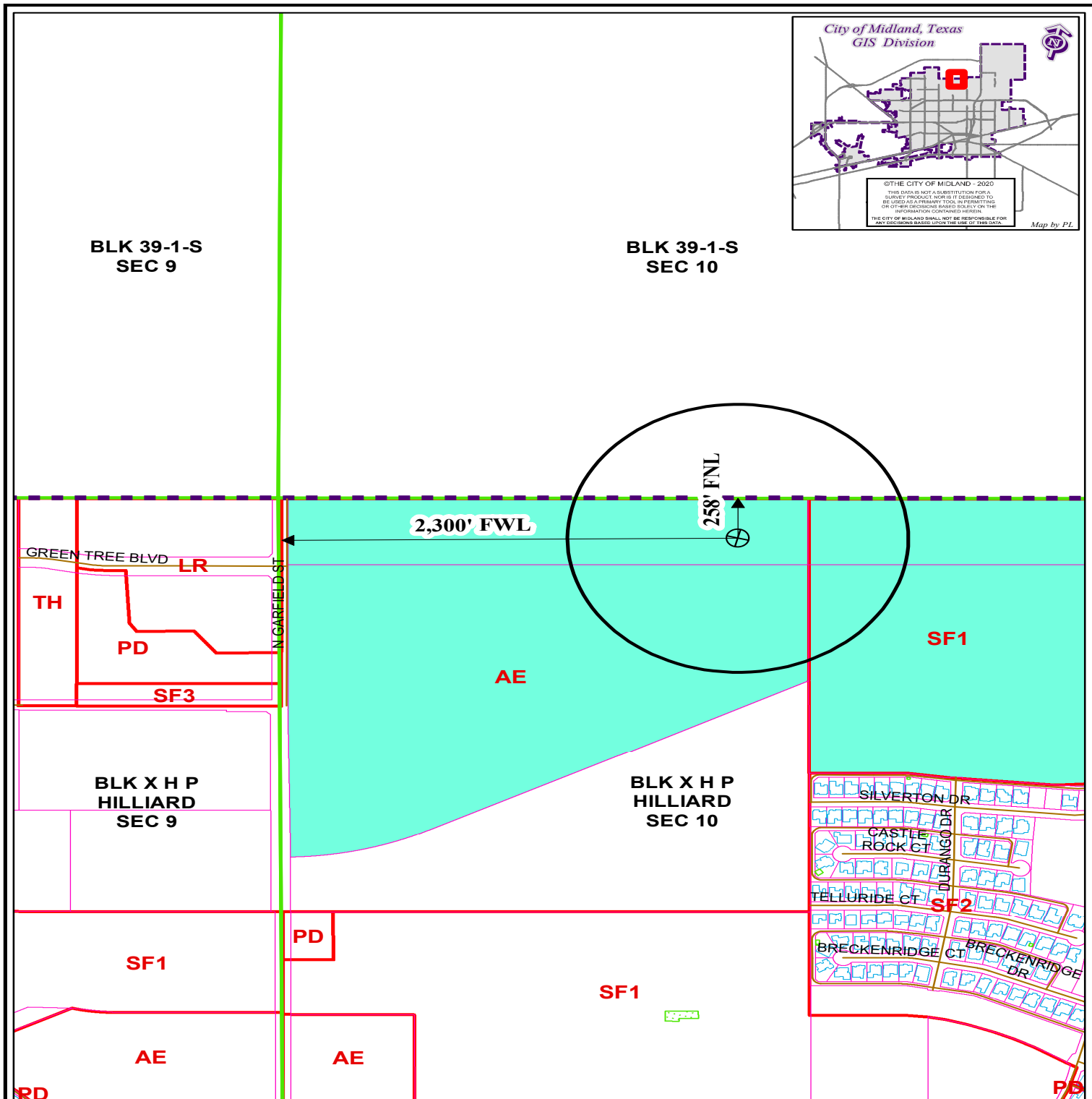
COUNTY OF MIDLAND

This instrument was acknowledged before me this 28th day of March, 2020, by Aaron Hunter, Vice President of Midland Basin, of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.



NOTARY PUBLIC-STATE OF TEXAS





LOCATION AND ZONING MAP

Oil - 024700 - 2020

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 258' FNL and 2,300' FWL, Section 10, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 2,300 feet east of North Garfield Street Extension, 258 feet north of Green Tree Boulevard Extension.

Mask Hz Unit No 1008MH

LEGEND

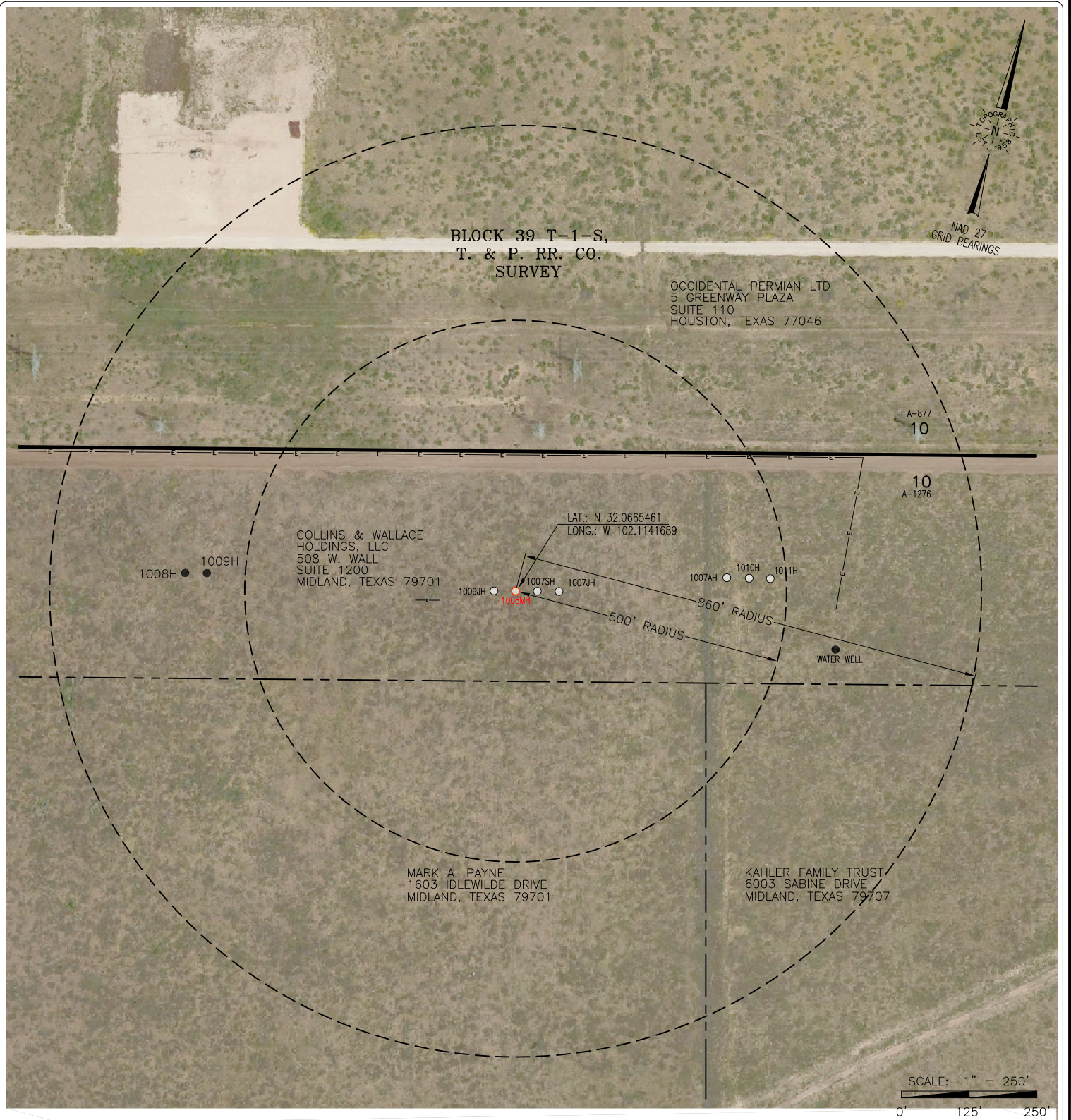
	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	LR1, LR2, LR3	RETAIL
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TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

12-19

June 9, 2020



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WWW.TOPOGRAPHIC.COM

Texas FIRM Registration NO. 10042500

FILE NAME: CD_MASK_HZ_UNIT_1008MH_AERIAL



CONCHO
OPERATOR: COG OPERATING LLC

MASK HZ UNIT 1008MH

LOCATION DESCRIPTION:

SECTION 10, BLOCK X, H.P. HILLIARD SURVEY A-1276
MIDLAND COUNTY, TEXAS

LEGEND

— Section Line

- - - Tract Line

— Block Line

● Found Monument

○ Calculated Corner

PACKET 12/20/19

COGO: 724-108888

ORIGINAL DOC. SIZE: 8.5"x11"

Drawn By: IG; 02/19/20

June 9, 2020



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/1/2020	Operator Name (must match W-1) COG Operating LLC	Operator Address 600 W. Illinois Ave. Midland, TX 79701
Representative Name Aaron Hunter	Representative Address (within Midland City Limits) 600 W. Illinois Ave. Midland, TX 79701	Rep. Tele. (432) 221-0376 Rep. Fax (432) 221-9802
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.): (432)253-4500 (HSE) No. 2 (Tele.): (432)818-2260 (Operations Manager)		
Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A"		
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Proposed Well Name: Mask Hz Unit № 1009JH

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: 258.0' FNL & 2,260' FWL Section 10, BHL: 10.0' FSL & 1,680.0' FWL Section 3
Block X, H.P. Hilliard Survey, Midland County, Texas

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- (2) **Operations:** Oncon

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Water to be piped from surface owner's water wells, a third parties water wells from the surrounding area, or trucked from commercial sources to the well site

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

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

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)].

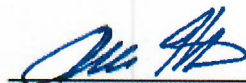
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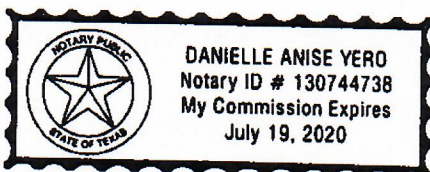
Aaron Hunter
Vice President of Midland Basin
COG Operating LLC

STATE OF TEXAS

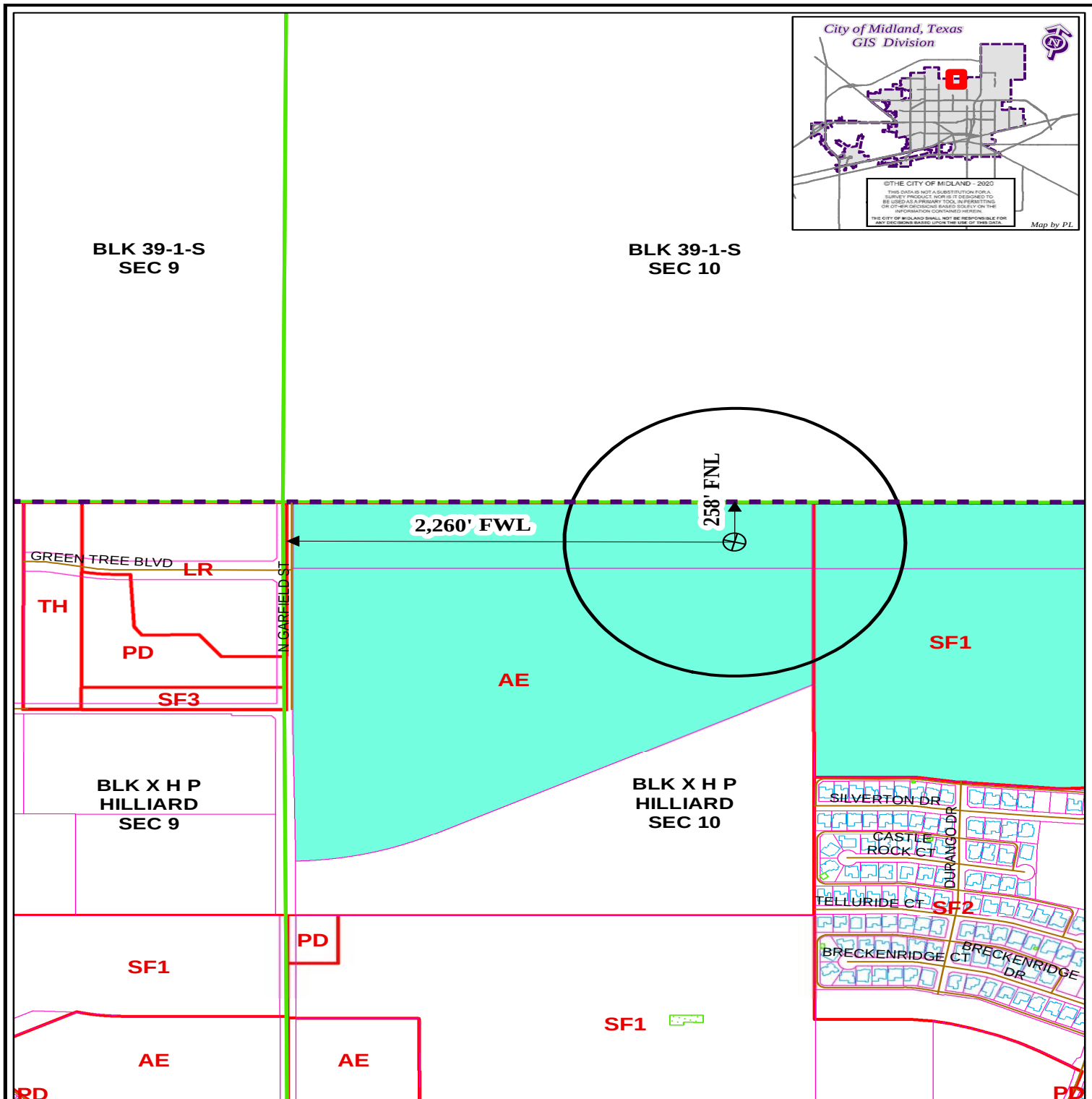
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COUNTY OF MIDLAND

This instrument was acknowledged before me this 26th day of March, 2020, by Aaron Hunter, Vice President of Midland Basin, of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.



NOTARY PUBLIC-STATE OF TEXAS



LOCATION AND ZONING MAP

Oil - 024699 - 2020 Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 258' FNL and 2,260' FWL, Section 10, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 2,260 feet east of North Garfield Street Extension, 258 feet north of Green Tree Boulevard Extension.

Mask Hz Unit No 1009JH

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.
ZONING DISTRICTS:					
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK		
PD	PLANNED DISTRICT	P	PARKING		
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CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE		
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	RETAIL		
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY		
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY		

12-24

June 9, 2020



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Texas FIRM Registration NO. 10042500

FILE NAME: CD_MASK_HZ_UNIT_1009JH_AERIAL



CONCHO
OPERATOR: COG OPERATING LLC

MASK HZ UNIT 1009JH

LOCATION DESCRIPTION:

SECTION 10, BLOCK X, H.P. HILLIARD SURVEY A-1276
MIDLAND COUNTY, TEXAS

PACKET 12/20/19

COGO: 724-108888

ORIGINAL DOC. SIZE: 8.5"x11"

Drawn By: IG; 02/19/20

LEGEND

- Section Line
- Tract Line
- Block Line
- Found Monument
- Calculated Corner

June 9, 2020

City Council Meeting



Item Number: 13
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Ron Jenkins, Oil and Gas Coordinator

Approved for Agenda:

City Manager's Office

064-2020

Subject: The proposed granting of oil and gas well permits to Parsley Energy Operations, LLC for the drilling of the following oil and gas wells: Hogan 1-24-E-2609H and Hogan 1-24-G-2613VH; said wells being generally located between 1900 feet and 1870 feet north of East Loop 250 North and 1,381 feet west of North Fairgrounds Road extension. (DEVELOPMENT SERVICES)

Purpose:

Parsley Energy Operations, LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. 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 this well site in detail and recommends approval noting an update of two exhibits. Parsley Energy Operations is the surface owner and will be using 24 ft. tall sound walls on the north and west sides of the pad sites during drilling and fracing. In addition, a

quiet frac fleet system as used on previous wells at this pad site. The tank battery for these wells are located approximately 2 miles to the east in the county. Receiving support of the Oil & Gas Advisory Committee, Parsley Energy Operations, LLC is requesting the following variances: (1) Requests variance for twenty-four-hour fracing operations and use of a workover rig during the completion process directly following the fracing operation. (2) Requests a variance from landscaping. Stating the proposed fencing plan provides adequate screening from adjacent roads and parcels. (3) Requests variance to the Road Repair Agreement due to no city streets will be used. Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location;



City Council Agenda

MEETING DATE: June 9, 2020

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Coordinator

SUBJECT: Hold a public hearing regarding the proposed granting of oil and gas well permits to Parsley Energy Operations, LLC for the drilling of the following oil and gas wells: Hogan 1-24-E-2609H and Hogan 1-24-G-2613VH said wells being generally located between 1900 feet and 1870 feet north of E Loop 250N and 1,381 feet west of N Fairgrounds Road extension. District 1

Purpose:

Parsley Energy Operations, LLC, for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. 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

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval noting an update of two exhibits. Parsley Energy Operations is the surface owner and will be using 24 ft. tall sound walls on the north and west sides of the pad sites during drilling and fracing. In addition, a quiet frac fleet system as used on previous wells at this pad site. The tank battery for these wells are located approximately 2 miles to the east in the county. Receiving support of the Oil & Gas Advisory Committee, Parsley Energy Operations, LLC is requesting the following variances:

- (1) Requests variance for twenty-four-hour fracing operations and use of a workover rig during the completion process directly following the fracing operation.
- (2) Requests a variance from landscaping. Stating the proposed fencing plan provides adequate screening from adjacent roads and parcels.
- (3) Requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location;



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 3/24/2020	Operator Name (must match W-1) Parsley Energy Operations, LLC	Operator Address 1703 ECR 120, Midland, TX 79703
Representative Name Mark Timmons	Representative Address (within Midland City Limits) 1703 ECR 120, Midland, TX 79703	Rep. Tele. (432) 704-2500
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Rep. Fax Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (<i>ATTACH STATEMENT AS EXHIBIT A</i>): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Justin Smith (432) 528-1994 1703 ECR 120 Midland, TX 79703 Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Attached as Exhibit "C" 2. 3.		
<i>ATTACHED AS EXHIBIT C</i> is (a Title Opinion by Bryan A. Shores, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): -Undeveloped and existing oil and gas facilities		
<i>ATTACHED AS EXHIBIT D</i> is Current Tax Roll from Midland Central Appraisal District), which lists		

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

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

IV. Well & Operations Information

Proposed Well Name: Hogan 1-24-E-2609H

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

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 2341' FSL and 1381' FEL-Situated in Section 1, A-11, Block X,H.P. Hilliard Survey, Midland County, TX

BHL - 1759' FNL and 2310' FEL-Situated in Section 24, A-561,Block 39, T-1-S,T& P RR Co,Midland County,TX

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

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

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

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

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

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

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

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

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

(1) Drilling:

None.

(2) Operations:

Electrical.

Description of water source to be used during Drilling:

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

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

Attached as Exhibit N

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

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

V. Additional Required Exhibits

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

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

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

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

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

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

PARSLEY ENERGY
[NAME OF COMPANY]

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

County of MIDLAND)

State of TEXAS)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[Signature]
Notary Public, State of TEXAS

[SEAL]



HOGAN 1-24-E-2609H
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.0543984
NAD 83 LONG=-102.0695312
NAD 27 X = 146179.76
NAD 27 Y = 872589.68
NAD 27 LAT= 32.0542767
NAD 27 LONG=-102.0691157
ELEVATION = 2803

EXISTING WELL PAD

PETREE ISBELL INC
R000204589

PARSLEY ENERGY LP

MARK PAYNE
R000000177

EXISTING WELL PAD

LAWTON HERITAGE, LLC
R000000181

PARSLEY ENERGY LP

EXISTING WELL PAD

ISBELL TONI
R000209726

FUTURE SOLOMON LN

EXISTING TRANSFER STATION

LAWTON HERITAGE, LLC
R000000181

PARSLEY ENERGY LP

EXISTING WELL PAD

FUTURE FAIRGROUNDS RD

PARSLEY ENERGY LP
R000000197

PARSLEY ENERGY LP
R000000197

REECE ALBERT INC
R000001989

HOGAN

OIL AND GAS PERMIT
MIDLAND, TX

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



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

SITE PLAN PREPARED BY:



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

TBPE FIRM NO. 12207
TBPLS FIRM NO. 1017700

WELLS AND PADS STAKED BY:



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

PROJECT NO: PEI 17002

FILE PATH: Petro/Exhibits/BaseSheets

DRAWN BY: CH

REVIEWED BY: AH

DATE: MARCH 2020

REV:



NORTH



GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'E'

AERIAL SITE PLAN
Hogan 1-24-E-2609H

LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- PARSLEY ENERGY LP
- ROW LINE

GENERAL NOTES:

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

HOGAN 1-24-E-2609H
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.0543984
NAD 83 LONG= -102.0695312
NAD 27 X = 146179.76
NAD 27 Y = 872589.68
NAD 27 LAT= 32.0542767
NAD 27 LONG= -102.0691157
ELEVATION = 2803

GENERAL NOTES:

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

LEGEND

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

HOGAN

OIL AND GAS PERMIT
MIDLAND, TX

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

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

SITE PLAN PREPARED BY:

PELOTON
LAND SOLUTIONS

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

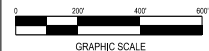
TBPE FIRM NO. 12207
TBPLS FIRM NO. 1017700

WELLS AND PADS STAKED BY:



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

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



SHEET CONTENT

EXHIBIT 'G' - 1

DRILL SITE, GATHERING LINES,
ACCESS ROAD, ELECTRIC

Hogan 1-24-E-2609H

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

PACKET

13.35

June 9, 2020

LOOP 250

FUTURE SOLOMON LN

FUTURE N FAIRGROUNDS RD

SOLOMON LN

ENTERPRISE PIPELINE
VOL. 47 PG. 293
VOL. 48 PG. 583
50' EASEMENT

EXISTING WELL
WIMBERLY 3

PLUGGED WELL
EXISTING PAD ACCESS

DCP MIDSTREAM, LP
NATURAL GAS
P5 NUMBER 195918
10' EASEMENT

PARSLEY ENERGY LP
R00001702

WELL #2609H

EXISTING WELL PAD

EXISTING
TRANSFER STATION

EXISTING WELL PAD

DCP MIDSTREAM, LP
NATURAL GAS
P5 NUMBER 195918
10' EASEMENT

PARSLEY ENERGY LP
R00001702

PARSLEY ENERGY LP
R0000197

PAATCH HERITAGE, LLC
MIDLAND, TX

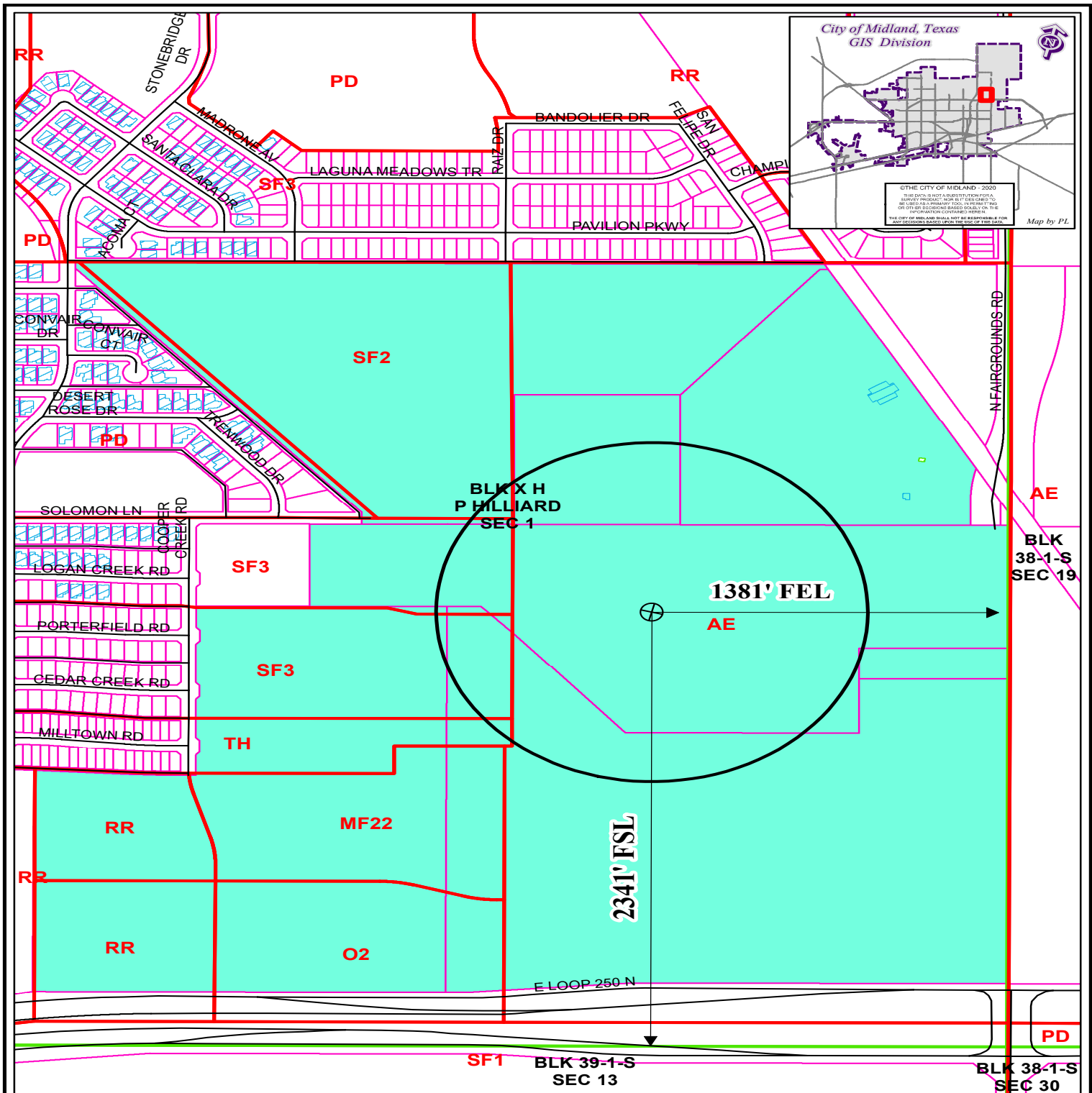
EXISTING WELL
WIMBERLY 4

WIMBERLY FRAC POND

REECE ALBERTINO
ROVINGTON

PARSLEY ENERGY LP
R0000197

PARSLEY ENERGY LP
R00001702



LOCATION AND ZONING MAP

Oil-024242-2020

Scale: 1" = 550'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2,341' FSL and 1,381' FEL, Section 1, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,900 feet north of E Loop 250 N and 1,381 feet north of Fairgrounds Road extension.

PACKET

Hogan 1-24-E-2609H

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
CE	COUNTRY ESTATE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

June 9, 2020



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 3/24/2020	Operator Name (must match W-1) Parsley Energy Operations, LLC	Operator Address 1703 ECR 120, Midland, TX 79703
Representative Name Mark Timmons	Representative Address (within Midland City Limits) 1703 ECR 120, Midland, TX 79703	Rep. Tele. (432) 704-2500
Fee: \$4,000.00 Rec'd Yes <u>X</u> No <u> </u>	NOTE: All attachments need to bound and put in a binder before submitting.	Rep. Fax Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____		
Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Justin Smith (432) 528-1994 1703 ECR 120 Midland, TX 79703		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Attached as Exhibit "C"		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Bryan A. Shores _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
-Undeveloped and existing oil and gas facilities		
ATTACHED AS EXHIBIT D is Current Tax Roll from Midland Central Appraisal District), which lists		

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

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

IV. Well & Operations Information

Proposed Well Name: Hogan 1-24-G-2613VH

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

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 2311' FSL and 1381' FEL-Situated in Section 1, A-11, Block X,H.P. Hilliard Survey, Midland County, TX

BHL - 2027' FNL and 725' FEL-Situated in Section 24, A-561,Block 39, T-1-S,T& P RR Co,Midland County,TX

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

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

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

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

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

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

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

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

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

(1) Drilling:

None.

(2) Operations:

Electrical.

Description of water source to be used during Drilling:

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

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

Attached as Exhibit N

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

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

V. Additional Required Exhibits

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

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

PARSLEY ENERGY
[NAME OF COMPANY]

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

County of MIDLAND)

State of TEXAS)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[Signature]
Notary Public, State of TEXAS

[SEAL]



HOGAN 1-24-G-2613VH
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 83 LAT= 32.0543188
NAD 83 LONG=-102.0695058
NAD 27 X = 1462187.21
NAD 27 Y = 872560.62
NAD 27 LAT= 32.0541972
NAD 27 LONG=-102.0690902
ELEVATION = 2803

EXISTING WELL PAD

PETREE ISBELL INC
R000204589

PARSLEY ENERGY LP

MARK PAYNE
R000000177

ISBELL TONI
R000000184

ISBELL TONI
R000209726

REECE ALBERT INC
R000001989

PARSLEY
ENERGY LP
R00000197

PARSLEY
ENERGY LP
R00000197

PARSLEY ENERGY LP

EXISTING WELL PAD

PARSLEY ENERGY LP

LAWTON HERITAGE, LLC
R000000181

LAWTON HERITAGE, LLC
R000000181

EXISTING TRANSFER STATION

FUTURE SOLOMON LN

ONCOR ELECTRIC DELIVERY CO
R000002004

FUTURE N FAIRGROUNDS RD
FUTURE N FAIRGROUNDS RD

GENERAL NOTES:

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

LEGEND

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

HOGAN

OIL AND GAS PERMIT
MIDLAND, TX

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



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

SITE PLAN PREPARED BY:



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

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:



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

PROJECT NO: PEI 17002

FILE PATH: Petro/Exhibits/BaseSheets

DRAWN BY: CH

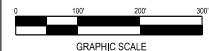
REVIEWED BY: AH

DATE: MARCH 2020

REV:



NORTH



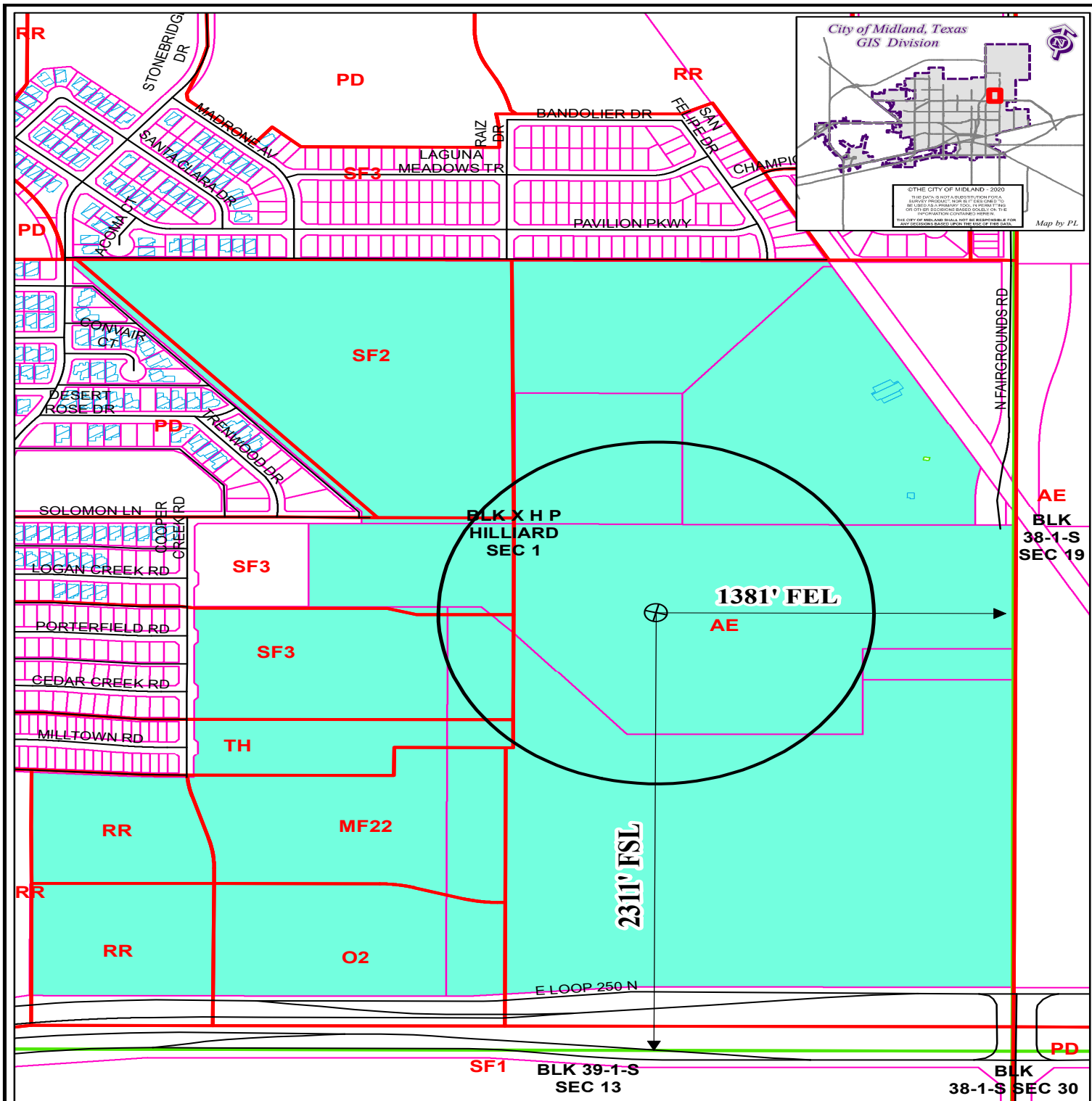
GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'E'

AERIAL SITE PLAN
Hogan 1-24-G-2613VH

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



LOCATION AND ZONING MAP

Oil-024243-2020

Scale: 1" = 550'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2,311' FSL and 1,381' FEL, Section 1, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,870 feet north of E Loop 250 N and 1,381 feet west of Fairgrounds Road extension.

PACKET

Hogan 1-24-G-2613VH

LEGEND

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

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
CE	COUNTRY ESTATE
1F1, 2F1	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

June 9, 2020



City Council Agenda

Approved for Agenda:
RWPatrick
City Manager's Office

MEETING DATE: June 9, 2020

TO: CITY COUNCIL

FROM: Taslima Khandaker, Senior Planner

SUBJECT: An ordinance on a request by Tyler West, for a Zone Change from O-1, Office District to PD, Planned Development District for a Housing Development, on Lot 1, Block 1, Roper Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Briarwood Avenue and North County Road 1250. Council District 4)

Purpose:

The applicant, Tyler West, is requesting a Zone Change from O-1, Office District, to PD, Planned Development District for a Housing Development at 7401 Briarwood Avenue to allow for a residence, nonprofit office and retail space, and short-term housing.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The properties to the north are zoned RR, Regional Retail District, and AE, Agricultural Estate District, and the locations of vacant land. The properties to the east are zoned AE, Agricultural Estate District, and the location of Midland Independent School District's bus barn. The properties to the south and west are located outside of the city limits within the extraterritorial jurisdiction, and the locations of metal buildings and vacant land, respectively.

Analysis:

The applicant, Tyler West, is requesting to rezone the property located at 7401 Briarwood Avenue to allow for a residence, nonprofit office and retail space, and short-term housing. The short-term housing will be utilized for social workers and families in crisis. The property is currently platted.

In addition to the existing residence, which already has 1,209 square feet of office and retail space being used by The Attic Foster Closet, the site plan attached hereto as Exhibit "A" shows six (6) tiny homes. The first tiny home will be a one (1) bedroom and one (1) bathroom home that will house a family of four (4). All future tiny homes proposed on the lot will be one (1) bedroom and one (1) bathroom units and approximately 300 to 500 square feet in size. The proposed homes will generally house 1 to 2 people. This property currently has about 6 to 10 parking spaces for the existing nonprofit office and retail space. At least one parking space will be required to be provided for each tiny home. The applicant will have to amend the site plan for any future development.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved with Conditions)

Fostering Restoration Z-20-0179

There is an Oil and Gas permitted well that needs to be identified on the plat. The well is the Bus Barn #2602 and is currently operated by COG Operating. In addition, a minimum 135' radius and a 500' radius needs to be included to identify the area that will need future variance.

Any occupied residential/commercial permits inside the 500 ft. radius would require a variance to the permitted well from the City Council. A variance would have to be presented to the City Council by the City Building Official. The request would be best if it included a letter of endorsement/support to approved requested distance from the Operator. The needed information/example for variance request would be provided from the City Building Official. Access to well is shown as an ingress/egress. Developer will want to visit with operator to identify exact location of flow lines and electrical lines.

Transportation: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

As listed in our Tall City Tomorrow Section 3.24. PD, Planned Development District, the purpose of the PD, Planned Development District is to create innovative concepts in land utilization or diversification. This means the property can encompass residential, commercial, light industrial, public or recreational uses.

The Future Land Use plan designates this area as Urban-Medium (U-M), which allows for single-family homes, offices, and retail, encouraging a mix of complementary uses, which creates a smooth transition from lower to higher intensity uses.

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 4, Housing & Neighborhoods, Goal 3, "Provide adequate housing opportunities for the diverse needs of Midland's population." (Tall City Tomorrow, Page 10). This request will aid in Midland housing needs by providing affordable and adequate housing for a community in need. This request also promotes various land uses.

This request was approved at the June 1, 2020 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from O-1, Office District to a PD, Planned Development District for a Housing Development, subject to conditions A through E.

Conditions:

- A. That the use and development shall conform to the regulations of the MF-16, Multiple Family Housing District, except as stated below.**
- B. That this property shall significantly conform to the site plan, attached hereto and incorporated herein, as Exhibit A.**
- C. That uses allowed in the O-1, Office District and LR, Local Retail District shall also be permitted.**
- D. That at least one (1) parking space shall be provided for each tiny home.**
- E. That the Landscape Plan shall be considered illustrative. Landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City code.**

Letters of Objection:

Staff has not received any letters of objections as of May 27, 2020.

Attachments:

Site Plan (Exhibit A)
Fostering Restoration Information
Application
Maps

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, ROPER ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND NORTH COUNTY ROAD 1250); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 1, Block 1, Roper Addition, City and County of Midland, Texas (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 O-1, Office District to PD, Planned Development District for a Housing Development.

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 MF-16, Multiple-Family Dwelling 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 Property shall significantly conform to the site plan attached hereto as Exhibit “A”; provided, however, that site plan’s identification of various zoning districts shall be of no force or effect.
- B. That the uses that are allowed in the O-1, Office District and the LR, Local Retail District shall be permitted on the Property.
- C. That one off-street parking space shall be provided on the Property for each tiny home. The tiny homes are identified in the site plan as “#1”, “#2”, “#3”, “#4”, “#5”, and “#6”.
- D. That the landscaping shown in Exhibit “A” shall be considered illustrative. The landscaping 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 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., 2020; 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., 2020, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

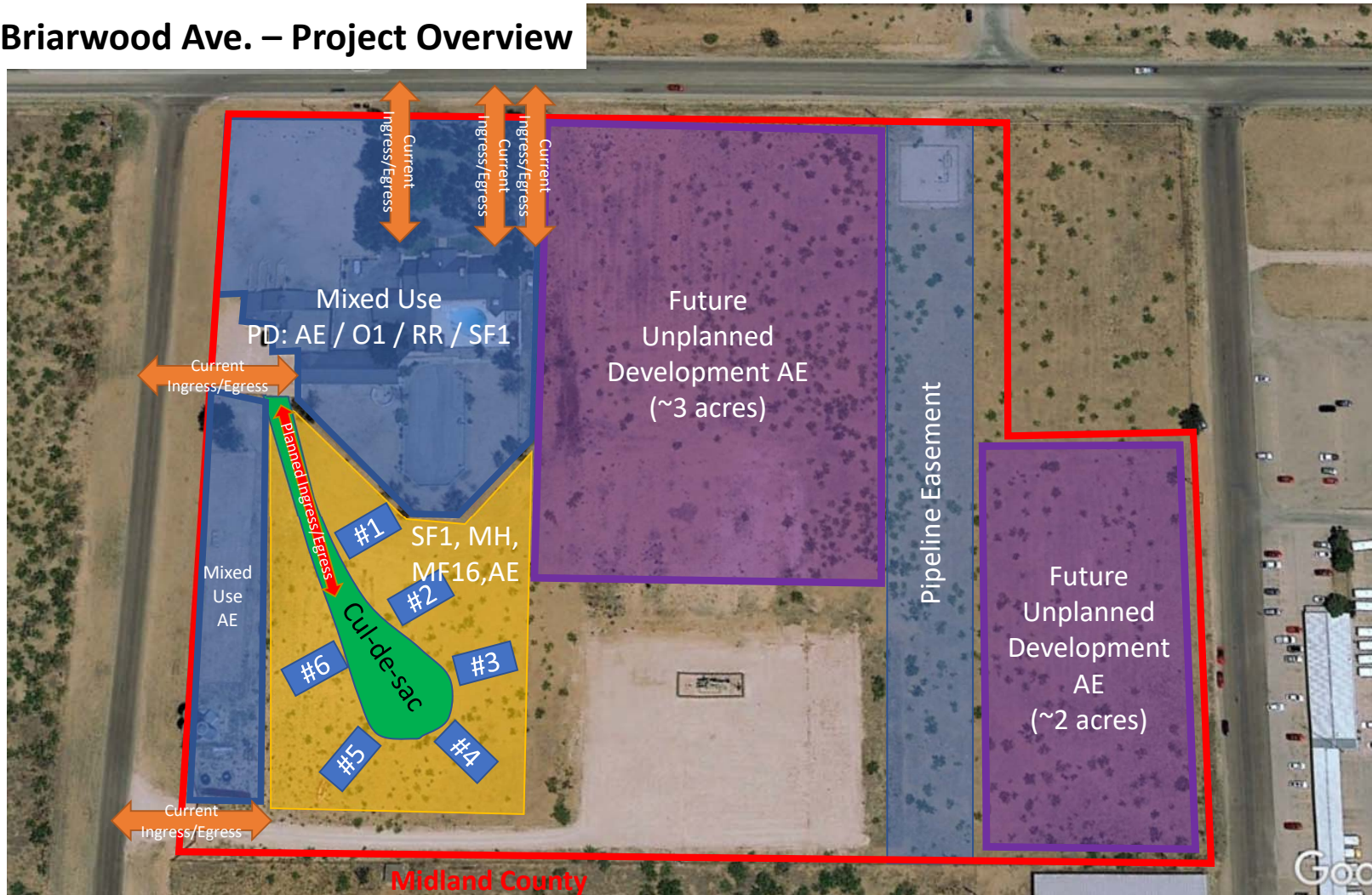
Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

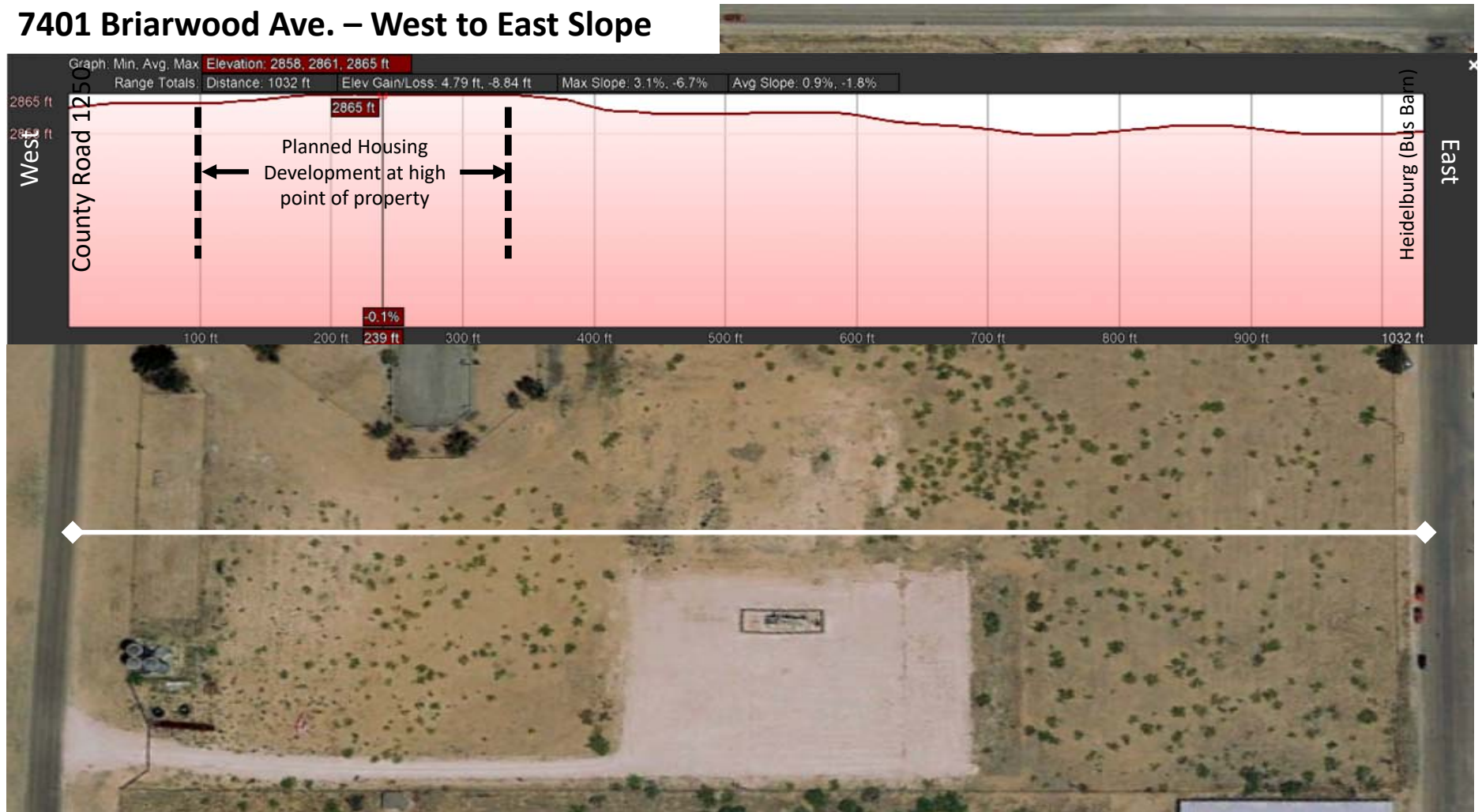
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

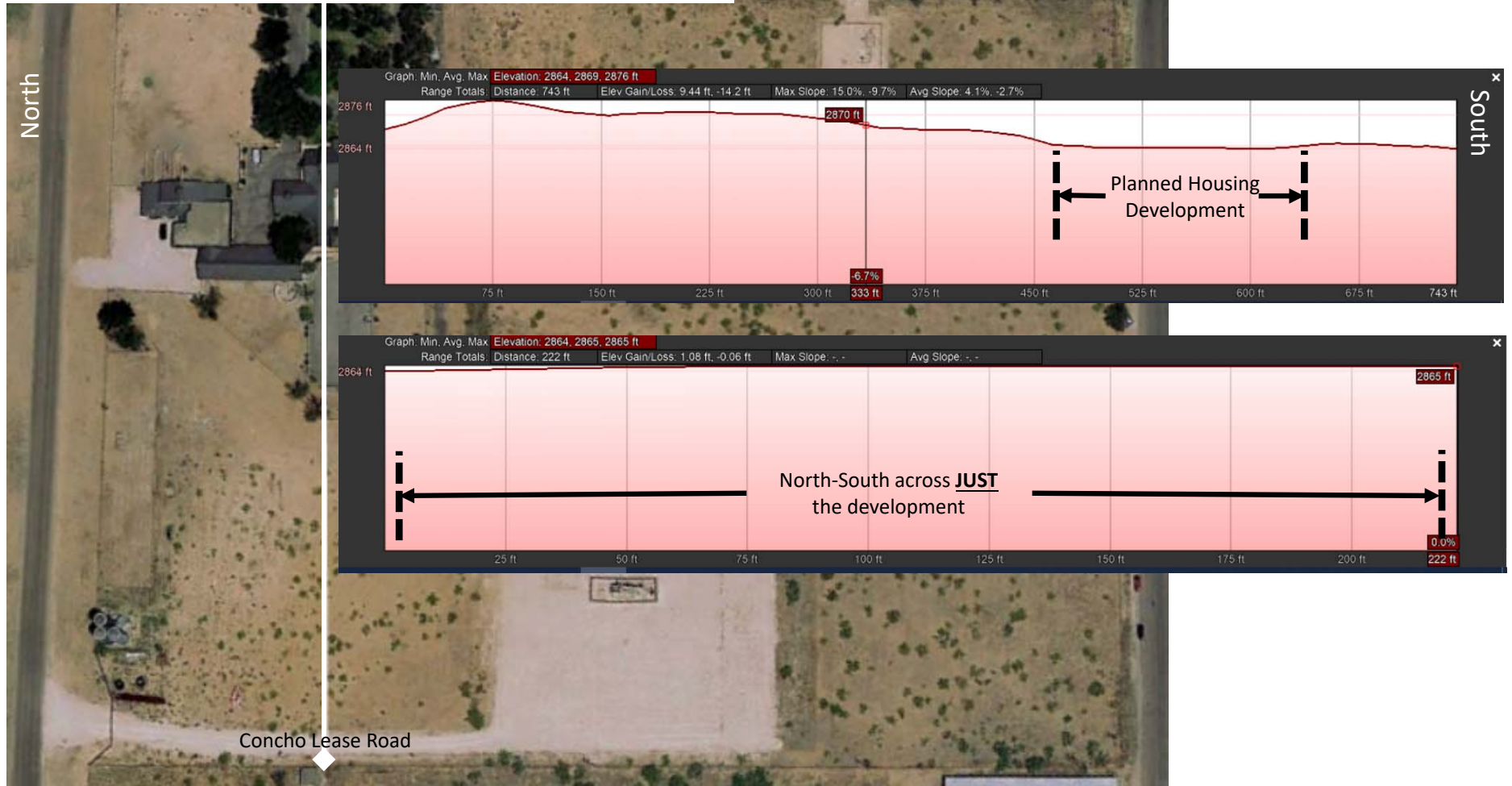
7401 Briarwood Ave. – Project Overview



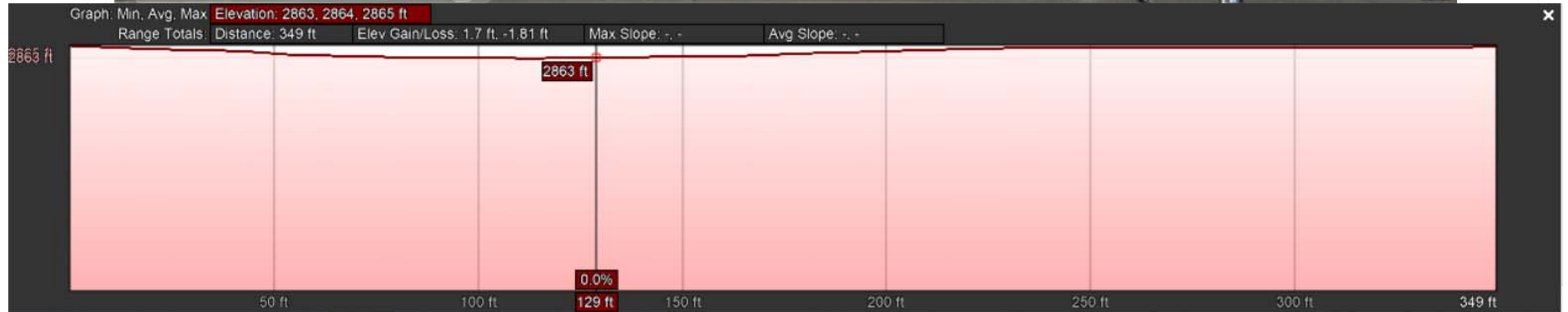
7401 Briarwood Ave. – West to East Slope



7401 Briarwood Ave. – North to South Slope



7401 Briarwood Ave. – Planned Road Slope





City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: June 9, 2020

TO: CITY COUNCIL

FROM: Taslima Khandaker, Senior Planner

SUBJECT: Hold a public hearing and consider an ordinance on a request by Tyler West, for a Zone Change from O-1, Office District to PD, Planned Development District for a Housing Development, on Lot 1, Block 1, Roper Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Briarwood Avenue and North County Road 1250. Council District 4)

Purpose:

The applicant, Tyler West, is requesting a Zone Change from O-1, Office District, to PD, Planned Development District for a Housing Development at 7401 Briarwood Avenue to allow for a residence, nonprofit office and retail space, and short-term housing.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The properties to the north are zoned RR, Regional Retail District, and AE, Agricultural Estate District, and the locations of vacant land. The properties to the east are zoned AE, Agricultural Estate District, and the location of Midland Independent School District's bus barn. The properties to the south and west are located outside of the city

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In addition to the existing residence, which already has 1,209 square feet of office and retail space being used by The Attic Foster Closet, the site plan attached hereto as Exhibit "A" shows six (6) tiny homes. The first tiny home will be a one (1) bedroom and one (1) bathroom home that will house a family of four (4). All future tiny homes proposed on the lot will be one (1) bedroom and one (1) bathroom units and approximately 300 to 500 square feet in size. The proposed homes will generally house 1 to 2 people. This property currently has about 6 to 10 parking spaces for the existing nonprofit office and retail space. At least one parking space will be required to be provided for each tiny home. The applicant will have to amend the site plan for any future development.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

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Code: (Approved with Conditions)

Fostering Restoration Z-20-0179

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Staff recommends approval of this zone change from O-1, Office District to a PD, Planned Development District for a Housing Development, subject to conditions A through E.

Conditions:

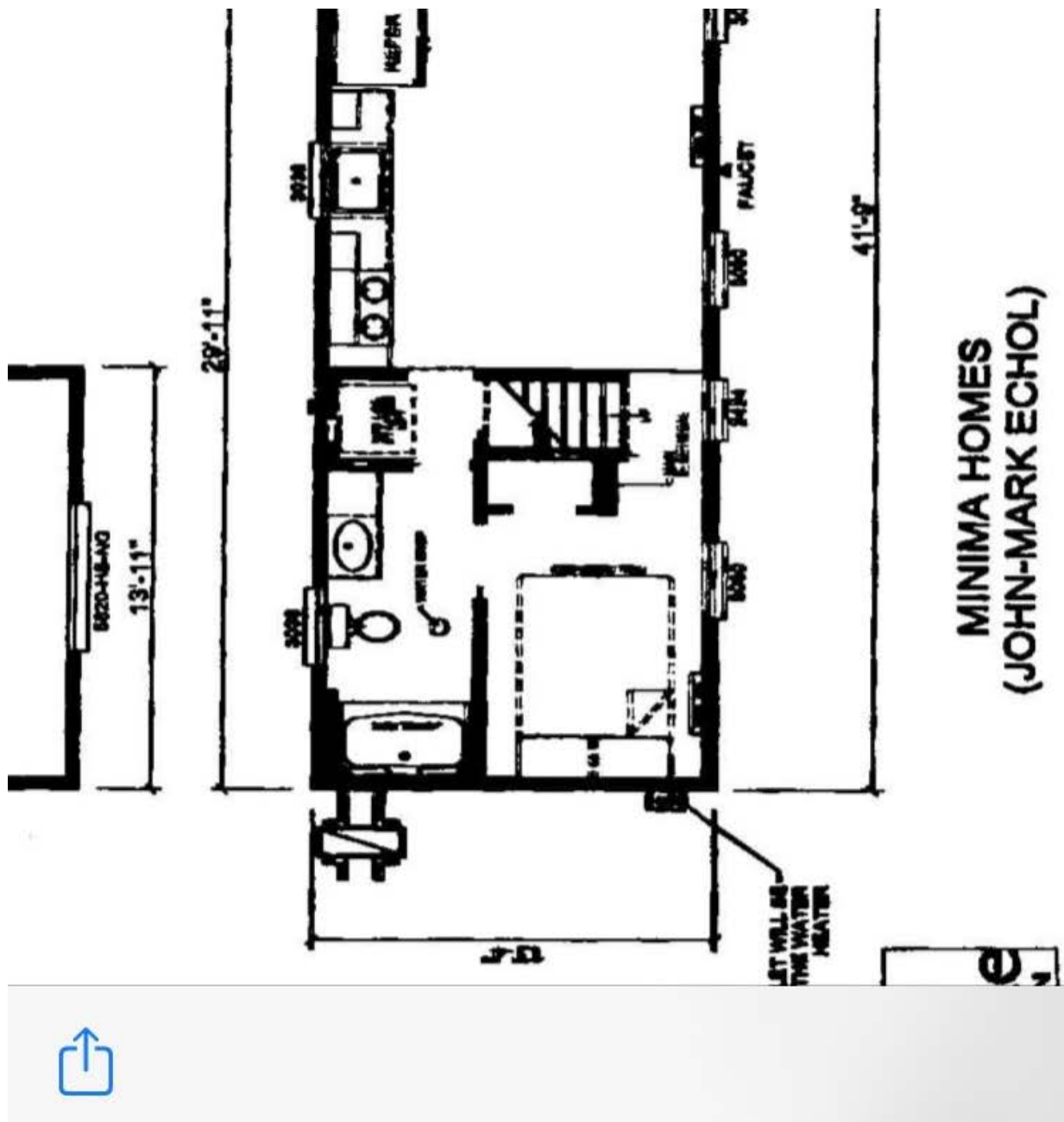
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- E. That the Landscape Plan shall be considered illustrative. Landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City code.**

Letters of Objection:

Staff has not received any letters of objections as of May 27, 2020.

Attachments:

Site Plan (Exhibit A)
Fostering Restoration Information
Application
Maps



On Apr 28, 2020, at 4:12 PM, Cristina Burns <coburns@midlandtexas.gov> wrote:

Hi, Mr. West,

Chuck forwarded your application and site plan for my review, and I have a couple of questions. Are any other buildings, in addition to the tiny homes, being proposed? Also, could you please provide more information on the proposed tiny homes (how many bedrooms, how many people will stay in each, etc.) and provide the floor area of the house being used for office and retail? Finally, how many parking spaces does the property currently have and how many additional parking spaces are proposed for the development?

Thank you,

Cristina Odenborg Burns, AICP, CPM, PCED

Planning Division Manager

Development Services

O: (432) 685-7902 | C: (432) 260-5362

[<image006.png>](#)

300 N. Loraine Street | P.O. Box 1152 | Midland, TX 79702

From: Tyler West <tyler@fosteringrestoration.com>

Sent: Tuesday, April 28, 2020 9:54 AM

To: Charles Harrington <charrington@midlandtexas.gov>

Subject: RE: Briarwood - Fostering Restoration

Chuck,

Take a look at the attached application and associated maps. Will this suffice for the Dimensioned Site Plan?

Tyler

From: Charles Harrington <charrington@midlandtexas.gov>

Sent: Monday, April 27, 2020 3:28 PM

To: Tyler West <tyler@fosteringrestoration.com>

Subject: RE: Briarwood - Fostering Restoration

Tyler,

It looks good. In the blanks with a question mark, they are pretty easy. The first is the Zoning Request. That is a PD or Planned Development. The second question revolves around the reason for the zone change. Here you need to state that you want to have a mixed use development.

As to the question regarding representation, it is not a requirement to have one. You can represent yourself. A lot of applicants reside out of town and use their engineer to represent them.

Charles Harrington

Director of Development Services | City of Midland

O. 432-685-7442

[<image007.png>](#)

[<image008.png>](#) [<image009.png>](#) [<image010.png>](#)

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

ATTENTION ELECTED OFFICIALS:

A "Reply to All" of this e-mail could lead to violations of the Texas Open Meetings Act. Please reply only to the sender.

From: Tyler West <tyler@fosteringrestoration.com>

Sent: Monday, April 27, 2020 3:20 PM

To: Charles Harrington <charrington@midlandtexas.gov>

Subject: RE: Briarwood - Fostering Restoration

Chuck,

I have taken a first pass through the Zone Change Application. It seems the form is not too cumbersome. See the attached. I left '???' in a few places that I would appreciate your input on when you have a moment.

Additionally, should I look into a 'Representative'?

Tyler
432-664-5658

From: Charles Harrington <charrington@midlandtexas.gov>
Sent: Monday, April 27, 2020 2:46 PM
To: Tyler West <tyler@fosteringrestoration.com>; Robert Patrick <rpatrick@midlandtexas.gov>
Cc: Lori Blong <lblong@midlandtexas.gov>; brendajstice@gmail.com; Bonnie West <bonnie@fosteringrestoration.com>
Subject: RE: Briarwood - Fostering Restoration

It would be the Zone Change Application. A PD is considered a zone change.

Charles Harrington

Director of Development Services | City of Midland
O. 432-685-7442

<[image007.png](#)>

<[image008.png](#)> <[image009.png](#)> <[image010.png](#)>

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

ATTENTION ELECTED OFFICIALS:

A "Reply to All" of this e-mail could lead to violations of the Texas Open Meetings Act. Please reply only to the sender.

From: Tyler West <tyler@fosteringrestoration.com>
Sent: Monday, April 27, 2020 2:40 PM
To: Robert Patrick <rpatrick@midlandtexas.gov>; Charles Harrington <charrington@midlandtexas.gov>
Cc: Lori Blong <lblong@midlandtexas.gov>; brendajstice@gmail.com; Bonnie West <bonnie@fosteringrestoration.com>
Subject: Briarwood - Fostering Restoration

Robert and Chuck – Thanks for your time today. For next steps, I've gone to the P&Z Planning page. Which application should I start working through? I included a screenshot below of the options I found.

Lori – Thanks for taking our call last week and organizing today's meeting.

We look forward to working through this with each of you.

<[image011.jpg](#)>

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

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**Zone Change/Planned
District Amendment/Site
Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Tyler and Bonnie West

Phone (432) 664-5658

Email tyler@fosteringrestoration.com

Address 7401 Briarwood Ave.

City Midland

State TX

Zip 79707

Property Owner

Printed Name: Tyler and Bonnie West

Phone (432) 664-5658

Email tyler@fosteringrestoration.com

Address 7401 Briarwood Ave.

City Midland

State TX

Zip 79707

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email _____

Address _____

City _____

State _____

Zip _____

Street Address: 7401 Briarwood Avenue

Legal Description

Lot: ONE Block: ONE Subdivision: ROPER ADDITION

Current Zoning: O1

Proposed Zone: Planned Development
(List by tracts if more than one district is requested)

Reason for Zone Change Request: The property has many functions - residential, office, retail, short-term housing. The proposed change would allow for further development to add additional housing.

Present Use of Property: Residence - Nonprofit Office - Nonprofit Retail Space

Proposed Use of Property: Residence - Nonprofit Office - Nonprofit Retail Space - Short Term Housing

How would this zone change affect the public health, safety and welfare? The proposed zone change would greatly benefit the public health, safety and welfare. Short term, low cost housing will be utilized for social workers and/or families in crisis. By aiding these individuals, our community will greatly benefit

Describe how conditions affecting the property have changed since present zoning designation: At the change in zoning systems, the property was used by a church for their offices. Prior to our ownership it was used as residential/non-profit/retail. The current plan is to continue using a portion of the property as residential, with additional use as retail, short-term housing, and office space.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature):	Date:
Property Owner (printed) : _____	
<i>The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

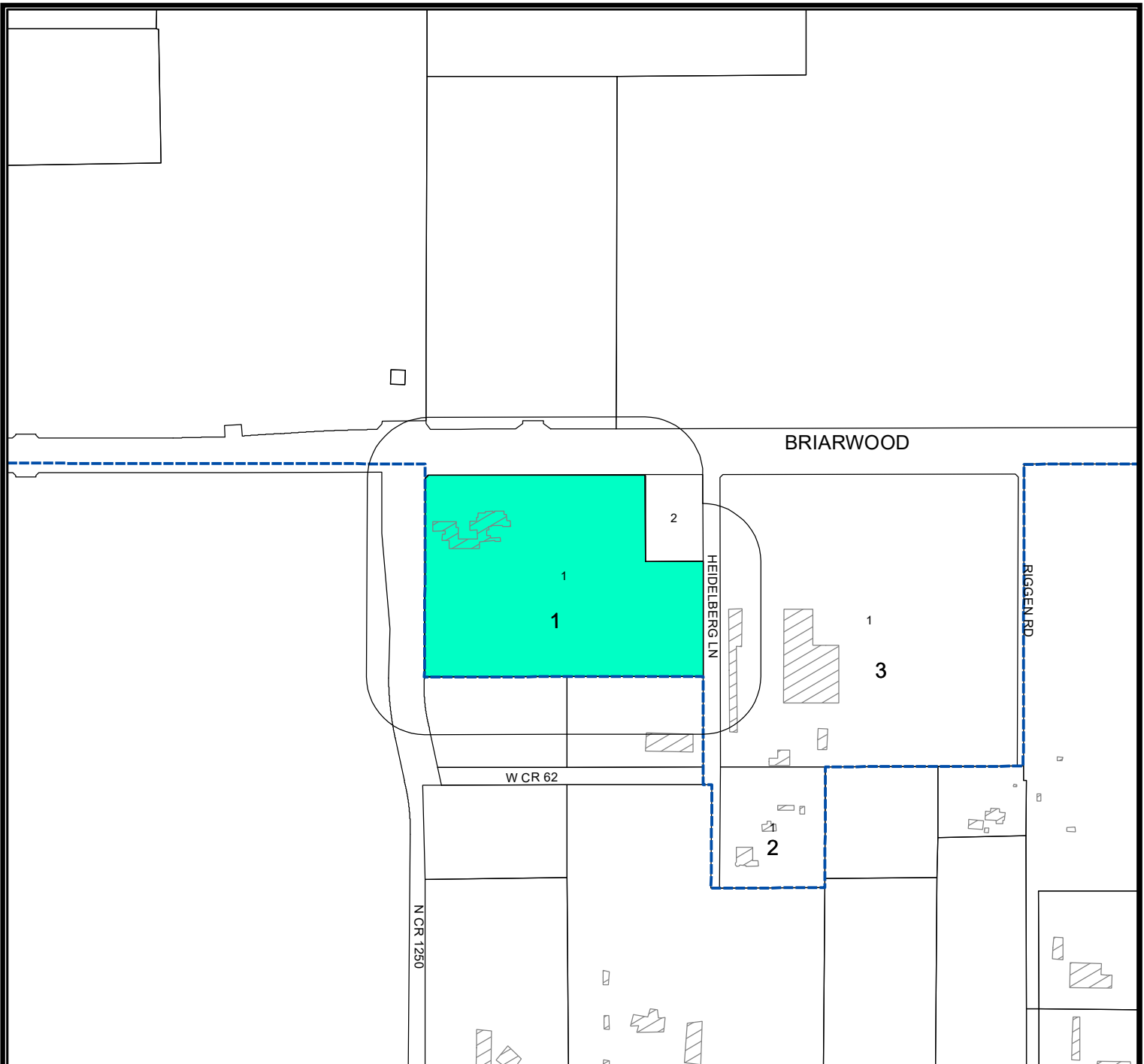
Authorized Agent (signature)

Subscribed and sworn to before me, this ____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization ☐ Application Fee Check # _____	☐ Dimensioned Site Plan ☐ Plans in Digital Format (PDF/JPEG)
Received By:	Date:

PACKET 14.65 June 9, 2020
 Application will not be considered for scheduling until reviewed by a planner.



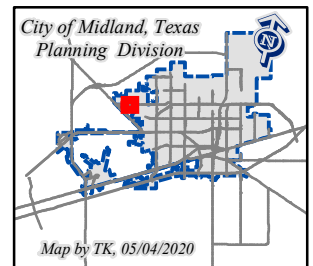
LOCATION MAP

Z-20-0179

Scale: 1" = 250'

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



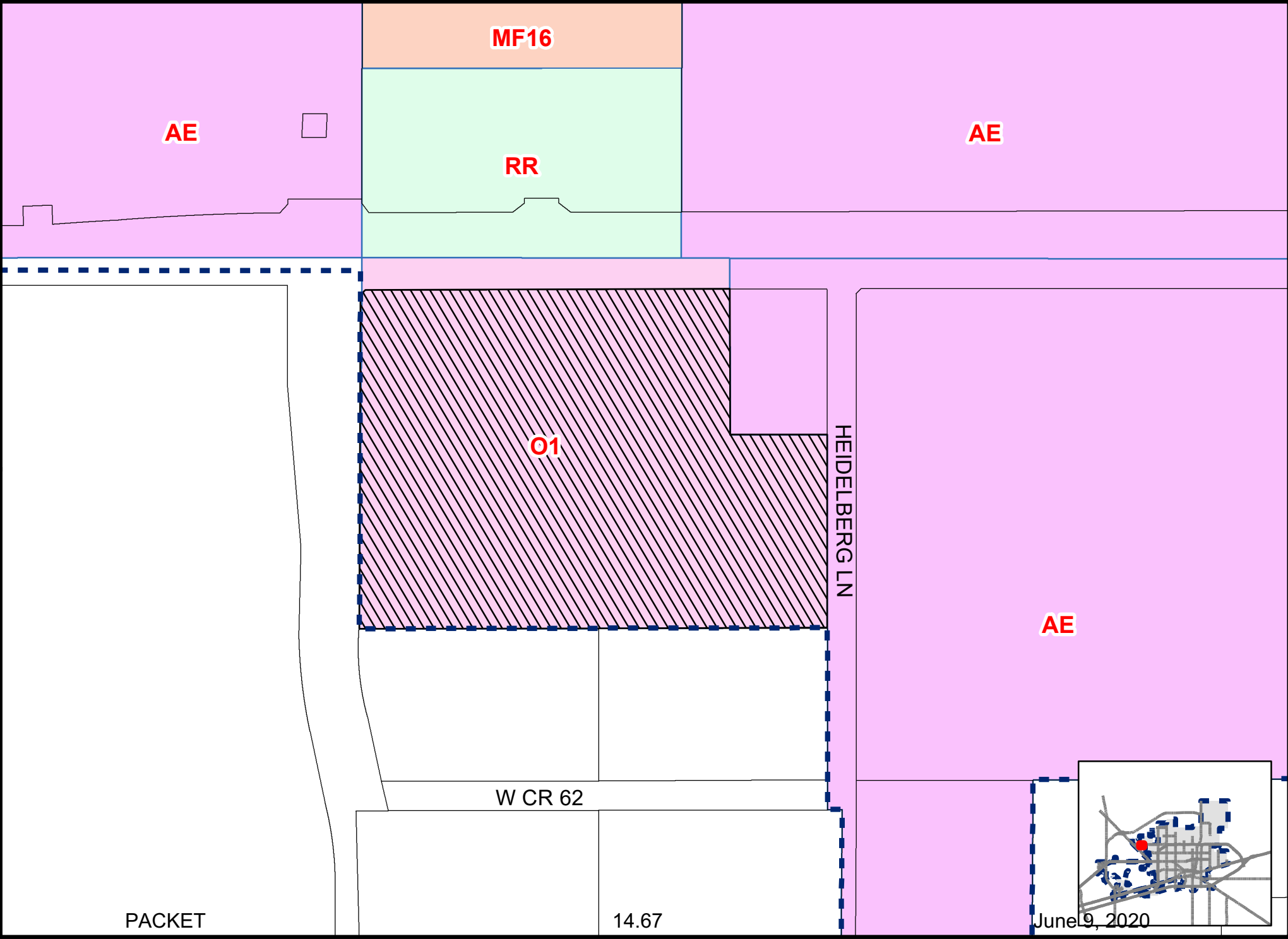
PACKET

14.66

June 9, 2020

Consider a request by Tyler West, for a zone change from O-1, Office District to PD, Planned Development District for a Housing Development, on Lot 1, Block 1, Roper Addition,

©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING OR IS IT DESIGNED TO BE USED AS A SURVEY 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.









PACKET

14.70

June 9, 2020



PACKET

14.71

June 9, 2020

City Council Meeting



Item Number: 15
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development

Approved for Agenda:

City Manager's Office

065-2020

Subject: Receive public comments, guidance and recommendations regarding the 2020-2021 CDBG grant application submission and the Five year consolidated plan goals. (DEVELOPMENT SERVICES)

Purpose:

Hold a public hearing in order for the Midland City Council and the CDBG Prioritization Committee to receive public comments, guidance and recommendations regarding the 2020-2021 CDBG grant application submission and the Five year consolidated plan goals.

Recommended City Council Action:

Directional/Informational

Fiscal Impact:

No fiscal Impact on City Budget

Discussion:

The City of Midland has prepared a draft Consolidated Plan which establishes Midland's long range strategies' for the investment of its U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) recourses linked to activities directed towards housing, homeless needs, infrastructure and public facilities improvements. The Plan covers the five years from 10/01/2020 to 09/30/2024 and the First year Action Plan for HUD fiscal years of 2020-2021.

City Council Meeting



Item Number: 16
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development

Approved for Agenda:

City Manager's Office

066-2020

Subject: Receive public comments, guidance and recommendations regarding the 2020-2024 Analysis of Impediments to Furthering Fair Housing Choice. (DEVELOPMENT SERVICES)

Purpose:

Hold a public hearing in order for the Midland City Council and the CDBG prioritization Committee to receive public comments, guidance and recommendations regarding the 2020-2024 Analysis of Impediments to Furthering Fair Housing Choice.

Recommended City Council Action:

DirectionalInformational

Fiscal Impact:

No Fiscal Impact on City Budget

Discussion:

As a recipient of Community Development Block Grant (CDBG) Program funds, the City is required by the U.S. Department of Housing and Urban Development (HUD) to conduct an Analysis of Impediments (AI) to Fair Housing Choice and to Affirmatively Further Fair Housing. The Community Development Office has developed and written the AI that resulted in the draft document. The draft will begin a process of 30-day public review from June 09, 2020 period and ends July 9, 2020. The AI will cover the City's fiscal years 2021 to 2025.

CITY OF MIDLAND, TEXAS

Analysis of Impediments to

Housing Choice

A Fair Housing Plan for
September 2020-2024



September 30, 2020

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EXECUTIVE SUMMARY

Midland Texas is quickly becoming the epicenter of global energy sector for the petroleum sector in the vast Permian Basin Region, which is the site of some of the largest oil and gas resources in the world. Midland County is also a location for substantial drilling and extraction activity. A combination of factors is causing dramatic changes in the City/County. Since 2010, the number of houses sold in the Midland MSA has increased, along with the average and median sales price, though fluctuations roughly corresponding to oil and gas activity levels have occurred. For the most part, the number of listings and the months of inventory available in the area have decreased, though there have been market fluctuations. Activity has increased notably over the past two years. The number of home sales jumped 33.8% in 2017 and continued to increase in 2018. There were also approximately two months less of inventory available over the 2017-2018 period. There is a severe shortage of rental properties with a gross rent of \$875 a month or less, and 45.2% of households in the Midland MSA reporting \$35,000 to \$49,999 in income are housing cost burdened (paying more than \$875-\$1,250 per month,

While only one-third of the population lives in renter-occupied housing units in the area, gross rents have also been increasing. According to Census Data, median gross rent (rent plus utility cost estimate) in the Midland area in 2017 was approximately \$100 more per month compared to the median across Texas and the United States. More recent data from ApartmentList.com shows that in February 2019, the median apartment rent for a two-bedroom apartment was \$1,553, much higher than \$1,049 for Texas and \$1,174 for the United States. Apartment rents had increased 2.5% from the previous month and 11.3% over the past year. The apartment rent for Texas was steady during the same month and had only increased 1.3% relative to the past year. The latest population estimates from the US Census Bureau indicate the Population for the City of Midland was 142,344 in 2018, while the county population was 172,578 and the MSA population was 178,331. Midland County is the 26th most-populous county in the State of Texas and is the most populated county in the Permian Basin Region.

This AI includes a review of both public and private sector housing market data in the City of Midland to identify practices or conditions that may have a negative impact on fair housing choice in the city. An analysis of demographic, economic, and housing data included in the review establishes the context in which housing choices are being made. Demographic data indicate the sizes of racial and ethnic populations and other protected classes; economic and employment data show additional factors in influencing housing choice; and counts of housing by type, tenure, quality, and cost indicate the ability of the local housing inventory to meet the needs of the city's residents. The contextual analysis described above provides a foundation for a detailed review of fair housing laws, cases, studies, complaints, and public involvement data. The structure provided by local, state, and federal fair housing laws shapes the complaint and advocacy processes available in the city.

It is the private sector that has the greatest impact and influence in the homebuyer and rental markets; such as home mortgage lending practices can substantially limit fair housing choices. Within the public sector, policies and practices can also significantly affect housing choice. HUD complaint data and AI public involvement feedback processes further help define problems and possible impediments to housing choice for persons of protected classes, and confirm suspected findings from contextual and supporting data.

For several years' since 2010, the population of Midland has increased from strong economic growth and permanent residency due primarily to the energy sector. The number of residents in all age groups increased, although in the case of residents aged over 65 data has shown only marginal increases in the number of residents in the same time period. Residents aged 35 to 64 accounted for the largest share of residents in 2010 at around a quarter to half of the population. White residents accounted for the largest share of the overall population in 2000 and 2010; however, over the last decade as the number of white residents in the city flattened, the number of black residents grew slightly. Hispanic residents demonstrated the greatest increase; nearly doubled in number and as a share of the overall population.

The Fair Housing Act of 1968 states that it is the policy of the United States to provide for fair housing throughout the country and the Act prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including or otherwise making unavailable or denying a dwelling to any person because of race, color, religion, sex, national origin, handicap, or familial status. The State of Texas concur with this policy and adopted legislation protecting equal access to housing. Fair housing and impediments to fair housing are monitored by the United States Department of Housing and Urban Development (HUD) through the use of Community Block Development Grant (CDBG) for fair housing advocacy groups. This role of HUD to act as an administrator of fair housing programs originated in 1968 with the passage of the Civil Rights Act. Each grantee which receives CDBG funding under Title I of the Housing and Community Development Act is required to further fair housing and fair housing planning by conducting an analysis to identify impediments to fair housing choice within those cities/communities within its jurisdiction.

Midland residents who believe that they have been subjected to unlawful discrimination in the housing market may seek recourse from agencies and organizations at the federal, state, and local levels. Fair Housing law and policy is directed at the national level by HUD, which accepts complaints from anyone who believes that he or she has been the victim of discrimination outlawed under the Fair Housing Act. The Texas Attorney General's Office of Civil Rights Enforcement enforces the state civil rights law. Midland residents may file complaints with the Office of Fair Housing and Equal Opportunity, which will conduct an investigation of the complaint and direct the complaint to the appropriate enforcement agency.

The City of Midland Community Development Office will also take appropriate actions to overcome the effects of any impediments identified and will maintain records, which reflect the analysis and actions taken in this regard. The purpose of this AI is to provide essential, specific, and detailed information and data to municipal officials and staff, policy makers, housing developers, lenders, and fair housing advocates. The AI helps build public support for fair housing efforts. This report represents Midland's efforts in making an objective assessment of the nature and extent of fair housing concerns in the City, and the potential impediments to making fair housing choice available to its residents.

The plan of action for the current Analysis of Impediment is intended to be a five-year period corresponding to the City's 2020-2025 Consolidated Plan, which covers October 1, 2020 through September 30, 2025. Federal law prohibits discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The AI is a review of public and private policies and practices to promote fair housing choice and to address any impediments to fair housing discovered through this review.

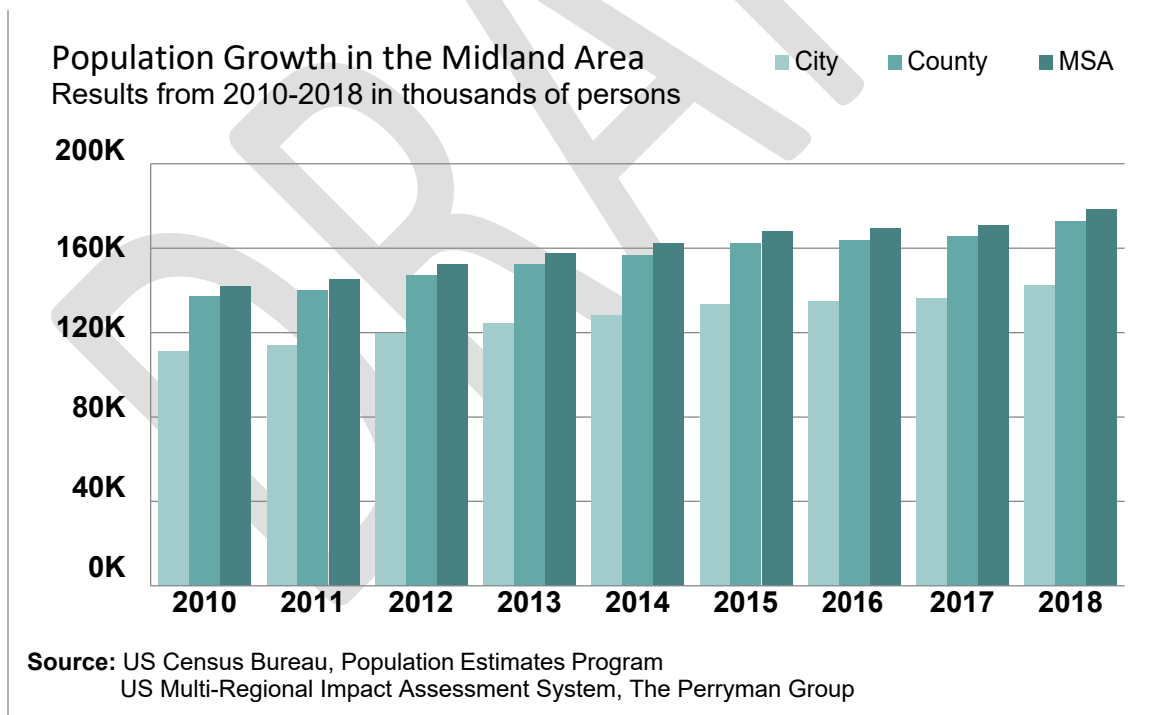
This AI resulted in a strategic continuation of the current AI and the identification of six critical impediments to address in the next five years.

- Lack of affordable housing
- Areas of minority and/or low income concentration
- Insufficient public awareness of fair housing
- Lack of affordable housing near high performing schools
- Private Loan market barriers that discourage homeownership
- Policy improvements needed for diverse community representation

The AI contains possible actions and strategies to address the impediments. These can form the outlines for annual action plans to affirmatively further fair housing. The AI involved a review of demographic information from the city. This includes population and housing characteristics and trends in Midland. The current fair housing legal status was reviewed as were various laws, regulations, and administrative policies, procedures, and practices of the City of Midland. Examination of local housing programs and activities also occurred as were private mortgage loan transactions. The AI was developed with citizen input and feedback. This was primarily in the form of a community meetings and citizens focus groups that decided the priority impediments to be addressed. Their involvement also aided in identifying strategies for addressing the impediments.

Federal law prohibits discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The City of Midland as a recipient of Community Development Block Grant (CDBG) Program funds is required by the U.S. Department of Housing and Urban Development (HUD) to conduct an analysis of impediments (AI) to fair housing choice and to affirmatively further fair housing.

The AI is a review of public and private policies and practices to promote fair housing choice and to address any impediments to fair housing discovered through this review. The chart below indicates growth in population since 2010. The City of Midland grew by 27.91% from 2010 to 2018, a compounded annual growth rate of 3.12%. During the same period, the populations of Texas and the United States grew at notably slower annual paces of 1.62% and 0.70%, respectively. Year-over-year growth for the city is shown in the chart below, compared with that of Texas and the United States. The pattern of yearly population growth in the city largely follows that of the county and MSA, which peaked for all regions in 2012 during the height of the most recent shale oil boom. Midland households with mortgages had a selected monthly owner cost greater than 30% of their income compared with 25.7% for Texas and 27.5% for the United States.



² US Census Bureau, Population Estimates Program, as of July 1, 2018.

³ US Census Bureau, Population Estimates Program, as of July 1, 2018.

⁴ US Census Bureau, Population Estimates Program, as of July 1, 2018.

⁵ US Census Bureau, American Community Survey, 1-Year Estimates, DP04, 2017

⁶ US Multi-Regional Impact Assessment System, The Perryman Group

There has been a steady increase in housing prices over the last decade with an exponential increase in pricing since 2015. Therefore, it is likely that the number of homeowners facing housing cost burdens will continue to increase significantly in during this impediment period. As a result, the percentage of the population facing affordability challenges may not subside, the magnitude, and severity of housing issues for those at or just above the poverty line will be much more pronounced.

INTRODUCTION AND RESEARCH METHODOLOGY

The AI process involves a thorough examination of a variety of data sets related to housing, particularly for persons who are protected under fair housing laws. AI sources include Census data, employment and income information, home mortgage application data, business lending data, fair housing complaint information, surveys of housing industry experts and stakeholders, and related information found in the public domain.

Relevant information was collected and evaluated using four applicable approaches:

- Primary Research, or the collection and analysis of raw data.
- Secondary Research, or the review of existing data and studies.
- Quantitative Analysis, or the evaluation of objective, measurable, and numerical data.
- Qualitative Analysis, or the evaluation and assessment of subjective data.

The Declaration of Independence states "that all men are created equal; that they are endowed by their Creator with certain unalienable rights," it was only after passage of the Civil Rights Act of 1966 that equal access to housing was delineated. It states, "All citizens shall have the same right to inherit, purchase, lease, sell, hold and convey real and personal property." Title VIII of the Civil Rights Act of 1968 (Public Law 90-294) was passed on April 11, 1968, and is more commonly known as the Fair Housing Act. Later that year, the U.S. Supreme Court ruled that the law prohibited all discrimination, private as well as public, in the sale or rental of property.

This law was amended on September 13, 1988 through the Fair Housing Amendments Act of 1988. Known as Public Law 90-294, the Fair Housing Act states that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status." Similarly, the Texas Fair Housing Act offer protection for the same categories. This statute became effective September 1, 1993.

HUD is committed to eliminating racial and ethnic segregation and other discriminatory practices in housing, and will use all the programmatic and enforcement tools to achieve this goal. The fundamental goal of the HUD's fair housing policy is to make housing choice a reality through fair housing planning. HUD defined its position by reporting that "equal and free access to residential housing (housing choice) is fundamental to meeting essential needs and pursuing personal, educational, employment or other goals. Because housing choice is so critical, fair housing is a goal that government,

public officials, and private citizens must achieve if equality of opportunity is to become a reality.” The Community Development (CD) Office of the City of Midland conducted the AI. The community Development Office staff will have primary responsibility for implementation of City actions to overcome the effects of the impediments identified in the AI, and monitor progress reflecting the AI and actions in this regard.

Texas provides protections to individuals with disabilities in the sale or rental of housing. The Texas Fair Housing Law is defined as discriminatory practices and exemptions from the housing provisions in the Texas Property Code, Title 15, and Chapter 301. The Texas Department of Housing and Community Affairs notes that the Fair Housing Act does not prohibit the denial of housing because of credit worthiness, previous rental history, or criminal record. Furthermore, the Fair Housing Act does not protect persons who present a direct threat to the persons or property of others. The Texas Workforce Commission notes that in specific circumstances, the law exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

In addition, housing developments that qualify as housing for persons age 55 or older may be exempt from the provisions barring discrimination based on familial status. The Texas law does stipulate that to increase a disabled person’s ability to access a housing unit, providers must take steps to increase access. For example, the Fair Housing Act requires housing providers to make reasonable accommodations in rules, policies, practices, or services when doing so would allow a person with a disability the equal opportunity to use and enjoy their dwelling. The Fair Housing Act also allows persons with disabilities to make reasonable modifications to their home. Several statutes govern the relationship between Texas Property owners and their tenants, particularly Chapter 92 of the Texas Property Code, and by various court rulings. Which defines and describes rental agreements, proprietor obligations, tenant obligations, and enforcement and remedies. There are other sub-chapters of the Texas Property Code, the Texas Local Government Code, the Texas Health and Safety Code, the Texas Human Resources Code, the Texas Government Code, the Texas Civil Practices and Remedies

The City of Midland as a recipient of CDBG funds is required by HUD to conduct an analysis of impediments to fair housing choice and to affirmatively further fair housing. HUD requires the AI to include a review of the City’s laws, regulations, and administrative policies, procedures, and practices; an assessment of how those laws, etc. affect the location, availability, and accessibility of housing; and an assessment of conditions, both public and private, affecting fair housing choice.

According to HUD, impediments to fair housing choice include any actions, omissions, or decisions that:

- Constitute violations, or potential violations, of the Fair Housing Act;
- Are counterproductive to fair housing choice, such as:
 - Resistance when minorities and/or low-income persons first move into white and/or moderate to high income areas, or

Resistance to the siting of group homes for persons with disabilities because of the persons who will occupy the housing.

- Have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status or national origin.

Policies, practices or procedures that appear neutral on their face, but which operate to deny or adversely affect the availability of housing to persons because of race, ethnicity, disability status and families with children may constitute such impediments. The methodology for the AI included an analysis of demographic and geographic information on the City. Data sources included those of the U.S. Census Bureau and HUD. Statistics were also taken from the Census' American Community Survey (ACS). The AI also consisted of reviewing local housing programs including those of the City and examining public policy affecting location and development of housing as well as administrative policies. Private lending information was examined.

A review of discriminatory complaints was updated. An effort was made to secure input from the public by distribution of a fair housing choice questionnaire (**See copy below**) at community meetings and focus groups settings that the CD staff coordinated during the 2018 CDBG program year and the first quarter of the 2019 program year. Responses were submitted to the CD staff. Fifty rating surveys to community organizations were sent out to solicit responses to the AI. Specifically, attendees were asked to rate a number of possible impediments. The Appendix contains information on citizen participation surveys.

The Community Development Division of the Development Services Department of the City conducted the AI. CD Division staff is responsible for administration of the CDBG program and will also have primary responsibility for implementation of City actions to overcome the effects of any impediments identified in the AI and maintaining records reflecting the AI and actions in this regard. HUD reviews the City's actions to ascertain if activities are carried out in a manner to affirmatively further fair housing in the public and private housing sectors. HUD issued a final rule on Affirmatively Furthering Fair Housing (AFFH) in 2015. HUD states that it believe the Fair Housing Act has two main goals: 1) ending housing discrimination; and 2) promoting diverse, inclusive communities.

While efforts to combat ongoing discrimination are important, they are also at the core of HUD's existing fair housing efforts. HUD's final rule is designed to support and facilitate those efforts, but goes further and addresses other significant barriers to fair housing choice that have been largely absent from HUD's fair housing policy initiatives. Specifically, HUD's rule is designed to help address the legacy of segregation and factors related to locational choice that have been influenced by race, national origin, disability, and other protected classes, but typically do not rise to the level of discriminatory actions that violate other sections of the Fair Housing Act.

Despite genuine progress and a landscape of communities transformed in the more than 40 years since the Fair Housing Act was enacted, the ZIP code in which a child grows up all too often remains a strong predictor of that child's life course. There are communities that remain segregated by classes protected by the Fair Housing Act with racially concentrated areas of poverty existing in virtually every metropolitan area. Disparities in access to important community assets prevail (Internet, Wi-Fi etc.) in many instances.

HUD does provide entitlement jurisdictions data that indicate disparities in access to community assets that, on further analysis, appear to show acute discriminatory trends for low-moderate income residents, many of whom are racial and ethnic minorities. Using this information, entitlement jurisdictions may choose to reduce access disparities by encouraging development of new affordable units evenly disbursed throughout the community.



CITY OF MIDLAND - SURVEY ON HOUSING AND COMMUNITY DEVELOPMENT NEEDS

The City of Midland is preparing a plan that will guide the use of its federal community development and housing funds over the next five years. Complete the following to help us establish priorities for various needs.

Please select up to four (4) community facilities needs that are a priority for you.

- | | |
|--|---|
| ☐ Senior Centers | ☐ Park and Recreational Facilities |
| ☐ Youth Centers | ☐ Centers for the Handicapped |
| ☐ Child Care Centers | ☐ Health Care Facilities |
| ☐ Community Centers | ☐ Non-Residential Historic Preservation |

Please select up to five (5) public service needs that are a priority for you.

- | | |
|--|---|
| ☐ Senior Services | ☐ Transportation Services |
| ☐ Child Care Services | ☐ Health Care Services |
| ☐ Youth Services | ☐ Services for Victims of Domestic Violence |
| ☐ Handicapped Services | ☐ Mental Health Services |
| ☐ Legal Services | ☐ Substance Abuse Services |

Please select up to five (5) housing needs that are a priority for you.

- | | |
|---|---|
| ☐ Rental Housing for Seniors | ☐ Rental Assistance/Lower Rent Apartments |
| ☐ Home Purchase Assistance | ☐ Assistance on Major Home Improvements |
| ☐ More Affordable Homes to Buy | ☐ Assistance with Minor Home Repairs |
| ☐ Mortgage/Utility Assistance | ☐ Shelter/Housing for the Homeless |
| ☐ Screening for Lead Poisoning | ☐ Housing Related Counseling/Education |
| ☐ Special Housing for (specify) | |

Please select up to five (5) community needs that are a priority for you.

- | | |
|---|--|
| ☐ Street Improvements | ☐ Mowing/Clearing Unsightly properties |
| ☐ Sidewalks | ☐ Removal of Dilapidated Structures |
| ☐ Business Loan Program | ☐ Water/Sewer Improvements |
| ☐ Employment Training | ☐ Drainage Improvements |
| ☐ Code Enforcement | ☐ Removal of Architectural Barriers |

If you know of other needs or have suggestions on locations for any need, please write them on the back or on a separate sheet. Only surveys with a zip code and with no more than the requested number of selections will be counted.

Your zip code: _____

Fair Housing - It's the Law. The Federal Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex, handicap or familial status

EQUAL HOUSING

Please evaluate the following possible impediments to fair housing in Midland by marking your response.	Don't Know	Not an Issue	Yes an Issue
Discriminatory practices among apartment managers			
Discriminatory practices among bankers/lenders			
Discriminatory practices among insurance industry representatives			
Discriminatory practices among local housing programs			
Discriminatory practices among Realtors			
Discriminatory practices among single family unit landlords			
Inadequate advertising by local media including daily paper			
Lack of affordable apartments/rental houses			
Lack of affordable homes to buy			
Lack of affordable housing near the better schools			
Lack of apartments for the disabled			
Lack of funding for local fair housing activities including investigation and testing			
Lack of knowledge among households regarding fair housing			
Lack of local funding for affordable housing			
Lack of rental assistance			
Lack of transportation by households			

Language barriers			
Restrictions on locating group homes or community living facilities			

DRAFT

Demographic and Housing Profile Analysis

Midland is experiencing growth in different directions. Since the 1990s, Midland's growth areas have been to the north and northwest. However, the decade from 2010 to 2018 showed that Northeast and Southeast Midland have experienced significant growth as seen in the population change from 2010 to 2018 census maps. Currently, growth is occurring in Central, North and Northeast Midland County.

Much of the information contained herein will be add to the City's 2020 to 2025 Consolidated Plan for Housing and Community Development Funds. The General Population and Housing Data Table provides comparisons of data from the 2010 Census. The base geography of Midland is on the maps entitled General Features and Census Tracts of the City of Midland. All maps are located in the Appendix.

The 2018 estimates by the American Census Survey are 172,578 in Midland County. This was a seventeen percent increase from the 2000 Census of 116,009 Midland County, according to the 2000 Census population count. Generally, the city accounts for about 67.22% of the county's population. The working age population in the area generally has more child-aged dependents than the larger areas, with a smaller percentage of residents of retirement age than Texas or the US. The child dependency ratio⁷ for the Midland area ranges from 44.5 for the City of Midland to 46.1 for the MSA, compared to 42.1 for Texas and 36.6 for the US as a whole.

Midland's minority population statistics are presented on the General Population and Housing Data Table. While the percent of white population was relatively unchanged from 2010 to 2018, several race groups showed increases greater than the city's overall growth rate: Native Americans, Asian and Pacific Islanders and those of two or more races represent an increase in population.

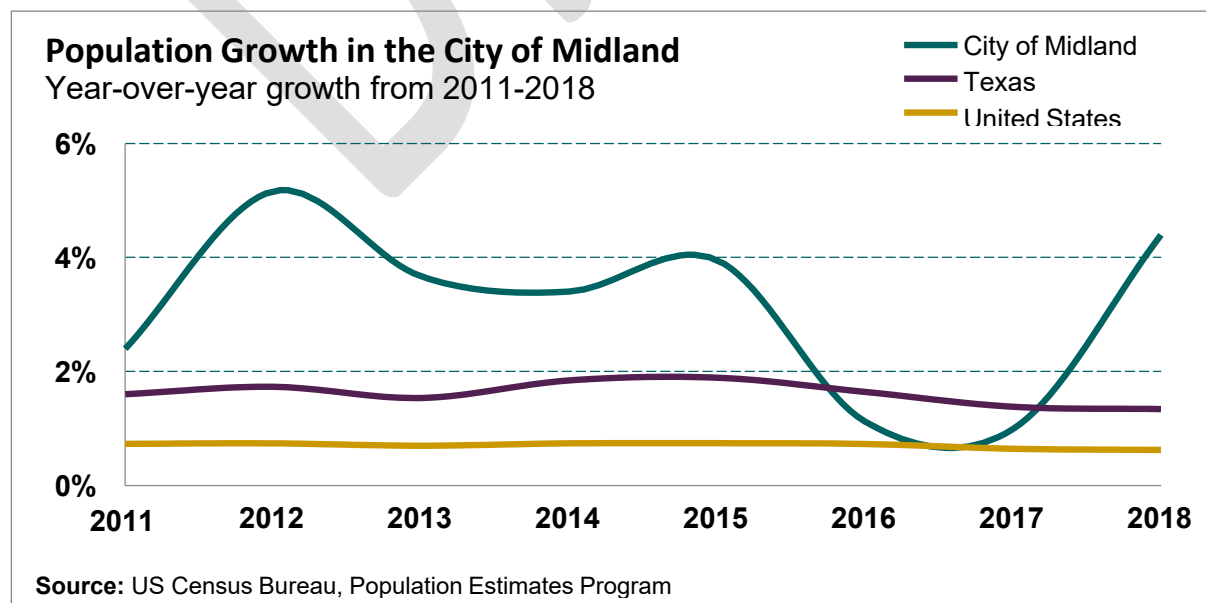
The share of homes in the Midland area where a language other than English is spoken is similar to the rest of the state. However, the area has a smaller percentage of people who speak English less than "very well" (10.3% for Midland MSA vs. 13.8% in Texas).¹⁴ The majority of the population 5 years and over that live in a non-English speaking household speaks Spanish (88.2% in the MSA).¹⁵ Only 8.9% of the population in the City of Midland and Midland County speak Spanish at home and English less than "very well" (8.8% in Midland MSA, compared with 11.7% for the state).

⁶US Multi-Regional Impact Assessment System, The Perryman Group

The Community Development Department staff conducted three publicized public Meetings and two public hearings held on March 9, March 11, March 13 and March 24. Public Hearing were held on May 12 and June 09. These hearings reviewed the basic elements of the AI and Con Plan, after which the city council open the public hearing for comments and questions. In addition, the Department conducted three focus group community meetings, inviting representatives from lending and financial services organizations, community service organizations, housing developers, housing advocacy groups, and government officials. Attendees at the focus group meetings and public hearings were encouraged to complete a survey that included questions on fair housing. The survey, in English and Spanish, was publicized and made available to City residents on the City website.

Fair housing is concerned with ensuring that: 1) all people are treated equally in the rental, sale, or occupancy of housing; and 2) a range in types and prices of housing is available. This chapter examines the population, housing, and special needs characteristics and trends in the City that may affect equal housing opportunity. This Community Profile provides insights for identifying potential impediments to fair housing choice. While not definitive indicators of impediments to fair housing choice in and of themselves, these data may point to conditions or situations that could be indicators of impediments to fair housing choice. Observations about issues that could arise are made at the end of this section.

The tables below illustrates the racial composition of Midland with that of Texas and the United States, demonstrating significant racial diversity in the City. As can be seen, Midland has a higher percentage of White persons than the State. The percentage of African-Americans is well below that of the State. The percentage of Hispanic Americans is slightly higher than the state average. However, the percentage of Asian persons is well below the State, as is the Some Other Race category.



Demographic Chart-2

Race and Ethnicity				
Results in 2017 for the Midland Area and Texas				
Race/Ethnicity	City of Midland	Midland County	Midland MSA	Texas
White	82.6%	84.8%	84.8%	73.9%
Black	8.3%	6.9%	6.7%	12.1%
Asian	2.5%	2.2%	2.1%	4.8%
Other	6.6%	6.1%	6.4%	9.2%
Hispanic	43.7%	45.0%	44.9%	39.4%
Note: Other includes those who identified as more than one race; Hispanic includes those who identified as such, regardless of race. Source: US Census Bureau, American Community Survey, 1-Year Estimates, DP05, 2017. US Multi-Regional Impact Assessment System, The Perryman Group				

Demographic Chart-3

Subject Poverty Status in the Past 12 Months 2013-2017 American community Survey 5-year Estimates	Midland County, Texas				
	All families		Married-couple families		Female householder, no husband present
	Total	Percent below poverty level	Total	Percent below poverty level	Total
	Estimate	Estimate	Estimate	Estimate	Estimate
Families	38,371	6.7%	28,561	2.9%	7,014
With related children of householder under 18 years	20,670	10.4%	13,907	3.6%	5,301
With related children of householder under 5 years	4,532	19.7%	2,681	5.9%	1,479
With related children of householder under 5 years and 5 to 17 years	5,052	9.7%	3,918	5.5%	891
With related children of householder 5 to 17 years	11,086	7.0%	7,308	1.8%	2,931
RACE AND HISPANIC OR LATINO ORIGIN					
Families with a householder who is--					
White alone	32,882	6.5%	25,358	2.8%	5,404
Black or African American alone	2,031	5.5%	837	3.0%	925
American Indian and Alaska Native alone	251	0.0%	220	0.0%	31
Asian alone	596	4.4%	564	4.6%	19
Native Hawaiian and Other Pacific Islander alone	7	0.0%	7	0.0%	0
Some other race alone	2,113	13.0%	1,240	5.2%	546
Two or more races	491	8.1%	335	4.5%	89
Hispanic or Latino origin (of any race)	14,600	11.8%	9,485	5.8%	3,619
White alone, not Hispanic or Latino	20,728	3.4%	17,292	1.3%	2,387
Householder worked	30,283	4.3%	22,306	1.6%	5,395
Householder worked full-time, year-round in the past 12 months	23,659	1.7%	17,551	1.2%	3,921

Householder 65 years and over	5,251	5.4%	4,271	4.5%	827
Family received --					
Supplemental Security Income (SSI) and/or cash public assistance income in the past 12 months	1,604	12.3%	844	5.9%	602
Social security income in the past 12 months	7,007	5.2%	5,430	5.1%	1,130

CENSUS POPULATION AND HOUSING DATA

The 2018 economic study (Perryman Group) commissioned by Priority Midland and Midland Development Corporation examined the dynamics of housing in the Midland area, both by looking at the latest available comprehensive statistics from the US Census Bureau (2017) as well as more recent data in order to understand the current status and availability of housing, both in single-family homes and apartments for rent. The share of homes in the Midland area where a language other than English is spoken is similar to the rest of the state. The majority of the population 5 years and over that live in a non-English speaking household speaks Spanish (88.2% in the MSA). Only 8.9% of the population in the City of Midland and Midland County speak Spanish at home and English less than “very well” (8.8% in Midland MSA). Rapid population growth in the area has caused strain in several areas of infrastructure and real estate, with the most significant being housing.¹

In 2020, the housing issue is expected to remain a challenge as oil prices steadily fluctuate between at \$50 to \$60 dollars per barrel. Data from the Real Estate Center at Texas A & M University shows that the inventory of homes for sale remain at an average 3 months high for the data-collecting period. The over sixty-five years of age, population in Midland is estimated at 10.6% in 2018. While the percent of elderly (those persons 62 years of age or older) in Midland has not increased which is indicative of the national trends, the absolute number of elderly has increased. The 2018 American Census Survey indicates that 8.8% of all persons in Midland that are five years of age or older have an ambulatory difficulty.

An indicator of the city's overall well-being is the number of persons with incomes below the federal poverty income level. In 2011, 13.4% of Midland's population was impoverished. The 2018 ACS reports that 10.1% of Midland population lives in poverty. The median family income (MFI) estimate for Midland by HUD as of March 2018 was \$71,900. The ACS 2018 estimates median family income in Midland at \$79,744. This certainly reflects the economic growth of Midland. For HUD programs, eligibility is often limited to low-income persons, meaning that an individual's or a household's income must be below eighty percent of MFI. According to HUD, over thirty-eight percent of Midland's population remain on the low-income scale and recent ACS Census data reflect the similar percentages. The low-income data is also displayed on the Percent Low Income Population by Census Tract Map. Census tracts with the greater percentage of low-income persons also have a greater percentage of minorities. The 2018 ACS Survey data reported the following median household incomes for Midland which closely reflects the State and National median household income figures:

Median Household Income:	\$79,744
Median Social Security Income	\$18,069
Median Social Security (SSI)	\$8,221
Temporary Assistance (TANF)	\$5,537
Supplemental Nutrition (SNAP)	\$3,790

The 2014 ACS estimated the city's housing count was 46,522. The count had increased to 60,214 by 2018. Over 70% of housing units are single family or manufactured dwellings. Multi-family units comprise 21% of the housing stock. The Appendix includes a map showing the locations of apartments in Midland and a map on the percent of renter occupied housing by census tract and another on owner occupied housing. The owner-occupied housing unit rate from 2014 to 2018 is 66.7% and the population growth was 26.1% during the same time-period. Since 2010, Midland's population and housing situation has changed drastically due to the oil boom. The Residential Permits from 2017 to 2018 reflect all housing unit at different square footage but the overall number of permits reflect housing units of Less Than 1,900 Square Feet. Appendix maps are indicators of affordable housing development within Midland city/county that demonstrate a desire build on every available property within the MSA.

In 2020, the housing issue is expected to remain a challenge as oil prices steadily fluctuate between at \$40 to \$60 dollars per barrel. Data from the Real Estate Center at Texas A & M University shows that the inventory of homes for sale remain at an average 3 months high for the data-collecting period. Buyers have been at a disadvantage for several years and the trend do not appear to subside in the near future. The Consolidated Plan reports, "It is still a seller's market in Midland, which hinders purchases by low-income buyers, as the median sales price is hovered at \$302,000.00 over the past year and a half. This is more than three times the annual income of a four-person low-income household." Low-income households also have a difficult time obtaining decent affordable rental housing in Midland. The Median Rent Value by Census Tract Map highlights tracts where rent was greater than the city average. The Median Value of Owner Housing by Census Tract reflect persons in poverty by tracts relative to the city's median value. See Appendix

The housing assistance needs being developed in the City's 2020-2025 Consolidated Plan reveal that low-income households are prone to structural problems and dilapidation forcing municipalities to take adverse actions with the home owner/renter. Some household groups do reflect a disproportionate need for affordable home repairs and new construction yet lack the income to make proper repairs. A disproportionate need is when a percentage of persons in an ethnic category of needs are also a member of a particular racial or ethnic group that is at a minimum of ten percentage points higher than the persons in the category as a whole. The following categories meet the criteria and are disproportionate need categories:

1. Lacks complete kitchen, bath, and or sleeping facilities.
2. Lacks complete plumbing or inoperable facilities.

3. More than two persons per room.
4. CostBurden greater than 30% of poverty index.

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**Small Area Income and Poverty Estimate (SAIPE) All Ages in Poverty
2018 - Selected State - Selected County**

Year	ID	Name	Poverty Universe	Number in Poverty	90% Confidence Interval	Percent in Poverty	90% Confidence Interval
2018	00000	United States	319,184,033	41,852,315	41,619,366 to 42,085,264	13.1	13.0 to 13.2
2018	48000	Texas	28,074,669	4,181,623	4,132,580 to 4,230,666	14.9	14.7 to 15.1
2018	48329	Midland County (TX)	171,113	17,351	14,194 to 20,508	10.1	8.3 to 11.9

No racial or ethnic group met the criteria that their needs are 11% greater than the needs of the category as a whole. While not a disproportionate need, Black and Hispanic households experienced a rate higher than the rate of its category (households in the >50%- 100% of AMI). American Indian/Alaska Native households in the over 50% of AMI have a disproportionately greater need due to housing cost burden. Asian households in the 30 to over 50% of AMI also have a disproportionately greater need due to housing cost burden. Staff will update demographic data after the 2020 census count submission. Highlighted census tracts have a percentage of substandard housing greater than the citywide average and are generally located in older and minority influenced areas.

Subject Characteristic of levels of Poverty in the Past 12 Months	Midland County, Texas		
	Total	Less than 50 percent of the poverty	Less than 100 percent of the poverty level
	Estimate	Estimate	Estimate
Population for whom poverty status is determined	157,849	4.1%	8.7%
SEX			
Male	79,262	3.2%	7.0%
Female	78,587	5.0%	
AGE			
Under 18 years	44,040	5.8%	
Related children of householder under 18 years	43,977	5.7%	
18 to 64 years	97,857	3.5%	7.3%
65 years and over	15,952	3.1%	9.3%
RACE AND HISPANIC OR LATINO ORIGIN			
One race	154,470	4.0%	8.7%
White	130,843	4.0%	8.1%
Black or African American	9,643	4.6%	
American Indian and Alaska Native	727	2.8%	2.8%
Asian	3,079	2.1%	3.7%
Native Hawaiian and Other Pacific Islander	74	0.0%	0.0%
Some other race	10,104	4.4%	
Two or more races	3,379	5.9%	10.4%

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Public (PHA) Housing Programs

Two public housing authorities (PHA) operate in Midland. The first PHA is the City of Midland Housing Authority that was established in 1971. The Midland City Council appoints the City Housing Authority Board of Commissioners. Otherwise, the City Housing Authority is independent of the City. The second housing authority is the Midland County Housing Authority that was created in 1988 by the Midland County government. The County Commissioners Court appoints the County Housing Authority Board of Commissioners. The County Housing Authority is also independent of the County government.

Two PHA's operates within Midland County: 173 Units, Hillcrest Manor, and Langtry Village, which are public housing properties. The Midland County PHA administers the rental voucher program in the city. Currently, 433 households receive rental voucher assistance. As per the Consolidated Plan, race characteristics of public housing and voucher recipients were as follows:

Race	Public Housing	PHA Hispanic	Midland County				
			Voucher	Elderly	Hispanic	Family Unification Program	Disabled *
White	62	38	204	79	131	0	104
Black/African American	73	0	226	42	1	0	83
Asian	0	0	1	1	0	0	0
American Indian/Alaska Native	0	0	1	0	0	0	1
Native Hawaiian/Pacific	0	0	1	0	1	0	0

The Inventory of Affordable Housing Properties Table identifies the publicly supported rental properties in Midland. The age of a property, the number of units, the population served and the number of units designed for disabled persons are shown on the Table. Properties listed include recent Low Income Housing Tax Credits complexes.

Information from the last four (covering the October 2015 to September 2020 period) Consolidated Annual Performance and Evaluation Reports submitted by the City to HUD reveal the following percentages of minorities served by each program.

Program - # of cases	% Black	White	% Asian *	% Hispanic
Homebuyer Assistance - 100	9	15	29	47
City Major Projects – 3	0	0	0	3
City Minor Repairs - 89	28	10	1	50
Transitional Housing – 0	0	0	0	0

It should be noted that CDBG supported activity, in order to meet federal requirements, may be limited to areas that have a high percent of low and moderate-income persons. These census tracts are also often the city's minority concentrated areas. Over the past five years, the city's housing programs have not been the subject of discrimination complaints. Both PHAs must administer the rental assistance programs consistent with the Fair Housing Act. Concerning other HUD supported housing programs in Midland; these seem to be consistent with the fair housing objectives, as minority households have not been excluded.

Average rent estimates by apartment type

Apartment	City of Midland	State of Texas	United States
Studio	\$1,044	\$731	\$827
1-Bedroom	\$1,236	\$844	\$946
2-Bedroom	\$1,553	\$1,049	\$1,174
3-Bedroom	\$1,945	\$1,416	\$1,577
4-Bedroom	\$2,194	\$1,745	\$1,838

Source: Current Month Rent Estimates, February 2019, Apartment List, March 1, 2019, [/www.apartmentlist.com/rentonomics/rental-price-data/](http://www.apartmentlist.com/rentonomics/rental-price-data/).

Figures from the National Low Income Housing Coalition indicate that the Fair Market Rent in Midland for a two-bedroom apartment is \$1,055 per month. According to the Coalition's figures, the monthly rent affordable to the mean renter wage (\$15 per hour) is \$1,850, which is \$795 more than the Fair Market Rent figure. Thus, the worker making the mean/median renter wage would need only 0.11 jobs at that rate to afford the apartment. However, a minimum wage worker would need 2.9 jobs to afford the apartment.

Midland TX - Inventory of Affordable Housing Properties, 2019									
Development Name (Year Opened)	Address	0-1 Bdrs	2 Bdrs	3+ Bdrs	Total units	Affordable Units	Population Served	Disabled Units	% Occupancy
Village Square (1959)	1710 N "A"	18	39	0	57	57	General	0	100%
Chaparral Apartments (1972)	4201 N Garfield	48	52	24	124	124	General	0	100%
Hillcrest Manor (1976)	700 W. Scharbauer	94	4	0	98	98	Elderly Disabled	14	100%
Ranchland (1983)	1212 E Wadley	84	120	0	207	74	General	5	92%
Langtry Village (1985)	2200 N Pecos	84	0	0	84	84	Elderly Disabled	5	100%
Parker Place (1997)	508 E Parker	40	0	0	40	40	Elderly	4	100%
The Zone (2005)	2800 W Illinois	19	20	0	39	39	General	1	100%
Park Glen Apartments (2000)	2300 Camp Drive	42	72	46	160	160	General	10	85%
Santa Rita Apartments (2003)	1900 E. Golf Course Rd.	112	28	0	136	136	Elderly	0	85%
Sterling Springs Apartments (2005)	1701 Fairgrounds Road	28	28	40	96	96	General	9	85%

Constellation Ranch Apartment	1301 Latta	16	72	48	136	130	General	10	100%
Gateway Plaza Apts (2012)	1701 Tradewinds Blvd	not verified	not verified	0	96	95	General	0	85%
Playa Del Pueblo (2013)	611 E I20	12	48	36	96	96	General	7	100%
Pine Hurst	609 Watson	19	18	9	46	46	General	0	95%
Courtyard	2300 N. A Street	NA	NA	NA	NA	NA	NA	NA	95%
Hyde Park	3329 W. Wadley Ave	30	60	30	120	120	General	NA NA	95%
Warterford Lakes	516 N. Loop 250 W	NA	NA	NA	NA	NA	NA	NA	95%
Summerhill	3001 N. Midland Dr.	88	42	0	128	128	General	NA	95%
Northridge Court	3417 N. Midland Dr.	280	60	40	384	348	General	NA	95%
Renew Andrews	1902 N. Midland Dr.	106	106	0	212	212	General	NA	95%
Newport	5244 W. Loop 250 N	148	148	0	296	296	General	NA	95%
Renew Andrews-2	4400 Midland Dr.	106	106	0	212	212	General	NA	95%
Westridge	5200 Graceland	56	40	0	96	84	Elderly	5	85%

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Lending Practices and Reason for the Denials.

The Home Mortgage Disclosure Act (HMDA) was enacted in 1975 and serves as the best source of information on lending practices to protected classes and in minority and low income neighborhoods. The Federal Financial Institutions Examination Council (FFIEC) collects the HMDA data submitted by financial institutions (certain financial institutions, including banks, savings associations, credit unions, and other mortgage lending institutions.). HMDA data sets contain loan application records with information on the race, ethnicity, gender, and income of the applicant, as well as loan terms. However, the data is limited by lack of applicant credit information. Nonetheless, HMDA data can be useful in identifying areas of potential concern that may warrant further investigations such as to detect if applications of a certain gender, race or ethnicity are rejected at higher rates than applicants with other characteristics.

The Loan Denials by Race and Ethnicity in Midland, Texas continue to be an issue for a more equitable loan rates. For all loan types, minority applicants experienced a denial rate higher than Caucasians applicants did. As for gender, the overall denied rate when gender was identified remained higher in denials rates then male applications across all loan categories. When considering the results of the HMDA analysis, one should take caution as some of the samples for the different categories are relatively small which can skew the percentages.

Often, insufficient income or failing credit standards are the reasons for denials. A review of reports generated by the Center for Housing Policy shows that Midland does not have a recent history of high foreclosure rates. Generally, the foreclosure rate has been three percent or lower. However, more current reports indicate a trend to increased delinquency rates on first lien mortgages in Midland.

Concerning local lending institutions complying with the federal Community Reinvestment Act (CRA), the overwhelming majority of local banks have been reviewed since 2018 and each has received a satisfactory rating. Banks have proven to be supportive of local community development and affordable housing efforts through financial aid to local non-profits housing organizations and the City's CD Department. Midland Habitat for Humanity, Visions 2000, Family Promise Inc., Fields Edge, and the Midland Community Development Corporation were recipients of local bank support.

Midland Aggregate Loans-MSA

<i>Selected Variables</i>	<i># of Records</i>	<i>\$ Amount</i>
<i>1 - Conventional</i>	<i>7,166</i>	<i>1,838,820,000</i>
<i>2 - FHA</i>	<i>1,658</i>	<i>344,070,000</i>
<i>3 - VA</i>	<i>427</i>	<i>119,875,000</i>
<i>4 - USDA</i>	<i>2</i>	<i>200,000</i>

MSA/MD Aggregate Reports

Disposition of applications by income, race, and ethnicity of applicant, 2018

MSA/MD: 33260 - MIDLAND, TX

Save as CSV

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
LESS THAN 50% OF MSA/MD MEDIAN														
RACE														
American Indian or Alaska Native	13	1605000	6	740000	1	135000	3	355000	2	320000	1	55000	1	55000
Asian	20	3280000	7	1015000	1	205000	7	1425000	3	475000	2	160000	1	145000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Black or African American	45	5725000	22	2990000	0	0	12	1640000	6	760000	5	335000	3	725000
Native Hawaiian or Other Pacific Islander	3	325000	2	190000	0	0	1	135000	0	0	0	0	0	0
White	668	8376000	299	3978500	18	234000	239	2798500	75	990500	37	374500	56	8230000
2 or more minority races	0	0	0	0	0	0	0	0	0	0	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	10	1470000	4	480000	1	205000	4	560000	1	225000	0	0	0	0
Free Form Text Only	1	25000	0	0	0	0	1	25000	0	0	0	0	0	0
Race Not Available	165	16715000	56	4910000	6	740000	63	7115000	26	2850000	14	1100000	12	1840000
ETHNICITY														
Hispanic or Latino	417	42595000	172	18820000	12	1590000	160	14980000	43	4625000	30	2580000	17	2505000
Not Hispanic or Latino	418	60200000	200	28600000	14	2000000	135	19885000	50	7750000	19	1965000	45	6865000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	10	1070000	4	480000	0	0	5	535000	0	0	1	55000	0	0
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ethnicity Not Available	80	9040000	20	2210000	1	35000	30	3840000	20	2160000	9	795000	11	1625000
50-79% OF MSA/MD MEDIAN														
RACE														
American Indian or Alaska Native	9	1395000	5	815000	0	0	2	160000	2	420000	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Asian	33	5915000	22	4030000	2	360000	5	785000	4	740000	0	0	3	545000
Black or African American	44	8210000	28	5340000	2	360000	4	590000	9	1775000	1	145000	5	935000
Native Hawaiian or Other Pacific Islander	6	1210000	2	470000	0	0	2	90000	0	0	2	650000	0	0
White	1120	191040000	749	136755000	29	4185000	163	20425000	145	25435000	34	4240000	159	33245000
2 or more minority races	0	0	0	0	0	0	0	0	0	0	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	27	342500 0	15	226500 0	0	0	2	47000 0	4	69000 0	0	0	0	0
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Race Not Available	227	3211500 0	125	1981500 0	5	615000	58	631000 0	23	42650 00	10	111000 0	39	814500 0
ETHNICITY														
Hispanic or Latino	579	827850 00	327	514250 00	20	26800 00	139	147150 00	73	118550 00	20	211000 0	47	978500 0
Not Hispanic or Latino	698	1313500 00	498	969900 00	15	23850 00	69	105650 00	97	184450 00	19	29650 00	117	232050 00

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps. Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	33	5335000	27	4605000	0	0	4	460000	1	105000	1	165000	7	1435000
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	1	295000
Ethnicity Not Available	144	2384000	94	1647000	3	455000	24	309000	16	292000	7	905000	40	8150000
80-99% OF MSA/MD MEDIAN														
RACE														
American Indian or Alaska Native	5	805000	3	545000	2	260000	0	0	0	0	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Asian	17	1955000	10	1720000	0	0	0	0	0	0	1	235000	2	300000
Black or African American	12	2030000	6	1320000	0	0	4	520000	0	0	2	190000	1	245000
Native Hawaiian or Other Pacific Islander	0	0	0	0	0	0	0	0	0	0	0	0	0	0
White	405	83875000	294	65250000	6	1070000	55	8075000	40	8390000	10	1090000	69	17065000
2 or more minority races	0	0	0	0	0	0	0	0	0	0	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps. Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Num ber	\$Amount	Num ber	\$Amount	Num ber	\$Amount	Num ber	\$Amount	Num ber	\$Amount	Num ber	\$Amount	Num ber	\$Amount
Joint	6	790000	5	695000	0	0	1	95000	0	0	0	0	0	0
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Race Not Available	63	1075500	38	675000	0	0	11	139500	9	198500	5	62500	9	217500
ETHNICITY														
Hispanic or Latino	171	2867500	118	2213000	2	26000	27	252500	15	277500	9	98500	15	322500
Not Hispanic or Latino	272	5971000	204	4724000	5	97500	31	528500	24	518000	8	103000	56	1392000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	22	4320000	13	2795000	1	95000	4	570000	3	735000	1	125000	2	640000
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ethnicity Not Available	37	7505000	21	4115000	0	0	9	1705000	7	1685000	0	0	8	2000000
100-119% OF MSA/MD MEDIAN														
RACE														
American Indian or Alaska Native	13	2765000	7	1665000	0	0	2	300000	3	765000	1	35000	1	175000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Asian	28	625000	17	374500	3	55500	3	60500	3	85500	2	49000	7	186500
Black or African American	23	482500	14	336000	0	0	3	275000	5	109500	1	95000	2	480000
Native Hawaiian or Other Pacific Islander	2	460000	2	460000	0	0	0	0	0	0	0	0	1	205000
White	1037	237135000	711	170835000	28	59900	115	211650	151	33945000	32	52000	183	467150
2 or more minority races	0	0	0	0	0	0	0	0	0	0	0	0	0	0

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps. Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	16	3850000	10	2210000	0	0	3	765000	2	530000	1	345000	0	0
Free Form Text Only	1	65000	0	0	0	0	1	65000	0	0	0	0	0	0
Race Not Available	187	3808500	97	1936500	6	65000	46	810000	37	857500	7	139500	30	853000
ETHNICITY														
Hispanic or Latino	373	7262500	226	4928000	9	177500	72	101600	50	951000	16	19000	39	942500
Not Hispanic or Latino	732	17353000	509	12408500	27	393500	69	1403500	114	2747000	19	400500	145	3713500

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	63	15655000	44	11000000	2	490000	7	1665000	9	2375000		1125000	9	2455000
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ethnicity Not Available	139	31625000	73	17275000	5	995000	25	5415000	28	6410000	8	1530000	37	8955000
120% OR MORE OF MSA/MD MEDIAN														
RACE														
American Indian or Alaska Native	14	3970000	9	2335000	0	0	2	640000	2	700000	1	295000	2	510000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Asian	62	208000.00	39	140450.00	2	78000.00	7	211500.00	12	32000.00	2	66000.00	13	341500.00
Black or African American	45	108350.00	24	648000.00		1145000.00	12	192000.00	7	191500.00	1	37500.00	3	895000.00
Native Hawaiian or Other Pacific Islander	5	765000.00	2	570000.00	0	0.00	3	195000.00	0	0.00	0	0.00	0	0.00
White	1877	561055.00	1337	4151450.00	56	153900.00	183	421550.00	252	781000.00	55	102650.00	397	125515.00
2 or more minority races	3	120500.00	1	215000.00	0	0.00	1	36500.00	1	62500.00	0	0.00	1	215000.00

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	67	17075000	39	12065000	4	760000	9	2145000	7	1735000	2	370000	7	2245000
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Race Not Available	278	7589000	182	5082000	6	2190000	38	8170000	45	13295000	7	1415000	52	16630000
ETHNICITY														
Hispanic or Latino	365	91945000	220	59830000	12	2430000	64	12450000	48	13450000	21	3785000	47	14155000
Not Hispanic or Latino	1609	499155000	1158	371310000	48	14010000	146	35620000	224	70810000	33	7405000	350	113820000

INCOME, RACE AND ETHNICITY	Applications Received		Loans Originated		Apps Approved But Not Accepted		Applications Denied		Applications Withdrawn		Files Closed for Incompleteness		Purchased Loans	
	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount	Number	\$Amount
Joint	110	270300.00	73	197650.00	2	49000.00	13	226500.00	17	36850.00	5	82500.00	27	593500.00
Free Form Text Only	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ethnicity Not Available	267	734650.00	176	507700.00	7	23350.00	32	737000.00	37	116250.00	9	136500.00	57	155150.00

Report date: 08/09/2019

Current Fair Housing Status

The City does not have a fair housing ordinance or resolution in effect. Rather, the City directs complaints alleging housing discrimination to the State of Texas or HUD. The Texas Workforce Commission Civil Rights Division is the entity responsible for the State law. Through November 2019, HUD had not filed fair housing discrimination charges against the City of Midland. There are also no court orders, consent decrees or HUD-imposed sanctions affecting the provision of assisted housing or fair housing remedies in Midland. The Department of Justice or private plaintiffs have not filed fair housing discrimination suits against the City.

As for impediments identified in the 2020 AI, the following highlights actions taken to meet original broad objectives of that AI:

Fair Housing Advocate – CD staff attended training, made referrals to HUD and the local legal aid agency, and created the MFHP. MFHP includes the Board of Realtors, the Midland Apartment Association, and the Midland Affordable Housing Alliance and others in its membership (see the Appendix).

Public Awareness – CD staff conducted low cost promotions; shared information at community functions, and celebrated Fair Housing Month with issuance of a fair housing month proclamation

Preparing Households/Individuals for Housing Choices – CD staff disseminated information on tenant rights and supported local financial educational programs.

Making Housing Choices Available – This was accomplished by implementing the City's Consolidated Plan. Housing programs were conducted by the CD Division, land was acquired and/or transfer to local non-profit affordable housing agencies.

City Policies, Procedures and Practices

As for the composition of bodies of elected or appointed individuals who make or recommend policy for the City of Midland, the publically elected City Council is made of seven members of which two represent census tracts with a poverty rate above 50%. The Mayor and City Council make all the appointments to the various Boards and Commissions of the city government. Interested citizens fill out applications that do not inquire about race, ethnicity or gender. (See copy in the Appendix). Some boards or commissions have qualifications determined by ordinance or State statute.

The City of Midland Comprehensive Plan (Tall City Tomorrow) provides a guide for future development policy. It is a tool to guide city priorities and directions, and provide context for making key land use and public investment decisions. The Midland 2025 Master Plan is the tool used to guide all rezoning requests and subdivision plats (including those within 3.5 miles of city limits).

Land use control is most commonly achieved by zoning ordinances such as those enacted in Midland. How land is zoned can support or hinder implementation of public policy that seeks to provide a mixture of housing, including affordable housing. A zoning ordinance can restrict the type of housing; determine the density of housing and the lot sizing. The effects can be exclusionary and/or the cost of housing unnecessarily increased. The City of Midland will continue to work towards an equitable distribution of stock (workforce housing, subsidized housing, market rate housing and supportive services housing).

The City may also use planned district zoning to allow residential development in a manner that conform to all requirements of the zoning district in place. Because of the net decline of available land and the variety of residential zoning districts available throughout most of Midland has become an additional affordable issue in Midland. The Residential Zoning Districts Map displays residential districts by the housing density allowed in individual districts. The City's public policies have resulted in the favorable allocation of land for development of multi-family sites located outside of minority-concentrated areas.

While neighborhoods need to have a strong role in decisions regarding development proposals, NIMBYism can be a significant barrier to affordable housing. NIMBY is short for "not in my backyard." Unfortunately, NIMBYism is usually associated with the misconception and preconceived notions of residents, the policies and practices of government entities can influence the role that NIMBYism plays in land use and zoning decisions promoting positive outcomes. Past actions and/or concerns about resistance by neighborhood groups can discourage developers from building in areas with NIMBY reputations. Housing proposals for persons with disabilities is most often affected by NIMBYism.

A city's subdivision code can also affect the cost of housing due to its public improvement requirements. Excessive design standards and infrastructure requirements (size of streets, curb and gutter, sidewalks, etc.) are passed on to the price of housing. Excessive public right-of-way requirements are a cost burden to developments. The City will waive these requirements for development under certain circumstances. Where excessive right-of-way exists, the City can issue right-of-way use permits thereby reducing the cost of installing off-street parking. The use of CDBG funds for public infrastructure (street paving, curb and gutter, sidewalks, etc.) also aids in keeping the cost of housing affordable.

Development standards such as building codes, housing standards and site requirements (parking, landscaping, etc.) add to the cost of housing especially if such standards are overly restrictive and excessive. The balance is the safety and quality assurances that are provided to citizens, especially those with limited options. The City updated its building codes in 2018 so as to adhere to the following: International Building Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, International Residential Code and the International Energy Efficiency Code, all with local amendments. The National Electrical Code will remain in effect. The construction of affordable housing in Midland is significantly affected by these various governmental standards. All housing construction development requires compliance with the Texas Minimum Construction Standards and the Texas Accessibility Standards and the City's housing rehabilitation program.

The City also collects building permits and other charges. Under certain circumstances, some of these charges could be viewed as duplicative, onerous, inhibiting innovations or encouraging inequitable administration. Generally, Midland's building related fees are not excessive. City does not recover full cost of administering those permits. When the City (as opposed to a private property owner) initiates a process, fee payment from affected property owners can be waived. Steps to ensure that duplication does not occur have included the establishment of a coordinated development permit system. The City will waive or reduce appropriate fees and charges (e.g., building permit fees, water and sewer taps) on non-profit sponsored housing development.

Local property taxes can also be viewed as contributing to the housing cost burden of individual households. The Midland County Appraisal District determines the appraised value of all taxable property in the city. This is based on its market value as of January 1st each year. A property can have as many as nine taxing entities in Midland County. To lower the property tax on their individual property, property owners may take available exemptions. The general homestead exemption is provided by state law for owner-occupied residential properties. The over 65 exemption is for all resident owners of age 65 or older. All taxing entities allow that exemption as well as the disabled veteran deduction. Other optional exemptions are the disability exemption and the surviving spouse resident who is 55 years or older.

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Other Factors

Federal Executive Order 12898 directs Federal agencies to achieving environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. HUD has developed its environmental justice strategy. The State of Texas through the Health and Human Service Commission has established Disproportionality and Disparities Advisory Committees in each region of Texas to provide ongoing guidance for disproportionality planning and implementation work. Each region has advisory groups that meet to develop strategies and activities to eliminate disproportionality and disparities. Midland is served by the group in Region 9.

The General Features Map also displays the bus routes of EZ-Rider, the public transit system serving Midland and Odessa. As a recipient of federal transit funds, EZ Rider is subject to civil rights laws. It is governed by the Midland Odessa Urban Transit Board that is comprised of six individuals from both cities, appointed by their respective City Councils. Diversity on this board is evident.

Fair Housing & MISD Elementary Schools Performance Data

Fair housing choice throughout the community should include the availability of affordable housing within all public schools. To meet state statutory requirements, the Texas Education Agency's accountability system assigns ratings that designate acceptable and unacceptable performance for campuses and districts. In brief, a Met Standard performance is an acceptable rating assigned to districts and campuses that meet the target on all indexes for which it has performance data. Distinction designations are awarded in recognition of outstanding achievement in specific areas.

The MISD Elementary Schools Performance Map shows how each campus fared in TEA accountability. A map of the boundaries of all Midland Independent School District elementary campuses is also in the Appendix. For 2018, MISD has modified its elementary school boundaries.

The Appendix includes a data highlighting census tracts that have a greater than city average of Non-English speaking population. Most of the low income and minority concentrated areas are impacted by this factor.

Primarily all new single family housing that is constructed or substantially modified by HUD funding or City supported activity meets the State's viability standards. This means that the unit is designed in such a way that it can be lived in or visited by people with disabilities. Key features are no-step entrance, adequate width doors, hallways, and a first floor bath sufficient to allow a person in a wheelchair to enter and close the door.

IMPEDIMENTS TO FAIR HOUSING CHOICE

Along with the results of the preceding reviews, the City attempted two methods of soliciting input from the public on their fair housing choice experiences. One was the “analysis of impediments to fair housing choice questionnaire” (see copy in the Appendix) that was distributed at public meetings that the CD staff conducted as part of the developing both the Consolidated Plan and the AI. The questionnaire was also distributed at other groups meetings that CD staff participated in late 2019. Unfortunately, the return rate of the questionnaires was about 50% but the information was very informative and provided for a good road map in planning.

The second approach was a survey instrument that was distributed at the above referenced community meetings and other group meetings attended by CD staff during the first quarter of 2020. A copy of that instrument is in the Appendix. The intent of this tool was to query housing professionals, advocates and others interested in housing issues affecting various population categories such the poor, the disabled, homeless persons, etc. in Midland. Respondents were ask to evaluate a number of possible impediments to fair housing in Midland by replying if they thought an issue/item “was not, might be or was an impediment.”

The survey’s results are in the Appendix and summarized as follows:

- The majority of respondents thought these were impediments -
 - Lack of affordable apartments/rental houses
 - Lack of affordable homes to buy
 - Lack of affordable senior housing
- The majority of respondents thought language barriers continue to be impediments
- The following were selected by most as being impediments -
 - Discriminatory practices among apartment managers
 - Discriminatory practices among bankers/lenders
 - Discriminatory practices in fair housing activities/processes
- Conversely, the majority “did not know” about the following:
 - Discriminatory practices among advertising by media
 - Discriminatory practices among insurance industry
 - Discriminatory practices among Realtors
 - Discriminatory practices among single-family unit landlords

The Community Development Office focused on selecting impediments that presented opportunity for realistic improvements as HUD suggests a prioritized list of impediments to address. In priority order, the AI identified six impediments as follows:

In priority order, the AI identified six priority impediments as follows:

1. Lack of affordable housing - affordable housing is lacking; therefore, protected classes households have very limited housing choices. The need for affordable housing includes units for special needs subpopulations such as people with disabilities and senior housing units.
2. Census tracts of minority and/or low income concentrations – the lack of affordable housing outside of low income and minority concentrated areas exacerbates segregation. The lack of affordable housing disproportionately affects protected classes with lower incomes.
3. Insufficient public awareness of fair housing laws – the lack of knowledge about fair housing requirements creates barriers to affirmatively furthering fair housing.
4. Private market barriers exist – the protected classes experience more unsuccessful banking activity than other categories of applicants.
5. Lack of diverse policymaking bodies – diversity in the composition of policymaking may bring attention to housing choice issues when policy decisions are being considered.

The AI also identified several concerns as follows (these are not in priority order):

- Information on housing choice is not widely available. It also needs to be provided in languages other than English.
- Substandard housing conditions including lack of accessibility can improve housing choices.
- Not-In-My-Backyard or NIMBYism

FAIR HOUSING PLAN / STRATEGIES TO OVERCOME BARRIERS

For the priority impediments, possible actions are outlined below and will serve as the basis for developing annual action plans to affirmatively further fair housing. Until such time that the AI is replaced by an AFFH, the below recommendations can comprise the annual fair housing programming for the City of Midland over the next five years – October 2020 to September 2025.

Additional activity that can be considered to address impediments of concern can be:

- Developing easy-to-find information with translation and accessible features
- on websites and in housing materials. It also needs to be provided in
- languages other than English.
- Assist developers in providing information about its affordable housing proposals to neighborhood groups/residents

Community Development staff prepares an annual action plan to be developed in consideration of funding source parameters. Since the CDBG funding cycle starts when applications are due in April, development of the annual plan should consider this requirement. CDBG funds can be used for fair housing programming as part of the CDBG Administration category, or as a public service; subject to the spending limitation on public services.

Impediment	Possible Actions to Address the Impediment
Lack of Affordable Housing	Implement the City's Consolidated Plan with regards to addressing priority housing needs Seek programming to aggregate land for future affordable housing units Assist the rental voucher program in identifying units for voucher holders Identify options for a sustainable local dedicated funding source for affordable housing Work with accessibility and/or disabled community/advocates to seek to increase supply of accessible units Seek to require enhanced local housing accessibility and visitability standards

Areas of minority and/or low income concentration	Institute a moratorium on affordable housing proposals in concentrated areas Seek incentives to encourage development of higher end housing in concentrated areas Encourage proposals that will provide affordable housing outside of concentration areas
Insufficient public awareness of fair housing	Continue the advocacy and public awareness programs of the 2020 Fair Housing Plan (Copy is in the Appendix) Facilitate and participate in forums for advocating fair housing Utilize the City's media outlets for awareness activity

Impediment	Possible Actions to Address the Impediment
Lack of Affordable Housing near the better schools.	Seek incentives to encourage development of higher end housing in concentrated areas Encourage proposals that will provide affordable housing outside of concentration areas
Private market barriers	Continue 2015 Fair Housing Plan activity to prepare households for housing choice (See the Appendix) with emphasis on credit and credit repair services Consider increasing the financial education requirements for receiving housing program benefits Assist lenders in pursuing options to better serve the under banked or unbanked Seek/encourage employer programs to complement banking options for protected classes households Conduct further studies/analysis of lending practices
Policy bodies not diverse	Encourage governing bodies to consider diversity when appointing members to its boards and commissions

SUMMARY

The citizens of Midland are protected from discrimination through states and local legislation and policies influencing the housing market. The federal Fair Housing Act serves as the foundation for fair housing policy in the United States, prohibiting discrimination on the bases of race, color, sex, religion, national origin, disability, and familial status. State law extends protections to Texans based on these same attributes; yet we must remain vigilant in rooting out housing discrimination. Illegal housing discrimination continues and may be manifested through covert actions. The City of Midland and the Community Development Office will continue to promote and advocate for fair housing and fair lending practices.

Appendix Contents

Acknowledgments:

- General Features Map
- 2018 Census Tracts Map
- Population Change from 2010-2018 Table
- White Population by Census
- Black Population by Census
- Asian Population by Census
- Hispanic Population by Census
- Low Income Population by Census
- Apartment Locations Map
- Percent of Renter Housing by Census
- Percent of Owner Housing by Census
- Median Rent by Census
- Median Value of Owner Housing by Census
- Percent Substandard Housing by Census
- Residential Permits 2015 to 2018
- Apartment Permits 2015 to 2018
- Mortgage Loan Denials 2018
- MISD Elem. School Listing 2018
- MISD Elem. School Performance Listing 2018

Impediments Rating Tool

- Results of Fair Housing Impediments Survey among Housing Advocates
Citizen Questionnaire
- 2020 Fair Housing Plan Objectives
- How to Report Housing Discrimination
- Sheet Internet Resources-TEA, HMDA,
- U.S. Census
- City Board
Applications

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Notices of Meetings



COMMUNITY MEETINGS

The City of Midland will hold the following public meetings regarding the City's community development

March 9, 2020 Casa de Amigos, 1101 E Garden Lane Meeting begins at 10:00 a.m.	March 11, 2020 MLK Community Center, 2300 Butternut Lane Meeting begins at 6:30 p.m.	March 13, 2020 South East Senior Center, 1803 E Indiana Ave Meeting begins at 10:00 a.m.	March 24, 2020 City of Midland Council Chambers Meeting begins at 6:00 p.m.
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The City is preparing a new **Consolidated Plan** and a new **Analysis of Impediments (AI)** for the Community Development Block Grant (CDBG) program. The Consolidated Plan will provide priorities to various needs of the City's low-moderate income areas and will be a guide on the use of CDBG funds. The AI involves an assessment of how laws, regulations, policies and procedures affect the location, availability, accessibility, and conditions of fair housing choices.

The 2020/21 CDBG office anticipates funding in the amount of **\$970,435** from the U.S. Department of Housing and Urban Development allocated to the city projects. The City expects to receive **\$90,000** in Program Income for 2020/21. A minimum 70% of CDBG funds must be allocated to projects that benefit low and moderate-income persons. Examples of activities eligible for CDBG funding are: housing rehabilitation, sidewalks, street improvements, park improvements, code enforcement, lot clearance, economic development and public services.

For further information, call the Community Development Office at 685-7472 or 685-7408.

FAIR HOUSING is the LAW

The Federal Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex, handicap or familial status. If you feel your rights have been violated, you may call HUD at 1-800-669-9777 (TOO) 1-800-927-9275).

Appendix

The Appendix has data displaying the census tracts according to the percent of each racial or ethnic group compared to the citywide percentage of that group, selected characteristics of people in poverty, and educational attainment. The charts illustrates concentrations of minority areas in Midland expressed by Census tracts, poverty, age, and child characteristics: Tract 3.05, Census Tract 101.04, Census Tract 101.12, Census Tract 101.13, Census Tract 101.06, Census Tract 13, Census Tract 101.05, Census Tract 5, Census Tract 6, Census Tract 12, Census Tract 4.01, Census Tract 3.02, Census Tract 4.02, Census Tract 102, Census Tract 11, Census Tract 101.07, Census Tract 101.14, Census Tract 1, Census Tract 101.09, Census Tract 15, Census Tract 17, Census Tract 14. A minority concentrated tract means one having 100% more than the city average.

Geographic area	Total population	Race			
		One race			
		Total	White	Black or African American	American Indian and Alaska Native
Midland	136,872	133,602	105,302	9,087	1,013
Census	5,388	5,248	2,833	1,593	42
Census	4,928	4,802	3,928	500	20
Census	5,504	5,381	4,329	431	14
Census	4,258	4,209	3,975	29	31
Census	3,962	3,888	3,376	135	18
Census	4,943	4,827	4,319	223	37
Census	3,435	3,320	2,790	203	15
Census	4,754	4,621	3,769	259	37
Census	4,771	4,636	3,777	237	52
Census	4,231	4,115	3,326	293	35
Census	5,130	4,916	3,310	276	42
Census	6,228	6,010	4,385	309	45
Census	5,971	5,812	4,537	316	53
Census	4,576	4,438	2,870	216	35
Census	4,262	4,164	1,957	1,247	35
Census	4,164	4,029	2,084	900	54
Census	6,978	6,814	5,741	270	51
Census	2,642	2,568	2,153	156	20
Census	5,451	5,352	4,429	258	34
Census	4,377	4,305	3,655	212	26
Census	3,370	3,318	3,071	90	11
Census	7,858	7,715	5,774	101	59
Census	11,417	11,221	9,971	227	83
Census	9,514	9,342	8,293	80	56
Census	5,331	5,251	4,631	57	70
Census	3,429	3,300	2,019	469	38
Census Tract 9800	0	0	0	0	0

Poverty Status

Subject	Midland County, Texas			
	Total	Less than 50 percent of the poverty level	Less than 100 percent of the poverty level	Less than 125 percent of the poverty level
	Estimate	Estimate	Estimate	Estimate
Population for whom poverty status is determined	157,849	4.1%	8.7%	11.9%
SEX				
Male	79,262	3.2%	7.0%	10.3%
Female	78,587	5.0%	10.3%	13.4%
AGE				
Under 18 years	44,040	5.8%	11.5%	15.8%
Related children of householder under 18 years	43,977	5.7%	11.4%	15.8%
18 to 64 years	97,857	3.5%	7.3%	10.0%
65 years and over	15,952	3.1%	9.3%	12.5%
RACE AND HISPANIC OR LATINO ORIGIN				
One race	154,470	4.0%	8.7%	11.7%
White	130,843	4.0%	8.1%	10.5%
Black or African American	9,643	4.6%	10.7%	19.8%
American Indian and Alaska Native	727	2.8%	2.8%	3.9%
Asian	3,079	2.1%	3.7%	3.7%
Native Hawaiian and Other Pacific Islander	74	0.0%	0.0%	0.0%
Some other race	10,104	4.4%	15.6%	21.9%
Two or more races	3,379	5.9%	10.4%	19.7%
Hispanic or Latino origin (of any race)	68,502	6.1%	13.2%	17.1%
White alone, not Hispanic or Latino	74,674	2.2%	4.5%	6.2%
LIVING ARRANGEMENT				
In family households	136,050	3.7%	7.9%	10.6%
In married-couple family	99,177	1.4%	3.5%	5.2%
In Female householder, no husband present households	26,391	12.3%	24.5%	31.4%
In other living arrangements	21,799	6.2%	13.8%	19.7%

Children Characteristics

Subject	Midland County, Texas Total	Midland County, Texas In male householder, no wife present, family household	Midland County, Texas In married-couple family household	Midland County, Texas In female householder, no husband present, family household
	Estimate	Estimate	Estimate	Estimate
Children under 18 years in households	44,594	2,913	30,463	10,899
AGE				
Under 6 years	35.6%	37.8%	35.2%	36.6%
6 to 11 years	34.7%	32.9%	34.7%	35.4%
12 to 17 years	29.7%	29.4%	30.1%	28.0%
RACE AND HISPANIC OR LATINO ORIGIN				
One race	96.2%	94.6%	97.1%	94.5%
White	81.7%	81.6%	86.0%	70.5%
Black or African American	5.9%	2.4%	2.2%	17.2%
American Indian and Alaska Native	0.1%	0.0%	0.0%	0.4%
Asian	2.0%	2.2%	2.4%	0.7%
Native Hawaiian and Other Pacific Islander	0.1%	0.0%	0.1%	0.0%
Some other race	6.2%	8.4%	6.3%	5.6%
Two or more races	3.8%	5.4%	2.9%	5.5%
Hispanic or Latino origin (of any race)	53.9%	62.6%	51.5%	59.0%
White alone, not Hispanic or Latino	36.3%	33.5%	42.3%	20.0%
RELATIONSHIP TO HOUSEHOLDER				
Own child (biological, step or adopted)	85.9%	67.6%	90.9%	79.2%
Grandchild	8.8%	9.2%	6.3%	16.0%
Other relatives	3.9%	16.0%	2.6%	4.6%
NATIVITY				
Native	96.4%	93.6%	96.9%	96.1%
Foreign born	3.6%	6.4%	3.1%	3.9%
PRESENCE OF OTHER ADULTS				

School Enrollment

Subject	Midland County, Texas				
	Total	Percent	In public school	Percent in public school	In private school
	Estimate	Estimate	Estimate	Estimate	Estimate
Population 3 years and over enrolled in school	40,804	(X)	(X)	84.7%	(X)
Nursery school, preschool	2,475	6.1%	1,435	58.0%	1,040
Kindergarten to 12th grade	30,953	75.9%	27,082	87.5%	3,871
Kindergarten	2,357	5.8%	2,003	85.0%	354
Elementary: grade 1 to grade 4	10,208	25.0%	8,809	86.3%	1,399
Elementary: grade 5 to grade 8	9,714	23.8%	8,410	86.6%	1,304
High school: grade 9 to grade 12	8,674	21.3%	7,860	90.6%	814
College, undergraduate	5,852	14.3%	5,048	86.3%	804
Graduate, professional school	1,524	3.7%	987	64.8%	537
Population enrolled in college or graduate school	7,376	18.1%	6,035	81.8%	1,341
Males enrolled in college or graduate school	3,036	14.9%	2,367	78.0%	669
Females enrolled in college or graduate school	4,340	21.3%	3,668	84.5%	672
Population 3 to 4 years	5,383	(X)	(X)	(X)	(X)
3 to 4 year olds enrolled in school	1,983	36.8%	1,136	57.3%	847
Population 5 to 9 years	12,565	(X)	(X)	(X)	(X)
5 to 9 year olds enrolled in school	11,863	94.4%	10,066	84.9%	1,797
Population 10 to 14 years	11,730	(X)	(X)	(X)	(X)
10 to 14 year olds enrolled in school	11,544	98.4%	10,094	87.4%	1,450
Population 15 to 17	6,605	(X)	(X)	(X)	(X)
15 to 17 year olds enrolled in school	6,507	98.5%	5,806	89.2%	701
Population 18 to 19 years	4,006	(X)	(X)	(X)	(X)
18 and 19 year olds enrolled in school	2,656	66.3%	2,430	91.5%	226
Population 20 to 24 years	11,585	(X)	(X)	(X)	(X)
20 to 24 year olds enrolled in school	2,553	22.0%	2,126	83.3%	427

Acknowledgements

Council Member Mayor:	Patrick Payton
Council Member District 1:	Scott Dufford
Council Member District 2:	John Norman
Council Member District 3:	Jack Ladd
Council Member District 4:	Lori Blong
Council Member At-Large:	Spencer Robnett
Council Member At-Large:	Michael Trost

Courtney Sharp, City Manager
Morris Williams City Manager
Robert Patrick Assistant City Manager
Charles Harrington, Director of Development Services
Isaac G Garnett, Community Development Manager
Wanda Valles, CDBG Program Coordinator
Steve Baker, GIS Specialist

MIDLAND FAIR HOUSING PARTNERSHIP MEMBERS

City of Midland Community Development Office
Buckner Children and Family Services
Casa De Amigos
Midland Affordable Housing Alliance
Midland College BEDC
Midland Community Development Corp
Midland County Housing Authority
Midland Habitat for Humanity
Midland Hispanic Chamber of Commerce
City of Midland Housing Authority
National Alliance on Mental Illness
Permian Basin Community Centers
Permian Basin Workforce Development Board – 211
Senior Link of Midland
Texas Civil Rights Project

SURVEY RESULTS & DEMOGRAPHIC MAPS

2010 CENSUS TRACTS

STEVE BAKER
2/12/2015

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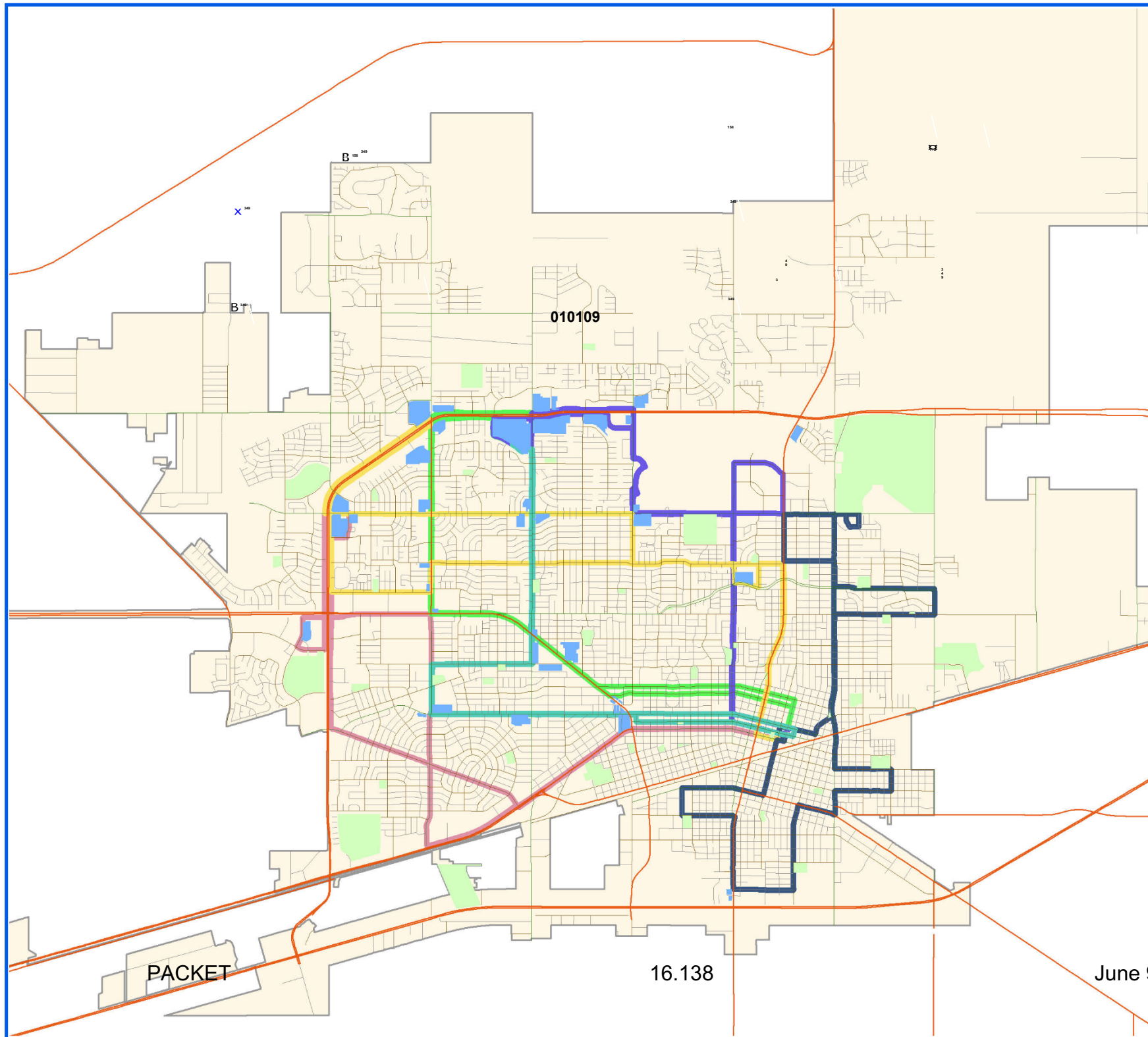
Legend

-  Census Tracts
-  City Limit
-  County Boundary

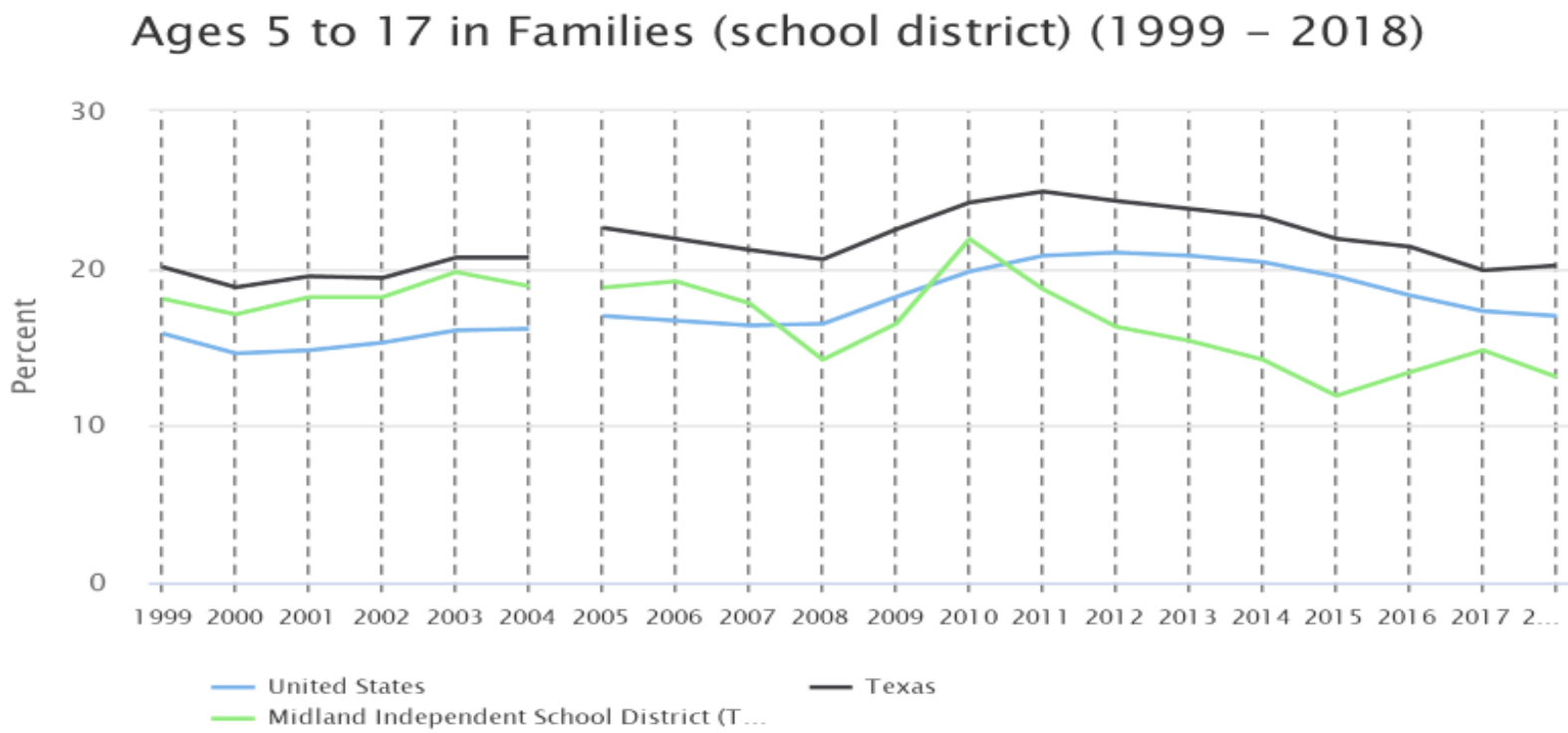


STEVE BAKER
1/27/2015

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Midland Independent School District Poverty Chart



U.S. Census Bureau

All Ages (state/county) (1997 – 2018)

DATA MAPS

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DATA MAPS

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Fair Housing – it's the Law. The Federal Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex, handicap or familial status

Please evaluate the following possible impediments to fair housing in Midland by marking your response.	It is not	It might be	Yes, it is	I don't know
	an	an impediment		
Discriminatory practices among apartment managers				
Discriminatory practices among bankers/flenders				
Discriminatory practices among insurance industry representatives				
Discriminatory practices among local housing programs				
Discriminatory practices among Realtors				
Discriminatory practices among single family unit landlords				
Inadequate advertising by local media including daily paper				
Lack of affordable apartments/rental houses				
Lack of affordable homes to buy				
Lack of affordable housing near the better schools				
Lack of apartments for the disabled				
Lack of funding for local fair housing activities including investigation and testing				
Lack of knowledge among households regarding fair housing				
Lack of local funding for affordable housing				
Lack of rental assistance				
Lack of transportation by households				
Language barriers				
Restrictions on locating group homes or community living facilities				
Other (Describe)				
Other (Describe)				

Results of Fair Housing Impediments Survey Among Housing Advocates

Page 1

	Discriminatory practices among apartment managers	Discriminatory practices among bankers lenders	Discriminatory practices among insurance industry representatives	Discriminatory practices among local housing programs	Discriminatory practices among Realtors	Discriminatory practices among single family unit landlords	Inadequate advertising by local media including daily paper	Lack of affordable apartments rental houses	Lack of affordable homes to buy	Lack of affordable housing near the better schools
Is not	1	5	5	5	2	1	3	0	1	0
Might be	9	8	5	6	7	4	6	3	0	0
Yes it is	4	1	0	1	2	8	5	20	18	17
Don't know	13	13	17	15	16	14	13	4	8	10
total	27	27	27	27	27	27	27	27	27	27
Is not	3.70%	18.52%	18.52%	18.52%	7.41%	3.70%	11.11%	0.00%	3.70%	0.00%
Might be	33.33%	29.63%	18.52%	22.22%	25.93%	14.81%	22.22%	11.11%	0.00%	0.00%
Yes it is	14.81%	3.70%	0.00%	3.70%	7.41%	29.63%	18.52%	74.07%	66.67%	62.96%
Don't know	48.15%	48.15%	62.96%	55.56%	59.26%	51.85%	48.15%	14.81%	29.63%	37.04%
over 50% rated it is or might be a								<u>YES</u>	<u>YES</u>	<u>YES</u>

Results of Fair Housing Impediments Survey Among Housing Advocates

Page 2

	Lack of apartments for the disabled	Lack of funding for local fair housing activities including investigation	Lack of knowledge among households regarding fair housing	Lack of local funding for affordable housing	Lack of rental assistance	Lack of transportation by households	Language barriers	Restrictions on locating group homes or community living facilities
Is not	2	1	2	2	0	2	1	0
Might be	1	1	1	0	0	2	2	3
Yes it is	17	8	15	19	19	15	17	11
Don't know	9	19	11	8	10	10	9	15
total responses	29	29	29	29	29	29	29	29
Is not	6.89%	3.44%	6.89%	3.44%	0.00%	6.89%	3.44%	0.00%
Might be	3.44%	3.44%	3.44%	0.00%	0.00%	6.89%	6.89%	10.34%
Yes it is	58.62%	24.13%	51.72%	65.51%	65.51%	51.72%	58.62%	37.93%
Don't know	31.03%	65.51%	37.93%	31.03%	34.48%	34.48%	31.03%	51.72%
over 50% rated it is or might be a problem	<u>YES</u>		<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>



Analysis of Impediments to Fair Housing Choice Questionnaire

The City of Midland is preparing an analysis of impediments (AI) to fair housing choice. The AI helps identify barriers and the necessary actions for fair housing in Midland. To aid in the AI, we want your input if you feel that you have been discriminated against or if you have encountered obstacles in seeking housing. Return by April 21, 2015 to Community Development, PO Box 1152, Midland, Texas 79702 or by email to scantu@midlandtexas.gov. Submitted forms must include valid responses to the first line. Individual responses will remain confidential. Thank you for your participation.

Zip Code of Current Residence: _____

Are you a: ☐ Renter ☐ Homeowner ☐ Living in Temporary Housing

What is your race (check all that apply): ☐ African American ☐ Asian ☐ Caucasian

☐ Native American

☐ Other (specify) _____

Are you Hispanic: ☐ Yes ☐ No

Check all that apply :

☐ Male

☐ Female

☐ Veteran

☐ Disabled

☐ Children reside with you

What is your gross household annual income:

☐ less than \$30,000

☐ from \$30,000 to \$60,000

☐ more than \$60,000

Was refusal of available housing made on the following grounds (Check all that apply):

☐ Age

☐ Race

☐ Color

☐ National Origin

☐ Disability

☐ Sex

☐ Religion

☐ Family status (children living with you)

☐ other (describe): _____

When did it occur: ☐ within the last 3 years ☐ more than 3 years ago

Please identify who was involved in refusing available housing to you:

☐ Lender

☐ Landlord

☐ Apartment Manager

☐ Realtor

☐ Service Provider

☐ Other (specify) _____

Did you file a complaint: ☐ Yes ☐ No If **yes**, with whom did you file a complaint:

If not, why not: _____

To avoid/limit such experiences, what action by whom would be helpful? _____

Please use the back of this form or include additional sheets as needed.



See http://portal.hud.gov/portal/page/portal/HUD/program_offices/fair_housing_equal_opp on the Internet for further information on fair housing.

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2020 FAIR HOUSING PLAN

Lack of a fair housing advocate – need an entity for enhanced advocacy and coordination of fair housing activity.

- Support the establishment of an entity to advocate fair housing
- Communicate designation to the public
- Secure cooperative commitments from housing related groups to actively support fair housing
- Assist public in filing complaints with State of Texas or HUD
- Monitor local public programs for compliance
- Review and disseminate pertinent data
- Coordinate forum for advocating fair housing

Insufficient public awareness of fair housing – overall promotion of fair housing and education of it and housing choice needs improvement.

- Develop an annual action plan of educational and promotional programs
- Disseminate informational materials to partner groups
- Institute low cost promotional activities (PSA, ad, flyers, etc.)
- Include 2-1-1 for referrals on housing choice inquiries
- Issue a fair housing proclamation
- Make available information to target groups at community functions

Households Individuals ill-prepared for housing choice – need to support a wide range of activities/program aimed at preparing people to increase their housing choice options whether as homeownership or rental.

- Support educational programs for homebuyer preparedness, homeownership responsibility and homebuyer assistance that are consistent with housing choice
- Disseminate information on tenant/landlord rights and responsibilities
- Support efforts designed to repair credit
- Support financing alternatives to coincide with housing choice and seek to regulate wrong options
- Create an environment for people to access traditional financing

Insufficient housing choices – need to support programs that will enable the provision of affordable housing, both rental and for ownership, so that housing choice options are improved especially for lower income households.

- Support implementation of local housing standards law (activate City Board)
- Implement the housing objectives of the City's Consolidated Plan.
- Build new affordable units for purchase
- Build new rental units

Encourage private sector to invest in housing projects

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How to Report Housing Discrimination

1. If you believe you have experienced housing discrimination, you can call HUD's Office of Fair Housing and Equal Opportunity toll-free at 1-800-669-9777.

You can file a complaint using HUD's online form at www.HUD.gov.

You can print out the form, complete it, and mail it to:
 Office of Fair Housing and Equal Opportunity
 U.S. Department of Housing and Urban Development
 Room 5204
 451 Seventh St. SW
 Washington, DC 20410-2000

You can write HUD a letter with:

- ☐ Your name and address
- ☐ The name and address of the person your complaint is about
- ☐ The address of the house or apartment you were trying to rent or buy
- ☐ The date when this incident occurred
- ☐ A short description of what happened

The local HUD Office for a housing discrimination complaint is HUD, Southwest Office of Fair Housing and Equal Opportunity, 801 Cherry Street, Unit #45, Suite 2500, Fort Worth, Texas 76102 or 1-888-560-8913.

2. Or, you can contact the Texas Workforce Commission Civil Rights Division.

- ☐ Complaint in person by coming to the Division office located at 1117 Trinity St., Room 144-T in Austin, Texas.
- ☐ You may call the Division office using the toll free number: 1-888-452-4778, between the hours of 8:00 AM and 5:00 PM.
- ☐ You may also write the Division at:
 Texas Workforce Commission
 Civil Rights Division
 1117 Trinity Street, Rm. 144-T
 Austin, Texas 78701



Internet Resources

<http://www.justice.gov/crt/housing/title8.php>)

www.statutes.legis.state.tx.us)

www.justice.gov

www.huduser.org

www.hud.gov

<http://www.tdhca.state.tx.us/fair-housing/policy-guidance.htm>

[U.S. Census.gov](http://www.census.gov)



**APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES**

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

I have lived in Midland _____ years.

Occupation: _____ Professional and/or

Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving: (You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

DRAFT

City Council Meeting



Item Number: 17
Meeting Date: June 9, 2020
To: City Council / City Manager
From: Carl Craig, Director

Approved for Agenda:

City Manager's Office

10088

Subject: AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES", OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (UTILITIES)

Purpose:

To amend Gallons above 50,000 water rate from \$54.02 to \$19.65. To remove exemptions of water rates by individual customers creating a single rate structure for residential and commercial.

Recommended City Council Action:

Approve

Fiscal Impact:

Subject to variations in water use by individuals and commercial businesses.

Discussion:

Non-residential (commercial) irrigation meters are required by the City's Code of Ordinances section 3-1-2. Outline the water rates for Residential, Apartment and commercial customers. Currently there is two separate rates for residential and nonresidential. This ordinance change will remove the reference to residential and nonresidential and make one tiered rate system for all customers. This ordinance

revision will in the same section reduce the forth tear or the rate for water usage exceeding 50,000 gallons to \$19.65 per 1,000 gallons.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES”, OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds that it is in the public interest of the City of Midland to make amendments to Title III, Chapter 1, Section 2, of the Midland City Code;

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

SECTION ONE. That Title III, “Departments”, Chapter 1, “Water Department”, Section 2, “Rates”, of the Midland City Code, is hereby amended to read in its entirety as follows:

(A) *Customers inside of City limits:*

1. *Water rates:* The monthly water rates or charges for services furnished by the City’s waterworks system shall be as follows:
 - (a) For all customers other than apartments, the following charges shall apply:
 - i. The minimum charge shall be \$21.61 for the first 2,000 gallons or less;
 - ii. \$6.11 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
 - iii. \$8.03 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
 - iv. \$10.80 per 1,000 gallons for all water usage exceeding 25,000 gallons up to 50,000 gallons;
 - v. \$19.65 per 1,000 gallons for all water usage exceeding 50,000 gallons.
 - (b) All non-residential customers which shall include apartments that use water furnished by the City’s waterworks system for outside landscape irrigation purposes shall have installed, by the

City, a separate water meter with separate water lines used exclusively for irrigation purposes.

- i. Said water meter must be installed by the City, at the customer's expense.
 - ii. The City shall own said water meter.
 - iii. The customer, at the customer's expense, shall be responsible for the installation of any necessary water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system according to the City's standard specifications.
 - iv. The requirement that a customer install said separate water meter with said separate water lines shall apply when the submission of a landscape plan or an amended landscape plan is required in connection with a request for a building permit for new construction or the expansion of an existing structure, as set forth in Title XI, Chapter 9 of the City Code of Midland, Texas.
 - v. The penalty for violation of this section shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).
- (c) For apartments, the minimum charge shall be \$17.60 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be \$1,760.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to subsection (B) of this section.

2. *Sewer rates:* The monthly rates or charges for services of users of the City's sewer system shall be as follows:

- (a) Residential (winter average). December, January, and February will be the residential winter average months. The average of the lowest two months out of the three will become the monthly charge for the following year. The residential charges shall be:
 - (1) The winter average or \$21.79 per month minimum, whichever is greater; plus
 - (2) \$0.88 per 1,000 gallons for water usage greater than 2,000 gallons.
- (b) Commercial (actual water consumption).
 - (1) \$21.79 per month minimum, plus

(2) \$0.88 per 1,000 gallons for water usage greater than 2,000 gallons.

(B) *Customers outside of City limits:* All customers, except for those qualifying for industrial rates, who obtain water or sewer service outside of the City limits shall pay 1.5 times the rates charged to customers inside the City limits.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to state law.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publishing.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; 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., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

3-1-2. - Rates.

(A) *Customers inside of City limits:*

1. *Water rates:* The monthly water rates or charges for services furnished by the City's waterworks system shall be as follows:

- (a) Except for sub-section (b) below, for all customers other than apartments, the following charges shall apply:

- i. The minimum charge shall be ~~\$20.07~~ 21.61 for the first 2,000 gallons or less;
- ii. ~~\$5.68~~ 6.11 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
- iii. ~~\$7.45~~ 8.03 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
- iv. ~~\$10.03~~ 10.80 per 1,000 gallons for all water usage exceeding 25,000 gallons up to 50,000 gallons;
- v. ~~\$50.16~~ 19.65 per 1,000 gallons for all water usage exceeding 50,000 gallons.

- ~~(b) For all non-residential customers which shall include apartments, with non-irrigation demands for January and February exceeding 10,000 gallons per month (as determined by the City Manager or his designee), the following charges shall apply:~~

- ~~i. The minimum charge shall be \$20.07 for the first 2,000 gallons or less;~~
- ~~ii. \$5.68 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;~~
- ~~iii. \$7.45 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;~~
- ~~iv. \$10.03 per 1,000 gallons for all water usage exceeding 25,000 gallons.~~
- ~~v. —~~

- ~~(b)~~ (c) All non-residential customers which shall include apartments who use water furnished by the City's waterworks system for outside landscape irrigation purposes shall have installed, by the City, a separate water meter with separate water lines used exclusively for irrigation purposes.

- i. Said water meter must be installed by the City, at the customer's expense.
- ii. The City shall own said water meter.
- iii. The customer, at he the customer's expense, shall be responsible for the installation of any necessary water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system according to City's standard specifications.
- iv. The requirement that a customer install said separate water meter with said separate water lines shall apply when the submission of a landscape plan or an amended landscape plan is required in connection with a request for a building permit for new construction or the expansion of an existing structure, as set forth in Title XI, Chapter 9 of the City Code of Midland, Texas. e. The penalty for violation of this section shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).

- ~~(c) All water and sewer rates will increase by 2.5% on October 1, 2017 and every October 1 thereafter unless otherwise modified by the City Council.~~

(dc) For apartments, the minimum charge shall be ~~\$16.34~~17.60 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be ~~\$1,634~~760.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to Subsection (B) of this Section.

2. *Sewer rates:* The monthly rates or charges for services to users of the City's sewer system shall be as follows:

(a) Residential (winter average). December, January, and February will be the residential winter average months. Delete the highest month out and average the other two months. This amount will become the monthly charge for the next year.

(1) ~~\$20.24~~21.79 per month minimum; plus

(2) ~~\$0.81~~0.88 per 1,000 gallons for water usage greater than 2,000 gallons.

(b) Commercial (actual water consumption).

(1) \$20.24 per month minimum; plus

(2) \$0.81 per 1,000 gallons for water usage greater than 2,000 gallons.

(B) *Customers outside of City limits:* All customers, except for those qualifying for industrial rates, who obtain water or sewer service outside the City limits shall pay 1.5 times the rates charged to customers inside the City limits.

(Ord. No. 4256, 6-28-1966; Ord. No. 7284, 11-9-1993; Ord. No. 7362, § 2, 9-13-94; Ord. No. 8059, § 2, 10-23-01; Ord. No. 8297, § 2, 3-22-05; Ord. No. 8436, § 7, 8-22-06; Ord. No. 8942, § 1, 9-27-11; Ord. No. 8991, § 1, 3-20-12; Ord. No. 9070, § 1, 9-25-12; Ord. No. 9076, § 1, 11-27-12; Ord. No. 9103, § 1, 1-22-13; Ord. No. 9137, § 1, 4-23-13; [Ord. No. 9214, § 1, 12-17-13](#); [Ord. No. 9222, § 1, 1-28-14](#))