



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

OPENING ITEMS

1. Invocation – Pastor Nathan Headrick, Midland Church of God
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - a. REGULAR CITY COUNCIL MEETING OF JUNE 9, 2020
4. 2020-102 – RESOLUTION APPROVING A CONTRACT WITH TOMMY KLEIN CONSTRUCTION, INC., FOR THE REPLACEMENT OF THE CENTRAL FIRE STATION ROOF, THROUGH SOURCEWELL EZIQ, AT A TOTAL COST OF \$313,780.51; AND APPROVING \$15,689.03 FOR CONTINGENCIES (GENERAL SERVICES)
5. 2020-103 – RESOLUTION AUTHORIZING THE PURCHASE OF ONE THOUSAND (1,000) THREE (3) CUBIC YARD RESIDENTIAL CONTAINERS, THREE HUNDRED (300) THREE AND A HALF (3.5) CUBIC YARD COMMERCIAL CONTAINERS, ONE HUNDRED (100) ONE AND A HALF (1.5) CUBIC YARD CONTAINERS FOR RESIDENTIAL AND THREE (3) THIRTY-FIVE (35) CUBIC YARD COMMERCIAL REFUSE COMPACTORS FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF \$670,700.00 (GENERAL SERVICES)
6. 2020-104 – RESOLUTION APPROVING A CONTRACT WITH PALOMAR MODULAR BUILDINGS LLC, THROUGH BUYBOARD, FOR THE CONSTRUCTION OF A MULTIPURPOSE BUILDING AT WASHINGTON PARK, FOR A TOTAL COST OF \$261,612.00; APPROVING \$13,080.00 FOR CONTINGENCIES; AND APPROPRIATING \$400,000.00 FOR SAID PROJECT (GENERAL SERVICES)
7. 2020-105 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH BOLER EQUIPMENT SERVICE, INC., IN THE AMOUNT OF \$872,310.00 FOR THE MAF CONCRETE APRON REHAB PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (AIRPORT)

8. 2020-106 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MAXWELL ASPHALT, INC., IN THE AMOUNT OF \$440,175.00 FOR THE MAF NORTHWEST TAXILANE AND EXECUTIVE APRON REHAB PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (AIRPORT)
9. 067-2020 – MOTION AUTHORIZING THE EXECUTION OF A THIRD AMENDMENT TO THAT CERTAIN COMMERCIAL HANGAR LEASE AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION REGARDING CERTAIN REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIR & SPACE PORT AND DESCRIBED AS LOTS 1B AND 8, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (CITY MANAGER'S OFFICE)
10. 068-2020 – MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN LEASE AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION REGARDING CERTAIN REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIR & SPACE PORT AND DESCRIBED AS LOT 7, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (CITY MANAGER'S OFFICE)
11. 069-2020 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF WEST TERMINAL ADDITION, SECTION 10, BEING A REPLAT OF LOTS 9 AND 11, BLOCK 5, WEST TERMINAL ADDITION, SECTION 4, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST COUNTY ROAD 100, APPROXIMATELY 605 FEET EAST OF SOUTH COUNTY ROAD 1295 (DEVELOPMENT SERVICES)
12. 070-2020 – MOTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND COSTCO WHOLESALE CORPORATION (“COSTCO”); SAID AMENDMENT CHANGING COSTCO’S DEADLINE TO ACQUIRE CERTAIN PROPERTY FROM JUNE 30, 2020, TO OCTOBER 30, 2020 (DEVELOPMENT SERVICES)
13. 2020-107 – RESOLUTION ACCEPTING GRANT FUNDS FROM THE DEPARTMENT OF JUSTICE ON BEHALF OF THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING GRANT PROGRAM IN THE AMOUNT OF \$93,553.00 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS REQUIRED TO ACCEPT GRANT FUNDS; SAID FUNDS TO BE USED BY THE MIDLAND FIRE DEPARTMENT TO PURCHASE PORTABLE AND MOBILE RADIOS AND PROTECTIVE EQUIPMENT (FIRE)
14. 2020-108 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2020 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM; SAID FUNDING SHALL BE USED TO PURCHASE EQUIPMENT FOR THE MIDLAND POLICE DEPARTMENT FOR THE PURPOSE OF RESPONDING TO THE CORONAVIRUS PANDEMIC (POLICE)

SECOND READINGS

15. 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) (First reading held June 09, 2020)
16. 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) (First reading held June 9, 2020)

PUBLIC HEARINGS

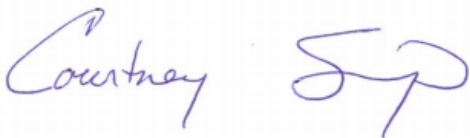
The City Council will hold public hearings on the following items:

17. 071-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2024 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) ANALYSIS OF IMPEDIMENTS (AI) TO FAIR HOUSING CHOICE AND TO AFFIRMATIVELY FURTHER FAIR HOUSING STUDY (DEVELOPMENT SERVICES)

MISCELLANEOUS

18. 10089 – AN ORDINANCE AMENDING TITLE I, “ADMINISTRATIVE”, CHAPTER 7, “MUNICIPAL COURT”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ADDING SECTION 20, “REIMBURSEMENT FEE FOR CREDIT OR DEBIT CARD PAYMENTS”; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE (MUNICIPAL COURT)

Respectfully Submitted,



Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
June 9, 2020**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., June 09, 2020.

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

Council Members absent: Lori Blong

Staff members present: 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 10:00 a.m.

OPENING ITEMS

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

Council Member Norman and Mayor Payton read and presented a proclamation celebrating Juneteenth.

CONSENT AGENDA

Shirley Howard, 405 Magnolia, reported the chairs and tables were removed from the swim parks and expressed concern for the disabled and elderly who will be there to watch their children swim. She did add that people can bring in their own chairs. She asked for the tables and chairs to be returned. She is aware of staffing issues, and wondered why the swim parks are even going to open if there is not enough staff to run them. She suggested that there be sanitizer available for people to clean their own tables and chairs. Finally, she asked that all people leaving boards or commissions be given a plaque of recognition like she received when she went off a board.

Michael Trost moved to approve Consent Agenda items 3-10 excluding items 4 and 6 ; seconded by Spencer Robnett.

The motion by the following vote:

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

NAY: None
ABSTAIN: None
ABSENT: Blong

3. MOTION APPROVING THE FOLLOWING MINUTES:

a. REGULAR CITY COUNCIL MEETING OF MAY 26, 2020

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)
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)

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

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)

Council Member Trost asked when was the board purchased. Parks & Recreation Manager Laurie Williams reported the old sign was not that old, but was damaged during
PACKET a.2 June 23, 2020

the hail storm of 2019. All but \$52,000 of this purchase is being covered by insurance money.

Jack Ladd moved to approve Resolution No. 2020-099; seconded by John Norman.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Blong

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)

Council Member Trost asked if there is a cost associated with supporting this item.

Engineering Services Director Jose Ortiz reported that James Beauchamp asked us to present this item at a public meeting noting Odessa approved a similar item at their last meeting. Mayor Payton added that he hopes this makes it to the Governor's desk with our preference so he knows we are serious about taking care of these issues.

Spencer Robnett moved to approve Resolution No. 2020-101; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Dufford, Norman, Ladd

NAY: Trost

ABSTAIN: None

ABSENT: Blong

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)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10086.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10086; seconded by Jack Ladd.

The motion passed by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Blong

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)

Mayor Payton opened the public hearing at 10:16 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

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)

Mayor Payton opened the public hearing at 10:17 a.m.

Chris Hamilton of Parsley Energy noted he was available to answer questions.

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

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)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10087.

Mayor Payton opened the public hearing at 10:18 a.m.

Tyler West, 7401 Briarwood, reported they bought this property a year and a half ago and it has a long history of serving churches and non-profits. Their intent is to continue that legacy by serving foster children. This is to true-up the zoning so they can continue to serve Midland. Mayor Payton asked Mr. West to elaborate on the foster care system and child welfare asking if he had any words of caution. Mr. West noted that the system is in crisis. Abuse continues to happen even in quarantine, it's just happening behind closed doors. The child welfare world is expecting quite an issue when school resumes as teachers are the number one reporters of abuse.

There being no one else wishing to speak, the public hearing closed at 10:21 a.m.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10087 ; seconded by Jack Ladd.

The motion by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Blong

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)

CDBG Manager Isaac Garnett reported this is the second public hearing. He reported they have moved \$97,000.00 to the Home Buyers Assistance Program based on comments received at the first public hearing. All other programs remain and the numbers were reviewed.

Council Member Robnett asked if the street paving project could be handled through General Fund or the road bond project. Following discussion, City Manager Courtney Sharp reported they would take a look to see what could be done.

Mayor Payton opened the public hearing at 10:26 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

16. 066-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2024 ANALYSIS OF IMPEDIMENTS TO FURTHERING FAIR HOUSING CHOICE (DEVELOPMENT SERVICES)

CDBG Manager Isaac Garnett reported this is a tool that complements the previous item and gives a picture of the affordable housing situation. It shows the issues we are facing and where improvements are needed and shares successes.

Mayor Payton opened the public hearing at 10:27 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

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)

Deputy City Secretary SueAnn Reyes read the caption of Ordinance No. 10088.

Council Member Trost asked if this item was opening up the taps for water four days a week. Utilities Director Carl Craigo reported after the highest tier is lowered they will begin to advertise the increased watering days. It will go into effect June 29, 2020.

Michael Trost moved to approve the first of two readings of Ordinance No. 10088. ;
seconded by Jack Ladd.

The motion by the following vote:

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

NAY: None

ABSTAIN: None

ABSENT: Blong

EXECUTIVE SESSION

Mayor Payton recessed the meeting to go to Executive Session at 10:31 a.m.

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.

All the business at hand having been completed, the meeting adjourned at 11:25 a.m.

PASSED AND APPROVED June 23, 2020.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

City Council Meeting



Item Number: 4
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing

Approved for Agenda:

City Manager's Office

2020-102

Subject: RESOLUTION APPROVING A CONTRACT WITH TOMMY KLEIN CONSTRUCTION, INC., FOR THE REPLACEMENT OF THE CENTRAL FIRE STATION ROOF, THROUGH SOURCEWELL EZIQC, AT A TOTAL COST OF \$313,780.51; AND APPROVING \$15,689.03 FOR CONTINGENCIES (**GENERAL SERVICES**)

Purpose:

Approval of a resolution awarding a contract to Tommy Klein Construction, Inc., for the replacement of the roof at Central Fire Station, through Sourcewell eziQC for a total cost of \$313,780.51 plus \$15,689.03 in contingencies for a total cost of \$329,469.54.

Recommended City Council Action:

Approve

Fiscal Impact:

\$313,780.51 plus \$15,689.03 in contingencies for a total cost of \$329,469.54 from the General Fund.

Discussion:

Due to age and normal wear and tear, roofing repairs need to be made to the Central Fire Station. Staff recommends awarding a contract to Tommy Klein Construction, Inc. to make these repairs. Tommy Klein Construction, Inc. has been awarded a contract through Sourcewell eziQC. eziQC (ez Indefinite

Quantity Construction) establishes competitively bid prices for construction projects and eliminates the need to bid each project separately. We are members of the Sourcewell cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please refer to the memo from Regina Stephenson, General Services Director, for further discussion concerning this procurement.

Therefore, please consider a resolution awarding a contract to Tommy Klein Construction, Inc. of Lubbock, Texas through Sourcewell ezIQC contract for roofing repairs for the Central Fire Station in the amount of \$313,780.51 plus \$15,689.03 in contingencies for a total cost of \$329,469.54.



INTEROFFICE MEMORANDUM

TO: Morris Williams, Assistant City Manager
FROM: Regina Stephenson, General Services Director
SUBJECT: Roof Repairs for Central Fire Station
DATE: June 8, 2020

City staff is requesting authorization to move forward with roof repairs for the Central Fire Station. This building has a roof that is beyond its useful life and leaks significantly during rain events.

The Central Fire Station roof has experienced excessive problems with leaks when it rains. Last year the roof over the bay and storage area only was replaced with a Thermoplastic Polyolefin (TPO) roof. The cost for the bay and storage area portion of the roof was not budgeted for Fiscal Year 2019 but staff believed that the roof should be replaced immediately due to safety concerns.

Funds were budgeted for Fiscal Year 2020 to replace the remainder of the roof over the offices and living quarters at Central Fire Station. This portion of the roof will also be replaced with a Thermoplastic Polyolefin (TPO) roof. The total cost for this work is \$313,780.51

Contingency

City staff is requesting an additional 5% in contingency for this roofing project. The total amount of contingency requested for this project is \$15,689.03 for a possible total project cost of \$329,469.54. . The Facilities Services operating budget (001041) will fund this proposed project.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
TOMMY KLEIN CONSTRUCTION, INC., FOR THE
REPLACEMENT OF THE CENTRAL FIRE STATION
ROOF, THROUGH SOURCEWELL EZIQC, AT A
TOTAL COST OF \$313,780.51; AND APPROVING
\$15,689.03 FOR CONTINGENCIES**

WHEREAS, Sourcewell eziQC 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, Tommy Klein Construction, Inc., has submitted a total proposed cost to the City of \$313,780.51, through Sourcewell eziQC, for the replacement of the Central Fire Station Roof; and

WHEREAS, the Council finds the price proposed by Tommy Klein Construction, Inc., for said roof replacement to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Tommy Klein Construction, Inc., for said roof replacement; and

WHEREAS, the City Council finds it to be in the public interest to approve \$15,689.03 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 for the replacement of the Central Fire Station roof, through Sourcewell eziQC, for a total cost of \$313,780.51. Said contract being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$15,689.03 for contingencies is hereby approved.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Tommy Klein Construction, Inc., for said roof replacement from funds available in the

General Services Department in the General Fund FY 2020 upon proper receipt of invoices or statements approved by the City Manager.

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



THE CITY OF MIDLAND

CONTRACT

Contract No.20003022

THIS CONTRACT, effective the 24th day of April, 2020, by and between the City of Midland, hereinafter referred to as "City", and Tommy Klein Construction, Inc., hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 313,780.51 DOLLARS
2. **Scope of Work:** Company shall perform all work described for Remove and replace roofing system at Central Fire Station of this Contract 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 Regina Stephenson 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 HEREIN ABOVE 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 10 calendar days after release to proceed.

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

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

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

12.1. 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 unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

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

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

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

16. **Payment:** After all work is completed by Company, including all Change Orders altering the original scope and amount of said contract are completed, and City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, City shall thereafter issue payment to Company in the amount of the contract and all Change Orders. City shall be the final judge of when the work is completed by Company. City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to City's requirements. City may make periodic payments to Company, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by Company and approved by City.

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

<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 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 to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of 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 Tommy Klein Construction, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



Work Order Signature Document

Sourcewell EZIQC Contract No.: TX-PB-GC-121819-TKL

☒

New Work Order



Modify an Existing Work Order

Work Order Number.: 080142.00

Work Order Date: 05/28/2020

Work Order Title: City of Midland- Central Fire Station, Roof Replacement

Owner Name: SOUTHWEST - City of Midland

Contractor Name: Tommy Klein Construcion, Inc.

Contact: Mark Garcia

Contact: Shad Hartman

Phone: (432) 685-7371

Phone:

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of Sourcewell EZIQC Contract No TX-PB-GC-121819-TKL.

Brief Work Order Description:

Remove and replace roofing system

Time of Performance

Estimated Start Date:

Estimated Completion Date:

Liquidated Damages

Will apply:



Will not apply:



Work Order Firm Fixed Price: \$313,780.51

Owner Purchase Order Number:

Approvals

Owner

Date

Contractor

Date

Detailed Scope of Work

To: Shad Hartman
Tommy Klein Construcion, Inc.
7312 Upland Ave
Lubbock, TX 79424
No Data Input

From: Mark Garcia
SOUTHWEST - City of Midland
300 N Loraine
Midland, TX 79701
(432) 685-7371

Date Printed: May 28, 2020

Work Order Number: 080142.00

Work Order Title: City of Midland- Central Fire Station, Roof Repacement

Brief Scope: Remove and replace roofing system

☐

Preliminary

☐

Revised

☒

Final

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

Specifications for the main section of the Central Fire Station (Gyp deck): We will tear off the existing system down to the deck and attach a #75 base sheet. Following this, we will mop a 60 mil GAF TPO fleece back. Specifications for the porch (Metal deck): We will sweep and remove the loose gravel and apply a ½" Dens Deck. Following this, we will mechanically attach a 60 mil GAF TPO. We will install a TPO metal on the edge to tie in and finish with a cover plate.

Contractor

Date

Owner

Date

Contractor's Price Proposal - Summary

Date: May 28, 2020

Re:

Work Order #: 080142 00
Owner PO #:
Title: City of Midland- Central Fire Station Roof Replacement
Contractor: Tommy Klein Construcion, Inc
Proposal Value: \$313 780 51

Section - 01	\$6,742.34
---------------------	-------------------

Section - 07	\$307,038.17
---------------------	---------------------

Proposal Total	\$313,780.51
-----------------------	---------------------

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

Contractor's Price Proposal - Detail

Date: May 28, 2020

Re:

Work Order #: 080142 00
 Owner PO #:
 Title: City of Midland- Central Fire Station. Roof Repacement
 Contractor: Tommy Klein Construciton. Inc
 Proposal Value: \$313,780 51

Sect.	Item	Mod.	UOM	Description	Line Total
Labor	Equip.	Material	(Excludes)		
Section - 01					
1	01 74 19 00 0015		EA	30 CY Dumpster (4 Ton) "Construction Debris" Includes delivery of dumpster, rental cost, pick-up cost, hauling, and disposal fee. Non-hazardous material	\$6,742.34
			Installation	Quantity Unit Price Factor = Total	
				8 00 x 674.99 x 1 2486 = 6 742.34	
Subtotal for Section - 01					\$6,742.34
Section - 07					
2	07 51 13 00 0068		SQ	Demolish Gravel/Slag Surfaced, Built Up Roofing System	\$38,813.98
			Installation	Quantity Unit Price Factor = Total	
				220 00 x 141.30 x 1 2486 = 38,813.98	
3	07 54 23 00 0004		SQ	80 Mil, Single Ply TPO Roofing Membrane. Fully Adhered Includes adhesive	\$167,370.98
			Installation	Quantity Unit Price Factor = Total	
				484 00 x 242.93 x 1 2486 = 146,808.04	
			Demolition	Quantity Unit Price Factor = Total	
				480 00 x 34.31 x 1 2486 = 20,562.94	
4	07 54 23 00 0004	0148	MOD	For Integral Polyester Fleece-Backing Add	\$20,093.72
			Installation	Quantity Unit Price Factor = Total	
				484 00 x 33.25 x 1 2486 = 20,093.72	
5	07 54 23 00 0009		SQ	Acrylic, TPO Roofing Primer. Price Per Coat	\$26,191.33
			Installation	Quantity Unit Price Factor = Total	
				484 00 x 43.34 x 1 2486 = 26,191.33	
6	07 54 23 00 0012		EA	>3" To 8" Pipe Diameter. Prefabricated TPO Pipe Cone/Boot Includes attaching the boot to the membrane, caulking around the pipe and installing a draw band	\$702.81
			Installation	Quantity Unit Price Factor = Total	
				16 00 x 35.18 x 1 2486 = 702.81	
7	07 54 23 00 0015		SF	TPO Membrane Base Flashing	\$10,987.68
			Installation	Quantity Unit Price Factor = Total	
				2 200 00 x 4.00 x 1 2486 = 10,987.68	
8	07 71 13 00 0005		LF	>16" To 22" Wide (Stretch-out), 24 Gauge, KYNAR 5000 Finish. Galvanized Steel Coping System With Galvanized Steel Cleats	\$21,153.28
			Installation	Quantity Unit Price Factor = Total	
				720 00 x 22.49 x 1 2486 = 20,218.33	
			Demolition	Quantity Unit Price Factor = Total	
				720 00 x 1.04 x 1 2486 = 934.95	
9	07 72 23 00 0041		EA	10" Onifice Diameter. Spout Aluminum. Stationary Mushroom Gravity Ventilator	\$2,545.65
			Installation	Quantity Unit Price Factor = Total	
				10 00 x 203.88 x 1 2486 = 2,545.65	
10	07 91 26 00 0012		CLF	1/2" x 6" Neoprene Gasket Closed Cell Adhesive	\$13,600.25
			Installation	Quantity Unit Price Factor = Total	
				24 00 x 453.85 x 1 2486 = 13,600.25	

Contractor's Price Proposal - Detail Continues..

Work Order Number: 080142.00

Work Order Title: City of Midland- Central Fire Station, Roof Repacement

Section - 07

11	07	92	13	00	0068	CLF	3/8" x 1/2" Joint. Flexible Polyurethane Security Sealant And Caulking									\$6,028.24
						Installation	Quantity		Unit Price		Factor				Total	
							20.00	x	241.40	x	1.2486	=			6,028.24	
12	07	92	13	00	0068	0102	MOD	For >10 CLF Deduct								-\$449.75
						Installation	Quantity		Unit Price		Factor				Total	
							20.00	x	-18.01	x	1.2486	=			-449.75	

Subtotal for Section - 07

\$307,038.17

Proposal Total

\$313,780.51

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

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 Obligee, 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 Obligee, 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

Form Revised August 2012

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.

=====

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.

=====

END OF GENERAL DECISION



THE CITY OF MIDLAND

CONTRACT

Contract No.20003022

THIS CONTRACT, effective the 24th day of April, 2020, by and between the City of Midland, hereinafter referred to as "City", and Tommy Klein Construction, Inc., hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 313,780.51 DOLLARS
2. **Scope of Work:** Company shall perform all work described for Remove and replace roofing system at Central Fire Station of this Contract 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 Regina Stephenson 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,

PACKET

4.38

June 23, 2020

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 10 calendar days after release to proceed.

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

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

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

12.1. 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 unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

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

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

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

16. **Payment:** After all work is completed by Company, including all Change Orders altering the original scope and amount of said contract are completed, and City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, City shall thereafter issue payment to Company in the amount of the contract and all Change Orders. City shall be the final judge of when the work is completed by Company. City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to City's requirements. City may make periodic payments to Company, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by Company and approved by City.

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

<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 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 to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of 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 Tommy Klein Construction, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

PACKET

4.48

June 23, 2020



Work Order Signature Document

Sourcewell EZIQc Contract No.: TX-PB-GC-121819-TKL

☒

New Work Order



Modify an Existing Work Order

Work Order Number.: 080142.00

Work Order Date: 05/28/2020

Work Order Title: City of Midland- Central Fire Station, Roof Replacement

Owner Name: SOUTHWEST - City of Midland

Contractor Name: Tommy Klein Construcion, Inc.

Contact: Mark Garcia

Contact: Shad Hartman

Phone: (432) 685-7371

Phone:

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of Sourcewell EZIQc Contract No TX-PB-GC-121819-TKL.

Brief Work Order Description:

Remove and replace roofing system

Time of Performance

Estimated Start Date:

Estimated Completion Date:

Liquidated Damages

Will apply: ☐

Will not apply: ☒

Work Order Firm Fixed Price: \$313,780.51

Owner Purchase Order Number:

Approvals

Owner

Date

Contractor

Date

Detailed Scope of Work

To: Shad Hartman
Tommy Klein Construcion, Inc.
7312 Upland Ave
Lubbock, TX 79424
No Data Input

From: Mark Garcia
SOUTHWEST - City of Midland
300 N Loraine
Midland, TX 79701
(432) 685-7371

Date Printed: May 28, 2020

Work Order Number: 080142.00

Work Order Title: City of Midland- Central Fire Station, Roof Repacement

Brief Scope: Remove and replace roofing system

☐**Preliminary**☐**Revised**☒**Final**

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

Specifications for the main section of the Central Fire Station (Gyp deck): We will tear off the existing system down to the deck and attach a #75 base sheet. Following this, we will mop a 60 mil GAF TPO fleece back. Specifications for the porch (Metal deck): We will sweep and remove the loose gravel and apply a 1/2" Dens Deck. Following this, we will mechanically attach a 60 mil GAF TPO. We will install a TPO metal on the edge to tie in and finish with a cover plate.

Contractor

Date

Owner

Date

Contractor's Price Proposal - Summary

Date: May 28, 2020

Re:

Work Order #: 080142.00
Owner PO #:
Title: City of Midland- Central Fire Station, Roof Repacement
Contractor: Tommy Klein Construciton, Inc.
Proposal Value: \$313,780.51

Section - 01	\$6,742.34
---------------------	-------------------

Section - 07	\$307,038.17
---------------------	---------------------

Proposal Total	\$313,780.51
-----------------------	---------------------

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

Contractor's Price Proposal - Detail

Date: May 28, 2020

Re:

Work Order #: 080142.00
 Owner PO #:
 Title: City of Midland- Central Fire Station, Roof Replacement
 Contractor: Tommy Klein Construcion, Inc.
 Proposal Value: \$313,780.51

Sect.	Item	Mod.	UOM	Description	Line Total
Labor	Equip.	Material	(Excludes)		
Section - 01					
1	01 74 19 00 0015		EA	30 CY Dumpster (4 Ton) "Construction Debris"Includes delivery of dumpster, rental cost, pick-up cost, hauling, and disposal fee. Non-hazardous material.	\$6,742.34
			Installation	Quantity 8.00 x Unit Price 674.99 x Factor 1.2486 = Total 6,742.34	
Subtotal for Section - 01					\$6,742.34
Section - 07					
2	07 51 13 00 0068		SQ	Demolish Gravel/Slag Surfaced, Built Up Roofing System	\$38,813.98
			Installation	Quantity 220.00 x Unit Price 141.30 x Factor 1.2486 = Total 38,813.98	
3	07 54 23 00 0004		SQ	80 Mil, Single Ply TPO Roofing Membrane, Fully AdheredIncludes adhesive.	\$167,370.98
			Installation	Quantity 484.00 x Unit Price 242.93 x Factor 1.2486 = Total 146,808.04	
			Demolition	Quantity 480.00 x Unit Price 34.31 x Factor 1.2486 = Total 20,562.94	
4	07 54 23 00 0004 0148		MOD	For Integral Polyester Fleece-Backing, Add	\$20,093.72
			Installation	Quantity 484.00 x Unit Price 33.25 x Factor 1.2486 = Total 20,093.72	
5	07 54 23 00 0009		SQ	Acrylic, TPO Roofing Primer, Price Per Coat	\$26,191.33
			Installation	Quantity 484.00 x Unit Price 43.34 x Factor 1.2486 = Total 26,191.33	
6	07 54 23 00 0012		EA	>3" To 8" Pipe Diameter, Prefabricated TPO Pipe Cone/BootIncludes attaching the boot to the membrane, caulking around the pipe and installing a draw band.	\$702.81
			Installation	Quantity 16.00 x Unit Price 35.18 x Factor 1.2486 = Total 702.81	
7	07 54 23 00 0015		SF	TPO Membrane Base Flashing	\$10,987.68
			Installation	Quantity 2,200.00 x Unit Price 4.00 x Factor 1.2486 = Total 10,987.68	
8	07 71 13 00 0005		LF	>16" To 22" Wide (Stretch-out), 24 Gauge, KYNAR 500® Finish, Galvanized Steel Coping System With Galvanized Steel Cleats	\$21,153.28
			Installation	Quantity 720.00 x Unit Price 22.49 x Factor 1.2486 = Total 20,218.33	
			Demolition	Quantity 720.00 x Unit Price 1.04 x Factor 1.2486 = Total 934.95	
9	07 72 23 00 0041		EA	10" Orifice Diameter, Spun Aluminum, Stationary Mushroom Gravity Ventilator	\$2,545.65
			Installation	Quantity 10.00 x Unit Price 203.88 x Factor 1.2486 = Total 2,545.65	
10	07 91 26 00 0012		CLF	1/2" x 6" Neoprene Gasket Closed Cell, Adhesive	\$13,600.25
			Installation	Quantity 24.00 x Unit Price 453.85 x Factor 1.2486 = Total 13,600.25	

Contractor's Price Proposal - Detail Continues..

Work Order Number: 080142.00

Work Order Title: City of Midland- Central Fire Station, Roof Repacement

Section - 07

11	07	92	13	00	0068	CLF	3/8" x 1/2" Joint, Flexible Polyurethane Security Sealant And Caulking										\$6,028.24
						Installation	Quantity		Unit Price		Factor	=		Total			
							20.00	x	241.40	x	1.2486	=		6,028.24			
12	07	92	13	00	0068	0102	MOD	For >10 CLF, Deduct									-\$449.75
						Installation	Quantity		Unit Price		Factor	=		Total			
							20.00	x	-18.01	x	1.2486	=		-449.75			

Subtotal for Section - 07

\$307,038.17

Proposal Total

\$313,780.51

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

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.

=====

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.

=====

END OF GENERAL DECISION



City Council Meeting



Item Number: 5
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing

Approved for Agenda:

City Manager's Office

2020-103

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF ONE THOUSAND (1,000) THREE (3) CUBIC YARD RESIDENTIAL CONTAINERS, THREE HUNDRED (300) THREE AND A HALF (3.5) CUBIC YARD COMMERCIAL CONTAINERS, ONE HUNDRED (100) ONE AND A HALF (1.5) CUBIC YARD CONTAINERS FOR RESIDENTIAL AND THREE (3) THIRTY-FIVE (35) CUBIC YARD COMMERCIAL REFUSE COMPACTORS FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF \$670,700.00 (**GENERAL SERVICES**)

Purpose:

Approval of a resolution approving the purchase of one thousand (1,000) 3 cubic yard residential containers, three hundred (300) 3.5 cubic yard commercial containers, one hundred (100) 1.5 cubic yard containers for residential, and three (3) 35 cubic yard commercial refuse compactors for the Solid Waste Department.

Recommended City Council Action:

Approve

Fiscal Impact:

\$670,700.00 from the Sanitation Fund.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for one thousand (1,000) 3 cubic yard residential containers, three hundred (300) 3.5 cubic yard commercial containers, one hundred (100) 1.5 cubic yard containers for residential, and three (3) 35 cubic yard commercial refuse compactors. Twenty-three (23) bid requests were issued. We received seven (7) bids.

Staff recommends purchasing items 1, 2, 3, and 4 from the apparent low bidders, UMC Waste Solutions LLC, Trailers By Southern LLC, and Box Gang Manufacturing. Please see the attached memo from Jeffery Ahrllett, Director of Solid Waste, for further information.

Therefore, please consider a resolution approving the purchase as shown below:

Item	Vendor	Total Cost
1	UMC Waste Solutions LLC of Joshua, Texas	445,000.00
2	Trailers By Southern LLC of Joshua, Texas	148,200.00
3	UMC Waste Solutions LLC of Joshua, Texas	23,500.00
4	Box Gang Manufacturing of Houston, Texas	54,000.00
	Total	\$ 670,700.00



INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director

FROM: Jeffery Ahrlett, Director of Solid Waste

SUBJECT: Bid for Refuse Containers

DATE: June 8, 2020

CC: Morris Williams Jr., Assistant City Manager

I am requesting the approval and to accept all low bid individual items meeting specifications for the purchase of refuse containers. Included in this purchase are the following: (1,000) 3 cubic yard residential containers with UMC Waste Solutions LLC, (300) 3.5 cubic yard commercial containers with Trailers by Southern LLC, (100) 1.5 cubic yard containers for residential collection with UMC Waste Solutions LLC, and (3) 35 cubic yard commercial refuse compactors with Box Gang Manufacturing. These refuse containers will be utilized as replacement containers that are no longer usable which are rusted and dilapidated, and to service new accounts.

UMC Waste Solutions LLC, Trailers By Southern LLC., and Box Gang all have low bid items and state they can meet all required specifications. These items are budgeted.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
ONE THOUSAND (1,000) THREE (3) CUBIC YARD
RESIDENTIAL CONTAINERS, THREE HUNDRED (300)
THREE AND A HALF (3.5) CUBIC YARD
COMMERCIAL CONTAINERS, ONE HUNDRED (100)
ONE AND A HALF (1.5) CUBIC YARD CONTAINERS
FOR RESIDENTIAL AND THREE (3) THIRTY-FIVE (35)
CUBIC YARD COMMERCIAL REFUSE COMPACTORS
FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF
\$670,700.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for one thousand (1,000) three (3) cubic yard residential containers, three hundred (300) three and a half (3.5) cubic yard commercial containers, one hundred (100) one and a half (1.5) cubic yard containers for residential and three (3) thirty-five (35) cubic yard commercial refuse compactors for the Solid Waste Department; and

WHEREAS, Bid No. 20003250 was opened on May 27, 2020 with the lowest and/or most advantageous bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes:

Items	Bidders	Cost
1	UMC Energy Solutions, Inc., of Joshua, Texas	\$445,000.00
2	Trailers by Southern LLC of Joshua, Texas	\$148,200.00
3	UMC Energy Solutions, Inc., of Joshua, Texas	\$23,500.00
4	Box Gang Manufacturing of Houston Texas	\$54,000.00
Total		\$670,700.00

WHEREAS, the Council finds the price proposed by the bidders as shown above to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of said containers from UMC Energy Solutions, Inc., of Joshua, Texas, Trailers by Southern LLC of Joshua, Texas and Box Gang Manufacturing of Houston, Texas.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said containers from UMC Energy Solutions, Inc., of Joshua, Texas, Trailers by

Southern LLC of Joshua, Texas and Box Gang Manufacturing of Houston, Texas for a total cost of \$670,700.00.

SECTION TWO. That upon receipt of proper invoice or statement approved by the City Manager, the City Comptroller is hereby authorized and directed to pay for said containers out of funds available in Fund 430.

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

Exhibit "A"

City of Midland - Bid Tabulation

[illegible]

PACKET
5.71
June 23, 2020

City of Midland - Bid Tabulation

[illegible]

City Council Meeting



Item Number: 6
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing

Approved for Agenda:

City Manager's Office

2020-104

Subject: RESOLUTION APPROVING A CONTRACT WITH PALOMAR MODULAR BUILDINGS LLC, THROUGH BUYBOARD, FOR THE CONSTRUCTION OF A MULTIPURPOSE BUILDING AT WASHINGTON PARK, FOR A TOTAL COST OF \$261,612.00; APPROVING \$13,080.00 FOR CONTINGENCIES; AND APPROPRIATING \$400,000.00 FOR SAID PROJECT (**GENERAL SERVICES**)

Purpose:

Approval for a resolution awarding a contract to Palomar Modular Buildings LLC through Buyboard contract #556-18 for labor, material, equipment, and supervision necessary to supply and install a multi-purpose building at Washington Park for the General Services Department.

Recommended City Council Action:

Approve

Fiscal Impact:

\$261,612.00 plus contingencies in the amount of \$13,080.00 and an additional \$125,308.00 for demolition, site work and an environmental study for a total project appropriation of \$400,000.00 to the Multi-Purpose Building at Washington Park Project (900340).

Discussion:

Staff recommends the purchase of labor, material, equipment, and supervision necessary to supply and install a multi-purpose building at Washington Park from Palomar Modular Buildings LLC through Buyboard contract #556-18 for the cost of \$261,612.00. 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. Please refer to the memo from Regina Stephenson, Director of General Services, for further discussion concerning this purchase.

Therefore, please consider a resolution awarding a contract to Palomar Modular Building LLC of DeSoto, Texas through Buyboard contract #556-18 for a cost of \$261,612.00 plus \$13,080.00 in contingencies. Staff recommends appropriating \$400,000.00 from the Facilities Services operating budget (001041) to the Multi-purpose Modular Building Project (900340). The additional \$125,308.00 will be used to pay for an environmental study, demolition of the existing structure, site work and other incidental items related to this project.



INTEROFFICE MEMORANDUM

TO: Morris Williams, Assistant City Manager
FROM: Regina Stephenson, General Services Director
SUBJECT: Multi-purpose Modular Building for Washington Park
DATE: June 8, 2020

The current multi-purpose building located at Washington Park is in disrepair (see attached photos). It is a metal building and in January 2019 we requested a quote from a contractor to renovate the current building. The cost for renovating the existing structure was \$444,286.00. The cost for the renovation does not include engineering costs, site work, an environmental study, nor fixtures, furnishings and equipment.

The cost for renovating the existing structure seemed excessive so we requested a quote from Palomar Modular Buildings to replicate the footprint of the current building and incorporate it into a modular building. The cost for the modular building delivered and move-in ready is \$261,612.00. We are also requesting \$13,080.00 in contingencies for the contract with Palomar. We plan to have the current structure demolished down to the concrete slab. The modular building which is approximately 3,192 square feet will take 4 to 6 weeks to complete and then when it is delivered it will be installed on the existing concrete slab. Staff anticipates the cost for the demolition, site work, environmental study and any other incidentals related to this project to be \$125,308.00. The estimated cost for the entire project is \$400,000.00. The project should be substantially complete in approximately 180 days.

Staff met with a member of the organization leasing the building on June 10, 2020. The response to the modular building was positive and it seemed that the modular building would be acceptable to the organization.

\$400,000.00 is available in the Facilities Services operating budget (001041) and should be appropriated to a project since the estimated completion date will cross fiscal years.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
PALOMAR MODULAR BUILDINGS LLC, THROUGH
BUYBOARD, FOR THE CONSTRUCTION OF A
MULTIPURPOSE BUILDING AT WASHINGTON PARK,
FOR A TOTAL COST OF \$261,612.00; APPROVING
\$13,080.00 FOR CONTINGENCIES; AND
APPROPRIATING \$400,000.00 FOR SAID PROJECT**

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, Palomar Modular Buildings LLC has submitted a total proposed cost to the City of \$261,612.00 for the construction of a multipurpose building at Washington Park, through Buyboard, as shown on the quote attached hereto as Exhibit A, which is incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Palomar Modular Buildings LLC through Buyboard for the construction of said building to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Palomar Modular Buildings LLC for the construction of said building through Buyboard; and

WHEREAS, the City Council finds it to be in the public interest to approve \$13,080.00 for contingencies; and

WHEREAS, the City Council finds it to be in the public interest to appropriate \$400,000.00 for said project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract for the construction of a multipurpose building at Washington Park, through Buyboard, for a total cost of \$261,612.00. Said contract being attached hereto as Exhibit B and incorporated

herein for all purposes.

SECTION TWO. That the sum of \$13,080.00 for contingencies is hereby approved for said project.

SECTION THREE. That the sum of \$400,000.00 is hereby appropriated from the Facilities Services Operating Budget (001401) to the Multipurpose Building at Washington Park Project (900340).

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Palomar Modular Buildings LLC for the construction of a multipurpose building at Washington Park from funds available in the Multipurpose Building at Washington Park Project (900340) upon proper receipt of invoices or statements approved by the City Manager.

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



505 North I-35 East, DeSoto, Texas 75115 P 469.727.0727 F 469.727.0728 866.912.4587 www.palomarmodularbuildings.com

June 11, 2020

City of Midland
Regina Stephenson
Midland, TX 79702

Regina

Thank you for your interest in Palomar Modular Buildings, LLC. The price reflected below, for a new **42' x 76' Multi-Purpose Building** (nominal dimensions), manufactured, delivered, and set in Midland, TX is based on the attached specifications and floor plan.

1. **The purchase price** as specified is **\$203,460.00**. The price does not include poured concrete footers, canopies, gutters, self-contained fire alarm and suppression, low voltage equipment, utility hookups, site work, taxes or permits. It is assumed that the site can support the building, is relatively level and easily accessible.
Aluminum Decks, Steps and Ramps (as shown) \$54,282.00
P&P Bond \$3,870.00
BuyBoard Account #556-18

The building will be built in compliance with the International Building, Plumbing and mechanical codes, Americans with Disabilities Act, and the National Electric Code. The building will be engineered to meet local floor and roof load requirements and will have electrical, heating and cooling loads sized in accordance with code. Cost to comply with local codes beyond the attached floor plan and specifications is the responsibility of the owner.

Prices are valid for 30 days. Our payment terms are 50% due upon execution on PO or Contract, 40% due upon completion of manufacturing at PMB and 10% when the building is accepted or occupied, whichever comes first.

Sincerely,

Guy Cruce
Lead Estimator/Business Developer
Palomar Modular Buildings LLC
469-727-0727 (o)
972-989-9456 (c)



SPECIFICATION AND STATEMENT OF WORK

CUSTOMER	CITY OF MIDLAND	LAYOUT	42' X 76' NOMINAL
DESTINATION	MIDLAND, TX	SIZE	3,137
BUILDING TYPE	VB	# OF MODS	3
DATE	6/11/2020	CODES	2015 IBC, IPC, IMC, IECC, 2014 NEC, 2012 TAS
CONSTR TYPE / USE:	BUSINESS		
FLOORS			
FRAME TYPE	OUTRIGGER SIZED TO MEET DESIGN CRITERIA		
RUNNING GEAR	TIRES, AXLES AND HITCHES REMOVED AND STORED UNDER UNIT, IF BUILDING IS SET LOWER THAN 34" AFG HITCH TO BE LEFT OUTSIDE BUILDING LINE.		
WOOD JOISTS	2X10 SYP @ 16 OC		
INSULATION	R-30 FIBERGLASS UNFACED FIBERGLASS BATT		
DECKING	3/4" ADVANTECH T&G		
MOISTURE PROTECTION	"BOTTOM BOARD" WOVEN, REINFORCED POLY		
FLOOR COVERING	COMMERCIAL VINYL TILE		
LOCATION	T/O		
COVE BASE	4 IN VINYL		
EXT. WALLS			
WOOD STUDS	2X6 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES		
INSULATION	R-19 FIBERGLASS UNFACED FIBERGLASS BATT		
EXTERIOR SHEATHING	7/16" OSB		
MOISTURE CONTROL	BUILDING WRAP		
EXTERIOR SIDING	29 GA STEEL PRE-FINISHED, PANEL LOC +		
VINYL GYP WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)		
INT. WALLS			
WOOD STUDS	2X4 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES		
INSULATION	R-11 UNFACED		
VCG WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)		
CLASS "C" FRP	FULL HEIGHT		
LOCATION	RESTROOMS AND KITCHEN		
ROOF			
TYPE	WOOD WITH LAMINATED PLYWOOD MATE BEAMS		
STD. WOOD RAFTERS	2X10 @ 24 OC		
INSULATION	R-30, UNFACED		
DECKING	5/8" FRC		
EPDM ROOF COVERING	45 MIL WHITE TPO		
CEILING	2X4 SUSPENDED CEILING, USG RADAR TILE, 15/16 GRID		
DOORS			
EXTERIOR STEEL DOORS	(4) 3-0 / 6-8 STEEL DOOR, KNOCK DOWN FRAME, CLOSER, PAINTED 18GA DOOR, 16GA FRAME, INSULATED		
EXTERIOR STEEL DOORS	(1) REMOVABLE MULLION		
INTERIOR DOORS	(4) 3-0 / 6-8 PRE FINISHED SOLID CORE WOOD DOOR / 18GA "TIMELY" KNOCK DOWN STEEL FRAME		
DOOR GLAZING	(4) DOOR GLASS: 6X27" (INT/EXT)		
EXT DOOR HARDWARE	(4) PMB STANDARD LEVER/PANIC GRADE 2		
INT DOOR HARDWARE	(4) LEVER-LOCKSET GRADE 2 PMB STANDARD		
DOOR STOPS	FLOOR MOUNTED		
WINDOWS			
EXTERIOR WINDOWS	(6) 2-0 / 4-0 DUAL PANE, LOW E, CLEAR GLAZING, FIXED WINDOWS WITH SECURITY BARS		
ELECTRICAL			
CONDUIT	NON-METALLIC TUBING (ENT)		
RECEPTACLES	DUPLEX RECEPTACLES, 20 AMP, UNBREAKABLE COVERS		
GFI RECEPT.	(14) EA 20 AMP		
EXTERIOR RECEPTACLE	(4) EA, CONVENIENCE DUPLEX WITH COVER		
DEDICATED RECEPTACLES	20A W/RECEPTACLE. (COPIERS, REFRIG, ETC.)		
DEDICATED RECEPTACLES	50A CONNECTION (40 GAL + WATER HEATER, ETC.)		
DEDICATED RECEPTACLES	50A W/RECEPTACLE (RANGE, DRYERS, ETC.)		
DEDICATED RECEPTACLES	WATER HEATER DISCONNECT		
PANELS	(2) 100A-200A, 10KAIC, 1P, CLIP ON BREAKERS		
ROOM LIGHTING	LED FIXTURE		
EMERGENCY LIGHTS	4 EMERGENCY - 2 BULB LED WITH REMOTE HEAD		
EXIT LIGHTS	(3) EXIT LIGHTS, LED W/BATTERY BU		
EXTERIOR LIGHTS	4 EXTERIOR PORCH, FLUOR. AT EACH EXIT		
EXTERIOR LIGHTS	6 EXTERIOR LED WALL PACKS (AREA LIGHTS)		
OCC. SENSOR, SINGLE	8 EACH		
OCC. SENSOR, AREA	1 EACH		
EMPTY BOX & CONDUITS	(12) STUBBED TO CEILING, 3/4"		

FIRE PROTECTION	
FIRE EXT. CABINETS	3 EA
FIRE EXTINGUISHER	3 EA 5# ABC
PLUMBING	
SUPPLY PIPING	CPVC
WASTE PIPING	PVC/ SCH 40 DWV
TOILETS	2 TOILET, HC FLOOR MOUNTED, TANK TYPE
LAVYS	2 LAVY, WALL MOUNT OR DROP-IN W/SINGLE LEVER FAUCET/TV
SINKS	SS, SINGLE BOWL SINK WITH FAUCET
SINKS	1 TRIPLE BOWL, COM. SS SINK (INC. DRAIN. BOARDS & FAUCETS)
FLOOR DRAINS	1 EA FLOOR DRAIN, WITH TRAP PRIMER & ACCESS DOOR
FLOOR DRAINS	1 EA FLOOR SINK, WITH TRAP PRIMER & ACCESS DOOR
MISC. STUBS	2 EA REFRIGERATOR BOX
WATER HEATERS	1 EA 40-60 GAL WATER HEATER, ELECTRIC W/OVERFLOW PAN
WATER HEATER ACC	1 EA RECIRCULATION PUMP
WATER HEATER ACC	1 EA EXPANSION TANK: 5-10 GAL
ACCESSORIES	2 EA 18" x 36" SS FRAMED MIRRORS
ACCESSORIES	2 EA SET HC GRAB BARS FOR HC TOILET
ACCESSORIES	2 EA TOILET PAPER HOLDER - SINGLE SURFACE MOUNTED
HVAC	
STD. UNITS	WALL MOUNTED PACKAGED HVAC WITH ELECTRIC HEAT STRIP, 1 PHASE, SIZED PER DESIGN REQUIRMENTS
DUCTING	CLASS 1 FIBERGLASS THROUGHOUT
RETURN AIR	DUCTED
THERMOSTATS	7 DAY PROGRAMABLE WITH OCCUPANT OVERRIDE
DIFFUSERS	STANDARD ADJUSTABLE
FILTER	AT UNIT
EXHAUST FANS	(2) 80 CFM EXHAUST FAN/LIGHT COMBO
EXHAUST FANS	(1) DUCTING FOR VENT HOOD
MILLWORK & BLOCKING	
CABINETS	(22 LF) BASE CABINETS, INC. COUNTER TOPS
MISC. & ACCESSORIES	
APPLIANCES	TRUE T-49DT TWO COMMERCIAL REFRIGERATOR/Freezer
APPLIANCES	MAYTAG ELECTRIC RANGE, MET8800FZ WITH CONVECTION, 6.7 CU FT
APPLIANCES	DISHWASHER
APPLIANCES	GARBAGE DISPOSAL
APPLIANCES	MAYTAG MICROWAVE VENT HOOD
SHIP LOOSE	
CLOSE UP	(3 EA. MOD) CLOSE-UP PLASTIC FOR SKIRTING OR BELLY BAND
SKIRT FRAMING	(704 SF) PRESSURE TREATED WOOD FRAMING (36" HT)
SKIRTING	(704 SF) 29 GA METAL
SET UP	(22 EA. ANCHOR) ANCHORS, AUGER, STRAPS, CLIPS
SET UP	(88 EA. PIER) 2" X 8" PT SHIMS & OAK WEDGES
NOTES	
OPTION	ALUMINUM DECKS, STEPS AND RAMPS
SITE WORK	
DELIVERY, SET AND SKIRT	
PALOMAR MODULAR BUILDINGS (PMB)	
CLARIFICATIONS	
ALL MATERIALS AND EQUIPMENT PROVIDED FOR THE CONSTRUCTION OF THIS PROPOSED PROJECT WILL BE OF TYPICAL QUALITY AND DURABILITY FOR SIMILAR TYPES OF CONSTRUCTION. ANY MATERIALS LISTED WITH SPECIFIC NAME BRANDS MAY BE SUBSTITUTED FOR OTHER BRANDS OF COMPARABLE QUALITY.	
PALOMAR MODULAR BUILDINGS (PMB) MANAGEMENT'S PROPOSAL IS BASED ON THESE WRITTEN SPECIFICATIONS AND STATEMENT OF WORK PROVIDED	
CUSTOMER IS RESPONSIBLE FOR ALL PERMITS INCLUDING BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES. PMB WILL BE RESPONSIBLE FOR ALL PERMITS REQUIRED FOR TRANSPORTATION OF THE MODULES OVER THE ROAD	
BUILDING FOOTPRINT NEEDS TO BE WITHIN 12" OF LEVEL IN A 60' SPAN	
CUSTOMER WILL PROVIDE AN APPROPRIATE GRADED AND COMPACTED SITE AS REQUIRED FOR THE SETTING OF THE MODULAR BUILDING. GRADING SHOULD PROVIDE POSITIVE DRAINAGE AWAY FROM THE BUILDING AND COMPACTION TO A MINIMUM ALLOWABLE SOIL BEARING PRESSURE OF 2000 PSF. IT IS ASSUMED THAT THE MODULAR BUILDING WILL BE SET ABOVE GRADE. PMB WILL UTILIZE ABS PADS AND STACKED CMU BLOCK PIERS TO SET THE BUILDING ON GRADE.	
FINISHED FLOOR WILL BE BETWEEN 34" AND 38" ABOVE GRADE	
PRICES ARE VALID FOR 30 DAYS.	
THE BUILDING WILL BE BUILT IN COMPLIANCE WITH THE INTERNATIONAL BUILDING CODE, AMERICANS WITH DISABILITIES ACT, AND THE NATIONAL ELECTRIC CODE. THE BUILDING WILL BE ENGINEERED TO MEET LOCAL FLOOR AND ROOF LOAD REQUIREMENTS AND WILL HAVE ELECTRICAL, HEATING AND COOLING LOADS SIZED IN ACCORDANCE WITH NEC AND IBC CODES. COST TO COMPLY WITH LOCAL CODES BEYOND THE ATTACHED FLOOR PLAN AND SPECIFICATIONS IS THE RESPONSIBILITY OF THE OWNER.	

CUSTOMER WILL MAKE SITE ACCESSIBLE FOR MODULAR INDUSTRY DELIVERY VEHICLES WHEN PMB IS READY TO DELIVER MODULAR SECTIONS.

IF SITE IS NOT READY IN TIME FOR DELIVERY OF MODULES, CUSTOMER AGREES TO REIMBURSE PMB FOR TEMPORARY STORAGE, STAGING AND/OR DAMAGES WHILE MODULES ARE STORED.

SCOPE

PMB WILL MANUFACTURE ALL MODULES IN ACCORDANCE WITH STATE AND CUSTOMER APPROVED DRAWINGS

PMB WILL TRUCK SET ALL MODULAR BUILDINGS IN ACCORDANCE WITH A MUTUALLY AGREED SITE PLAN.

PMB WILL MAKE FINAL MODULAR MATE LINE STRUCTURAL CONNECTIONS AND FINISHES INCLUDING ELECTRICAL AND HVAC CROSSOVERS PROVIDED BY PMB IN THE FIELD

PMB WILL PROVIDE AND INSTALL PRESSURE TREATED WOOD FRAMING WITH SIDING TO MATCH EXTERIOR OF BUILDING INCLUDING VENTILATION & SKIRT PANEL ACCESS

ROOF SLOPE TO ACCOMMODATE MODULAR CONSTRUCTION METHODS

CUSTOMER WILL PROVIDE APPROPRIATE AND CURRENT GEOTECHNICAL INFORMATION AS REQUIRED FOR FOUNDATION LAYOUT. NO FOUNDATION DESIGN IS INCLUDED

PMB WILL PROVIDE STANDARD MODULAR STATE APPROVALS AND ENGINEERING (IF STATE HAS A MODULAR BUILDING PROGRAM)

PMB STANDARD GENERAL LIABILITY UNTIL PMB WORK IS COMPLETE.

STANDARD PMB WARRANTY INFORMATION PROVIDED AT THE COMPLETION OF THE PROJECT

STANDARD PMB TECHNICAL INPUT (SUBMITTAL PACKAGE) PROVIDED FOR CUSTOMER REVIEW AND APPROVAL.

EXCLUSIONS

ALL UTILITIES, SITE WORK, SITE PREPARATION, ACCESS FOR MODULAR UNITS, HAULING ROADS, CRANES OR ACCESS ROADS

ADA ACCESSIBILITY

BELOW GRADE FOOTERS

FOUNDATION DESIGN

ANY AND ALL WORK NOT ASSOCIATED WITH THE MODULAR BUILDING

FINAL CONNECTION OF ALL UTILITIES

MANIFOLDING OF WASTE LINES UNDER BUILDING IF BUILDING HAS PLUMBING

FURNITURE

CARD ACCESS READERS

LOW VOLTAGE WIRING INCLUDING, FIRE ALARM, PHONE, DATA, COAXIAL, MASS NOTIFICATION, PA SYSTEM, CCTV, SECURITY, ETC.

BUILDERS RISK INSURANCE

ANY HORIZONTAL CONDUIT FOR LOW VOLTAGE WIRING

FIRE SUPPRESSION OR FIRE ALARM SYSTEMS

PORT-A-POTTY

TEMPORARY ELECTRIC

TEST AND BALANCE OF THE HVAC SYSTEM

CRANES, MAN LIFTS OR FORKLIFTS

SIGNAGE

SURVEYING

STAKING OF THE SITE TO SHOW WHERE BUILDING IS GOING.

CLEANING OF ANY KIND BEYOND BROOM SWEEP

TAXES AND BONDING OF ANY KIND

LOCAL ZONING AND DEED RESTRICTIONS

PERMITS INCLUDING BUT NOT LIMITED TO BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES.

PRESSURE TREATED WOOD OR METAL DECKS, STEP AND RAMPS PER ADA REQUIREMENTS

GUTTERS, DOWNSPOUTS AND SPLASH BLOCKS

CANOPIES

ASPHALT OR CONCRETE PARKING LOT, INCLUDING DRIVES, ENTRIES, CURBS, SIGNAGE, ETC. AS OR IF REQUIRED

REINFORCED CONCRETE FOR SIDE WALKS, ROADS, RAMPS, STOOPS, DECKS, STEPS AND EQUIPMENT PADS



THE CITY OF MIDLAND

CONTRACT

Contract No. 20003581

THIS CONTRACT, effective the 24th day of June, 2020, by and between the City of Midland, hereinafter referred to as "City", and Palomar Modular Buildings LLC, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 261,612.00 DOLLARS
2. **Scope of Work:** Company shall perform all work described for labor, material, equipment and supervision necessary to supply and install a multi-purpose modular building at Washington Park in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Proposal
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 Regina Stephenson 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 HEREIN ABOVE 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 90 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 unavailable in any fiscal period for contract payments due under the contract, then this contract

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

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

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

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

16. **Payment:** After all work is completed by Company, including all Change Orders altering the original scope and amount of said contract are completed, and City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, City shall thereafter issue payment to Company in the amount of the contract and all Change Orders. City shall be the final judge of when the work is completed by Company. City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to City's requirements. City may make periodic payments to Company, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by Company and approved by City. 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

<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

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 to it as such

independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of 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 Palomar Modular Buildings LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

EXHIBIT "A"



505 North I-35 East, DeSoto, Texas 75115 P 469.727.0727 F 469.727.0728 866.912.4587 www.palomarmodularbuildings.com

June 11, 2020

City of Midland
Regina Stephenson
Midland, TX 79702

Regina

Thank you for your interest in Palomar Modular Buildings, LLC. The price reflected below, for a new **42' x 76' Multi-Purpose Building** (nominal dimensions), manufactured, delivered, and set in Midland, TX is based on the attached specifications and floor plan.

1. **The purchase price** as specified is **\$203,460.00**. The price does not include poured concrete footers, canopies, gutters, self-contained fire alarm and suppression, low voltage equipment, utility hookups, site work, taxes or permits. It is assumed that the site can support the building, is relatively level and easily accessible.
Aluminum Decks, Steps and Ramps (as shown) \$54,282.00
P&P Bond \$3,870.00
BuyBoard Account #556-18

The building will be built in compliance with the International Building, Plumbing and mechanical codes, Americans with Disabilities Act, and the National Electric Code. The building will be engineered to meet local floor and roof load requirements and will have electrical, heating and cooling loads sized in accordance with code. Cost to comply with local codes beyond the attached floor plan and specifications is the responsibility of the owner.

Prices are valid for 30 days. Our payment terms are 50% due upon execution on PO or Contract, 40% due upon completion of manufacturing at PMB and 10% when the building is accepted or occupied, whichever comes first.

Sincerely,

Guy Cruce
Lead Estimator/Business Developer
Palomar Modular Buildings LLC
469-727-0727 (o)
972-989-9456 (c)



SPECIFICATION AND STATEMENT OF WORK

CUSTOMER	CITY OF MIDLAND	LAYOUT	42' X 76' NOMINAL
DESTINATION	MIDLAND, TX	SIZE	3,137
BUILDING TYPE	VB	# OF MODS	3
DATE	6/11/2020	CODES	2015 IBC, IPC, IMC, IECC, 2014 NEC, 2012 TAS
CONSTR TYPE / USE:	BUSINESS		

FLOORS

FRAME TYPE	OUTRIGGER SIZED TO MEET DESIGN CRITERIA
RUNNING GEAR	TIRES, AXLES AND HITCHES REMOVED AND STORED UNDER UNIT, IF BUILDING IS SET LOWER THAN 34" AFG HITCH TO BE LEFT OUTSIDE BUILDING LINE.
WOOD JOISTS	2X10 SYP @ 16 OC
INSULATION	R-30 FIBERGLASS UNFACED FIBERGLASS BATT
DECKING	3/4" ADVANTECH T&G
MOISTURE PROTECTION	"BOTTOM BOARD" WOVEN, REINFORCED POLY
FLOOR COVERING	COMMERCIAL VINYL TILE
LOCATION	T/O
COVE BASE	4 IN VINYL

EXT. WALLS

WOOD STUDS	2X6 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES
INSULATION	R-19 FIBERGLASS UNFACED FIBERGLASS BATT
EXTERIOR SHEATHING	7/16" OSB
MOISTURE CONTROL	BUILDING WRAP
EXTERIOR SIDING	29 GA STEEL PRE-FINISHED, PANEL LOC +
VINYL GYP WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)

INT. WALLS

WOOD STUDS	2X4 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES
INSULATION	R-11 UNFACED
VCG WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)
CLASS "C" FRP	FULL HEIGHT
LOCATION	RESTROOMS AND KITCHEN

ROOF

TYPE	WOOD WITH LAMINATED PLYWOOD MATE BEAMS
STD. WOOD RAFTERS	2X10 @ 24 OC
INSULATION	R-30, UNFACED
DECKING	5/8" FRC
EPDM ROOF COVERING	45 MIL WHITE TPO
CEILING	2X4 SUSPENDED CEILING, USG RADAR TILE, 15/16 GRID

DOORS

EXTERIOR STEEL DOORS	(4) 3-0 / 6-8 STEEL DOOR, KNOCK DOWN FRAME, CLOSER, PAINTED 18GA DOOR, 16GA FRAME, INSULATED
EXTERIOR STEEL DOORS	(1) REMOVABLE MULLION
INTERIOR DOORS	(4) 3-0 / 6-8 PRE FINISHED SOLID CORE WOOD DOOR / 18GA "TIMELY" KNOCK DOWN STEEL FRAME
DOOR GLAZING	(4) DOOR GLASS: 6X27" (INT/EXT)
EXT DOOR HARDWARE	(4) PMB STANDARD LEVER/PANIC GRADE 2
INT DOOR HARDWARE	(4) LEVER-LOCKSET GRADE 2 PMB STANDARD
DOOR STOPS	FLOOR MOUNTED

WINDOWS

EXTERIOR WINDOWS	(6) 2-0 / 4-0 DUAL PANE, LOW E, CLEAR GLAZING, FIXED WINDOWS WITH SECURITY BARS
------------------	---

ELECTRICAL

CONDUIT	NON-METALLIC TUBING (ENT)
RECEPTACLES	DUPLEX RECEPTACLES, 20 AMP, UNBREAKABLE COVERS
GFI RECEPT.	(14) EA 20 AMP
EXTERIOR RECEPTACLE	(4) EA, CONVENIENCE DUPLEX WITH COVER
DEDICATED RECEPTACLES	20A W/RECEPTACLE. (COPIERS, REFRIG, ETC.)
DEDICATED RECEPTACLES	50A CONNECTION (40 GAL + WATER HEATER, ETC.)
DEDICATED RECEPTACLES	50A W/RECEPTACLE (RANGE, DRYERS, ETC.)
DEDICATED RECEPTACLES	WATER HEATER DISCONNECT
PANELS	(2) 100A-200A, 10KAIC, 1P, CLIP ON BREAKERS
ROOM LIGHTING	LED FIXTURE
EMERGENCY LIGHTS	4 EMERGENCY - 2 BULB LED WITH REMOTE HEAD
EXIT LIGHTS	(3) EXIT LIGHTS, LED W/BATTERY BU
EXTERIOR LIGHTS	4 EXTERIOR PORCH, FLUOR. AT EACH EXIT
EXTERIOR LIGHTS	6 EXTERIOR LED WALL PACKS (AREA LIGHTS)
OCC. SENSOR, SINGLE	8 EACH
OCC. SENSOR, AREA	1 EACH
EMPTY BOX & CONDUITS	(12) STUBBED TO CEILING, 3/4"

FIRE PROTECTION	
FIRE EXT. CABINETS	3 EA
FIRE EXTINGUISHER	3 EA 5# ABC
PLUMBING	
SUPPLY PIPING	CPVC
WASTE PIPING	PVC/ SCH 40 DWV
TOILETS	2 TOILET, HC FLOOR MOUNTED, TANK TYPE
LAVYS	2 LAVY, WALL MOUNT OR DROP-IN W/SINGLE LEVER FAUCET/TV
SINKS	SS, SINGLE BOWL SINK WITH FAUCET
SINKS	1 TRIPLE BOWL, COM. SS SINK (INC. DRAIN. BOARDS & FAUCETS)
FLOOR DRAINS	1 EA FLOOR DRAIN, WITH TRAP PRIMER & ACCESS DOOR
FLOOR DRAINS	1 EA FLOOR SINK, WITH TRAP PRIMER & ACCESS DOOR
MISC. STUBS	2 EA REFRIGERATOR BOX
WATER HEATERS	1 EA 40-60 GAL WATER HEATER, ELECTRIC W/OVERFLOW PAN
WATER HEATER ACC	1 EA RECIRCULATION PUMP
WATER HEATER ACC	1 EA EXPANSION TANK: 5-10 GAL
ACCESSORIES	2 EA 18" x 36" SS FRAMED MIRRORS
ACCESSORIES	2 EA SET HC GRAB BARS FOR HC TOILET
ACCESSORIES	2 EA TOILET PAPER HOLDER - SINGLE SURFACE MOUNTED
HVAC	
STD. UNITS	WALL MOUNTED PACKAGED HVAC WITH ELECTRIC HEAT STRIP, 1 PHASE, SIZED PER DESIGN REQUIRMENTS
DUCTING	CLASS 1 FIBERGLASS THROUGHOUT
RETURN AIR	DUCTED
THERMOSTATS	7 DAY PROGRAMABLE WITH OCCUPANT OVERRIDE
DIFFUSERS	STANDARD ADJUSTABLE
FILTER	AT UNIT
EXHAUST FANS	(2) 80 CFM EXHAUST FAN/LIGHT COMBO
EXHAUST FANS	(1) DUCTING FOR VENT HOOD
MILLWORK & BLOCKING	
CABINETS	(22 LF) BASE CABINETS, INC. COUNTER TOPS
MISC. & ACCESSORIES	
APPLIANCES	TRUE T-49DT TWO COMMERCIAL REFRIGERATOR/Freezer
APPLIANCES	MAYTAG ELECTRIC RANGE, MET8800FZ WITH CONVECTION, 6.7 CU FT
APPLIANCES	DISHWASHER
APPLIANCES	GARBAGE DISPOSAL
APPLIANCES	MAYTAG MICROWAVE VENT HOOD
SHIP LOOSE	
CLOSE UP	(3 EA. MOD) CLOSE-UP PLASTIC FOR SKIRTING OR BELLY BAND
SKIRT FRAMING	(704 SF) PRESSURE TREATED WOOD FRAMING (36" HT)
SKIRTING	(704 SF) 29 GA METAL
SET UP	(22 EA. ANCHOR) ANCHORS, AUGER, STRAPS, CLIPS
SET UP	(88 EA. PIER) 2" X 8" PT SHIMS & OAK WEDGES
NOTES	
OPTION	ALUMINUM DECKS, STEPS AND RAMPS
SITE WORK	
DELIVERY, SET AND SKIRT	
PALOMAR MODULAR BUILDINGS (PMB)	
CLARIFICATIONS	
ALL MATERIALS AND EQUIPMENT PROVIDED FOR THE CONSTRUCTION OF THIS PROPOSED PROJECT WILL BE OF TYPICAL QUALITY AND DURABILITY FOR SIMILAR TYPES OF CONSTRUCTION. ANY MATERIALS LISTED WITH SPECIFIC NAME BRANDS MAY BE SUBSTITUTED FOR OTHER BRANDS OF COMPARABLE QUALITY. PALOMAR MODULAR BUILDINGS (PMB) MANAGEMENT'S PROPOSAL IS BASED ON THESE WRITTEN SPECIFICATIONS AND STATEMENT OF WORK PROVIDED CUSTOMER IS RESPONSIBLE FOR ALL PERMITS INCLUDING BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES. PMB WILL BE RESPONSIBLE FOR ALL PERMITS REQUIRED FOR TRANSPORTATION OF THE MODULES OVER THE ROAD. BUILDING FOOTPRINT NEEDS TO BE WITHIN 12" OF LEVEL IN A 60' SPAN CUSTOMER WILL PROVIDE AN APPROPRIATE GRADED AND COMPACTED SITE AS REQUIRED FOR THE SETTING OF THE MODULAR BUILDING. GRADING SHOULD PROVIDE POSITIVE DRAINAGE AWAY FROM THE BUILDING AND COMPACTION TO A MINIMUM ALLOWABLE SOIL BEARING PRESSURE OF 2000 PSF. IT IS ASSUMED THAT THE MODULAR BUILDING WILL BE SET ABOVE GRADE. PMB WILL UTILIZE ABS PADS AND STACKED CMU BLOCK PIERS TO SET THE BUILDING ON GRADE. FINISHED FLOOR WILL BE BETWEEN 34" AND 38" ABOVE GRADE PRICES ARE VALID FOR 30 DAYS. THE BUILDING WILL BE BUILT IN COMPLIANCE WITH THE INTERNATIONAL BUILDING CODE, AMERICANS WITH DISABILITIES ACT, AND THE NATIONAL ELECTRIC CODE. THE BUILDING WILL BE ENGINEERED TO MEET LOCAL FLOOR AND ROOF LOAD REQUIREMENTS AND WILL HAVE ELECTRICAL, HEATING AND COOLING LOADS SIZED IN ACCORDANCE WITH NEC AND IBC CODES. COST TO COMPLY WITH LOCAL CODES BEYOND THE ATTACHED FLOOR PLAN AND SPECIFICATIONS IS THE RESPONSIBILITY OF THE OWNER.	

CUSTOMER WILL MAKE SITE ACCESSIBLE FOR MODULAR INDUSTRY DELIVERY VEHICLES WHEN PMB IS READY TO DELIVER MODULAR SECTIONS.
IF SITE IS NOT READY IN TIME FOR DELIVERY OF MODULES, CUSTOMER AGREES TO REIMBURSE PMB FOR TEMPORARY STORAGE, STAGING AND/OR DAMAGES WHILE MODULES ARE STORED.

SCOPE

PMB WILL MANUFACTURE ALL MODULES IN ACCORDANCE WITH STATE AND CUSTOMER APPROVED DRAWINGS
PMB WILL TRUCK SET ALL MODULAR BUILDINGS IN ACCORDANCE WITH A MUTUALLY AGREED SITE PLAN.
PMB WILL MAKE FINAL MODULAR MATERIAL STRUCTURAL CONNECTIONS AND FINISHES INCLUDING ELECTRICAL AND HVAC CROSSOVERS PROVIDED BY PMB IN THE FIELD
PMB WILL PROVIDE AND INSTALL PRESSURE TREATED WOOD FRAMING WITH SIDING TO MATCH EXTERIOR OF BUILDING INCLUDING VENTILATION & SKIRT PANEL ACCESS
ROOF SLOPE TO ACCOMMODATE MODULAR CONSTRUCTION METHODS
CUSTOMER WILL PROVIDE APPROPRIATE AND CURRENT GEOTECHNICAL INFORMATION AS REQUIRED FOR FOUNDATION LAYOUT, NO FOUNDATION DESIGN IS INCLUDED
PMB WILL PROVIDE STANDARD MODULAR STATE APPROVALS AND ENGINEERING (IF STATE HAS A MODULAR BUILDING PROGRAM)
PMB STANDARD GENERAL LIABILITY UNTIL PMB WORK IS COMPLETE.
STANDARD PMB WARRANTY INFORMATION PROVIDED AT THE COMPLETION OF THE PROJECT
STANDARD PMB TECHNICAL INPUT (SUBMITTAL PACKAGE) PROVIDED FOR CUSTOMER REVIEW AND APPROVAL.

EXCLUSIONS

ALL UTILITIES, SITE WORK, SITE PREPARATION, ACCESS FOR MODULAR UNITS, HAULING ROADS, CRANES OR ACCESS ROADS
ADA ACCESSIBILITY
BELOW GRADE FOOTERS
FOUNDATION DESIGN
ANY AND ALL WORK NOT ASSOCIATED WITH THE MODULAR BUILDING
FINAL CONNECTION OF ALL UTILITIES
MANIFOLDING OF WASTE LINES UNDER BUILDING IF BUILDING HAS PLUMBING
FURNITURE
CARD ACCESS READERS
LOW VOLTAGE WIRING INCLUDING, FIRE ALARM, PHONE, DATA, COAXIAL, MASS NOTIFICATION, PA SYSTEM, CCTV, SECURITY, ETC.
BUILDERS RISK INSURANCE
ANY HORIZONTAL CONDUIT FOR LOW VOLTAGE WIRING
FIRE SUPPRESSION OR FIRE ALARM SYSTEMS
PORT-A-POTTY
TEMPORARY ELECTRIC
TEST AND BALANCE OF THE HVAC SYSTEM
CRANES, MAN LIFTS OR FORKLIFTS
SIGNAGE
SURVEYING
STAKING OF THE SITE TO SHOW WHERE BUILDING IS GOING
CLEANING OF ANY KIND BEYOND BROOM SWEEP
TAXES AND BONDING OF ANY KIND
LOCAL ZONING AND DEED RESTRICTIONS
PERMITS INCLUDING BUT NOT LIMITED TO BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES.
PRESSURE TREATED WOOD OR METAL DECKS, STEP AND RAMPS PER ADA REQUIREMENTS
GUTTERS, DOWNSPOUTS AND SPLASH BLOCKS
CANOPIES
ASPHALT OR CONCRETE PARKING LOT, INCLUDING DRIVES, ENTRIES, CURBS, SIGNAGE, ETC. AS OR IF REQUIRED
REINFORCED CONCRETE FOR SIDE WALKS, ROADS, RAMPS, STOOPS, DECKS, STEPS AND EQUIPMENT PADS

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of \$50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Oblige.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

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.

=====

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.

=====

END OF GENERAL DECISION



THE CITY OF MIDLAND CONTRACT

Contract No. 20003581

THIS CONTRACT, effective the 24th day of June, 2020, by and between the City of Midland, hereinafter referred to as "City", and Palomar Modular Buildings LLC, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 261,612.00 DOLLARS
2. **Scope of Work:** Company shall perform all work described for labor, material, equipment and supervision necessary to supply and install a multi-purpose modular building at Washington Park in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Proposal
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 Regina Stephenson 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 90 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

6.116

June 23, 2020

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

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

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

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

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

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

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

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

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

PACKET

6-117

June 23, 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 to, 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 Palomar Modular Buildings LLC, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

EXHIBIT "A"



505 North I-35 East, DeSoto, Texas 75115 P 469.727.0727 F 469.727.0728 866.912.4587 www.palomarmodularbuildings.com

June 11, 2020

City of Midland
Regina Stephenson
Midland, TX 79702

Regina

Thank you for your interest in Palomar Modular Buildings, LLC. The price reflected below, for a new **42' x 76' Multi-Purpose Building** (nominal dimensions), manufactured, delivered, and set in Midland, TX is based on the attached specifications and floor plan.

1. **The purchase price** as specified is **\$203,460.00**. The price does not include poured concrete footers, canopies, gutters, self-contained fire alarm and suppression, low voltage equipment, utility hookups, site work, taxes or permits. It is assumed that the site can support the building, is relatively level and easily accessible.
Aluminum Decks, Steps and Ramps (as shown) \$54,282.00
P&P Bond \$3,870.00
BuyBoard Account #556-18

The building will be built in compliance with the International Building, Plumbing and mechanical codes, Americans with Disabilities Act, and the National Electric Code. The building will be engineered to meet local floor and roof load requirements and will have electrical, heating and cooling loads sized in accordance with code. Cost to comply with local codes beyond the attached floor plan and specifications is the responsibility of the owner.

Prices are valid for 30 days. Our payment terms are 50% due upon execution on PO or Contract, 40% due upon completion of manufacturing at PMB and 10% when the building is accepted or occupied, whichever comes first.

Sincerely,

Guy Cruce
Lead Estimator/Business Developer
Palomar Modular Buildings LLC
469-727-0727 (o)
972-989-9456 (c)

SPECIFICATION AND STATEMENT OF WORK

CUSTOMER	CITY OF MIDLAND	LAYOUT	42' X 76' NOMINAL
DESTINATION	MIDLAND, TX	SIZE	3,137
BUILDING. TYPE	VB	# OF MODS	3
DATE	6/11/2020	CODES	2015 IBC, IPC, IMC, IECC, 2014 NEC, 2012 TAS
CONSTR TYPE / USE:	BUSINESS		
FLOORS			
FRAME TYPE	OUTRIGGER SIZED TO MEET DESIGN CRITERIA		
RUNNING GEAR	TIRES, AXLES AND HITCHES REMOVED AND STORED UNDER UNIT, IF BUILDING IS SET LOWER THAT 34" AFG HITCH TO BE LEFT OUTSIDE BUILDING LINE.		
WOOD JOISTS	2X10 SYP @ 16 OC		
INSULATION	R-30 FIBERGLASS UNFACED FIBERGLASS BATT		
DECKING	3/4" ADVANTECH T&G		
MOISTURE PROTECTION	"BOTTOM BOARD" WOVEN, REINFORCED POLY		
FLOOR COVERING	COMMERCIAL VINYL TILE		
LOCATION	T/O		
COVE BASE	4 IN VINYL		
EXT. WALLS			
WOOD STUDS	2X6 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES		
INSULATION	R-19 FIBERGLASS UNFACED FIBERGLASS BATT		
EXTERIOR SHEATHING	7/16" OSB		
MOISTURE CONTROL	BUILDING WRAP		
EXTERIOR SIDING	29 GA STEEL PRE-FINISHED, PANEL LOC +		
VINYL GYP WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)		
INT. WALLS			
WOOD STUDS	2X4 @ 16 O.C. WITH DOUBLE TOP AND SINGLE BOTTOM PLATES		
INSULATION	R-11 UNFACED		
VCG WALL FINISH	5/8" VINYL COVERED GYP (VENETIAN FROST)		
CLASS "C" FRP	FULL HEIGHT		
LOCATION	RESTROOMS AND KITCHEN		
ROOF			
TYPE	WOOD WITH LAMINATED PLYWOOD MATE BEAMS		
STD. WOOD RAFTERS	2X10 @ 24 OC		
INSULATION	R-30, UNFACED		
DECKING	5/8" FRC		
EPDM ROOF COVERING	45 MIL WHITE TPO		
CEILING	2X4 SUSPENDED CEILING, USG RADAR TILE, 15/16 GRID		
DOORS			
EXTERIOR STEEL DOORS	(4) 3-0 / 6-8 STEEL DOOR, KNOCK DOWN FRAME, CLOSER, PAINTED 18GA DOOR ,16GA FRAME, INSULATED		
EXTERIOR STEEL DOORS	(1) REMOVABLE MULLION		
INTERIOR DOORS	(4) 3-0 / 6-8 PRE FINISHED SOLID CORE WOOD DOOR / 18GA "TIMELY" KNOCK DOWN STEEL FRAME		
DOOR GLAZING	(4) DOOR GLASS: 6X27" (INT/EXT)		
EXT DOOR HARDWARE	(4) PMB STANDARD LEVER/PANIC GRADE 2		
INT DOOR HARDWARE	(4) LEVER-LOCKSET GRADE 2 PMB STANDARD		
DOOR STOPS	FLOOR MOUNTED		
WINDOWS			
EXTERIOR WINDOWS	(6) 2-0 / 4-0 DUAL PANE, LOW E, CLEAR GLAZING, FIXED WINDOWS WITH SECURITY BARS		
ELECTRICAL			
CONDUIT	NON-METALLIC TUBING (ENT)		
RECEPTACLES	DUPLEX RECEPTACLES, 20 AMP, UNBREAKABLE COVERS		
GFI RECEPT.	(14) EA 20 AMP		
EXTERIOR RECEPTACLE	(4) EA, CONVENIENCE DUPLEX WITH COVER		
DEDICATED RECEPTACLES	20A W/RECEPTACLE. (COPIERS, REFRIG, ETC.)		
DEDICATED RECEPTACLES	50A CONNECTION (40 GAL + WATER HEATER, ETC.)		
DEDICATED RECEPTACLES	50A W/RECEPTACLE (RANGE, DRYERS, ETC.)		
DEDICATED RECEPTACLES	WATER HEATER DISCONNECT		
PANELS	(2) 100A-200A, 10KAIC, 1P, CLIP ON BREAKERS		
ROOM LIGHTING	LED FIXTURE		
EMERGENCY LIGHTS	4 EMERGENCY - 2 BULB LED WITH REMOTE HEAD		
EXIT LIGHTS	(3) EXIT LIGHTS, LED W/BATTERY BU		
EXTERIOR LIGHTS	4 EXTERIOR PORCH, FLUOR. AT EACH EXIT		
EXTERIOR LIGHTS	6 EXTERIOR LED WALL PACKS (AREA LIGHTS)		
OCC. SENSOR, SINGLE	8 EACH		
OCC. SENSOR, AREA	1 EACH		
EMPTY BOX & CONDUITS	(12) STUBBED TO CEILING, 3/4"		

PACKET

6.123

June 23, 2020

PACKET

6.123

June 23, 2020

FIRE PROTECTION	
FIRE EXT. CABINETS	3 EA
FIRE EXTINGUISHER	3 EA 5# ABC
PLUMBING	
SUPPLY PIPING	CPVC
WASTE PIPING	PVC/ SCH 40 DWV
TOILETS	2 TOILET, HC FLOOR MOUNTED, TANK TYPE
LAVYS	2 LAVY, WALL MOUNT OR DROP-IN W/SINGLE LEVER FAUCET/TV
SINKS	SS, SINGLE BOWL SINK WITH FAUCET
SINKS	1 TRIPLE BOWL, COM. SS SINK (INC. DRAIN. BOARDS & FAUCETS)
FLOOR DRAINS	1 EA FLOOR DRAIN, WITH TRAP PRIMER & ACCESS DOOR
FLOOR DRAINS	1 EA FLOOR SINK, WITH TRAP PRIMER & ACCESS DOOR
MISC. STUBS	2 EA REFRIGERATOR BOX
WATER HEATERS	1 EA 40-60 GAL WATER HEATER, ELECTRIC W/OVERFLOW PAN
WATER HEATER ACC	1 EA RECIRCULATION PUMP
WATER HEATER ACC	1 EA EXPANSION TANK: 5-10 GAL
ACCESSORIES	2 EA 18" x 36" SS FRAMED MIRRORS
ACCESSORIES	2 EA SET HC GRAB BARS FOR HC TOILET
ACCESSORIES	2 EA TOILET PAPER HOLDER - SINGLE SURFACE MOUNTED
HVAC	
STD. UNITS	WALL MOUNTED PACKAGED HVAC WITH ELECTRIC HEAT STRIP, 1 PHASE, SIZED PER DESIGN REQUIRMENTS
DUCTING	CLASS 1 FIBERGLASS THROUGHOUT
RETURN AIR	DUCTED
THERMOSTATS	7 DAY PROGRAMABLE WITH OCCUPANT OVERRIDE
DIFFUSERS	STANDARD ADJUSTABLE
FILTER	AT UNIT
EXHAUST FANS	(2) 80 CFM EXHAUST FAN/LIGHT COMBO
EXHAUST FANS	(1) DUCTING FOR VENT HOOD
MILLWORK & BLOCKING	
CABINETS	(22 LF) BASE CABINETS, INC. COUNTER TOPS
MISC. & ACCESSORIES	
APPLIANCES	TRUE T-49DT TWO COMMERCIAL REFRIGERATOR/Freezer
APPLIANCES	MAYTAG ELECTRIC RANGE, MET8800FZ WITH CONVECTION, 6.7 CU FT
APPLIANCES	DISHWASHER
APPLIANCES	GARBAGE DISPOSAL
APPLIANCES	MAYTAG MICROWAVE VENT HOOD
SHIP LOOSE	
CLOSE UP	(3 EA. MOD) CLOSE-UP PLASTIC FOR SKIRTING OR BELLY BAND
SKIRT FRAMING	(704 SF) PRESSURE TREATED WOOD FRAMING (36" HT)
SKIRTING	(704 SF) 29 GA METAL
SET UP	(22 EA. ANCHOR) ANCHORS, AUGER, STRAPS, CLIPS
SET UP	(88 EA. PIER) 2" X 8" PT SHIMS & OAK WEDGES
NOTES	
OPTION	ALUMINUM DECKS, STEPS AND RAMPS
SITE WORK	
DELIVERY, SET AND SKIRT	
PALOMAR MODULAR BUILDINGS (PMB)	
CLARIFICATIONS	
ALL MATERIALS AND EQUIPMENT PROVIDED FOR THE CONSTRUCTION OF THIS PROPOSED PROJECT WILL BE OF TYPICAL QUALITY AND DURABILITY FOR SIMILAR TYPES OF CONSTRUCTION. ANY MATERIALS LISTED WITH SPECIFIC NAME BRANDS MAY BE SUBSTITUTED FOR OTHER BRANDS OF COMPARABLE QUALITY. PALOMAR MODULAR BUILDINGS (PMB) MANAGEMENT'S PROPOSAL IS BASED ON THESE WRITTEN SPECIFICATIONS AND STATEMENT OF WORK PROVIDED CUSTOMER IS RESPONSIBLE FOR ALL PERMITS INCLUDING BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES. PMB WILL BE RESPONSIBLE FOR ALL PERMITS REQUIRED FOR TRANSPORTATION OF THE MODULES OVER THE ROAD. BUILDING FOOTPRINT NEEDS TO BE WITHIN 12" OF LEVEL IN A 60' SPAN CUSTOMER WILL PROVIDE AN APPROPRIATE GRADED AND COMPACTED SITE AS REQUIRED FOR THE SETTING OF THE MODULAR BUILDING. GRADING SHOULD PROVIDE POSITIVE DRAINAGE AWAY FROM THE BUILDING AND COMPACTION TO A MINIMUM ALLOWABLE SOIL BEARING PRESSURE OF 2000 PSF. IT IS ASSUMED THAT THE MODULAR BUILDING WILL BE SET ABOVE GRADE. PMB WILL UTILIZE ABS PADS AND STACKED CMU BLOCK PIERS TO SET THE BUILDING ON GRADE. FINISHED FLOOR WILL BE BETWEEN 34" AND 38" ABOVE GRADE PRICES ARE VALID FOR 30 DAYS. THE BUILDING WILL BE BUILT IN COMPLIANCE WITH THE INTERNATIONAL BUILDING CODE, AMERICANS WITH DISABILITIES ACT, AND THE NATIONAL ELECTRIC CODE. THE BUILDING WILL BE ENGINEERED TO MEET LOCAL FLOOR AND ROOF LOAD REQUIREMENTS AND WILL HAVE ELECTRICAL, HEATING AND COOLING LOADS SIZED IN ACCORDANCE WITH NEC AND IBC CODES. COST TO COMPLY WITH LOCAL CODES BEYOND THE ATTACHED FLOOR PLAN AND SPECIFICATIONS IS THE RESPONSIBILITY OF THE OWNER.	

PACKET

6.124

June 23, 2020

CUSTOMER WILL MAKE SITE ACCESSIBLE FOR MODULAR INDUSTRY DELIVERY VEHICLES WHEN PMB IS READY TO DELIVER MODULAR SECTIONS.

IF SITE IS NOT READY IN TIME FOR DELIVERY OF MODULES, CUSTOMER AGREES TO REIMBURSE PMB FOR TEMPORARY STORAGE, STAGING AND/OR DAMAGES WHILE MODULES ARE STORED.

SCOPE

PMB WILL MANUFACTURE ALL MODULES IN ACCORDANCE WITH STATE AND CUSTOMER APPROVED DRAWINGS

PMB WILL TRUCK SET ALL MODULAR BUILDINGS IN ACCORDANCE WITH A MUTUALLY AGREED SITE PLAN.

PMB WILL MAKE FINAL MODULAR MATE LINE STRUCTURAL CONNECTIONS AND FINISHES INCLUDING ELECTRICAL AND HVAC CROSSOVERS PROVIDED BY PMB IN THE FIELD

PMB WILL PROVIDE AND INSTALL PRESSURE TREATED WOOD FRAMING WITH SIDING TO MATCH EXTERIOR OF BUILDING INCLUDING VENTILATION & SKIRT PANEL ACCESS

ROOF SLOPE TO ACCOMMODATE MODULAR CONSTRUCTION METHODS

CUSTOMER WILL PROVIDE APPROPRIATE AND CURRENT GEOTECHNICAL INFORMATION AS REQUIRED FOR FOUNDATION LAYOUT, NO FOUNDATION DESIGN IS INCLUDED

PMB WILL PROVIDE STANDARD MODULAR STATE APPROVALS AND ENGINEERING (IF STATE HAS A MODULAR BUILDING PROGRAM)

PMB STANDARD GENERAL LIABILITY UNTIL PMB' WORK IS COMPLETE.

STANDARD PMB WARRANTY INFORMATION PROVIDED AT THE COMPLETION OF THE PROJECT.

STANDARD PMB TECHNICAL INPUT (SUBMITTAL PACKAGE) PROVIDED FOR CUSTOMER REVIEW AND APPROVAL.

EXCLUSIONS

ALL UTILITIES, SITE WORK, SITE PREPARATION, ACCESS FOR MODULAR UNITS, HAULING ROADS, CRANES OR ACCESS ROADS

ADA ACCESSIBILITY

BELOW GRADE FOOTERS

FOUNDATION DESIGN

ANY AND ALL WORK NOT ASSOCIATED WITH THE MODULAR BUILDING

FINAL CONNECTION OF ALL UTILITIES

MANIFOLDING OF WASTE LINES UNDER BUILDING IF BUILDING HAS PLUMBING

FURNITURE

CARD ACCESS READERS

LOW VOLTAGE WIRING INCLUDING, FIRE ALARM, PHONE, DATA, COAXIAL, MASS NOTIFICATION, PA SYSTEM, CCTV, SECURITY, ETC.

BUILDERS RISK INSURANCE

ANY HORIZONTAL CONDUIT FOR LOW VOLTAGE WIRING

FIRE SUPPRESSION OR FIRE ALARM SYSTEMS

PORT-A-POTTY

TEMPORARY ELECTRIC

TEST AND BALANCE OF THE HVAC SYSTEM

CRANES, MAN LIFTS OR FORKLIFTS

SIGNAGE

SURVEYING

STAKING OF THE SITE TO SHOW WHERE BUILDING IS GOING.

CLEANING OF ANY KIND BEYOND BROOM SWEEP

TAXES AND BONDING OF ANY KIND

LOCAL ZONING AND DEED RESTRICTIONS

PERMITS INCLUDING BUT NOT LIMITED TO BUILDING PERMITS, LICENSING COSTS AND IMPACT FEES.

PRESSURE TREATED WOOD OR METAL DECKS, STEP AND RAMPS PER ADA REQUIREMENTS

GUTTERS, DOWNSPOUTS AND SPLASH BLOCKS

CANOPIES

ASPHALT OR CONCRETE PARKING LOT, INCLUDING DRIVES, ENTRIES, CURBS, SIGNAGE, ETC. AS OR IF REQUIRED

REINFORCED CONCRETE FOR SIDE WALKS, ROADS, RAMPS, STOOPS, DECKS, STEPS AND EQUIPMENT PADS

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of \$50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Oblige.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

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.

=====

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.

=====

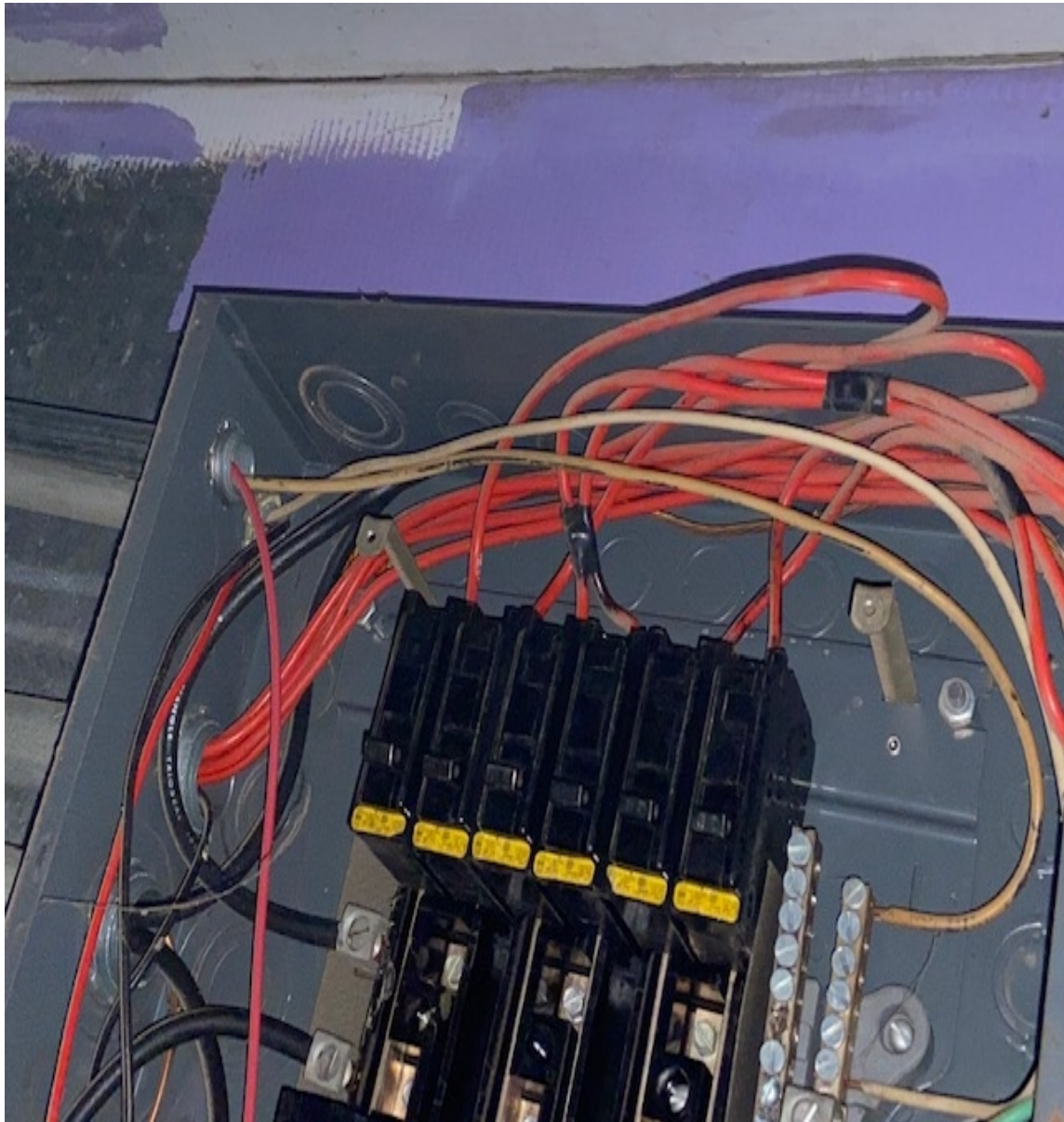
END OF GENERAL DECISION















City Council Meeting



Item Number: 7
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Justine Ruff, Director

Approved for Agenda:
CSharp
City Manager's Office

2020-105

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH BOLER EQUIPMENT SERVICE, INC., IN THE AMOUNT OF \$872,310.00 FOR THE MAF CONCRETE APRON REHAB PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (**AIRPORT**)

Purpose:

Resolution awarding the project described as MAF Concrete Apron Rehabilitation at Midland International Air & Space Port to Boler Equipment Service, Inc., and appropriate necessary funds.

Recommended City Council Action:

Approve

Fiscal Impact:

FAA Share (100%) – Forthcoming Grant 60	\$1,587,677.00
City/Airport Share (0%) – Forthcoming Grant 60	\$ 0.00
City/Airport Share (Contingency) – Future 90/10 split FAA/City	<u>\$ 87,250.00</u>
Total	\$1,674,927.00

Breakout of Costs:

Construction Phase Airport Admin Costs (Audit, etc.)	\$ 15,000.00
Construction Phase Engineering Fee	\$ 121,667.00
Construction Phase Admin/Resident Project Representative (RPR)	\$ 275,000.00
Construction Phase Surveying and Testing	\$ 85,000.00
Construction Phase Reimbursable Costs	\$ 50,000.00

Construction Improvements Bid	\$ 872,310.00
Construction Improvements – FAA Known Change of Work	\$ 168,700.00
Construction Contingency	<u>\$ 87,250.00</u>
Total Recommended Construction	\$1,674,927.00
Phase Appropriation	
Construction Improvements – FAA Known Change of Work	\$ 168,700.00
Construction Contingency	\$ 87,250.00
Total Recommended Construction	\$1,674,927.00
Phase Appropriation	

Appropriation Language:

That the sum of \$1,587,677 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance (35305) to the MAF Concrete Apron Rehab (700241-505).

That the sum of \$87,250.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (35650) to the MAF Concrete Apron Project (700241-505).

Discussion:

During the April 14, 2020, meeting a motion authorized the Advertisement for bids for the MAF Rehabilitate North, Terminal and South Apron Concrete Pavement Project (700241-505) at MAF. On Thursday, May 21, three bids were received and opened. The low bid was submitted by Boler Equipment Service, Inc. in the amount of \$872,310.00. Parkhill, Smith & Cooper has reviewed the bids and recommends that the project be awarded to Boler Equipment Service, Inc.

This project includes replacing all the existing joint sealant and backer-rod from the entirety of the existing concrete pavement located on the North, Terminal and South aprons. Panels that are not functioning correctly for transferring load from the aircraft as it moves across the panels will be replaced. New pavement markings will also be applied.

This project was included in FAA Grant #58, and the Grant covered 90% of the expenses through the bidding phase of the project. The construction process of this project is covered by FAA Grant #60, which with the Government's new COVID-19 Assistance Package, will cover 100% of the construction expenses and is scheduled to be funded in the Summer of 2020. The Airport will upfront the necessary funds and receive reimbursement at a later date.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH BOLER EQUIPMENT SERVICE,
INC., IN THE AMOUNT OF \$872,310.00 FOR THE MAF
CONCRETE APRON REHAB PROJECT AT MIDLAND
INTERNATIONAL AIR & SPACE PORT; AND
APPROPRIATING FUNDS FOR SAID PROJECT**

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the MAF Concrete Apron Rehab Project at Midland International Air & Space Port; and

WHEREAS, on May 21, 2020, three (3) bids were received for said project with the lowest and most responsible bid being submitted by Boler Equipment Service, Inc., for a total cost of \$872,310.00; and

WHEREAS, the City Council finds the price proposed by Boler Equipment Service, Inc., for said project to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Boler Equipment Service, Inc., for said project and to appropriate necessary funds therefor;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Boler Equipment Service, Inc., in the amount of \$872,310.00 for the MAF Concrete Apron Rehab Project at Midland International Air & Space Port. Said contract shall be on file in the office of the City Secretary referenced by the number and date of this Resolution

SECTION TWO. That the sum of \$1,587,677.00 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance (35305) to the MAF Concrete Apron Rehab Project (700241-505).

SECTION THREE. That the sum of \$87,250.00 is hereby appropriated from the

Airport Operating Fund (500) Unappropriated Fund Balance (35650) to the MAF Concrete Apron Rehab Project (700241-505).

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Boler Equipment Service, Inc., pursuant to the terms of said contract from funds available in the MAF Concrete Apron Rehab Project (700241-505) upon receipt of proper invoices or statements approved by the City Manager.

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

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

City Council Meeting



Item Number: 8
Meeting Date: July 14, 2020
To: City Council / City Manager
From: Justine Ruff, Director

Approved for Agenda:
CSharp
City Manager's Office

2020-106

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MAXWELL ASPHALT, INC., IN THE AMOUNT OF \$440,175.00 FOR THE MAF NORTHWEST TAXILANE AND EXECUTIVE APRON REHAB PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (**AIRPORT**)

Purpose:

Resolution awarding the project described as MAF Northwest Taxilane and Executive Apron Rehabilitation at Midland International Air & Space Port to Maxwell Asphalt Inc. of Salt Lake City Utah, and appropriate necessary funds.

Recommended City Council Action:

Approve

Fiscal Impact:

Meeting Date Display

FAA Share (100%) – Forthcoming Grant 60	\$ 767,902.00
City/Airport Share (0%) – Forthcoming Grant 60	\$ 0.00
City/Airport Share (Contingency) – Future 90/10 split FAA/City	<u>\$ 45,000.00</u>
Total	\$ 812,902.00

Breakout of Costs:

Construction Phase Airport Admin Costs (Audit, etc.)	\$ 15,000.00
Construction Phase Engineering Fee	\$ 82,727.00
Construction Phase Admin/Resident Project Representative (RPR)	\$160,000.00
Construction Phase Surveying and Testing	\$ 30,000.00

Construction Phase Reimbursable Costs	\$ 40,000.00
Construction Improvements Bid	\$440,175.00
Construction Contingency	<u>\$ 45,000.00</u>
Total Recommended Construction Phase Appropriation	\$812,902.00

Appropriation Language:

That the sum of \$767,902.00 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance (35305) to the Northwest Taxilane and Executive Apron Rehab Project (700242-505).

That the sum of \$45,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (35650) to the Northwest Taxilane & Executive Apron Rehab Project (700242-505).

Discussion:

During the April 14, 2020, meeting a motion authorized the Advertisement for Bids for the MAF Rehabilitate Northwest Taxilane and Executive Apron Project (#70024) at MAF. On Thursday, May 21, three bids were opened. The low bid was submitted by Maxwell Asphalt, Inc. in the amount of \$440,175.00. Parkhill, Smith & Cooper has reviewed the bids and recommends that the project be awarded to Maxwell Asphalt, Inc., of Salt Lake City, Utah.

This project includes preparing a rehabilitation plan to include sealing the cracks and surface course and application of an FAA Emulsified Asphalt Surface Seal to the bituminous surface course pavement on the Northwest Taxilane extension and the Executive Apron to reduce the rate of pavement oxidation. This project was included in FAA Grant #58, and the grant covered 90% of the expenses through the bidding phase of the project. The construction process of this project is covered by FAA Grant #60, which with the Government's new COVID-19 Assistance Package, will cover 100% of the construction expenses and is scheduled to be funded in the Summer of 2020. The Airport will upfront the necessary funds and receive reimbursement at a later date.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH MAXWELL ASPHALT, INC., IN THE
AMOUNT OF \$440,175.00 FOR THE MAF NORTHWEST
TAXILANE AND EXECUTIVE APRON REHAB
PROJECT AT MIDLAND INTERNATIONAL AIR &
SPACE PORT; AND APPROPRIATING FUNDS FOR
SAID PROJECT**

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the MAF Northwest Taxilane and Executive Apron Rehab Project at Midland International Air & Space Port; and

WHEREAS, on May 21, 2020, three (3) bids were received for said project with the lowest and most responsible bid being submitted by Maxwell Asphalt, Inc., for a total cost of \$440,175.00; and

WHEREAS, the City Council finds the price proposed by Maxwell Asphalt, Inc., for said project to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Maxwell Asphalt, Inc., for said project and to appropriate necessary funds therefor;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Maxwell Asphalt, Inc., in the amount of \$440,175.00 for the MAF Northwest Taxilane and Executive Apron Rehab Project at Midland International Air & Space Port. Said contract shall be on file in the office of the City Secretary referenced by the number and date of this Resolution

SECTION TWO. That the sum of \$767,902.00 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance (35305) to the MAF Northwest Taxilane and Executive Apron Rehab Project (700242-505).

SECTION THREE. That the sum of \$45,000.00 is hereby appropriated from the

Airport Operating Fund (500) Unappropriated Fund Balance (35650) to the MAF Northwest Taxilane and Executive Apron Rehab Project (700242-505).

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Maxwell Asphalt, Inc., pursuant to the terms of said contract from funds available in the MAF Northwest Taxilane and Executive Apron Rehab Project (700242-505) upon receipt of proper invoices or statements approved by the City Manager.

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

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

City Council Meeting



Item Number: 9

Meeting Date: June 23, 2020

To: City Council / City Manager

From: Morris Williams, Assistant City Manager 067-2020

Approved for Agenda:
CSharp
City Manager's Office

Subject: MOTION AUTHORIZING THE EXECUTION OF A THIRD AMENDMENT TO THAT CERTAIN COMMERCIAL HANGAR LEASE AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION REGARDING CERTAIN REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIR & SPACE PORT AND DESCRIBED AS LOTS 1B AND 8, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (CITY MANAGER'S OFFICE)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on June 1, 2020 a resolution authorizing the execution of a third amendment to that certain Commercial Hangar Lease Agreement with the City of Midland regarding certain real property located at Midland International Air & Space Port and described as Lots 1B and 8, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas. The hangar, located at the Spaceport Business Park, is occupied by MDC's tenant, AST & Science.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact.

Discussion:

The MDC has completed the platting process of the Spaceport Business Park, which necessitates this amendment. The exhibit in this amendment replaces the original metes and bounds lease description, which will correct any disparities and eliminate ambiguities regarding the leased premises. There is no

material change in the amount of land being leased from the City to the MDC.

**THIRD AMENDMENT TO THE COMMERCIAL HANGAR LEASE AGREEMENT
BETWEEN THE MIDLAND DEVELOPMENT CORPORATION
AND THE CITY OF MIDLAND, TEXAS**

THIS THIRD AMENDMENT is made and effective June 10, 2020, by and between the Midland Development Corporation (“*Lessee*”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the City of Midland (“*City*”), a home-rule municipality.

WHEREAS, Lessee and City entered into that certain Commercial Hangar Lease Agreement dated July 10, 2012 (the “*Agreement*”) of certain City-owned facilities and land at the Midland Air & Space Port for economic development purposes, which was approved by the Midland Development Corporation Board of Directors and the Midland City Council; and

WHEREAS, Lessee and City executed an amendment to the Agreement on May 10, 2017 (the “*First Amendment*”), so as to expand the area of the Leased Premises; and

WHEREAS, Lessee and City executed a second amendment to the Agreement on November 7, 2018 (the “*Second Amendment*”), so as to further expand the area of the Leased Premises, extend the Term of the Agreement, and provide for certain adjustments in the rent due to City; and

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

WHEREAS, Lessee and City desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

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

- 1) The Agreement is hereby amended to replace all prior exhibits contained in the Agreement, inclusive of the First Amendment and Second Amendment, with the attached **Exhibit A**, which is incorporated herein for all purposes.
- 2) The Agreement, inclusive of this Third Amendment, is hereby ratified and affirmed by Lessee and City, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Pages Follow]

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

CITY OF MIDLAND

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

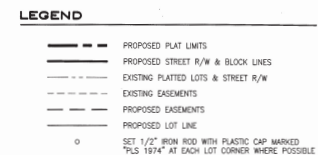
MIDLAND DEVELOPMENT CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary for the
Midland Development Corporation

Being a 21:156 Ac. Replat. of a 0.03 Ac. Portion of Lot 1A, Block 1, a 0.03 Ac. Portion of Lot 1A, Block 2, a 0.13 Ac. Portion of Lot 2A Block 2, and a 2.12 Ac. Portion of Lot 1A, Block 13; Utility Easement and Railroad Spur, Eardart Drive All in MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK, An Addition to the City and County of Midland, Texas. Recorded in Cabinet F, Page 187, P.R.M.C.



1. A BULKY EASEMENT OF RIGHTS AND EGRESS WILL BE GRANTED TO WILKIND INTERNATIONAL APARTMENT INDUSTRIAL PARK, SECTION 8 OF THE CITY OF MELBOURNE FOR GARBAGE TRASH COLLECTION AND LOADING AND MAINTENANCE OF TRUCK CARRIAGES, AND ALSO EXCEPT THOSE AREAS NEARBY TO A BUILDING OR BUILDINGS THAT MAY BE CONSTRUCTED THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT UNTIL THERE IS AN EASEMENT OF SUCH CONVEYORS AND THE EASEMENTS IN CONNECTION THERETO HAVE BEEN SELECTED AND APPROVED BY THE OFFICE OF UTILITIES
2. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCES CONCERNING ZONING LAW AND SUBJECT TO FINES AND WITHHELDING OF UTILITIES AND BUILDING PERMITS.
3. ACQUISITION OF A SITE PLAN BY THE CITY OF MELBOURNE MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
4. THIS DEVELOPMENT FALLS WITHIN THE MELBOURNE INTERNATIONAL APARTS-4-A-ZONE.
5. BASED ON THE STATE DEPARTMENT OF HIGHWAYS AND URBAN DEVELOPMENT, FLOOD INSURANCE ADMINISTRATION FLOOD HAZARD RISK MAP, SHOWING LOW RISK AREA, ADJACENT SHEET NUMBER 4803200C-76, WITH AN EFFECTIVE DATE OF DECEMBER 9, 1999, AND REVISED SEPTEMBER 16, 2008, THE SURVEYED PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE MAP. THE FLOOD ZONE CLASSIFICATION FOR THE SURVEYED PROPERTY IS NONE.
6. INTERIOR WALL FEELS WILL BE ASSIGNED DURING THE FINAL PLANNING PROCESS; IMPLEMENTATION AND COLLECTION OF WHAT FEELS WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL MAP FEELERS OR INCREASES IN FEELS WILL NOT BE ASSERTED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.
7. RELATE TO THE EXISTING DRAINAGE DESIGN: THE MAINTENANCE OF ANY STORMWATER FACILITY OR STRUCTURE, THE REPAIRS AND REPLACEMENTS OF SUCH FACILITIES OR STRUCTURES TO MAINTAIN THE FACILITY IN WORKING ORDER, WITH INSPECTIONS AND CORRECTIVE ACTION MADE AT LEAST ANNUALLY. REPORTS OF SUCH INSPECTIONS AND MAINTENANCE SHALL BE KEPT FOR ONE YEAR AND SUBMITTED TO THE CITY ENGINEER'S ADMINISTRATION ON REQUEST; OR MAY BE FORWARDED TO THE CITY ENGINEERS OFFICE.
8. RELATE TO THE EXISTING DRAINAGE DESIGN: THE CITY OF MELBOURNE SHALL HAVE THE RIGHT TO INSTALL DEVICES IN THE FRANCHISE OF THE STORMWATER FACILITY AND TO BE REMEDIATED BY THE PROPERTY OWNER. IF THE CITY FINDS IT NECESSARY FOR PUBLIC HEALTH AND SAFETY.
9. RELATE TO THE EXISTING DRAINAGE DESIGN: THE CITY OF MELBOURNE AND ITS EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS, AND ADDRESSES, SHALL MAKE THE FREE AND UNBUTTERED RIGHT OF PASSAGE IN, ON, UNDER, OVER, ALONG, ACROSS, THROUGH, THROUGHOUT THE PROPERTY OF THE CITY OF MELBOURNE FOR THE PURPOSES OF EXAMINATION, LAYOUT, DESIGN, CONSTRUCTION, RECONSTRUCTING, INSTALLING, REBUILDING, WOODEDING, REPLACING, IMPROVING, ALTERING, OPERATING, MAINTAINING, ACCESSING, REPAIRING, REFRESHING, RELOCATING AND REMOVING SAID FACILITIES BUT NOT LIMITED TO THE USES OF THE CITY AND THE BARGAINS AND TREES, TOGETHER WITH THE RIGHT OF ROGESS, EGRESS AND REGRESS FOR SUCH PURPOSES IN, ON, UNDER, OVER, ALONG, ACROSS AND THROUGH FOR THEIR RESPECTIVE PARTS.
10. RELATE TO THE EXISTING DRAINAGE DESIGN: DEVELOPER MAY NOT USE ANY PART OF THE PROPERTY OR FACILITY IF SUCH USE, DAMAGE, DISTURB, NUISANCE, AND/OR UNLAWFULLY INTERFERE WITH THE CITY OF MELBOURNE'S POLICE, FIRE, AND OTHER EMERGENCY SERVICES, CONVEYANTS AND AGENTS FOR THEMSELVES, HIS LEGAL REPRESENTATIVES, SUCCESSORS AND/OR APPOINTEES, THAT BY INCLUDING, RANGING, OR CURBS OR OTHERS OF THAT KIND WILL BE PLACED IN THE FORESHORED STREET, HIGHWAY, WATERWAY, OR OTHER OPEN SPACE OR ROADWAY. DISCREPANCIES MUST BE OBTAINED FROM THE CITY OF MELBOURNE, PRIOR TO INSTALLATION.

OWNER: CITY OF MIDLAND
300 N. LORRAINE
P.O. BOX 1152
MIDLAND, TEXAS 79702
(432) 685-7200

ENGINEER: PARKHILL, SMITH & COOPER, INC.
1700 W. WALL ST
SUITE 100
MIDLAND, TEXAS 79701
(432) 697-1447

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

June 29, 2020

CURVE TABLE					
CURVE	ARC L	CHORD L	CHORD BEARING	DELTA ANG	RADIUS
C1	162.71	158.61	S69°04'24"W	44°42'43"	208.50'
C2	73.90	73.15	S69°45'52"W	28°13'39"	155.07'
C3	36.89	36.61	N73°35'49"E	24°50'56"	85.00'
C4	33.99	33.81	N51°06'20"E	20°08'02"	96.72'
C5	40.78	39.64	N31°15'28"E	48°42'48"	50.00'
C6	76.74	74.12	N28°32'59"E	52°07'43"	84.34'
C7	72.64	71.74	N18°05'01"E	31°18'42"	132.92'
C8	107.12	102.65	S62°35'04"W	57°14'24"	166.39'
C9	403.18	366.18	N44°48'14"E	93°13'05"	247.80'
C10	984.47	937.85	N43°55'54"E	48°49'50"	1180.00'
C11	14.57	13.87	N27°16'01"E	59°01'51"	14.14'
C13	438.81	426.78	N24°40'14"W	293°49'45"	84.88'
C14	13.80	13.26	S39°59'42"W	55°56'26"	14.14'
C15	66.60	65.39	S85°58'30"E	39°09'38"	100.00'
C16	115.21	111.95	N39°45'15"E	55°56'15"	126.62'
C17	802.75	788.35	S44°32'20"W	37°42'01"	1220.00'
C18	849.70	830.17	N41°51'53"E	42°42'20"	1140.00'

That I, J. Stan Piper, a Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

J. Stan Piper
J. Stan Piper, R.P.L. #194
Piper Surveying Company, Inc.; P.O. Box 60432 Midland, Texas 79706
FIRM #10155200



Bearings, distances and coordinates are relative to the Texas State Plane Coordinate System (Central Zone 1983 NAD), with a combined grid factor of 0.99987767 for mean project datum. The theta angle is equal to $-00^{\circ}57'45''$ at the Airport Reference Point.

STATE OF TEXAS:
COUNTY OF TEXAS:

WHEREAS, THE CITY OF MIDLAND is the record owner of a 21.31 Acre Tract of Land as described above situated in Section 8, Block 40, T-2-S, T.A.P. RR Co. Survey, City and County of Midland, Texas and more particularly described below:

WITNESS our hands at MIDLAND, Texas, this the _____ day of _____, 20____.

By: _____
CITY OF MIDLAND – MAYOR Patrick Peyton

STATE OF TEXAS:
COUNTY OF TEXAS:

This instrument was acknowledged before me on _____, 2020
by Patrick Peyton, as Mayor of the City of Midland, Texas.

9.160
Notary Public Signature

This plot has been checked for accessibility of utilities

Mariona Pina
Oncor Electric Delivery Service (PLEASE PRINT)

Luis Montez Digitally signed by Luis Montez
Date: 2020.04.16 14:45:12 -0500
Suddenlink Communications (PLEASE PRINT)

Mark Lieb MARK LIEB

Bill Beeth Bill Ben

Kenneth P. Spurr Kenneth P. S.

This is to certify that the above and foregoing plat of MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, SECTION 8 was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas, on this ____th day of _____2020.

Chairman _____ (SIGN) Secretary _____ (SIGN)

_____ (PRINT) _____ (PRINT)

9.160

City Council Meeting



Item Number: 10

Meeting Date: June 23, 2020

To: City Council / City Manager

From: Morris Williams, Assistant City Manager 068-2020

Approved for Agenda:

City Manager's Office

Subject: Motion authorizing the execution of a second amendment to that certain Lease Agreement with the Midland Development Corporation regarding certain real property located at Midland International Air & Space Port and described as Lot 7, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas (CITY MANAGER'S OFFICE)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on June 1, 2020 a resolution authorizing the execution of a second amendment to that certain Lease Agreement with the Midland Development Corporation regarding certain real property located at Midland International Air & Space Port and described as Lot 7, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas. This lease is located at the Spaceport Business Park, and the leased premises is occupied by MDC's tenant, Kepler Aerospace.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact.

Discussion:

The MDC has completed the platting process of the Spaceport Business Park, which necessitates this amendment. The exhibit in this amendment replaces the original metes and bounds lease description, which will correct any disparities and eliminate ambiguities regarding the leased premises. There is no material change in the amount of land being leased from the City to the MDC.

**SECOND AMENDMENT TO THE LEASE AGREEMENT
BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF
MIDLAND, TEXAS**

THIS SECOND AMENDMENT is made and effective June 10, 2020, by and between the Midland Development Corporation (“*Lessee*”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the City of Midland (“*City*”), a home-rule municipality

WHEREAS, Lessee and City entered into that certain Lease Agreement dated January 29, 2014 (the “*Agreement*”), of certain City-owned facilities and land at the Midland Air & Space Port for economic development purposes, which was approved by the Midland Development Corporation Board of Directors and the Midland City Council; and

WHEREAS, Lessee and City executed an amendment to the Agreement, dated October 12, 2016 (the “*First Amendment*”), that expanded the area of the Leased Premises; and

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

WHEREAS, Lessee and City desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

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

- 1) The Agreement is hereby amended to replace the current exhibit (referred to in the Agreement as **Exhibit A**) in its entirety with **Exhibit A**, attached hereto and incorporated herein for all purposes.
- 2) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by Lessee and City, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Pages Follow]

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

CITY OF MIDLAND

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

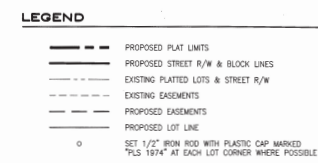
MIDLAND DEVELOPMENT CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary for the
Midland Development Corporation

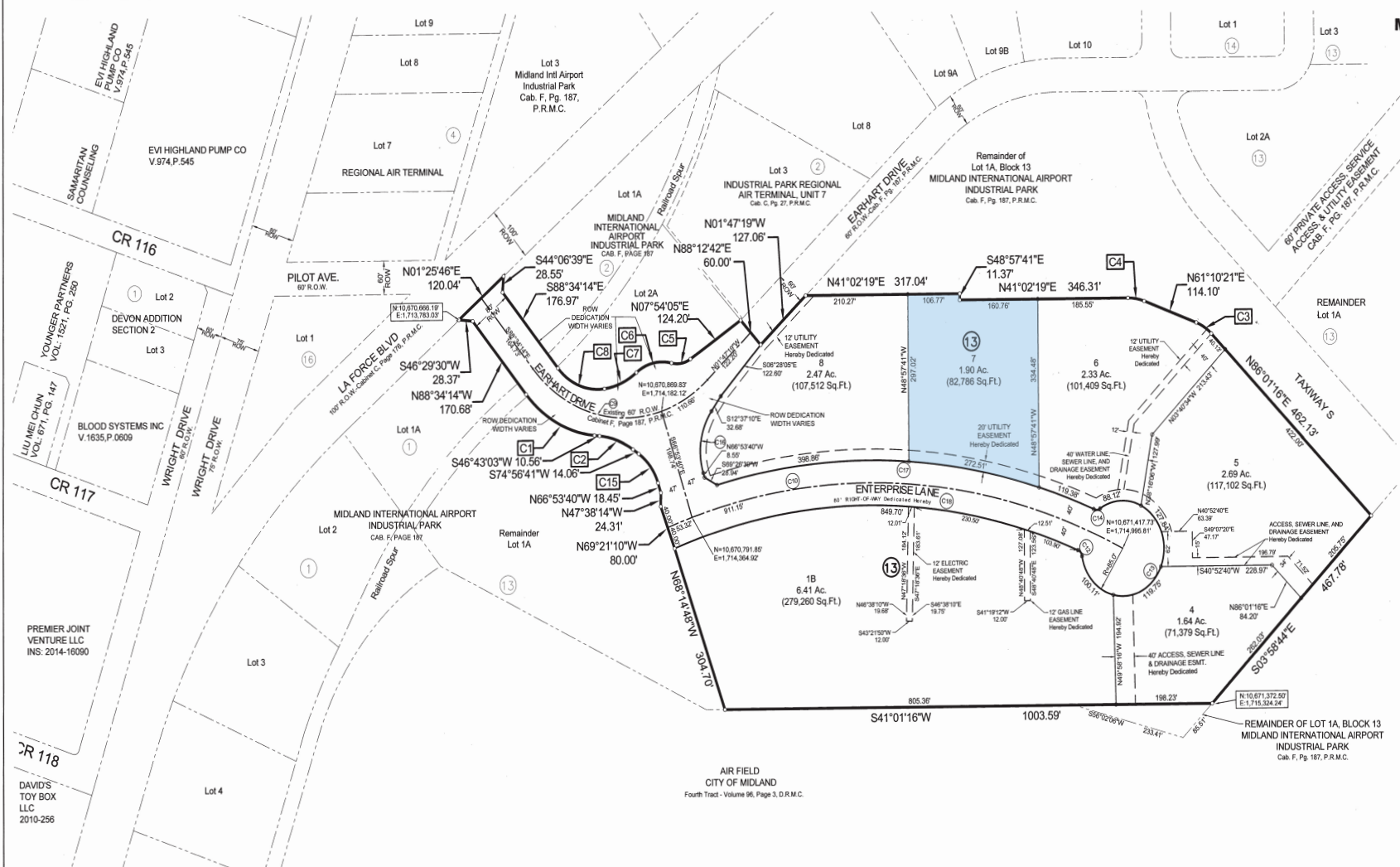
Being a 21:156 Ac. Replat. of a 0.03 Ac. Portion of Lot 1A, Block 1, a 0.03 Ac. Portion of Lot 1A, Block 2, a 0.13 Ac. Portion of Lot 2A Block 2, and a 21.12 Ac. Portion of Lot 1A, Block 13, Utility Easement and Railroad Spur, Earnhart Drive All in MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK, An Addition to the City and County of Midland, Texas. Recorded in Cabinet F, Page 187, P.R.M.C.



4. A BARRANTY AGREEMENT OF RIGHTS AND EGRESS WILL BE GRANTED FOR MIDLAND INTERNATIONAL, PROPERTY INDUSTRIAL PARK, SECTION 8 TO THE CITY OF MIDLAND FOR UMBRELLA AND TRASH COLLECTION AND MAINTENANCE OF TRASH CONTAINERS, SAME AND EXCEPT THOSE THAT ARE IN A BUILDING OR ARE IN A CONSTRUCTION ZONE. THE CITY OF MIDLAND SHALL CONSTRUCTION SHALL COMMENCE ON SAND LOT UPLIN, EXACT LOCATION TO BE SAVED CONVEYORS AND THE EXISTENTS IN CONNECTION THEREWITH HAVE BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.
5. SELLING A PORTION OF THIS ADDITION BY BIDS AND BIDDING MAY BE A VIOLATION OF CITY ORDINANCES AND CITY LAW AND SUBJECT TO FINES AND FORFEITURES OF UTILITIES AND ISSUED PERMITS.
6. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
7. THIS DEVELOPMENT FALLS WITHIN THE MIDLAND INTERNATIONAL, PROPERTY AC2-A ZONE.
8. BASED ON THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL INSURANCE ADMINISTRATION FLOOD INSURANCE RISK MAP, COWAN COUNTY, MISSOURI, SHEET NUMBER 100050-1, REPRODUCED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SEPTEMBER 16, 2005, THE SURVEYED PROPERTY IS NOT CLASSIFIED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO THE MAP. THE FLOOD ZONE ZONE IDENTIFICATION FOR THE SURVEYED PROPERTY MAY BE FORMERLY TO CITY GOVERNMENTS CITY.
9. RETAIN WATERS WILL BE KEPT UNDEVELOPED DURING THE FINAL PLANNING PROCESS. IMPLEMENTATION AND CONSTRUCTION OF WATERS WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL PAPER WORKS OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE LOTS TO BE DEVELOPED ON THE TRACT INCREASES.
10. RELATIVE TO THE EXISTING DRAINAGE: THE MAINTENANCE OF ANY STORMWATER FACILITY IN THIS ACQUISITION IS THE RESPONSIBILITY OF THE PROPERTY OWNER. PROPERTY OWNER AGREES TO MAINTAIN THE FACILITY IN ACCORDANCE WITH THE CITY OF MIDLAND'S REQUIREMENTS THAT AT LEAST ANNUALLY, REPORTS OF SUCH INSPECTIONS AND MAINTENANCE SHALL BE KEPT FOR RECORD IN THE CITY OF MIDLAND STORMWATER MAINTENANCE RECORDS ON REQUEST, OR MAY BE FORWARDED TO THE CITY GOVERNMENTS CITY.
11. RELATIVE TO THE EXISTING DRAINAGE: EXISTENTS THE CITY OF MIDLAND SHALL HAVE THE RIGHT TO MAINTAIN OR IMPROVE IN THE FUNCTION OF THE STORMWATER FACILITY, AND TO BE REMEDIATED BY THE PROPERTY OWNER, IF THE CITY FINDS IT NECESSARY FOR PUBLIC HEALTH AND SAFETY.
12. RELATIVE TO THE EXISTING DRAINAGE: THE CITY OF MIDLAND AND ITS EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS, ASSIGNEES, LICENSEES, AND SUBS, SHALL BE RESPONSIBLE FOR THE PROTECTION OF PUGASKE RIVER, UPRIVER, LOWER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF ESTABLISHING, LAYOUT, CONSTRUCTING, MAINTAINING, IMPROVING, REPLACING, UPGRADE, REPAIRING, REPLACING, IMPROVING, MAINTAINING, ACCESSING, POSITIVE, REPAIRING, REPLACING AND REMOVING SAND CONTAINERS, INCLUDING BUT NOT LIMITED TO, THE RIGHT TO CUT AND TRIM BRUSHES AND TREES, TOGETHER WITH THE RIGHT OF ACCESS, EGRESS AND REGRESS FOR SUCH PURPOSES. ON UPRIVER, LOWER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN.
13. RELATIVE TO THE EXISTING DRAINAGE: DEVELOPER MAY NOT USE ANY PART OF THE PROPERTY DESCRIBED HEREIN IF SUCH USE WOULD DAMAGE, DESTROY, NAUSE, OR OTHERWISE INTERFERE WITH THE CITY OF MIDLAND'S USE OF THE PROPERTY. DEVELOPER EXPRESSLY CONVEYANTS AND AGREES FOR ITSELF, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNEES, CONTRACTORS, AGENTS, EMPLOYEES, SUBS AND OTHERS WHO MAY BE PLACED ON THE PROPERTY DESCRIBED HEREIN, WRITTEN PERMISSION FOR ABOVE GROUND APPURTENANCES MUST BE OBTAINED FROM THE CITY OF MIDLAND, PRIOR TO INSTALLATION.

ENGINEER: PARKHILL, SMITH & COOPER, INC.
1700 W. WALL ST
SUITE 100
MIDLAND, TEXAS 79701
(432) 697-1447

June 29, 2020



CURVE TABLE					
CURVE	ARC L	CHORD L	CHORD BEARING	DELTA ANGLE	RADIUS
C1	162.71'	158.61'	S69°04'24"W	44°42'43"	208.50'
C2	73.00'	73.15'	S60°49'52"W	28°13'39"	155.00'
C3	38.89'	38.61'	N73°35'49"E	24°05'06"	80.07'
C4	33.99'	33.81'	N51°05'22"E	20°09'02"	96.72'
C5	40.76'	39.64'	N31°15'28"E	46°49'45"	80.00'
C6	76.74'	74.12'	N28°32'39"E	52°07'43"	54.34'
C7	72.64'	71.74'	N18°05'01"W	31°11'42"	132.92'
C8	107.12'	102.68'	S62°35'04"W	57°41'24"	106.39'
C9	403.16'	360.15'	N44°49'14"E	93°13'05"	247.80'
C10	964.47'	937.85'	S47°55'01"E	46°49'50"	1180.00'
C12	14.57'	13.93'	S83°16'14"E	59°01'51"	14.14'
C13	435.81'	92.78'	N24°40'07"W	293°49'45"	84.88'
C14	16.60'	13.26'	S33°59'42"W	55°06'26"	14.14'
C15	68.03'	63.63'	S85°58'30"E	38°09'38"	100.00'
C16	115.21'	110.95'	N39°45'10"E	54°01'51"	116.62'
C17	862.79'	788.39'	S44°32'20"W	37°42'01"	1220.00'
C18	849.70'	830.17'	N41°51'53"E	42°42'20"	1140.00'

KNOW ALL MEN BY THESE PRESENTS

That I, J. Stan Piper, a Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

J. Stan Piper
J. Stan Piper, R.P.L.S. #194
Piper Surveying Company, Inc., P.O. Box 60432, Midland, Texas 79711
FIRM #10155200



Bearings, distances and coordinates are relative to the Texas State Plane Coordinate System (Central Zone 1983 NAD), with a combined grid factor of 0.99987767 for mean project datum. The theta angle is equal to $-00^{\circ}57'45''$ at the Airport Reference Point.

STATE OF TEXAS:
COUNTY OF TEXAS:

WHEREAS, THE CITY OF MIDLAND is the record owner of a 21.31 Acre Tract of Land as described above situated in Section 8, Block 40, T-2-S, T.&P. RR Co. Survey, City and County of Midland, Texas and more particularly described herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS :
That we, THE CITY OF MIDLAND do hereby adopt this plat designating the
hereinabove described property as MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL
PARK, SECTION 8 to the City and County of Midland, Texas, and we do hereby
dedicate to the public use forever the streets, and easements shown thereon.
WITNESS our hands at MIDLAND, Texas, this _____ day of _____, 2020

By: _____
CITY OF MIDLAND – MAYOR Patrick Peyton

STATE OF TEXAS:
COUNTY OF TEXAS:

This instrument was acknowledged before me on _____, 2020
by Patrick Peyton, as Mayor of the City of Midland, Texas.

This plot has been checked for accessibility of utilities.

 Marina Pind
Oncor Electric Delivery Service (PLEASE PRINT)

Luis Montez Digitally signed by Luis Montez
SuddenLink Communications Date: 2009.04.19 14:45:12 -0500
(PLEASE PRINT)

Mark Lieb *MARK LIEB*
Almos Energy (PLEASE PRINT)

Bill Beeth *BILL BEETH*
Grande Communications (PLEASE PRINT)

Kenneth P. Spivey *Kenneth P. Spivey*
AT&T Texas (PLEASE PRINT)

© 2006 The Authors
Journal compilation © 2006 Blackwell Publishing Ltd

This is to certify that the above and foregoing plat of MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, SECTION 8 was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas, on this _____th day of _____, 2020.

10.166
Notary Public Signature

City Council Meeting



Item Number: 11
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Taslima Khandaker, Planner

Approved for Agenda:

City Manager's Office

069-2020

Subject: MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF WEST TERMINAL ADDITION, SECTION 10, BEING A REPLAT OF LOTS 9 AND 11, BLOCK 5, WEST TERMINAL ADDITION, SECTION 4, MIDLAND COUNTY, TEXAS. (GENERALLY LOCATED ON THE NORTH SIDE OF WEST COUNTY ROAD 100, APPROXIMATELY 605-FEET EAST OF SOUTH COUNTY ROAD 1295. EXTRATERRITORIAL JURISDICTION) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Landgraf, Crutcher, and Associates, is proposing to replat Lots 9 and 11, Block 5, West Terminal Addition, Section 4, Midland County, Texas, into (4) four lots for future development. This plat requires City Council Approval as per City of Midland Ordinance, Section 11-2-3, Platting Procedures.

11. Approval by the Council.

(a) Approval by the Council shall be required prior to consideration of a final plat by the commission for any preliminary plat which:

(6) Is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site or sites intended for both.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not have significant fiscal impact to the City's budget.

Discussion:

The property is currently within the ETJ, Extraterritorial Jurisdiction.

This request has been routed to all respective departments for internal review. Their comments are below.

BUILDING CODE: (Approved)

ETJ, no jurisdiction.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Plat is located outside of Service Areas, no note is required.

ROW: ROW along West County Road 100 is fine as shown (60' Public Right-of-Way). ROW dedication along Solaris Rd. is fine as shown (100' Right-of-Way).

PAVING: West County Road 100 is sub-standard, construct to City Standards for entire platted frontage or request a deferral.

WATER: None existing. Construct water to City standards along entire platted frontage, or request a deferral.

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test.

PRO RATA: None. SEWER: None existing. Construct wastewater to City standards along entire platted frontage, or request a deferral.

DRAINAGE: Drainage study required. FEMA Firm data to be on plat face. EASEMENTS: Show existing and proposed.

SIDEWALKS: Required at building permit. However, subdivision located in county so request a deferral.

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved)

No objections to plat.

FIRE: (Approved)

No comments....ETJ

CODE COMPLIANCE: (Approved)

Not in the City limits- no oil or gas jurisdiction.

PLANNING: (Approved with Conditions)

Provide the legal description on the plat under that title to read: "Being a replat of Lots 9 and 11, Block 5, West Terminal Addition, Section 4, Midland County, Texas".

Remove the Cabinet, and Page number information.

Remove the cabinet and page numbers of all adjacent subdivisions. Only provide the lot number, block number, and subdivision name.

Provide the ROW width of S. County Road 1295.

Provide another northing and easting.

This plat is over 25-acres and meets the conditions in Section 11-2-3 (D) 11 of the Subdivision Ordinance of the City of Midland Code; therefore, this plat requires City Council approval.

Note #3 should read: "Bearings/distances/coordinates to the Texas State Plan Coordinate System, Texas Central Zone, North American Datum of 1983".

Provide a Title of Opinion and Tax Certificate at the final plat stage.

Change the plat section number to 10 in the Certificate of Approval.

Staff recommends approval of this preliminary plat of West Terminal Addition, Section 10, subject to the following conditions.

Conditions:

- A. That a drainage study is approved.**
- B. That all public improvements above are addressed.**
- C. That the technical items listed above are addressed.**
- D. All plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filling for recording with the County Clerk of Midland County, Texas.**

Attachments:

Proposed Preliminary Plat
Maps
Application



Preliminary Plat Application

LCA Job # 19-025

Project Number:

Case Number:

Sub-20-0313
P-20-0856

Proposed Subdivision Plat Name: West Terminal Addition Section 10

Legal Description (attached sealed Metes and Bounds): Being a Replat of Lots 9 & 11, Block 5, West Terminal Addition, Section 4 as recorded in Cabinet J, page 134, Midland County Plat Records located in Section 1, Block 41, T-2-S, T&P RR Co. Survey Midland County, Texas.

Property Owner

Printed Name: DJK Inc.

Phone (432) 334-8881

Email

Address 700 North Grant

City Odessa

State TX

Zip 79761

Developer (if different than Owner)

Printed Name:

Phone ()

Email

Address

City

State

Zip

Representative (if acting as Agent, see affidavit on page 2)

Firm: Landgraf, Crutcher & Associates

Phone (432) 332-5058

Email lca@lcaodessa.com

Printed Name: LCA

Address 521 N. Texas Avenue

City Odessa

State TX

Zip 79761

Current Zoning: Project is not Zoned

Reason for Platting: Ownership purposes, future building permits will be required

Plat Information

Total Acreage: 27.39

Type: ☐ Single-Family Residential

☐ Multi-Family Residential

☒ Commercial

☐ Extraterritorial Jurisdiction (ETJ)

Number of Residential Lots:

Number of Multi-Family Dwelling Units:

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No

If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved***, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature (by property owner only – authorized agent must sign affidavit below)

Property Owner (signature): _____

Date: _____

Property Owner (printed) : _____

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared George E. Thornley who, being by me duly sworn, upon oath says: That (s)he is authorized by DJK, Inc., the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

George E. Thornley
Authorized Agent (signature)

Subscribed and sworn to before me, this 20th day of May, 2020, to certify which witness my hand and seal of office.



Melanie Martinez
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- | | | |
|---|---|--|
| ☐ Property Owner Authorization | ☐ 1 Copy of Dimensioned Plat | ☐ Plat in Digital Format (PDF/JPEG) |
| ☐ Application Fee | ☐ 1 Copy of Plat (11x17) | |

Check # _____

Received By: _____

Date: _____

RECEIVED
MAY 20 2020

EMAILED

****Application will not be considered for scheduling until reviewed by a planner.****

PACKET
Preliminary Plat Application

11,173

June 23, 2020
Revised 12/6/16



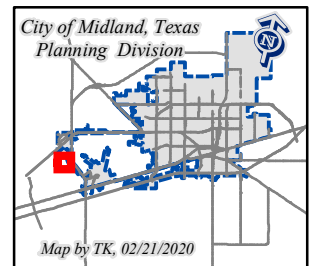
LOCATION MAP

SUB-20-0313

Scale: 1" = 200'

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



PACKET

11.174

June 23, 2020

Consider a proposed Plat of West Terminal Addition, Section 10, being a replat of Lots 9 and 11, Block 5, West Terminal Addition, Section 4, Midland County,

©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.

City Council Meeting



Item Number: 12
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Charles Harrington, Director

Approved for Agenda:

City Manager's Office

070-2020

Subject: MOTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND COSTCO WHOLESALE CORPORATION ("COSTCO"); SAID AMENDMENT CHANGING COSTCO'S DEADLINE TO ACQUIRE CERTAIN PROPERTY FROM JUNE 30, 2020, TO OCTOBER 30, 2020. (DEVELOPMENT SERVICES)

Purpose:

Approve an amendment to the original Chapter 380 Economic Development Agreement that will change the property acquisition date from June 30, 2020 to October 30, 2020.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no fiscal impact to the City of Midland.

Discussion:

The City of Midland previously approved a Chapter 380 Economic Development Agreement with Costco in December of 2019. Under the original agreement, the property acquisition date was to be no later than June 30, 2020. As the project was being finalized, there were a number of factors affecting

the start date that forced Costco to renegotiate their contract for purchase with the property owner. the revised closing date was moved to October, 2020. It was brought to the City's attention that the revised closing date conflicted with the property acquisition date. Costco, therefore, is asking that the City of Midland revise the acquisition date to October 30, 2020.

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MIDLAND, TEXAS AND
COSTCO WHOLESALE CORPORATION

This Chapter 380 Economic Development Agreement (this “**Agreement**”) is entered into between the City of Midland, Texas, a Texas home rule city (the “**City**”) and Costco Wholesale Corporation, a Washington corporation (“**Costco**”). The City and Costco may be referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

WHEREAS, as of the date of this Agreement, Costco has entered into an agreement to purchase approximately 18.32 acres of land from Cumberland & Western Resources LLC, a Wyoming limited liability company (“**Cumberland**”), located at the Northwest corner of State Highway 158 and State Highway 191, as more particularly described on the attached **Exhibit “A”** (together with the land to comprise the hereinafter defined TxDot Drainage Parcel, the “**Costco Property**”); and

WHEREAS, in connection with Costco’s acquisition of the Costco Property, the Costco Property has been or will be annexed into the City; and

WHEREAS, the Costco Property is intended to be platted into the following lots as generally depicted on the attached **Exhibit “B”**, (i) the outparcels (collectively, and whether one or more, the “**Outparcels**”), (ii) a lot upon which is currently situated a drainage easement for highway purposes in favor of the State of Texas (the “**TxDot Drainage Parcel**”), and (iii) the lot upon which the hereinafter defined Costco Facility is to be developed (the “**Costco Parcel**”), the exact dimensions of which lots will be determined in the platting approval process with the City; and

WHEREAS, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code (Chapter 380), which provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has determined this Agreement to be an economic development program for the making of loans and granting of money as contemplated by Chapter 380 of the Texas Local Government Code, and the City has taken all necessary legal action therefor in satisfaction of Chapter 380; and

WHEREAS, this Agreement is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the Grant (as defined herein) granted to Costco in this Agreement complies in all respects with Section 380.001(b), Texas Local Government Code, as amended; and

WHEREAS, Costco has represented that the development of the Costco Parcel will add significant new revenue to the City's tax base and will create jobs, which Costco believes will help stimulate the overall local economy; and

WHEREAS, the City has determined and hereby finds that the development of the Costco Parcel as contemplated in this Agreement will promote economic development in the City and stimulate business and commercial activity in the City and, as such, meets the requirements of Chapter 380 and is in the best interests of City; and

WHEREAS, in order to induce Costco to acquire and develop the Costco Parcel, the City desires to offer incentives to Costco over a period of time which, after Costco acquires the Costco Property, will enable Costco to develop, construct, open, operate, and maintain the Costco Parcel as a wholesale and retail general merchandise facility (the "**Costco Facility**"), which Costco Facility is or will be more fully described in the permit(s) for the Costco Facility approved by the City (whether one or more, the "**City-Approved Permit**"); and

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Costco agree as follows:

1.
City's Authority

The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code. All appropriate and necessary action has been taken to authorize the City Manager to sign on behalf of the City and this Agreement constitutes a valid and binding obligation of the City subject to the terms and conditions set forth in this Agreement. The City acknowledges that Costco is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to acquire the Costco Property and develop the Costco Parcel and that the City is acting in reliance upon the Costco's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Costco Parcel. The City's agreement to commit substantial resources to Costco is subject to the satisfaction of the conditions and obligations set forth in this Agreement with respect to Costco and the Costco Property.

2.
Definitions

The foregoing Recitals are incorporated into this Agreement for all purposes. In addition to the terms defined above in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "Acquisition Deadline" shall mean June 30, 2020.

2.2 "Certificate of Occupancy" shall mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under

which Costco is permitted to Open for Business within the Costco Facility. A Certificate of Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by Costco or its agent.

2.3 “Chapter 380 Payment(s)” means the amount(s) to be paid by the City to Costco under Article 5 of this Agreement.

2.4 “City-Approved Permit” shall have the meaning set forth in the above Recitals.

2.5 “City of Midland” or “City” means the City of Midland, Texas, the governing municipal corporation, and the geographic area that is within the city limits of the City of Midland, Texas.

2.6 “City Default” shall have the meaning set forth in Section 7.2 of this Agreement.

2.7 “Conditions Satisfaction Deadline” shall mean the date that is 24 months after the date of the Costco Property Closing, as such Conditions Satisfaction Deadline may be extended by delays caused by Force Majeure.

2.8 “Costco Default” shall have the meaning set forth in Section 7.1 of this Agreement.

2.9 “Costco Facility” shall have the meaning set forth in the above Recitals.

2.10 “Costco Parcel” shall have the meaning set forth in the above Recitals.

2.11 “Costco Property” shall have the meaning set forth in the above Recitals.

2.12 “Costco Property Closing” shall mean the closing of the sale of the Costco Property to Costco as evidenced by the recordation of the deed conveying the Costco Property to Costco.

2.13 “Cumberland” shall have the meaning set forth in the above Recitals.

2.14 “Effective Date” means the last date this Agreement is signed and delivered by the City and Costco.

2.15 “Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, (a) war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; (b) labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; (c) acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; (d) delays caused by acts or failures to act by the City or any other governmental entity (or de facto governmental entity) or utility company or their respective agents or employees; and (e) delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums). An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

2.16 “Gross Leasable Space” means either air-conditioned and heated space under roof, or space under roof ready for finish-out work (which may include installation of heating, ventilation, and air-conditioning systems) by a tenant under an executed lease.

2.17 “Open for Business” means that the space under roof and air-conditioned and heated is open for full-time business operations with a full line of products and services.

2.18 “Outparcels” shall have the meaning set forth in the above Recitals.

2.19 “Permitted Closure” shall have the meaning set forth in Section 4.2.1 of this Agreement.

2.20 “Program” means the economic development program established by the City under this Agreement, as authorized by Chapter 380 of the Texas Local Government Code, to promote local economic development and stimulate business and commercial activity within the City.

2.21 “Sales Tax Effective Date” means the first day of the month next following the date that is one hundred eighty (180) days after the Certificate of Occupancy is issued to Costco for the Costco Facility and Costco has opened for full-time business operations (subject to its membership policies) with a full line of products and services for at least one (1) day.

2.22 “Sales Tax Revenues” means the amount of sales/use tax that the City receives for transactions arising from and within the Costco Property resulting from the imposition of a municipal sales tax, such as the one percent sales tax currently in effect pursuant to Section 321.101(a) and Section 321.103, Texas Tax Code, less any portion thereof the State is permitted under law to retain. If the City ever elects to charge less than a one percent sales tax, but is allowed by law to collect a sales tax of one percent or more, then, for purposes of calculating the amount of the Chapter 380 Payments as provided in Article 5, the Sales Tax Revenues attributable to sales tax collected will be grossed up and computed as if the City had elected to charge a one percent sales tax, less any portion the State is permitted under law to retain.

2.23 “Term of Fifteen Years” means a fifteen (15) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year through the end of the fifteenth year.

2.24 “Term of this Agreement” shall have the meaning set forth in Article 3 of this Agreement.

2.25 “Third Party Owner” shall have the meaning set forth in Section 4.3.4 below.

2.26 “Third Party Parcel” shall have the meaning set forth in Section 4.3.4 below.

2.27 “TxDot Drainage Parcel” shall have the meaning set forth in the above Recitals.

3. Term

This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur of (a) the Term of Fifteen Years; or (b) receipt by Costco of Chapter 380 Payments of Seven Million Dollars (\$7,000,000); or (c) upon termination of this Agreement as provided for herein (the “**Term of this Agreement**”). In recognition of the fact that the Chapter 380 Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term of this Agreement shall be deemed extended until any Chapter 380 Payments relating to Sales Tax Revenues levied during the Term of the Agreement specified above have been paid by the City to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Costco Property by the Acquisition Deadline, this Agreement shall automatically terminate and be of no further force or effect as of such date and the Parties shall have no further rights or obligations hereunder.

4. Costco’s Performance Criteria

4.1 Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Chapter 380 Payments hereunder:

- 4.1.1** Completion of construction of the Costco Facility on the Costco Parcel containing at least 170,000 square feet of Gross Leasable Space. This condition shall be satisfied by delivery of a certificate from an architect licensed in the State of Texas certifying the same.
- 4.1.2** Costco shall have made a capital investment of not less than Fifteen Million Dollars (\$15,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Costco Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as **Exhibit “C”** certifying that Costco has made a total of at least \$15,000,000 in capital investment.
- 4.1.3** A Certificate of Occupancy shall have been issued for the Costco Facility.
- 4.1.4** The Costco Facility shall have been built in substantial accordance with (i) the City-Approved Permit, subject to changes and modifications in the course of construction, which, to the extent required, shall be subject to the review and approval of City and/or other governmental entities with jurisdiction, as applicable, and (ii) the City’s Code of Ordinances and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy.

4.1.5 The Costco Facility shall be Open for Business (subject to Costco's membership policies) for at least one day.

4.1.6 A failure by Costco to satisfy all of the foregoing performance criteria by the Conditions Satisfaction Date shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Chapter 380 Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

4.2 Notwithstanding anything contained in this Agreement, Costco shall have no obligation to occupy or operate the Costco Facility, and if Costco fails or ceases to operate for business in the Costco Facility it shall not constitute a Costco Default under this Agreement. However, if at any time from and after the date that Costco opens for business to the public (subject to Costco's membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas for a continuous period of 180 days, except in connection with, and to the extent of, a Permitted Closure as defined in Section 4.2.1 below, then at any time after such 180 day period, the City shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 380 Payments to Costco under this Agreement from the 181st day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco's membership policies) in the Costco Facility, without any obligation for the City to pay any Chapter 380 Payments which would or may have accrued during such period of ceased occupation or operation; and/or (ii) to terminate this Agreement with respect to Costco if Costco fails to re-open for business to the public (subject to Costco's membership policies) in the Costco Facility within 90 days from the date Costco receives the City's written notice of termination, with such termination being effective as of the 91st day without further notice. Further, if at any time from and after the date that Costco opens for business to the public (subject to Costco's membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in the State of Texas pursuant to a Permitted Closure, as defined in Section 4.2.1 below, for a period of more than 365 days, then at any time after such 365 day period, the City shall have the right, via written notice to Costco: (i) to cease payment of all or any of the Chapter 380 Payments to Costco under this Agreement from the 366th day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco's membership policies) in the Costco Facility, without any obligation for the City to pay any Chapter 380 Payments which would or may have accrued during such period of ceased occupation or operation; and/or (ii) to terminate this Agreement with respect to Costco if Costco fails to re-open for business to the public (subject to Costco's membership policies) in the Costco Facility within 90 days from the date Costco receives the City's written notice of termination, with such termination being effective as of the 91st day without further notice.

4.2.1 "Permitted Closure" shall mean any period in which the Costco Facility is not open for business to the public (subject to Costco's membership policies) for hours of operation consistent with Costco's other facilities in

the State of Texas (i) as a result of a fire, earthquake, flood or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by Costco in its reasonably exercised judgment, or (ii) as a result of an event of Force Majeure, or (iii) as a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary to as determined by Costco in its reasonably exercised judgment for repair and restoration of the Costco Facility, or (iv) as a result of any repairs, renovations, alterations or modifications to the Costco Facility made by Costco with the intention of recommencing operations in the Costco Facility, or (v) as required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of Costco's action, inaction, or failure to timely fulfill its obligations under this Agreement.

4.3 Notwithstanding anything to the contrary set forth in this Agreement, the following shall apply to the portions of the Costco Property other than the Costco Parcel:

- 4.3.1** The City acknowledges and agrees that Costco shall have the right to sell all or a portion of the Outparcels. Costco shall have the right, but no obligation, to develop all or any portion of the Outparcels as part of the Costco Facility. Nothing in this Agreement obligates Costco to develop any portion of the Outparcels and development of the Outparcels shall not be a condition to any Chapter 380 Payments hereunder.
- 4.3.2** In addition, the City acknowledges and agrees that it is intended that the TxDot Drainage Parcel be utilized solely for the purposes set forth in the drainage easement for highway purposes in favor of the State of Texas currently situated on such portion of the Costco Property and that the TxDot Drainage Parcel may be dedicated in the future to the City or the State of Texas or other applicable governmental or quasi-governmental authority and that nothing in this Agreement obligates Costco to develop any portion of the TxDot Drainage Parcel and development of the TxDot Drainage Parcel shall not be a condition to any Chapter 380 Payments hereunder. However, if the easement on the TxDot Drainage Parcel is ever modified to allow development or abandoned or terminated in the future, Costco shall have the right, but no obligation, to include all or a portion of the TxDot Drainage Parcel as part of the Costco Facility.
- 4.3.3** If and when any portion of the Outparcels or TxDot Drainage Parcel is developed, any Sales Tax Revenues the City receives for transactions arising from and within such portions of the Costco Property shall be included in determining the amount of the Chapter 380 Payments pursuant to Article 5 below.
- 4.3.4** If Costco sells or leases any portion of the Outparcels or TxDot Drainage Parcel (a "**Third Party Parcel**") to an unaffiliated third party owner or lessee (in either case a "**Third Party Owner**"), Costco shall not be

obligated to comply with any of the covenants, warranties, obligations and duties set forth in Article 6 of this Agreement with respect to any such Third Party Parcel. However, it shall be a condition to the inclusion of any Sales Tax Revenues from a Third Party Parcel in determining the amount of any Chapter 380 Payments under this Agreement, that the Third Party Owner of such Third Party Parcel comply with all of the covenants, warranties, obligations and duties set forth in Article 6 of this Agreement with respect to any such Third Party Parcel. Further provided, however, that Costco shall have no liability for a breach of any such covenants, warranties, obligations and duties by a Third Party Owner, the City's sole remedy for any such default by a Third Party Owner, which is not cured within the same notice and cure periods as set forth in Section 7.1 below, being not to include the Sales Tax Revenue from the Third Party Parcel of such defaulting Third Party Owner during the continuance of such default. In the event of a default by Third Party Owner of the provisions of Section 6.1.9 below, Costco shall be obligated to repay to the City the total amount of Chapter 380 Payments paid to Costco under this Agreement attributable to such Third Party Parcel, plus interest as provided in Section 6.1.9 below, and no other portion of the Chapter 380 Payments received under this Agreement. In no event shall any Third Party Owner be entitled to payment of any Chapter 380 Payments, or any portion thereof.

5.

City's Payment of Chapter 380 Payments and Obligations

5.1 Subject to Costco's satisfaction of the performance criteria set forth in Article 4 above, the City shall be obligated to pay to Costco payments based on Sales Tax Revenues as provided in this Article 5, in an amount up to but not to exceed a cumulative total amount of Seven Million Dollars (\$7,000,000) over a period not to exceed the Term of Fifteen Years. In no event shall the City be required to make any Chapter 380 Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth in Article 4 above. The City's obligation to pay Costco shall cease upon payment in full to Costco of Seven Million Dollars (\$7,000,000), or the expiration of the Term of this Agreement, even if the full Seven Million Dollars (\$7,000,000) has not been paid, whichever occurs first.

5.2 Payments to Costco.

5.2.1 Commencing after the satisfaction of all of the conditions set forth in Section 4.1 above, the City shall pay to Costco annual payments in the amount of one hundred percent (100%) of the Sales Tax Revenues arising from and within the Costco Property as received by the City from the Texas Comptroller for the previous calendar year, as reconciled with the sales and use tax information provided by the Texas Comptroller's office. The City shall make such payments annually by March 31st, commencing with the March 31st next following the satisfaction of all of the conditions set forth in Section 4.1 above. The payments shall be for sales tax-generating

transactions in that occurred from January 1 to December 31 of the prior calendar year. The City's obligation to pay Costco under this Article 5 shall cease upon Costco's receipt of Chapter 380 Payments totaling Seven Million Dollars (\$7,000,000) in the aggregate, or the expiration of the Term of this Agreement, whichever occurs first. The City shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment under this Article 5 to Costco or Costco's designee.

5.2.2 A delay in the City's payment obligation in Section 5.2.1 due to a delay in receiving the Sales Tax Revenues and/or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the City so long as the City uses reasonable efforts to obtain the Sales Tax Revenues and/or sales and use tax information and makes the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues and/or sales and use tax information.

5.2.3 As a condition to obtaining any Chapter 380 Payment based upon Sales Tax Revenues, Costco shall sign (and shall cause any affiliate, tenant, licensee, Third Party Owner or other party generating Sales Tax Revenues from the Costco Property which Costco desires to be included for purposes of determining any such Chapter 380 Payment to sign) and submit to the City and maintain during the Term of this Agreement), the Waiver of Sales Tax Confidentiality form attached as **Exhibit "D"**, or other similar form required by the Texas Comptroller as may be required from time to time during the Term of this Agreement to permit the release of sales tax information relating to the Costco Property to the City.

6.

Costco's Covenants, Warranties, Obligations and Duties

6.1 Costco hereby makes the following covenants and warranties to the City, and agrees, to timely and fully perform the following obligations and duties.

6.1.1 Costco is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

6.1.2 The execution of this Agreement has been duly authorized by Costco, and the corporate officer signing this Agreement is an officer of Costco, empowered to execute this Agreement and bind Costco, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Costco's articles of incorporation, by-laws, or of any agreement or instrument to which Costco is a party or by which it may be bound.

- 6.1.3** The execution and performance of this Agreement by Costco constitutes its valid and binding obligation, subject to the terms and conditions set forth in this Agreement.
- 6.1.4** As of the date of this Agreement, no litigation or governmental proceeding is pending or, to the knowledge of Costco, threatened against or affecting Costco that may result in any material adverse change in Costco's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.
- 6.1.5** There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.
- 6.1.6** Costco shall pay all taxes due and owing by Costco to all taxing authorities having jurisdiction over the Costco Property prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes and so long as Costco is timely and properly protesting or contesting the same it shall not constitute a Costco Default).
- 6.1.7** Costco shall not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled, and shall refrain from violating any applicable local, state, and federal law which may have a material adverse effect on the City's reputation by virtue of the City's relationship with Costco.
- 6.1.8** Costco acknowledges that for contracts needing City Council approval, the City may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission ("TEC") Form 1295 from Costco complete with a certificate number assigned by the TEC, pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. Attached hereto as **Exhibit "E"** is a copy of the TEC Form 1295 filed by Costco. The certificate number assigned by the TEC is 2019-538317.
- 6.1.9** Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term of this Agreement, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in Section 2264.001 of the Texas Government Code), and if Costco's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. § 1324a(f) occurring during the Term of this Agreement, Costco shall repay to City the total amount of Chapter 380 Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the 120th day after the date City

notifies Costco of the violation. It is agreed that for purposes of this subsection, but only if permissible under Chapter 2264 of the Texas Government Code, (i) Costco shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom Costco contracts; (ii) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been “convicted of a violation” until all appeals have been exhausted and/or the time for all appeals has expired; and (iii) the date that “City notifies Costco of the violation” may not be earlier than the date that Costco has been “convicted of a violation” as provided in the immediately preceding subsection. For purposes of this Section “Agreed Rate” shall mean shall mean the lesser of: (i) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers and (ii) the highest lawful rate.

7.

Default

7.1 The following shall constitute a “Costco Default” under this Agreement:

7.1.1 The appointment of a receiver of Costco, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.

7.1.2 The adjudication of Costco as bankrupt.

7.1.3 The filing by Costco of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

7.1.4 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of a material representation under this Agreement by Costco.

7.1.5 Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of any material covenant set forth in Section 6.1 of this Agreement.

7.2 The following shall constitute a “City Default” under this Agreement:

7.2.1 The appointment of a receiver of the City, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.

- 7.2.2** The adjudication of the City as bankrupt.
- 7.2.3** The filing by the City of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- 7.2.4** Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of a material representation under this Agreement by the City.
- 7.2.5** Upon the expiration of the notice and cure period set forth in Section 7.3 below, the City's failure to pay any Chapter 380 Payment owing to Costco in accordance with this Agreement.
- 7.2.6** Upon the expiration of the notice and cure period set forth in Section 7.3 below, a breach of the City's obligations set forth in Section 9.1 of this Agreement.

7.3 In the event of the occurrence of a breach or default by Costco or the City under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Party of such default, and the defaulting Party shall have 60 days thereafter to cure said default or if the defaulting Party is diligently pursuing the cure of such default but such default is not reasonably curable within 60 days, then the defaulting Party shall have such additional amount of time as is reasonably necessary to cure such default. Should a default or breach as described in Sections 7.1.4, 7.1.5, 7.2.4, 7.2.5 or 7.2.6, as applicable, remain uncured after such cure period it shall constitute a Costco Default or City Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth in Section 7.4 below.

7.4 Remedies.

- 7.4.1** Upon the occurrence of a Costco Default, the City shall have the right to terminate this Agreement by written notice to Costco, in which event the City shall have no obligation to make any future Chapter 380 Payments to Costco under this Agreement.
- 7.4.2** Upon the occurrence of a City Default, Costco shall have the right to terminate this Agreement by written notice to the City, in which event Costco shall have no further obligations under this Agreement.
- 7.4.3** In addition, and without terminating this Agreement, either Party shall further have the power to enforce specific performance to collect amounts owing by the other Party under this Agreement or to otherwise compel the other party to perform its obligations under this Agreement. Further, either Party shall have the right to bring an action for a declaratory judgment.
- 7.4.4** Under no circumstances shall the City be entitled to a refund of any Chapter 380 Payments that have been paid to Costco, except as provided in Sections

6.1.9, and further provided that the City shall be entitled to recapture any Chapter 380 Payments which were made based upon false or fraudulent information certified to or provided by Costco and for which Costco would not otherwise have been entitled. No action shall lie for damages against Costco except that the City shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

7.4.5 Upon the occurrence of a City Default, Costco has the right to bring any action to recover any amounts owed to it under this Agreement. In addition, Costco shall have the right to seek a judicial declaration of the appropriate amount of Chapter 380 Payments owing to Costco by the City under this Agreement.

7.4.6 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

7.4.7 In the event of any conflict between the Parties hereto such that either Party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code §37.001, et seq., as amended), the Parties hereto agree to waive any and all rights to recovery of attorneys' fees to which the prevailing Party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY, SPECIFICALLY AND SOLELY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS

UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PARTY BRINGING THE ACTION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH THE PARTY MIGHT OTHERWISE BE ENTITLED.

- 7.4.8** The sole and exclusive remedies of Costco for a breach by the City under this Agreement, and the City's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 7.4 and elsewhere in this Agreement. Costco and the City each hereby waives any other remedies under law or in equity.
- 7.4.9** A Party shall not be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of an event of Force Majeure, but only for so long as the event of Force Majeure reasonably delays, disrupts or prevents performance.
- 7.4.10** Any delay for any amount of time by a Party in providing notice of default to the other Party shall in no event be deemed or constitute a waiver of such default by such non-defaulting Party of any of its rights and remedies available in law or in equity.
- 7.4.11** Any waiver granted by one Party to the other Party shall not be deemed or constitute a waiver of any other existing or future default by such Party or of a subsequent default of the same act or event.

8.

City's Liability Limitations

The City is making payments under this Agreement solely and exclusively from the Sales Tax Revenues it receives from the Texas Comptroller related to the Costco Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

9.

Additional City Representations, Warranties, and Agreements

9.1 Permitting. The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Costco Parcel and Costco Facility. This section does not waive any requirements of the City's Code of Ordinances as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

9.2 City's Authority. The City represents and warrants to Costco the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement.

10. Miscellaneous Provisions

10.1 Changes in Law. If, during the Term of this Agreement, State law applicable to municipal sales taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from sources which are not within the City's discretion to allocate to the Costco Property in order to achieve the same economic benefits to Costco, which would have resulted if the law had not changed. Should any other legal impediment arise during the term of this Agreement, including without limitation a change in law, that prevents or prohibits the City from complying with or making any payments under this Agreement, the Parties agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the Parties agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide Costco with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

10.2 Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

10.3 Assignment. Except as provided below, Costco may not assign all or part of its rights under this Agreement to a third party without the prior written approval of the City, which approval will not be unreasonably withheld or delayed. In the event either Costco is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City hereby consents to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. Costco shall provide the City with written notice of any such assignment.

10.4 Notice. Any notice or other communication ("**Notice**") given under this Agreement shall be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party; (iii) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii). Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. For the purposes of Notice, the addresses of the Parties are, until changed as provided below, be as follows:

City:	City of Midland, Texas Attn.: City Manager 300 N. Loraine, Suite 310 Midland, TX 79701
--------------	--

Fax: (432) 686-1600

with a copy to: City Attorney
300 N. Loraine, Suite 320
Midland, Texas 79701
Fax: (432) _____

Costco: Costco Wholesale Corporation
999 Lake Drive
Issaquah, Washington 98027
Attn: Property Management Department
Fax: (425) 318-8114

with a copy to: Thompson & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201
Attn: Ray T. Khirallah
Fax: (214) 969-1751

A Party may designate a different address at any time by giving Notice to the other Party.

10.5 Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for, or against, either Party based on draftsmanship.

10.6 Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the City nor its past, present or future elected officials, officers, directors, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Costco Property or the design, construction or operation of any portion of the Costco Property.

10.7 Applicable Law and Venue. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas without regard to any conflicts of law provision, and venue will lie in a state district court in Midland County, Texas. The Parties consent to, and waives any objections to, in personam jurisdiction in Midland County, Texas.

10.8 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable in any respect under present or future laws, the remainder of this Agreement shall not be affected so long as the intent, purpose, and benefits of this Agreement are not affected in any manner materially adverse to either Party hereto. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable, is as similar in terms as possible to the provision

found to be illegal, invalid or unenforceable, and effects the intent, purpose, and benefits of this Agreement.

10.9 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

10.10 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

10.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A signature transmitted by facsimile or email will be deemed to be an original signature for all purposes. As used in this Section, "signature" means a manually signed document by a natural person, as opposed to an electronic signature.

10.12 Exhibits. The following exhibits are attached to and incorporated into this Agreement and made a part of this Agreement for all purposes as if they were set forth herein in their entirety:

Exhibit A	–	Legal Description of Costco Property
Exhibit B	–	Sketch of Costco Property
Exhibit C	–	Form of Certificate Regarding Capital Investment
Exhibit D	–	Agreement for Disclosure of Confidential Information
Exhibit E	–	TEC Form 1295

10.13 Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary, agreements between the Parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

10.14 Confidentiality. The City acknowledges that the information regarding sales taxes generated by the Costco Property is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to Costco and/or its respective tenants, subtenants and/or licensees, as applicable. To the maximum extent permitted by law, the City and elected officials, officers, directors, and employees, and its agents or contractors retained to perform economic development services for City (hereinafter the "**City Parties**") (i) shall maintain the confidentiality of all sales tax information filed by Costco and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales Tax Revenue generated by the Costco Property; (ii) shall treat as confidential any other proprietary or financial information of Costco and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. Costco acknowledges and understands that the City is required to comply with and will comply with the Texas Public Information Act, Chapter 552, Government Code, as amended. The City shall promptly notify Costco of requests for information described by this Section 10.14, Attorney General Opinion, and court orders to release such information. The City shall be permitted to disclose the foregoing information to such of the City officials and employees as the City, in its reasonable discretion, deems appropriate in furtherance of the

purposes of this Agreement, so long as the City makes such disclosure subject to compliance by such City officials and employees with the terms of this Section 10.14.

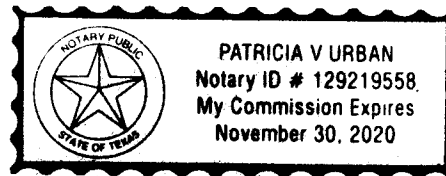
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

THE CITY OF MIDLAND, TEXAS,
a Texas municipal corporation

By: Courtney SP
Name: Courtney Sharp
Title: City Manager

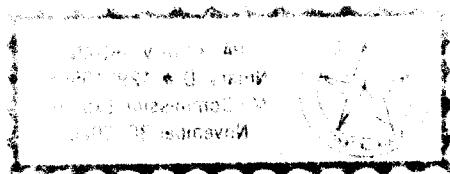
Date: 1-10-20



STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 10 day of January, 2019, by Courtney Sharp, the City Manager of the City of Midland, Texas, a Texas municipal corporation, on behalf of said municipal corporation.

Patricia V. Urban
Notary Public, State of Texas



IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

COSTCO WHOLESALE CORPORATION,
a Washington corporation

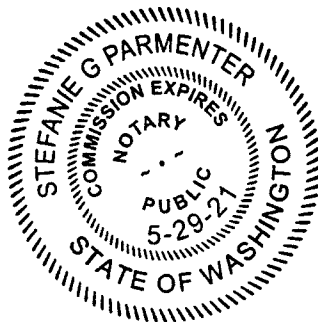
By: *John S. Sullivan*
Name: John Sullivan
Title: SVP/General Counsel/Secretary

Date: 12/30/19

STATE OF Washington §
COUNTY OF King §

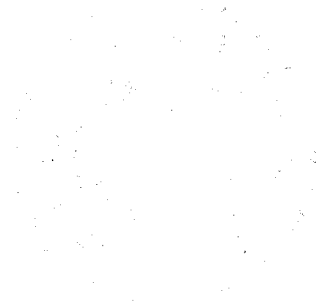
This instrument was acknowledged before me on the 30th day of December, 2019, by John S. Sullivan, the SVP/General Counsel/Secretary of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.

Stefanie G. Parmenter
Notary Public, State of Washington



Error! Unknown document property name.

WILLIAM
WILLIAM
WILLIAM



[illegible]

EXHIBIT B
SKETCH OF COSTCO PROPERTY

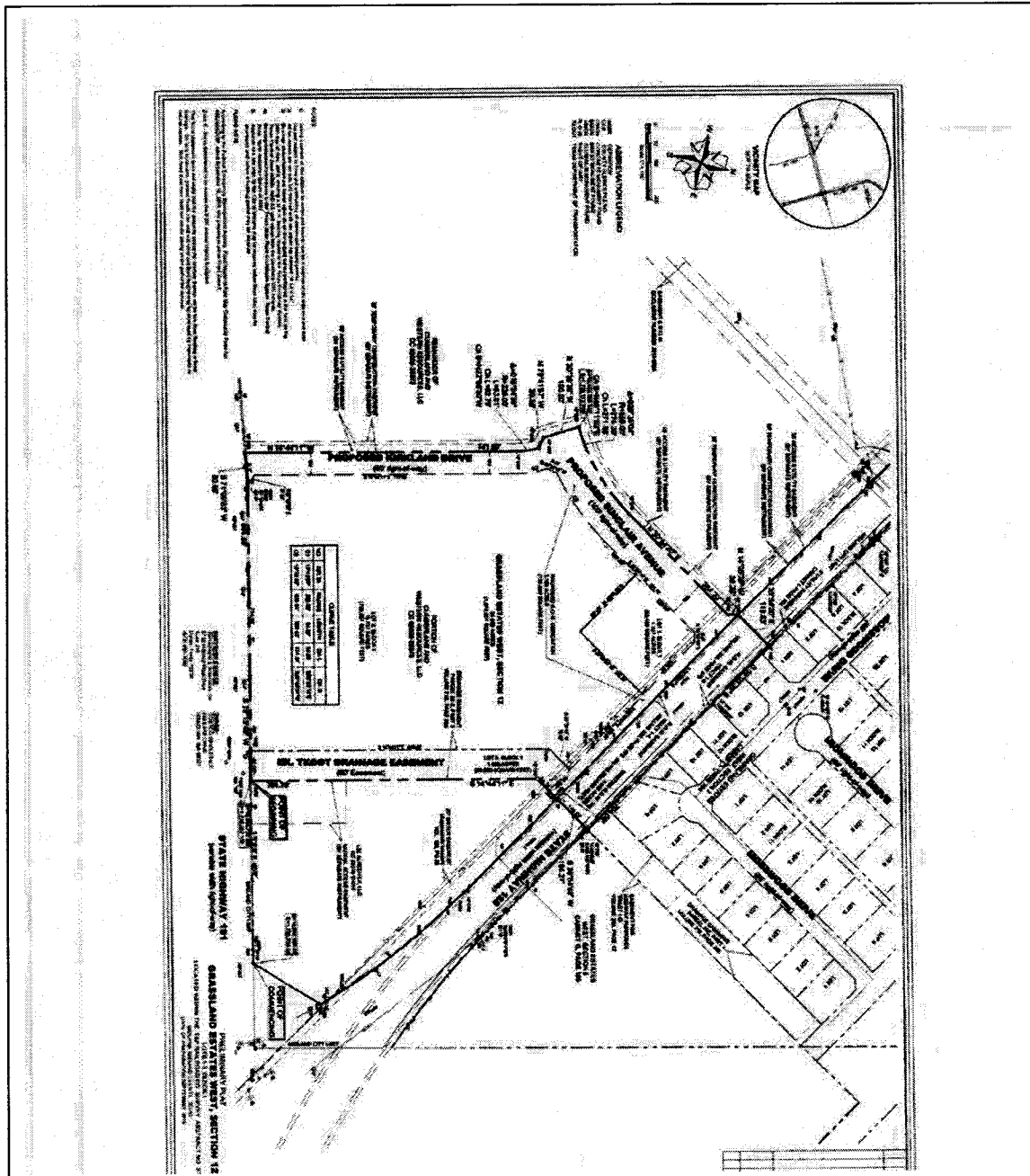


EXHIBIT C

FORM OF CAPITAL INVESTMENT CERTIFICATION

Re: CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND COSTCO WHOLESALE CORPORATION; CAPITAL INVESTMENT CERTIFICATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Agreement between the City of Midland, Texas (the "City") and Costco effective as of _____, 2019 (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

1. The undersigned authorized officer of Costco hereby certifies to the City that Costco has made a capital investment of not less than Fifteen Million Dollars as follows:

Land Acquisition Costs:	approximately \$ _____
Hard and Soft Construction Costs:	approximately \$ _____
Equipment and Fixtures:	approximately \$ _____
Other (does not include inventory):	approximately \$ _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Cost Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

NAME – PRINTED

TITLE _____ DATE _____ 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ____ day of _____,
20____, by _____.

NOTARY NAME

EXHIBIT D

AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this "Agreement") is entered into between the City of Midland, Texas (the "City") and [Costco Wholesale Corporation, a Washington corporation][*(business name)*] (hereafter the "Taxpayer") for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller's Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer's business in the Costco wholesale/retail facility located at the Northwest corner of State Highway 158 and State Highway 191, in Midland, Texas. This waiver applies only to the Costco wholesale/retail facility located at the Northwest corner of State Highway 158 and State Highway 191, in Midland, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller's Office to release and disclose Taxpayer's sales and use tax information as provided in this Agreement.

The City agrees that the City will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under the Chapter 380 Economic Development Agreement Between the City of Midland, Texas and Costco Wholesale Corporation, and subject to the terms thereof.

This Agreement is entered into in the City of Midland, Midland County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 2019

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

Texas Taxpayer ID Number

Tax Outlet Number

(As Shown on Texas Sales Tax Permit)

Taxpayer's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature

*The authorized signature must be that of an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.

City of Midland, Texas

City's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature

EXHIBIT E

TEC Form 1295

CERTIFICATE OF INTERESTED PARTIES		FORM 1295																																															
1 of 1																																																	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5 and 6 if there are no interested parties.		OFFICE USE ONLY CERTIFICATION OF FILING																																															
1 Name of business entity filing form, and the city, state and country of the business entity's place of business. Costco Wholesale Corporation Issaquah, WA United States		Certificate Number: 2019-535217																																															
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. City of Midland		Date Filed: 2019-08-2019																																															
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract. 2019-08-27 12:40:15:353750 Economic Assistance Agreement		Date Acknowledged:																																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2" style="width: 45%;">Name of Interested Party</th> <th rowspan="2" style="width: 25%;">City, State, Country (place of business)</th> <th colspan="2" style="width: 30%;">Nature of Interest (check applicable)</th> </tr> <tr> <th style="width: 15%;">Controlling</th> <th style="width: 15%;">Intellectual</th> </tr> </thead> <tbody> <tr> <td>Thomson & Knight</td> <td>Dallas, TX United States</td> <td></td> <td style="text-align: center;">X</td> </tr> <tr> <td>Northwest Atlantic Partners</td> <td>Orlando, FL United States</td> <td></td> <td style="text-align: center;">X</td> </tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>				Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)		Controlling	Intellectual	Thomson & Knight	Dallas, TX United States		X	Northwest Atlantic Partners	Orlando, FL United States		X																																
Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)																																															
		Controlling	Intellectual																																														
Thomson & Knight	Dallas, TX United States		X																																														
Northwest Atlantic Partners	Orlando, FL United States		X																																														
5 Check only if there is NO Interested Party. ☐																																																	
6 UNSWORN DECLARATION for Costco My name is <u>Josh S. Frank</u> <u>wholesale corporation</u> and my date of birth is <u>2/7/56</u> My address is <u>999 Lake Drive</u> <u>Issaquah</u> <u>WA</u> <u>98027</u> <u>USA</u> (street) (city) (state) (zip code) (country) I declare under penalty of perjury that the foregoing is true and correct. Executed in <u>King</u> County, State of <u>WA</u> on the <u>10th</u> day of <u>Sept.</u>, 20<u>19</u> (month) (year) Signature of authorized agent of contracting business entity (Exhibit B)																																																	
Forms provided by Texas Ethics Commission. www.ethics.state.tx.us Version V1.0 Revised 7/11																																																	

City Council Meeting



Item Number: 13
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Charles Blumenauer, Fire Chief

Approved for Agenda:
CSharp
City Manager's Office

2020-107

Subject: RESOLUTION ACCEPTING GRANT FUNDS FROM THE DEPARTMENT OF JUSTICE ON BEHALF OF THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING GRANT PROGRAM IN THE AMOUNT OF \$93,553.00 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS REQUIRED TO ACCEPT GRANT FUNDS; SAID FUNDS TO BE USED BY THE MIDLAND FIRE DEPARTMENT TO PURCHASE PORTABLE AND MOBILE RADIOS AND PROTECTIVE EQUIPMENT **(FIRE)**

Purpose:

The purpose of this grant is to purchase radios and protective equipment. The grant will pay for 12 portable radios and 6 mobile radios. It will also pay for 96 cartridges and 95 adapters for our MSA SCBA (Self Contained Breathing Apparatus) masks. This allows us to use our masks as airway protection on medical calls without having to wear the SCBA tank and harness.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no fiscal impact to the City.

Discussion:

The Fire Department recommends accepting this grant. It is a Federal Grant with no matching funds required. The Coronavirus Emergency Supplemental Funding (CESF) Program will provide funding to assist eligible states, local units of government, and tribes in preventing, preparing for, and responding to the coronavirus. All items and quantities were listed in the grant application and approved by the grantor.

It will help the department offset the costs of radios for upcoming equipment purchases and replacements. It will also be used to purchase air filter cartridges and adapters for our MSA SCBAs. This will allow us to use these devices as airway protection during medical calls that may be COVID related without having to wear the tank and harness.

Therefore, please consider a motion accepting grant funds in the amount of \$93,553.00 awarded by the Department of Justice on behalf the Coronavirus Emergency Supplemental Funding Grant Program; said grant funds to be used for the purchase of Harris XL-P Portable Radios, XL-200 M Mobile Radios, P100 Optifilter cartridges, and G1 MSA adaptors for the Fire Department; authorizing the execution of all documents necessary to accept said grant funds; and depositing the sum of \$93,553.00 to [Budget Account/Project].”

RESOLUTION NO. _____

RESOLUTION ACCEPTING GRANT FUNDS FROM THE DEPARTMENT OF JUSTICE ON BEHALF OF THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING GRANT PROGRAM IN THE AMOUNT OF \$93,553.00 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS REQUIRED TO ACCEPT GRANT FUNDS; SAID FUNDS TO BE USED BY THE MIDLAND FIRE DEPARTMENT TO PURCHASE PORTABLE AND MOBILE RADIOS AND PROTECTIVE EQUIPMENT

WHEREAS, the City of Midland has been awarded a grant from the Department of Justice on behalf of the Coronavirus Emergency Supplemental Funding Grant Program in the amount of \$93,553.00; and

WHEREAS, the grant will be used by the Midland Fire Department to purchase twelve (12) XL-P portable radios, six (6) XL-200 M mobile radios and ninety-six (96) cartridges and ninety-five (95) adapters for MSA Self Contained Breathing Apparatus (SCBA) masks; and

WHEREAS, the City Council finds it to be in the public interest to accept the grant award and authorize the execution of all documents required to accept grant funds;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the grant award of \$93,553.00 as made by the Department of Justice on behalf of the Coronavirus Emergency Supplemental Funding Grant Program to be used by the Midland Fire Department for the purchase of said equipment.

SECTION TWO. That the Mayor, Director of Finance, and Fire Chief of the City of Midland, Texas, are hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant.

SECTION THREE. That the grant sum of \$93,553.00 is hereby deposited into the General Fund of the City, and is hereby appropriated from the General Fund Unappropriated Fund Balance to the Coronavirus Emergency Supplemental Funding Grant Project (700281).

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

Mark Mason, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Blumenauer, Fire Chief

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

City Council Meeting



Item Number: 14
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Kayci LaDuke,

Approved for Agenda:
CSharp
City Manager's Office

2020-108

Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2020 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM; SAID FUNDING SHALL BE USED TO PURCHASE EQUIPMENT FOR THE MIDLAND POLICE DEPARTMENT FOR THE PURPOSE OF RESPONDING TO THE CORONAVIRUS PANDEMIC **(POLICE)**

Purpose:

Consider a resolution authorizing the City of Midland to submit a grant application for the FY2020 Coronavirus Emergency Supplemental Funding (CESF) Program through the Office of the Governor of Texas Criminal Justice Division

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact to the City of Midland

Discussion:

The funds from this grant, if awarded, will be used to purchase equipment for the Police Department to prevent, prepare for, and respond to the coronavirus pandemic to include Personal Protective Equipment (PPE), training equipment, disinfecting foggers, and contactless fever warning systems. In the event of loss or misuse of any awarded funds from the Office of the Governor of Texas, the City of Midland assures that the funds will be returned to the Office of the Governor of Texas in full.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE SUBMISSION OF
AN APPLICATION TO THE OFFICE OF THE
GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION,
FOR THE FISCAL YEAR 2020 CORONAVIRUS
EMERGENCY SUPPLEMENTAL FUNDING PROGRAM;
SAID FUNDING SHALL BE USED TO PURCHASE
EQUIPMENT FOR THE MIDLAND POLICE
DEPARTMENT FOR THE PURPOSE OF RESPONDING
TO THE CORONAVIRUS PANDEMIC**

WHEREAS, the Office of the Governor, Texas Criminal Justice Division, has announced the availability of funds through the Fiscal Year 2020 Coronavirus Emergency Supplemental Funding (CESF) Program; and

WHEREAS, the Midland Police Department wishes to submit an application for funding in order to purchase personal protective equipment, training equipment, disinfecting foggers, and non-contact fever warning systems; and

WHEREAS, the City Council finds it to be in the public interest to authorize the submission of an application for said funds and to designate the City Manager as the City of Midland's authorized signatory; and

WHEREAS, the City of Midland will not use the CESF Program funding to offset or decrease total salaries, expenses and allowances that the applicant receives from the governing body at or after the time the funding is awarded; and

WHEREAS, in the event of loss or misuse of the CESF Program funding, the City of Midland assures that the funds will be returned to the Office of the Governor, Texas Criminal Justice Division in full;

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

SECTION ONE. That the City of Midland is hereby authorized to submit an application to the Office of the Governor, Texas Criminal Justice Division, for the Fiscal Year 2020 Coronavirus Emergency Supplemental Funding (CESF) Program in order to purchase personal protective equipment, training equipment, disinfecting foggers, and non-

contact fever warning systems for the Police Department.

SECTION TWO. That the City of Midland will not use the existence of CESF Program funding to offset or decrease total salaries, expenses and allowances that the applicant receives from the governing body at or after the time the funding is awarded.

SECTION THREE. That in the event of loss or misuse of the CESF Program funding, the City of Midland assures that the funds will be returned to the Office of the Governor, Texas Criminal Justice Division in full.

SECTION FOUR. That the City Manager is designated as the City of Midland's authorized signatory and is hereby authorized to apply, accept, reject, alter or terminate the CESF Program funding on behalf of the City of Midland.

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:

Mark Mason, Director of Finance

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



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:

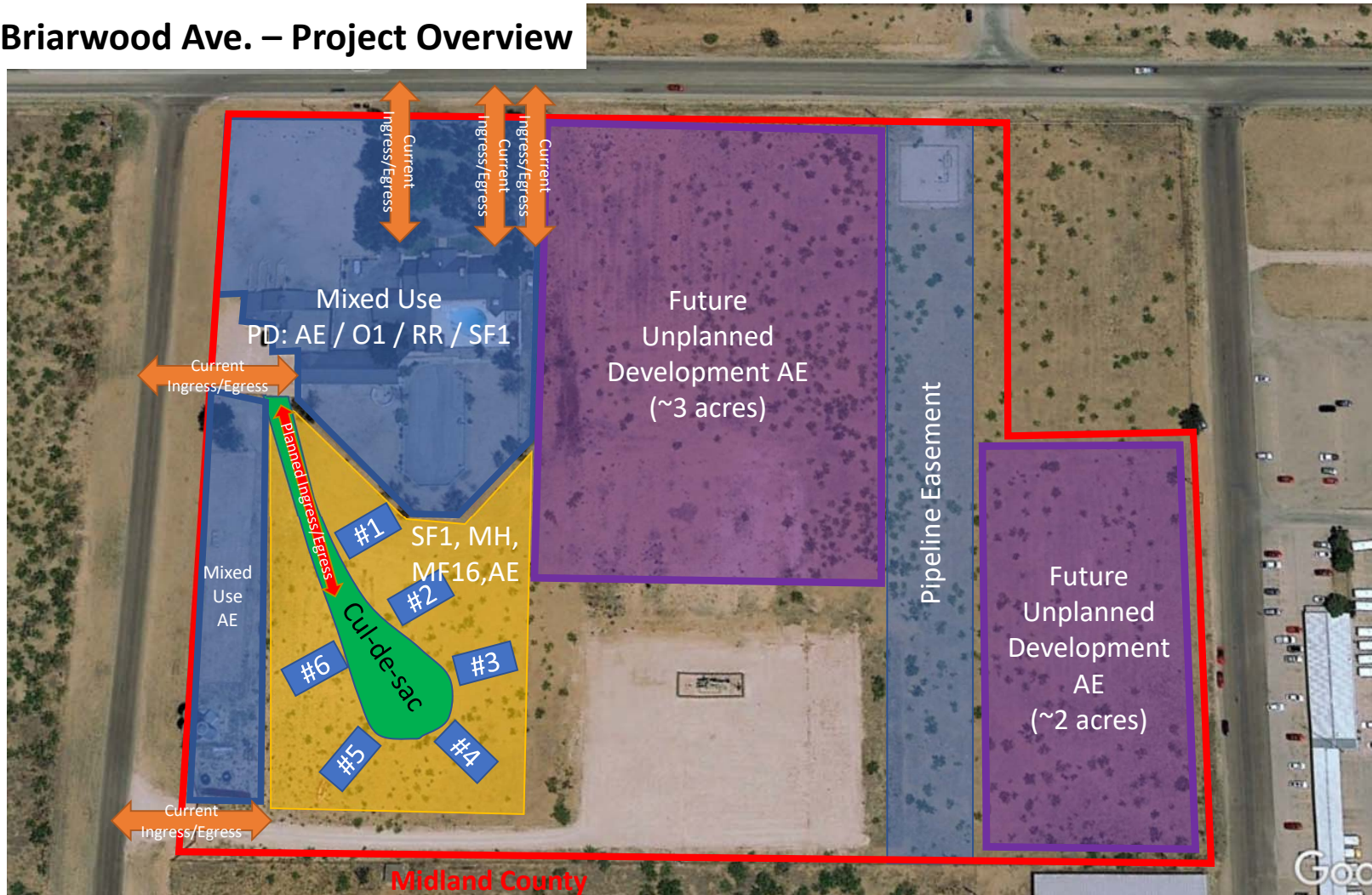
Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

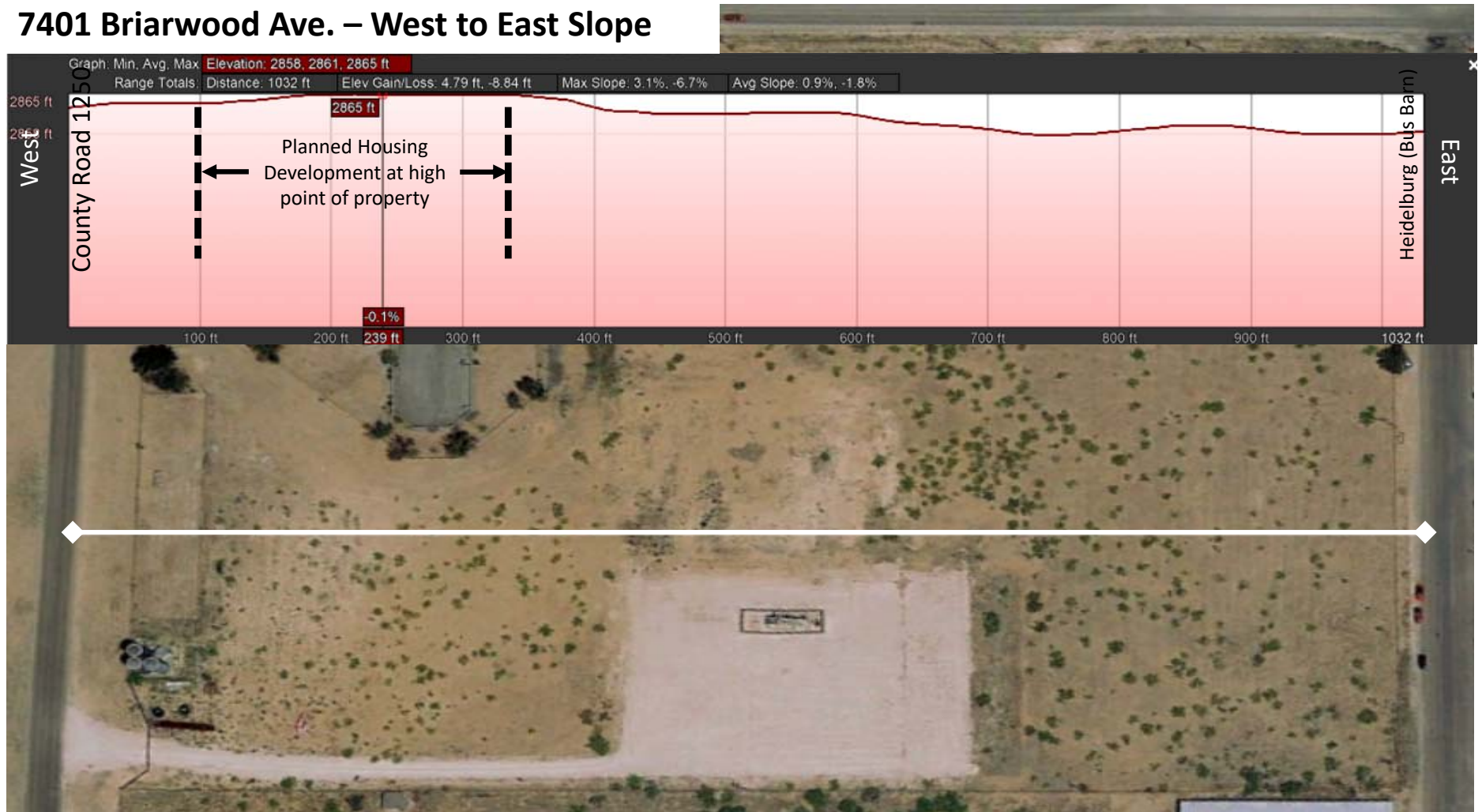
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

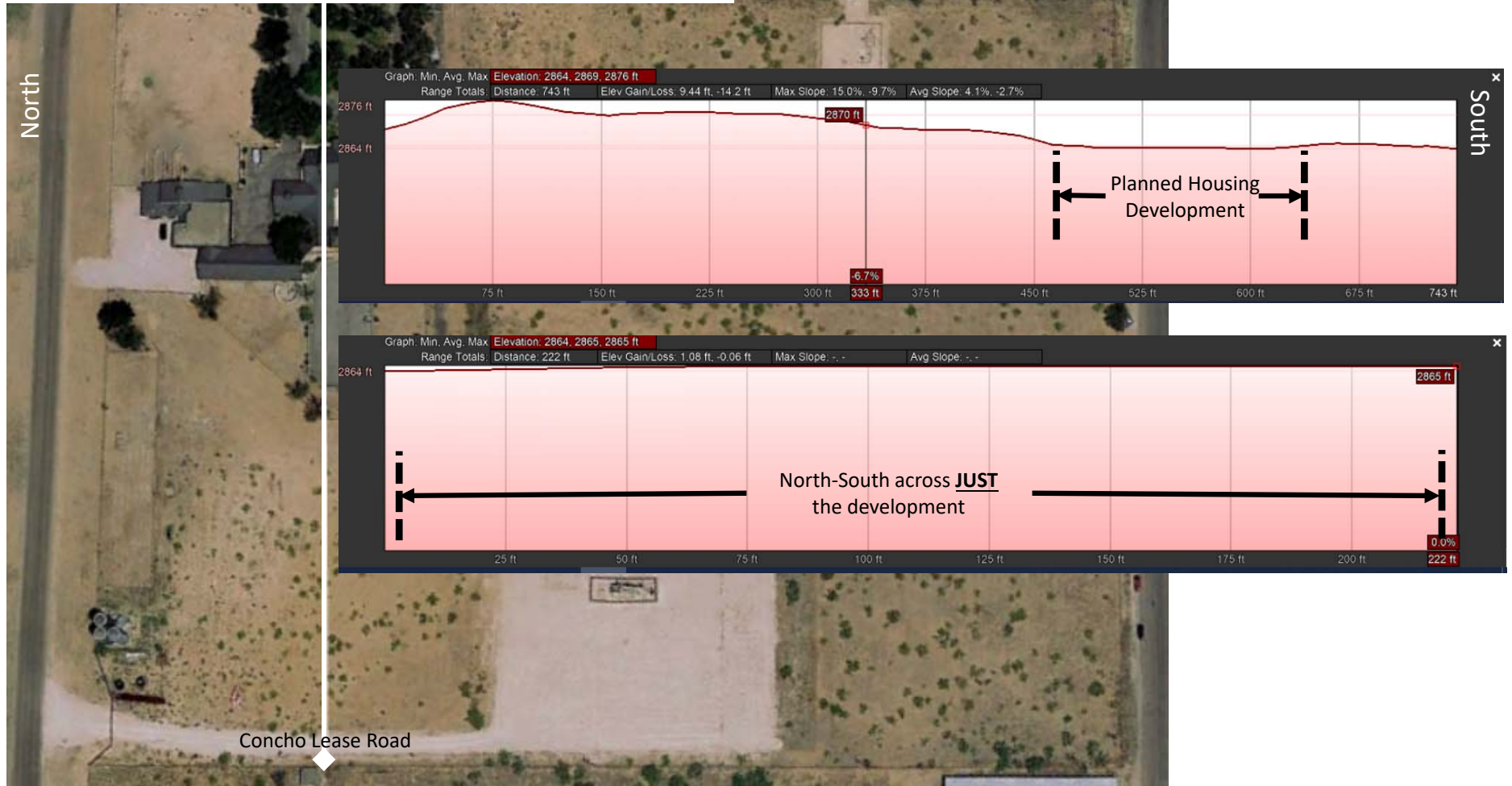
7401 Briarwood Ave. – Project Overview



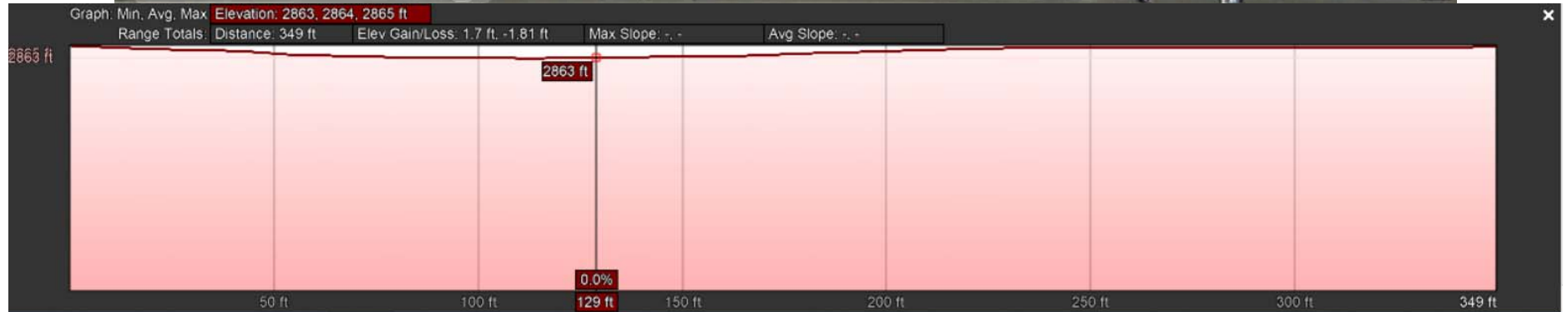
7401 Briarwood Ave. – West to East Slope



7401 Briarwood Ave. – North to South Slope



7401 Briarwood Ave. – Planned Road Slope



From: [Tyler West](#)
To: [Cristina Burns](#)
Cc: [Charles Harrington](#)
Subject: Re: Briarwood - Fostering Restoration
Date: Wednesday, April 29, 2020 7:34:31 AM
Attachments: [image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)

Cristina,

Thanks for the follow up!

At this time, no other buildings are being contemplated other than the tiny homes. We don't have specifics for all the future homes, but they should be in the 300-500 sf range. The first one to move in will be 500 sf and I attached the floor plan for it. This first home will be 1 bed/1 bath and will house a family of 4 (the Echols Family). The future homes should also be 1/1 but generally house 1-2 people.

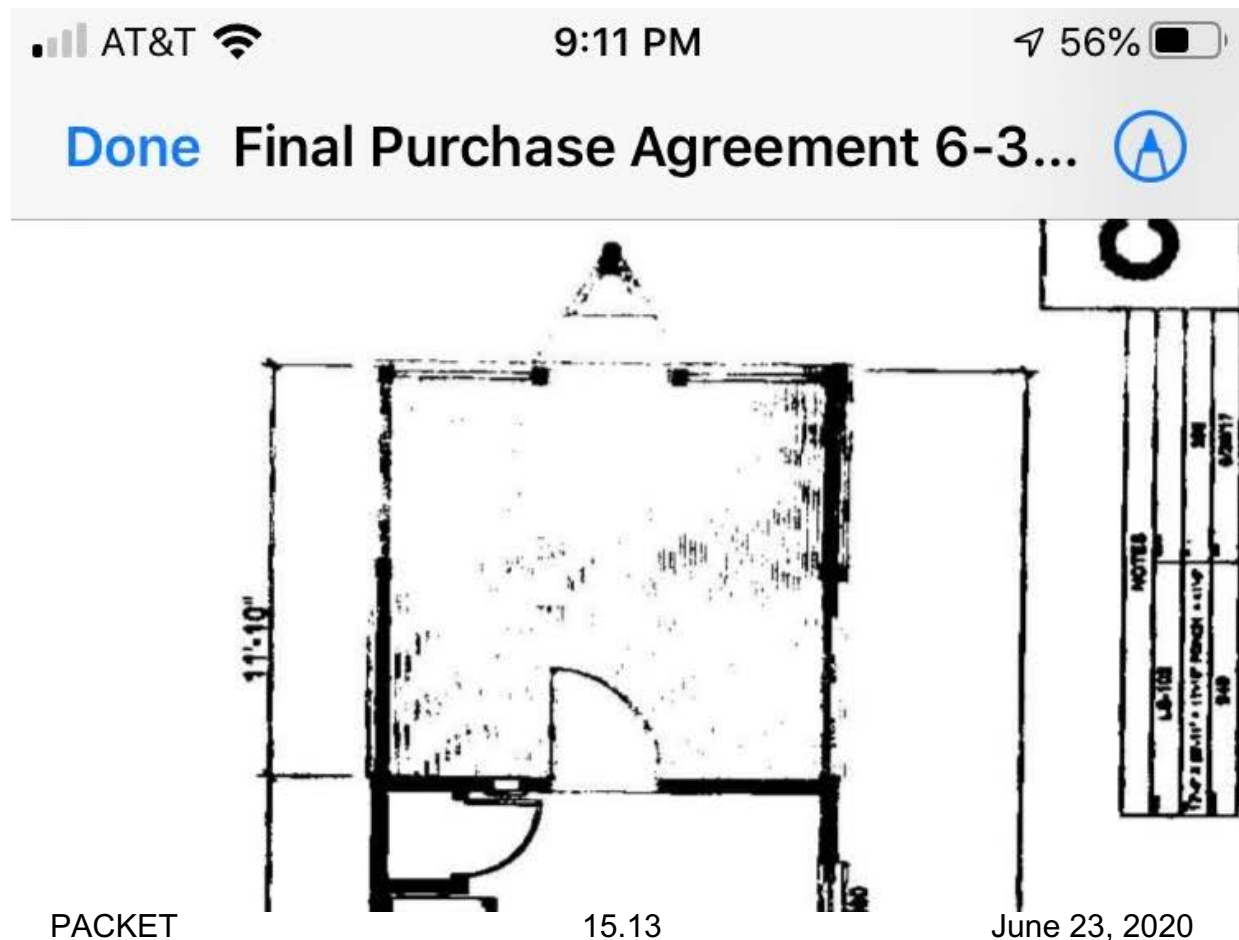
The office and retail are already in place (and have been since Mid Cities Church owned the property). This area is 1,209 sf and is already built and in place (and has been for a number of years prior to our ownership) and is currently being leased to The Attic Foster Closet as a closet for foster homes and families in need.

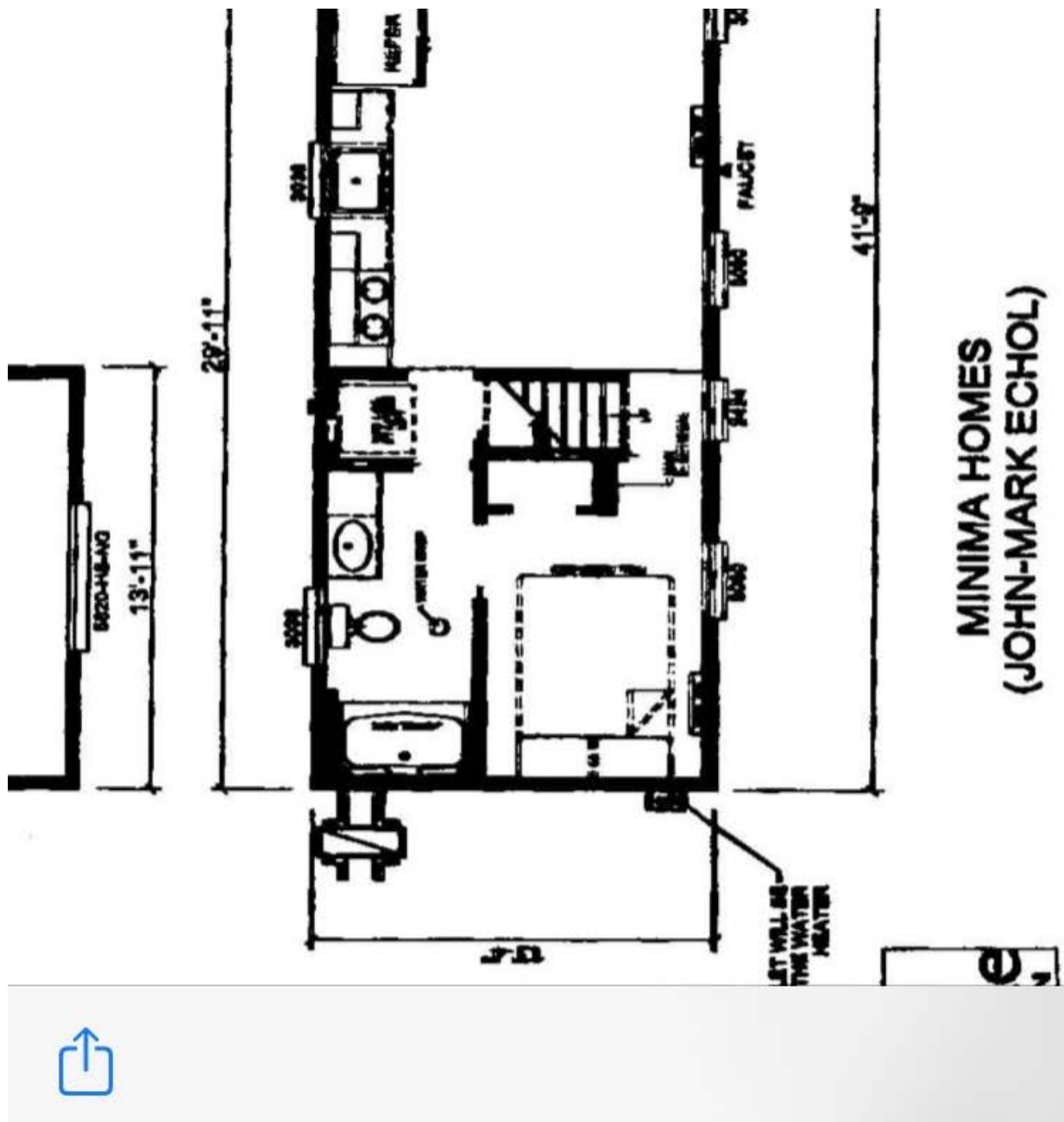
The property currently has about 6-10 parking spots directly off CR 1250. This lot services the retail/office space. Each additional home would add 1-2 parking spots directly next to the home.

I hope this helps!

If you have any more questions, let me know.

Tyler
432-664-5658





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.

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.



**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.

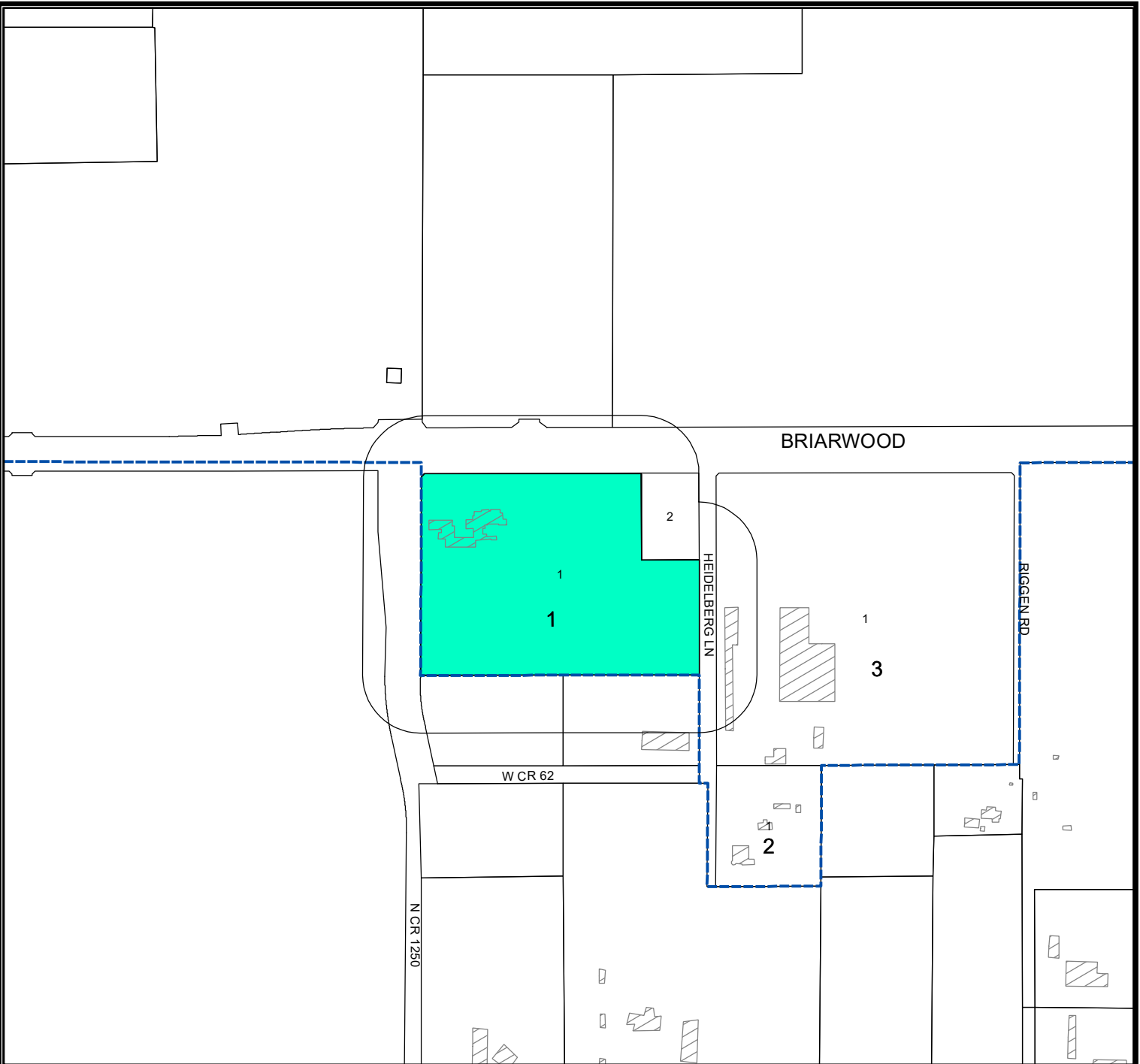
Authorized Agent (signature)

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
 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



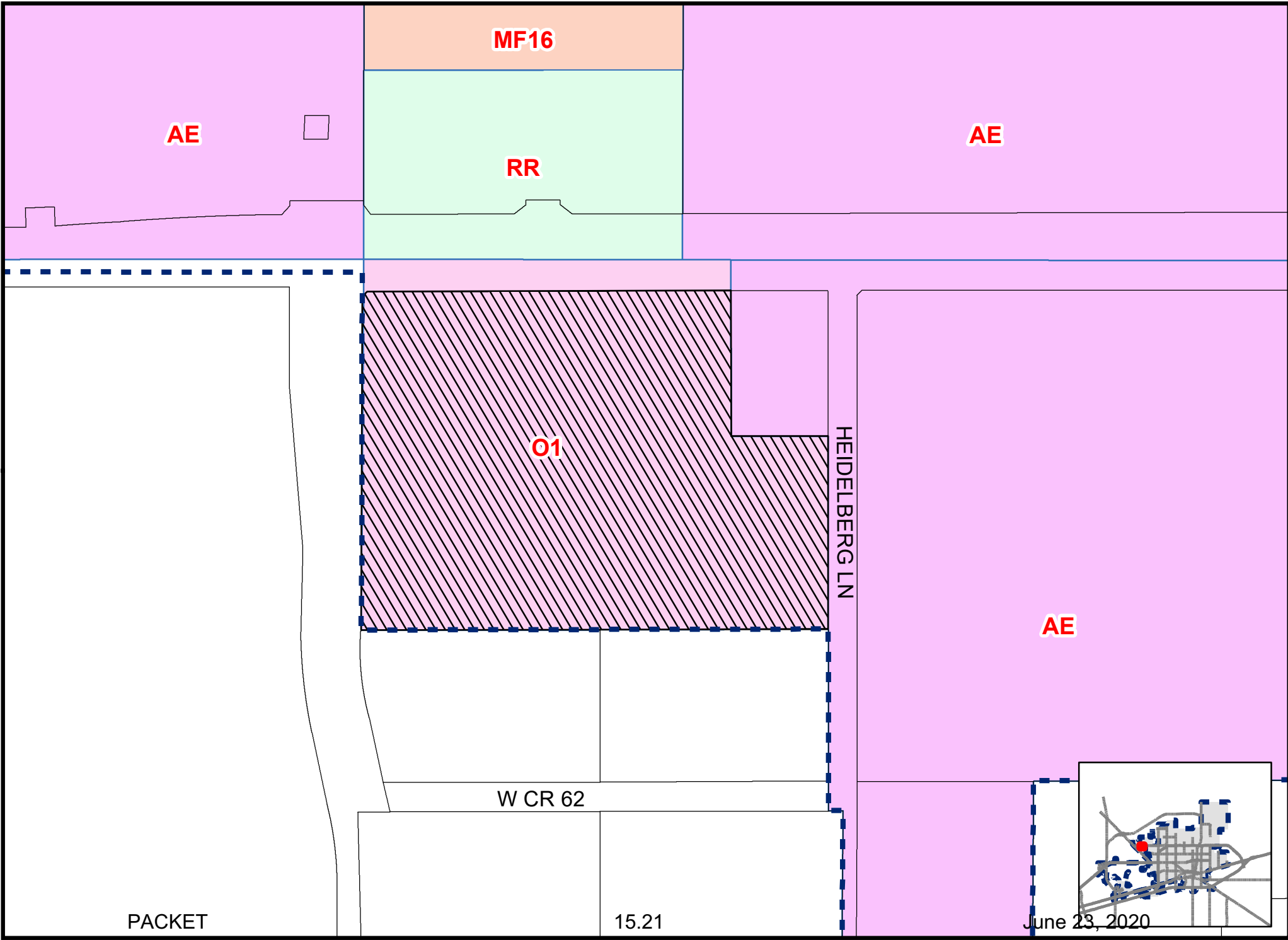
PACKET

15.20

June 23, 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

15.25

June 23, 2020

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

City Council Meeting



Item Number: 16
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](#))

City Council Meeting



Item Number: 17
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Isaac Garnett, Manager, Community Development

Approved for Agenda:

City Manager's Office

071-2020

Subject: RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2024 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) ANALYSIS OF IMPEDIMENTS (AI) TO FAIR HOUSING CHOICE AND TO AFFIRMATIVELY FURTHER FAIR HOUSING STUDY (DEVELOPMENT SERVICES)

Purpose:

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.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No fiscal Impact on City Budget

Discussion:

The Community Development Office has developed and written the AI that resulted in the draft document. The draft is in the process of a 30-day public review period that ends July 23, 2020. The AI will cover the City's fiscal years 2020 to 2024.



City Council Meeting

Item Number: 18
Meeting Date: June 23, 2020
To: City Council / City Manager
From: Tim Meek, Presiding Judge
Subject: AN ORDINANCE AMENDING TITLE I, "ADMINISTRATIVE", CHAPTER 7, "MUNICIPAL COURT", OF THE CITY CODE OF MIDLAND, TEXAS, BY ADDING SECTION 20, "REIMBURSEMENT FEE FOR CREDIT OR DEBIT CARD PAYMENTS"; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE (**MUNICIPAL COURT**)

Purpose:

Hold a public hearing and consider an ordinance amending Title 1, "Administrative," Chapter 7, "Municipal Court," of the City Code of Midland, Texas, by adding Section 20, "Reimbursement Fee for Credit Card Payments"; containing a cumulative clause; containing a savings and severability clause; and ordering publication.

Recommended City Council Action:

Approve

Fiscal Impact:

The Midland Municipal Court has spent the following on credit and debit card fees for the past four years:

Fiscal Year 2016	\$ 34,482.58
Fiscal Year 2017	\$ 46,016.08
Fiscal Year 2018	\$ 48,961.87
Fiscal Year 2019	\$ 41,606.32

As of June 10th, 2020, the Municipal Court has accrued \$27,178.97 in credit card fees for fiscal year 2020, with almost four months still remaining in the budgeted year. By passing this ordinance, the City of Midland is saving a potential average of \$42,766.71 per fiscal year.

Discussion:

Currently, Midland Municipal Court assumes the costs of credit and debit card fees when processing payments received at the court. As discussed above, this is an enormous burden for the city to assume, as it averages roughly \$42,766.71 each year to implement.

To combat this, the court is recommending the collection of a 2.5% reimbursement fee for processing payments by credit or debit card. Members of the public who choose to utilize a card will be informed of this fee, which is calculated based off of 2.5% of the fee, fine, court cost, or other charge assessed by the court, and will be processed automatically. This 2.5% fee will account for all costs associated with utilizing credit and debit cards; the city will no longer be required to budget for these fees.

Many courts and counties throughout Texas have already implemented a similar fee associated with credit cards. Below is a list of several to name a few:

1. Midland County
2. Dallas County
3. Brazos County
4. Arlington Municipal Court
5. College Station Municipal Court

In these current economic times, it has never been more imperative to be as fiscally responsible as possible. With the potential of enormous savings that this reimbursement fee brings, the Midland Municipal Court is recommending approval on this amendment.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE I, “ADMINISTRATIVE”, CHAPTER 7, “MUNICIPAL COURT”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ADDING SECTION 20, “REIMBURSEMENT FEE FOR CREDIT OR DEBIT CARD PAYMENTS”; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE;

WHEREAS, pursuant to Chapter 132 of the Texas Local Government Code, the City Council may authorize the municipal court clerk to collect a reimbursement fee for processing each payment, by credit or debit card, of a fee, fine, court cost or other charge assessed by the municipal court;

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

SECTION ONE. That Midland City Code Title 1, “Administrative”, Chapter 7, “Municipal Court”, shall be amended by adding Section 20, “Reimbursement Fee for Credit or Debit Card Payments”, which shall read as follows:

1-7-20. Reimbursement Fee for Credit or Debit Card Payments.

The municipal court clerk may collect a reimbursement fee of 2.5% for processing each payment, by credit or debit card, of a fee, fine, court cost or other charge assessed by the municipal court.

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.

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