

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
June 25, 2024 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall



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

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

OPENING ITEMS

1. Invocation – Minister Mabio Gomes, Midland SDA Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, periods of time, or reports, including, but not limited to:
 - 3a. Presentation from Bhupen Agrawal regarding the Honolulu Building located at 200 West Illinois Avenue, Midland, Texas.

CONSENT AGENDA

4. 2024-101 – RESOLUTION AWARDING A CONTRACT FOR THE GARFIELD STREET PAVING BOND PROJECT TO THE SOLE BIDDER, REECE ALBERT, INC. OF SAN ANGELO, TEXAS, AT A TOTAL COST OF \$4,187,756.14; APPROVING \$837,551.23 FOR CONTINGENCIES; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT **(DISTRICT 3) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**
5. 2024-102 – RESOLUTION APPROVING A CONTRACT WITH LEXIPOL LLC THROUGH SOURCEWELL, FOR A THREE-YEAR SUBSCRIPTION OF THE FIRST RESPONDER MENTAL HEALTH APPLICATION FOR A TOTAL COST OF \$146,526.60 **(DISTRICT: NONE) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**
6. 2024-103 – RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FIELDTURF USA, INC., THROUGH THE EQUALIS GROUP PURCHASING PROGRAM, FOR DESIGN SERVICES ASSOCIATED WITH THE CONSTRUCTION OF
PACKET

FIELDS 5 AND 6 AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF \$238,892.00; APPROVING \$23,893.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 4) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

7. 2024-104 – RESOLUTION AUTHORIZING THE PURCHASE OF STRING LIGHTS AND POLES FOR DOWNTOWN MIDLAND FROM WHOLESALE ELECTRIC SUPPLY COMPANY OF HOUSTON, INC. THROUGH THE INTERLOCAL PURCHASING SYSTEM FOR A TOTAL COST OF \$305,255.67 **(DISTRICT 2) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)**
8. 2024-105 – RESOLUTION AUTHORIZING A ONE-YEAR RENEWAL OF A SOLE-SOURCE CONTRACT WITH AZTECA SYSTEMS, LLC, FOR LICENSING AND SOFTWARE MAINTENANCE SUPPORT SERVICES OF CITYWORKS SOFTWARE FOR THE INFORMATION TECHNOLOGY SYSTEMS DEPARTMENT AT A TOTAL COST OF \$135,981.30 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**
9. 2024-106 – RESOLUTION RATIFYING AND APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND AND SILVERWING ENTERPRISES, LLC, FOR PROFESSIONAL SERVICES IN SUPPORT OF THE OPERATION OF THE SPACEPORT LOCATED AT MIDLAND INTERNATIONAL AIR AND SPACE PORT; AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO SAID PROFESSIONAL SERVICES AGREEMENT **(DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**
10. 2024-107 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MAVERICK CIVIL & SURVEY, LLC, DBA MAVERICK ENGINEERING TO PROVIDE CONCEPTUAL AND DESIGN SERVICES FOR THE BEAUTIFICATION OF TWO ENTRYWAYS TO THE MIDLAND INTERNATIONAL AIR & SPACE PORT FOR A TOTAL COST NOT TO EXCEED \$109,000.00; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**
11. 067-2024 – MOTION APPROVING A MASTER RESEARCH AND DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE MITRE CORPORATION; SAID AGREEMENT TO PROVIDE FOR RESEARCH AND DEVELOPMENT, SYSTEMS ENGINEERING, AND RELATED ADVISORY SERVICES NECESSARY FOR THE FURTHERANCE OF COMMERCIAL SPACE AND HIGH-SPEED FLIGHT OPERATIONS IN THE PERMIAN BASIN **(DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**
12. 068-2024 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SPACE FORCE ASSOCIATION, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES; AND REPEALING

MOTION NO. 038-2024 (DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

13. 069-2024 – MOTION APPROVING, WITH STAFF’S RECOMMENDED CONDITIONS, A PROPOSED PRELIMINARY PLAT OF GRASSLANDS ESTATES, SECTION 26, BEING A REPLAT OF LOT 1, BLOCK 21, GRASSLANDS ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WADLEY AVENUE AND CALLAWAY DRIVE) **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
14. 070-2024 – MOTION ACCEPTING GRANT FUNDS IN THE AMOUNT OF \$105,462.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; SAID GRANT FUNDS TO BE USED TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS NECESSITIES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND **(DISTRICT: ALL) (FIRE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

SECOND READINGS

15. 10535 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 15,266-SQUARE FOOT PORTION OF LOTS 26 AND 27, BLOCK 2, 349 RANCH ESTATES, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND WASHITA COURT), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD JUNE 11, 2024) **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
16. 10536 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1 AND THE EAST FIVE FEET OF LOT 2, BLOCK 5, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH L STREET AND SHELL AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (FIRST READING HELD JUNE 11, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES)**

(QUALITY OF LIFE AND PLACE)

PUBLIC HEARINGS

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

17. 10537 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF KENT STREET AND WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**
18. 10538 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF KENT STREET, APPROXIMATELY 140 FEET NORTH OF WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**
19. 10539 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1A, BLOCK 4, PLUNK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF GARDEN CITY HIGHWAY, APPROXIMATELY 568 FEET WEST OF ALLEN STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
20. 10540 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.92-ACRE TRACT OF LAND OUT OF BLOCK 1, WEST 191 INDUSTRIAL PARK, SECTION 12, AND AN 8.70-ACRE TRACT OF LAND OUT OF BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH FM 1788 AND WEST COUNTY ROAD 77); CONTAINING A

CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

21. 2024-108 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A FARMERS MARKET ON A 4.87-ACRE TRACT OF LAND OUT OF LOT 4, BLOCK 1, PORRAS ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 800 FEET EAST OF NORTH A STREET) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS **(DISTRICT 3) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**
22. 10541 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 4 AND 17, BLOCK 61, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH LEE STREET AND ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 165 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (COUNCIL DISTRICT 2)(DEVELOPMENT SERVICES)(QUALITY OF LIFE AND PLACE) **(DISTRICT 2) (DEVELOPMENT SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

MISCELLANEOUS

23. 071-2024 – MOTION GRANTING C&J GENERAL CONTRACTING LLC'S APPEAL, ON BEHALF OF SIMON PROPERTIES, AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR LOT 10, BLOCK 17, SKYLINE TERRACE, UNIT 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND COURTYARD DRIVE) **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**
24. 10542 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10493; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION **(DISTRICT: NONE) (ENGINEERING SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

PUBLIC COMMENT

25. Receive public comments where individuals may address the City Council on City related

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

EXECUTIVE SESSION

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

Respectfully Submitted,

Tommy Gonzalez
City Manager

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



City Council Meeting

Item Number: 4
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AWARDING A CONTRACT FOR THE GARFIELD STREET PAVING BOND PROJECT TO THE SOLE BIDDER, REECE ALBERT, INC. OF SAN ANGELO, TEXAS, AT A TOTAL COST OF \$4,187,756.14; APPROVING \$837,551.23 FOR CONTINGENCIES; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 3) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution awarding a contract to Reece Albert, Inc. of San Angelo, Texas for the Garfield Street Paving Bond Project - Break Out 03 for a cost of \$4,187,756.14 plus \$837,551.23 in contingencies for a total cost of \$5,025,307.37 for the Engineering Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Road Bond Fund (120) and will appropriated to a project.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for Garfield Street Paving Bond Project - Break Out 03. The bid request was sent to eighty-two (82) companies. We received sole bid. Staff recommends awarding a contract to Reece Albert, Inc. The project timeline is projected at 210 calendar days. Please see the attached memo

from Bobby Wojciechowski, CIP Manager, for more information.

Therefore, please consider a resolution awarding a contract to Reece Albert, Inc. of San Angelo, Texas for the Garfield Street Paving Bond Project - Break Out 03 for a cost of \$4,187,756.14 plus \$837,551.23 in contingencies for a total cost of \$5,025,307.37 for the Engineering Department.



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Erika Martinez; City of Midland, Purchasing Manager

FROM: Bobby Wojciechowski; City of Midland, CIP Manager – Capital Improvements

SUBJECT: Garfield St Paving Bond Project – Break Out 03 ♦ Engr. Project No. BPU 18-02 ♦ Bid Tabulation ♦ Funding #_____2017 Bond_____

DATE: June 12th, 2024

Erika,

Engineering staff has reviewed the bid tabulation for the Garfield St Paving Bond Project – Break Out 03 project. Reece Albert, Inc. of San Angelo, Texas, is the apparent successful bidder. Staff recommends awarding the Garfield St Paving Bond Project – Break Out 03 to Reece Albert, Inc.

Reece Albert, Inc has an established history with the City of Midland of performing work of similar scale and scope to the Garfield St Paving Bond Project – Break Out 03.

Funding is available for this project.

The apparent successful bidder was selected based on the base bid amount of **\$4,187,756.04** as outlined in the bidding documents. In addition, we would like to request that a 20% contingency in the amount of **\$837,551.23** be allowed for value added changes to the project during construction. The total amount made available for the project would be **\$5,025,307.37**.

Kerry Koehler, P.E.
Director – Capital Improvements

Cc: Kirby Jones
Regina Stephenson

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE

GARFIELD STREET PAVING BOND PROJECT TO THE

SOLE BIDDER, REECE ALBERT, INC. OF SAN

ANGELO, TEXAS, AT A TOTAL COST OF \$4,187,756.14;
WHEREAS, the City Manager approved the plans and specifications and
advised APPROVING \$837,551.23 FOR CONTINGENCIES;

APPROPRIATING FUNDS; AND AUTHORIZING
for competitive bids for the Garfield Street Paving Bond Project (the "Project"); and
PAYMENT

WHEREAS, Bid No. 24004078 was opened on May 15, 2024, with the sole
bidder

and the lowest responsible bidder being Reece Albert, Inc. of San Angelo,
Texas, WHEREAS, the total cost of the work to be completed according to the
SECTION ONE. That the Mayor and City Secretary are hereby authorized
and previously

("Contractor"), as shown in the bid tabulation and evaluation, which are attached
advised plans and specifications and the unit prices in Exhibit "A" shall not
hereby execute and attest, respectively, on behalf of the City of Midland, a
WHEREAS, the City Council finds it to be in the public interest to execute a
contract with

with contract
Exhibits "A" and "B" and incorporated herein for all purposes, having submitted a
\$4,187,756.14; and Project at a total cost of \$4,187,756.14, said contract being on file
SO NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE

in the
CITY OF MIDLAND, TEXAS:

\$4,187,756.14; and

office of the City Secretary, referenced by the date and number of this resolution.

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

execute, on behalf of the City of Midland, change orders to said contract if (1) each
change

order involves a decrease or an increase of \$50,000.00 or less and (2) the change
orders, in

total, do not increase the original contract price by more than \$837,551.23.

SECTION THREE. That the sum of \$5,025,307.37 shall be appropriated from the

Road Bond Fund (120) to a project account for said Project. The sum of

\$837,551.23 is SECTION FOUR. That the City Comptroller is hereby authorized and directed to

approved for contract contingencies.

pay Contractor pursuant to the terms of said contract and change orders executed in

accordance with this resolution in an amount not to exceed \$5,025,307.37 from funds On motion of Council member _____, seconded by Council member

appropriated in accordance with Section Three, upon receipt of proper invoices or statements _____, the above and foregoing resolution was adopted by the City Council of the

approved Council members voting "AYE": City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by

the following vote:

Council members voting "NAY":

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

PACKET

APPROVED AS TO CONTENT

AND COMPLETENESS:

Regina Stephenson, General Services
Director

Gabe McClelland, Engineering Services
Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT A

24004078 BPU18-02 Garfield St. Pving Bond Proj.
Bid Opening: Wednesday, May 15, 2024

Reece Albert, Inc.
3001 Foster ST.
San Angelo TX 76903

Items	QuantityRequired	Description	Unit	PayNote	UnitPrice	TotalCost
Miscellaneous Items						
1	7	Mobilization, Furnished, Installed, completed and in place	MO	M1	\$93,451.42	\$654,159.94
2	120	3" PVC Pipe Conduit (Shedule 40 Electric)furnished, installed, complete and in place	LF	M2	\$56.62	\$6,794.40
3	10	Pexco City Post Eac, 42" Yellow, Triple Wrap, Furnished, Installed, complete and in place	EA	M3	\$820.43	\$8,204.30
4	7	Erosion/Sediment Control, furnished, installed, complete and in place	MO	M4	\$4,786.98	\$33,508.86
5	7	Traffic Control, furnished, installed, complete and in place	MO	M5	\$7,084.44	\$49,591.08
6	7	Job Site Safety, furnished, installed, complete and in place	MO	M6	\$1,099.24	\$7,694.68
						\$759,953.26
Demolition Items						
1	9190	Unclassified Roadway Excavation (Depth ≤ 18"), complete and in place	SY	D1	\$10.96	\$100,722.40
2	9960	Removal & Dispose of Existing Unclassified Pavement, complete and in place	SY	D2	\$7.73	\$76,990.80
3	1360	Removal & Disposal of Existing Unclassified ConcretePavement, complete and in place	SY	D3	\$39.66	\$53,937.60
4	2210	Removal & Disposal of Existing Concrete Curb &Gutter, complete and in place	LF	D4	\$24.41	\$53,946.10
5	470	Removal & Disposal of Existing Concrete Sidewalk & Ramps, complete and in place,	SY	D5	\$65.59	\$30,827.30
6	2	Removal & Disposal of Existing Sign Assembly, complete and in place.	EA	D6	\$437.09	\$874.18
7	6	Removal & Disposal of Existing Sign Assembly &Foundation, complete and in place	EA	D7	\$857.20	\$5,143.20
						\$322,441.58
Storm Drain Items						
1	5	10'x5' Reinforced Concrete Curb Inlet, furnished,installed, complete and in place	EA	SD1	\$14,118.00	\$70,590.00
2	40	24" Reinforced Concrete Pipe (RCP), furnished, installed, complete and in place	LF	SD2	\$383.76	\$15,350.40
3	40	Open Trenching of Storm Drain, furnished, installed, complete and in place,	LF	SD3	\$386.14	\$15,445.60
						\$101,386.00
Paving Items						
1	9190	Subgrade Preparation (Depth ≤ 8"), furnished,installed, complete and in place,	SY	P1	\$7.94	\$72,968.60
2	6590	8" Jointed Concrete Pavement, furnished, installed, complete and in place,	SY	P2	\$210.39	\$1,386,470.10
3	1190	8" Jointed Concrete Pavement Truck Apron, furnished, installed, complete and in place	SY	P3	\$482.02	\$573,603.80
4	340	Concrete Asphalt Pavement Transition Sleeper Slab, Furnished, Installed, Complete and in Place	SY	P4	\$493.78	\$167,885.20
5	37	3" Type C HMAc Asphalt Pavement Surface Course (PG64-22, 110Lbs/SY @ 1" Thick) Furnished, Installed, Complete and in Place	SY	P5	\$255.40	\$9,449.80
6	330	8" Flexible Base (Type A, Grade 4), Furnished, Complete and in Place	SY	P6	\$54.47	\$17,975.10
7	7.4	Bituminous Prime Coat (MC-30, 0.20 GAL / SY), Furnished, Installed, Complete and in Place.	GAL	P7	\$14.35	\$106.19
8	80	6" Concrete Median, furnished, installed, complete and in place,	SY	P8	\$546.48	\$43,718.40
9	210	8" Concrete Fillet, furnished, installed, complete and in place,	SY	P9	\$234	\$49,140.00
10	80	6" Concrete Alley Approach, Furnished, Installed, Complete and in Place	SY	P10	\$282.51	\$22,600.80
11	240	6" Residential Concrete Driveway Approach, furnished, installed, complete and in place	SY	P11	\$287.77	\$69,064.80
12	270	Type A Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$78.48	\$21,189.60
13	540	Type C Concrete Curb & Gutter, furnished, installed,complete and in place,	LF	P12	\$78.48	\$42,379.20
14	50	Type F Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$3,710.00
15	2850	Type R Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$211,470.00
16	340	Vertical Concrete Curb, furnished, installed, complete and in place	LF	P12	\$206.89	\$70,342.60
17	60	Concrete Pedestrian Access Ramp, furnished,installed, complete and in place	SY	P13	\$428.05	\$25,683.00
18	70	6" Concrete Sidewalk, furnished, installed, complete and in place,	SY	P14	\$256.83	\$17,978.10
19	670	4" Concrete Sidewalk, furnished, installed, complete and in place	SY	P14	\$231.15	\$154,870.50
20	7	Storm Inlet Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,902.64	\$13,318.48
21	3	Manhole Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,906.91	\$5,720.73
22	14	Water Valve Box Ring & Cover Adjustment, furnished,installed, complete and in place	EA	P15	\$979.95	\$13,719.30
23	50	Flowable Fill / 2-Sack Backfill, furnished, installed, complete and in place,	SY	P16	\$212.22	\$10,611.00
						\$3,003,975.30
Total						\$4,187,756.14

Bidding Summary:
82 Bid Request wer issued
3 Bids Listed Above
0 No Bids were received
79 Bidders did not respond
0 Incomplete Proposals

EXHIBIT B

BPU18-02 Garfield St Pving Bond Proj - Break Out 03

[Scoring Summary](#)[BidTable Summary](#)[Reviewer Scores](#)

Scoring Summary

Active Submissions

[View Proposal Analysis](#)[Show/Hide](#)

Supplier	Total	Work History on Projects of a Size and Scope Similar to the Present					Safety	Pricing
		Work History on Projects for the City of Midland	Work History on Projects within (but not for) the City of Midland	Project				
	/ 100 pts	/ 20 pts	/ 10 pts	/ 15 pts			/ 10 pts	/ 45 pts
Reece Albert, Inc.	100 pts	20 pts	10 pts	15 pts			10 pts	45 pts (\$4,187,756.14)

Click a proposal to view its individual scores

24004078 BPU18-02 Garfield St. Pving Bond Proj.
Bid Opening: Wednesday, May 15, 2024

Reece Albert, Inc.
3001 Foster ST.
San Angelo TX 76903

Items	QuantityRequired	Description	Unit	PayNote	UnitPrice	TotalCost
Miscellaneous Items						
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2	120	3" PVC Pipe Conduit (Shedule 40 Electric)furnished, installed, complete and in place	LF	M2	\$56.62	\$6,794.40
3	10	Pexco City Post Eac, 42" Yellow, Triple Wrap, Furnished, Installed, complete and in place	EA	M3	\$820.43	\$8,204.30
4	7	Erosion/Sediment Control, furnished, installed, complete and in place	MO	M4	\$4,786.98	\$33,508.86
5	7	Traffic Control, furnished, installed, complete and in place	MO	M5	\$7,084.44	\$49,591.08
6	7	Job Site Safety, furnished, installed, complete and in place	MO	M6	\$1,099.24	\$7,694.68
						\$759,953.26
Demolition Items						
1	9190	Unclassified Roadway Excavation (Depth ≤ 18"), complete and in place	SY	D1	\$10.96	\$100,722.40
2	9960	Removal & Dispose of Existing Unclassified Pavement, complete and in place	SY	D2	\$7.73	\$76,990.80
3	1360	Removal & Disposal of Existing Unclassified ConcretePavement, complete and in place	SY	D3	\$39.66	\$53,937.60
4	2210	Removal & Disposal of Existing Concrete Curb &Gutter, complete and in place	LF	D4	\$24.41	\$53,946.10
5	470	Removal & Disposal of Existing Concrete Sidewalk & Ramps, complete and in place,	SY	D5	\$65.59	\$30,827.30
6	2	Removal & Disposal of Existing Sign Assembly, complete and in place.	EA	D6	\$437.09	\$874.18
7	6	Removal & Disposal of Existing Sign Assembly &Foundation, complete and in place	EA	D7	\$857.20	\$5,143.20
						\$322,441.58
Storm Drain Items						
1	5	10'x5' Reinforced Concrete Curb Inlet, furnished,installed, complete and in place	EA	SD1	\$14,118.00	\$70,590.00
2	40	24" Reinforced Concrete Pipe (RCP), furnished, installed, complete and in place	LF	SD2	\$383.76	\$15,350.40
3	40	Open Trenching of Storm Drain, furnished, installed, complete and in place,	LF	SD3	\$386.14	\$15,445.60
						\$101,386.00
Paving Items						
1	9190	Subgrade Preparation (Depth ≤ 8"), furnished,installed, complete and in place,	SY	P1	\$7.94	\$72,968.60
2	6590	8" Jointed Concrete Pavement, furnished, installed, complete and in place,	SY	P2	\$210.39	\$1,386,470.10
3	1190	8" Jointed Concrete Pavement Truck Apron, furnished, installed, complete and in place	SY	P3	\$482.02	\$573,603.80
4	340	Concrete Asphalt Pavement Transition Sleeper Slab, Furnished, Installed, Complete and in Place	SY	P4	\$493.78	\$167,885.20
5	37	3" Type C HMAc Asphalt Pavement Surface Course (PG64-22, 110Lbs/SY @ 1" Thick) Furnished, Installed, Complete and in Place	SY	P5	\$255.40	\$9,449.80
6	330	8" Flexible Base (Type A, Grade 4), Furnished, Complete and in Place	SY	P6	\$54.47	\$17,975.10
7	7.4	Bituminous Prime Coat (MC-30, 0.20 GAL / SY), Furnished, Installed, Complete and in Place.	GAL	P7	\$14.35	\$106.19
8	80	6" Concrete Median, furnished, installed, complete and in place,	SY	P8	\$546.48	\$43,718.40
9	210	8" Concrete Fillet, furnished, installed, complete and in place,	SY	P9	\$234	\$49,140.00
10	80	6" Concrete Alley Approach, Furnished, Installed, Complete and in Place	SY	P10	\$282.51	\$22,600.80
11	240	6" Residential Concrete Driveway Approach, furnished, installed, complete and in place	SY	P11	\$287.77	\$69,064.80
12	270	Type A Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$78.48	\$21,189.60
13	540	Type C Concrete Curb & Gutter, furnished, installed,complete and in place,	LF	P12	\$78.48	\$42,379.20
14	50	Type F Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$3,710.00
15	2850	Type R Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$211,470.00
16	340	Vertical Concrete Curb, furnished, installed, complete and in place	LF	P12	\$206.89	\$70,342.60
17	60	Concrete Pedestrian Access Ramp, furnished,installed, complete and in place	SY	P13	\$428.05	\$25,683.00
18	70	6" Concrete Sidewalk, furnished, installed, complete and in place,	SY	P14	\$256.83	\$17,978.10
19	670	4" Concrete Sidewalk, furnished, installed, complete and in place	SY	P14	\$231.15	\$154,870.50
20	7	Storm Inlet Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,902.64	\$13,318.48
21	3	Manhole Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,906.91	\$5,720.73
22	14	Water Valve Box Ring & Cover Adjustment, furnished,installed, complete and in place	EA	P15	\$979.95	\$13,719.30
23	50	Flowable Fill / 2-Sack Backfill, furnished, installed, complete and in place,	SY	P16	\$212.22	\$10,611.00
						\$3,003,975.30
Total						\$4,187,756.14

Bidding Summary:
82 Bid Request wer issued
3 Bids Listed Above
0 No Bids were received
79 Bidders did not respond
0 Incomplete Proposals

Evaluation Group 2 - Scoring Evaluation

Reviewer	Scorecard	Total	Work History on Projects ...	Work History on Projects ...	Work History on Projects ...	Safety
	Weight:	/ 55 pts	/ 20 pts	/ 10 pts	/ 15 pts	/ 10 pts
Bobby Wojciechowski	Edit	55 pts	20 pts 	10 pts 	15 pts 	10 pts 
Joshua Ferguson	Edit	55 pts	20 pts 	10 pts 	15 pts 	10 pts 
Kerry Koehler	Edit	-	-	-	-	-
Kirby Jones	Edit	55 pts	20 pts 	10 pts 	15 pts 	10 pts 
Average:			20 pts	10 pts	15 pts	10 pts
Calculated:		55 pts =	+ 20 pts	+ 10 pts	+ 15 pts	+ 10 pts



PROJECT MANUAL

Project Name: Garfield Street Paving Bond Project – Break Out Set 03

Project Number: BPU18-02

MAYOR

Lori Blong

COUNCIL MEMBERS

District 1 Scott Dufford

District 2 John Norman

At-Large Robin Poole

District 3 Jack Ladd

District 4 Amy Stretcher Burkes

UTILITIES DIRECTOR

Carl Craig, P.E.



Prepared by City of Midland, Texas
Capital Improvements

April 2024

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A Message for Our Vendors

The City of Midland, Texas has developed a strategic plan with long-term objectives, new mission and vision statements, and a course of action to carry out goals established by and for our community. This includes strategic priorities that will address our economy, infrastructure, quality of life, standards for a safe and secure city, plus much more that's detailed below. We hope you join us on this exciting journey and to be part of the energy toward a successful and prosperous Midland!

Vision Statement

The City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Mission Statement

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

Communication • Customer Service
Economic Development
Fiscal Responsibility & Accountability
High-Performing City Team • Legislation
Quality of Place • Technology Improvements

Core Values

Commitment: Duty to the public good.
Engagement: Foster partnerships and collaboration.
Excellence: Practice continuous improvement.
Innovation: Embrace creativity and cutting-edge solutions.
Integrity: Operate with transparency and accountability.
Inclusivity: Ensure all voices are heard and valued.

Strategic Goals

1. Strong Economy with More Quality Jobs

- 1.1 Increase the Midland Sales Tax Base: Develop strategies to expand the tax base by attracting businesses and supporting local commerce.
- 1.2 Enhance Visitor Revenue Opportunities: Boost tourism through marketing and infrastructure improvements.
- 1.3 Continue Downtown and West Midland Redevelopment: Promote revitalization efforts for a vibrant downtown.
- 1.4 Nurture Development Districts: Establish key action plans honed to enhance Development Districts.
- 1.5 Grow the Core Business of Air Transportation: Develop and transform the Midland airport system.
- 1.6 Diversify Midland's Economy: Support initiatives that diversify the local economy and enhance resilience.
- 1.7 Expand Opportunities and Programming for General and Small Business: Foster the growth, retention, and expansion of local small businesses as well as business in general.
- 1.8 Improve Speed to Market for Citizens, Builders, Developers, and Contractors: Reduce wait times for permit review/approval and inspection process of permitted work.
- 1.9 Establish Midland Community as a Premier Destination for Retail and Entertainment: Offer unique, compelling experiences that draw visitors, ultimately driving economic growth and community vibrancy, while increasing tourism and business development.

2. Set the Standard for a safe and secure City

- 2.1 Enhance public safety programs.
- 2.2 Improve Pedestrian and Motorist Safety: Invest in traffic management and infrastructure.
- 2.3 Implement Effective Code Enforcement Strategies: Address nuisances to improve overall health and safety.
- 2.4 Revitalize Neighborhoods: Utilize best practices to support the redevelopment of neighborhoods.
- 2.5 Enhance Animal Services: Ensure the welfare of pets and wildlife in the city.
- 2.6 Grow and Retain Public Safety Resources: Expand law enforcement presence as well as fire reduction and prevention programs while reducing attrition.

3. Quality of Life and Place

- 3.1 Enhance Community Engagement: Champion innovative recreational, educational, and cultural programs that enrich residents' lives in partnership with the business community.
- 3.2 Foster Relationships with Foundations and Outside Businesses: Collaborate to create world-class facilities and amenities.
- 3.3 Create an Attractive and Inclusive Living Environment: Develop and enhance live, work, and play opportunities for our citizens.
- 3.4 Establish Beautification Programs: Implement initiatives to make the community clean and bright.
- 3.5 Nurture and Promote a Healthy Community: Increase healthy community living and education opportunities for citizens of all ages.
- 3.6 Build the Best Parks System in Our Region: Offer diverse, accessible, and enjoyable green spaces, tournament-ready ball fields, safe playgrounds, and unique recreational opportunities that enhance the quality of life/quality of place for our community.

4. Transparent and Consistent Communication

- 4.1 Set a Climate of Respect, Collaboration, and Team Spirit: Cultivate a culture of openness and respect.
- 4.2 Enhance Communication Efficiency and Effectiveness: Leverage and expand the use of technology to facilitate the exchange of information.
- 4.3 Elevate Internal Communication and Employee Engagement: Strengthen information flow and collaboration among city staff.
- 4.4 Advance Two-Way Communication of Key Messages: Engage effectively with external stakeholders; foster community engagement.
- 4.5 Strengthen Messaging Opportunities Through Various Media Outlets: Communicate the city's achievements and initiatives.

5. Provide Sound Governance and Fiscal Management

- 5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.
- 5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.
- 5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.
- 5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.
- 5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.
- 5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.
- 5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.
- 5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.
- 5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks and other facilities, with a standard of excellence.
- 5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

- 6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.
- 6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.
- 6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.
- 6.4 Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructure development.
- 6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.
- 6.6 Strategize and Monitor City Growth: Develop proactive responses to growth rather than reactive.
- 6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

BID NOTICE

ATTENTION: All bidders who choose to mail bid packets must address them to one of the addresses below:

USPS Mailing Address:

City of Midland, Texas

Attn: City Secretary's Office

P O Box 1152

Midland, TX 79702

OR

Physical Address for mail carriers other than USPS:

City of Midland, Texas

Attn: City Secretary's Office

300 North Loraine St, Suite 330

Midland, TX 79701

If bid packets are delivered in person then bidders must drop the bid packets off at the first-floor front desk of City Hall before the bid opening deadline.

Sealed proposals, addressed to the Mayor and City Council of the City of Midland, Texas, for the furnishing of materials and labor together with other miscellaneous and appurtenant work will be received at the office of the City Secretary, City Hall, Midland, Texas, until 2:00 p.m. on the 1st day of May, 2024, and publicly opened and read aloud at that time.

Delivery of Submittals

Bid packets must be received in the City Secretary's Office no later than May 1, 2024 at 2:00 p.m. Bidders are responsible for the means of timely delivering the bid packet. Delays due to any instrumentality used to transmit the bid packet (e.g., delay occasioned by a bidder, City's internal mailing system, etc.) are the sole responsibility of the bidder. **Late bid packets will not be accepted under any circumstances.**

ATTENTION: The public bid opening will be in the City Council Meeting Chambers.

The Proposed Work provides for the furnishing of materials and labor for Garfield Street Paving Bond Project – Break Out Set 03 together with other miscellaneous and appurtenant work.

ATTENTION: A NON-MANDATORY PRE-BID MEETING will be held at 4:00 p.m. on Wednesday, April 24th, 2024 in the basement conference room of City Hall, 300 N. Loraine Street, Midland, Texas.

ATTENTION: All questions submitted before or after the Non-Mandatory Pre-Bid Meeting must be submitted via email to the following email address:

kjones@midlandtexas.gov

The deadline for submitting additional questions after the Non-Mandatory Pre-Bid Meeting is Noon on Friday, April 26, 2024. Questions submitted before the Noon deadline will be included in the Addendum that will go out that same day along with all discussion items, questions, answers, and any new information resulting from the Non-Mandatory Pre-Bid Meeting. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

Bids will be received on a unit price basis.

No Bid may be withdrawn within a period of 60 days after the date fixed for opening Bids.

"FAX" or telephone bids or modifications will not be accepted.

Bid Envelopes shall be plainly marked "Proposal for City of Midland".

ATTENTION: Information for bidders, proposal forms, specifications, and plans may be obtained by emailing purchasing@midlandtexas.gov.

A bid bond or proposal guaranty is to accompany the bid, thereby guaranteeing the good faith of the bidder and that the bidder will enter into the written contract. The guaranty is to amount to five percent (5%) of the total bid and must be in the form of cash or certified check, issued by a bank satisfactory to the City of Midland, or bid bond. If in the form of cash or certified check, it is expressly understood and agreed that the City of Midland is given the right to retain such as liquidated damages if such bidder withdraws its bid anytime after such bid is opened and before official rejection of such bid, or if successful in securing the awarded thereof, such bidder fails to enter into the contract and furnish satisfactory performance and payment bonds. If a bid bond is submitted, it shall be executed on forms contained in these contract documents by a corporate surety authorized to do business in the State of Texas and acceptable to the City of Midland.

WAIVER OF ATTORNEY FEES

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

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

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

WAIVER

BIDDER'S WAIVER:

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

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

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

City of Midland

Marcia Bentley-German
City Secretary

Form Revised April 2024

Notice of Delegated Authority

The City Council of the City of Midland has delegated to the City Manager, Deputy City Manager, Assistant City Managers, Director of Engineering Services, Director of Utilities, and Director of Capital Improvement Projects the Council's authority to determine the method of purchase that provides the best value for the City for procurements related to capital improvement projects. This delegated authority is limited to procurements related to capital improvement projects and does not apply to procurements of professional services or to procurements for which such delegation is prohibited by law.

INSTRUCTION AND INFORMATION FOR BIDDERS

1. LOCATION AND EXTENT OF WORK

The work and construction contemplated to be accomplished under this Contract is located in the City of Midland, Texas, and consists of municipal public works projects as set forth in the proposal.

The location and details for the construction and related work are shown upon a set of drawings dated March 8, 2021 and numbered from 1 (1) through 161 (89) inclusive. These drawings and plans, together with the specifications, form a part of the Contract. Where figures are shown on the drawings, they shall take precedence over scaled distances and dimensions.

2. TIME AND PLACE OF RECEIVING BIDS

All bids shall be sealed, addressed to the Mayor and City Council of the City of Midland, Texas, and will be received by the City Secretary in her office at City Hall, 300 N. Loraine Street, Midland, Texas, mailing address is P.O. Box 1152, Midland, Texas 79702, until time stated on the Advertisement for Bids.

3. PREPARATION OF BID FORM

Bids shall be submitted only on the forms provided therefore in the Contract Documents, and must not be submitted in letter form or in any other form. They shall be filled out in ink in both script and figures. The Proposal form provided in the Contract Documents sets forth in detail the various items and approximate quantities thereof contained in the Project. Bids submitted in any other form will be considered irregular and will be returned to the Bidder without receiving consideration by the Owner.

All bids must be submitted in sealed envelopes bearing on the outside the name of the Bidder, his address, and the name of the Project for which the bid is submitted. It is the sole responsibility of the Bidder to see that his bid is received in proper time. Any bid received after the scheduled closing time for receipt of bids will be returned to the Bidder unopened.

The bid must be signed in the name of the Bidder and must bear the signature in longhand of the persons duly authorized to sign the bid.

Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in the Owner's rejection of the bid as not being responsive to the invitation. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the Bidder was placed in the mail prior to the opening of bids.

The bid submitted must not contain any erasures, interlineations or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surnames of the person or persons signing the bid.

4. EXAMINATION OF SITE, DRAWINGS, ETC

Each Bidder is requested to visit the site of the proposed work and fully acquaint himself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the Plans and the Specifications. The failure or omission of any Bidder to receive or examine any form, instrument, addendum or other document or to visit the site and acquaint himself with conditions there existing shall in no way relieve any Bidder from obligations with respect to his bid or to the Contract. The submission of a bid shall be taken as prima-facie evidence of compliance with this section.

5. WITHDRAWAL OF BIDS

Any Bidder may withdraw his bid, either personally, by written request, or by telegraphic request confirmed in the manner specified above, at any time prior to the scheduled closing time for receipt of bids.

6. AGREEMENT AND BONDS

The successful Bidder will be required to furnish a Performance Bond, and a Payment Bond, 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, and 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.

7. INTERPRETATION OF PLANS AND DOCUMENTS

If any person contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents or finds discrepancies in, or omissions from the Plans or Specifications, he may submit to the Owner written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the Contract Documents will be made only by Addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such Contract Documents. The Owner will not be responsible for any other explanations or interpretations of the Contract Documents. No oral interpretations of any provision in the Contract Documents will be made to any Bidder.

8. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm or corporation shall be allowed to make, or file more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal.

9. AWARD OF CONTRACT

The Owner reserves the right to reject any or all bids submitted and not make an award. The Owner also reserves the privilege of accepting any item as a separate contract or the combination of items of a contract. The Owner and Bidder agree that, if the Contract is awarded, it will be awarded to the lowest responsible bidder. In determining who is the lowest responsible bidder, the Owner shall assign each bidder a selection

score based on the criteria listed in this Section, and the lowest responsible bidder shall be the bidder receiving the highest selection score. Bids that are incomplete shall be deemed non-responsive and will not be scored.

The criteria and the number of points that may be awarded for each criterion are as follows:

Price (0-45 Points): Points are awarded for this criterion based on the total bid amount (price). The bidder having submitted the lowest total bid amount will receive 45 points. Each other bidder will receive 45 points from which one (1) point will be deducted for each percentage point that its total bid amount exceeds the lowest total bid amount, up to a maximum deduction of 45 points. Example: A bidder whose total bid amount is 3% greater than the lowest total bid amount would receive 42 points.

Work History on Projects for the City of Midland (0-20 Points): Points are awarded for this criterion based on a bidder's experience during the previous 10 years working on public infrastructure improvements projects for the City of Midland, giving consideration to the number of such projects the bidder has completed, the quality of the work, timely project completion (not including delays due to matters that were beyond the bidder's ability to reasonably foresee or control, such as inclement weather, design issues, or changes to the project scope made at the direction of the City of Midland), and the bidder's history of making payments to its vendors. A bidder's experience working as a subcontractor will not be considered for this criterion. A bidder who has completed at least two such projects for the City of Midland during the previous 10 years will receive up to a maximum of 20 points. A bidder who has completed one such project for the City of Midland during the previous 10 years will receive up to a maximum of 10 points. A bidder who has completed no such project for the City of Midland during the previous 10 years will receive zero (0) points.

Work History on Projects within (but not for) the City of Midland (0-10 Points): Points are awarded for this criterion based on a bidder's past experience working on public infrastructure improvements projects within the corporate boundaries of the City of Midland for a person or entity other than the City of Midland, giving consideration to the number of such projects the bidder has completed and the quality of the work based on inspections of the work that were performed by the City of Midland. A bidder who has completed at least two such projects during the previous 10 years will receive up to a maximum of 10 points. A bidder's experience working as a subcontractor will be considered for this criterion. A bidder who has completed one such project during the previous 10 years will receive up to a maximum of five (5) points. A bidder who has completed no such project during the previous 10 years will receive zero (0) points.

Work History on Projects of a Size and Scope Similar to the Present Project (0-15 Points): Points are awarded for this criterion based on a bidder's past experience during the previous 10 years working on public infrastructure improvements projects anywhere in the State of Texas that are of a size and scope similar to the project that is presently being bid, giving consideration to the number of such projects the bidder has completed, the quality of the work, timely project completion (not including delays due to matters that were beyond the bidder's ability to reasonably foresee or control, such as inclement weather, design issues, or changes to the project scope made at the direction of the person or entity for whom the bidder was performing the work), and the bidder's history of making payments to its vendors.

In order to be awarded points for this criterion, a bidder's bid shall include verifiable references for one or more such projects the bidder completed during the previous 10 years. Each such reference must include the project name, project location, a brief description of the project scope, and the name and contact information of the person or entity for whom the work was performed; provided, however, that if a bidder desires for the Owner to consider, for the purpose of this criterion, a project the bidder completed for the City of Midland that is of a similar size and scope to the present project, the reference submitted by the bidder must include the project name, project location, and a brief description of the project scope.

For the purpose of awarding points for this criterion, the Owner will consider only those projects associated with references submitted by a bidder. A bidder's experience working as a subcontractor may be considered for this criterion. If the Owner determines, in the Owner's sole discretion, that a project completed by a bidder was not of a size and scope similar to the present project, the Owner will not consider the project for this criterion.

A bidder who has completed at least three such projects during the previous 10 years will receive up to a maximum of 15 points. A bidder who has completed two such projects during the previous 10 years will receive up to a maximum of 10 points. A bidder who has completed one such project during the previous 10 years will receive up to a maximum of five (5) points. A bidder who has completed no such project during the previous 10 years will receive zero (0) points.

Safety (0-10 Points): Points are awarded for this criterion based on a bidder's safety history. A bidder will receive a maximum of 10 points for this criterion. Each bidder will receive 10 points from which two (2) points will be deducted for each of the bidder's safety violations. For purposes of this criterion, a "safety violation" is (i) a safety violation reflected on the Occupational Safety and Health Administration website, regardless of whether the case is open or closed, but excluding a deleted violation or (ii) a failure or refusal, while performing work within the City of Midland, to implement or follow safety measures required by any applicable ordinance, statute, rule, regulation, or industry standard, with such failure or refusal having been observed by the City of Midland.

10. OPENING OF BIDS

Bidders are invited to be present at the opening of the Proposals. All Proposals shall be made and received with the understanding that the Bidder accepts the terms and conditions contained in the Contract Documents.

11. COMPARISON OF BIDS

All bids will be compared on the basis of the Proposal.

12. BID GUARANTY

A Certified Check, Bank Money Order, issued by a bank satisfactory to the Owner, or a Bidder's Bond on the form provided and approved by the City Attorney, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the Owner, must accompany the Bidder's Proposal, as a guaranty that the Bidder will enter into a Contract and execute the required Performance 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 Proposals shall remain in effect for a period of thirty (30) days after date of bid opening.

13. CONTRACT DOCUMENTS

The complete Contract Documents may include the following: (1) Notice to Bidders, (2) Instructions and Information for Bidders, (3) Proposal, (4) Experience Record, (5) Bid Bond, (6) Contract Agreement, (7) Performance Bond, (8) Payment Bond, (9) Insurance Certificate, (10) General Conditions, (11) Special Conditions, (12) Detailed Specifications all of which are bound together, and/or (13) Certificate of Payment. The Contract Documents shall also include Drawings or Detailed Plans for the proposed work. A complete set of the Contract Documents and the detailed plans are on file in the Office of the City Secretary.

14. TIME ELEMENT

The work to be done under this Contract shall be commenced within fifteen (15) days from the date of the notice from the City to the Contractor to commence work. The Contractor shall commence performance of the Contract on the date stated in the City's notice to the Contractor to proceed and shall complete the performance of the Contract without delay.

15. PAYMENTS

Payments to the Contractor will be based upon the prices stated in the proposal and upon basis of the work performed as determined by the Engineer. The Engineer's determination shall be considered as final unless changes are authorized by the City in writing which shall affect the work. Upon issuance of the Certificate of Completion, the Engineer shall proceed to take final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the agreement and shall certify same to the Owner who shall pay to the Contractor on or after the 30th day, and before the 35th day, after the date of the Certificate of Completion, the balance due the Contractor under the terms of this agreement, provided he has fully performed his contractual obligations under the terms of this Contract, and said payment shall become due in any event upon said performance by the Contractor. Notwithstanding any provision of these Contract documents to the contrary, it is expressly understood and agreed by the parties hereto that neither the Certificate of Acceptance, nor the final or any other payment hereunder, nor any partial or total occupancy or possession of the project by the Owner, shall relieve the Contractor of his responsibility for completion of the entire project in a good workmanlike manner and in full compliance with the plans and specifications and the fulfillment of any warranties which may be required in the Contract documents.

Revised April 2024

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

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

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. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE
AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR.** BIDS
SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN
FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE
CITY MANAGER.

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: REECE ALBERT, INC.

Local Address (must be within the City limits): NOT APPLICABLE - OFFICE IS OUT OF CITY LIMITS

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: Mike Schmidt Date: 5-6-24

Printed Name and Title: MIKE SCHMIDT, VICE PRESIDENT

24004078 BPU18-02 Garfield St. Pving Bond Proj.
Bid Opening: Wednesday, May 15,2024

Reece Albert, Inc.
3001 Foster ST.
San Angelo TX 76903

Items	QuantityRequired	Description	Unit	PayNote	UnitPrice	TotalCost
Miscellaneous Items						
1	7	Mobilization, Furnished, Installed, completed and in place	MO	M1	\$93,451.42	\$654,159.94
2	120	3" PVC Pipe Conduit (Shedule 40 Electric)furnished, installed, complete and in place	LF	M2	\$56.62	\$6,794.40
3	10	Pexco City Post Eac, 42" Yellow, Triple Wrap, Furnished, Installed, complete and in place	EA	M3	\$820.43	\$8,204.30
4	7	Erosion/Sediment Control, furnished, installed, complete and in place	MO	M4	\$4,786.98	\$33,508.86
5	7	Traffic Control, furnished, installed, complete and in place	MO	M5	\$7,084.44	\$49,591.08
6	7	Job Site Safety, furnished, installed, complete and in place	MO	M6	\$1,099.24	\$7,694.68
						\$759,953.26
Demolition Items						
1	9190	Unclassified Roadway Excavation (Depth ≤ 18"), complete and in place	SY	D1	\$10.96	\$100,722.40
2	9960	Removal & Dispose of Existing Unclassified Pavement, complete and in place	SY	D2	\$7.73	\$76,990.80
3	1360	Removal & Disposal of Existing Unclassified ConcretePavement, complete and in place	SY	D3	\$39.66	\$53,937.60
4	2210	Removal & Disposal of Existing Concrete Curb &Gutter, complete and in place	LF	D4	\$24.41	\$53,946.10
5	470	Removal & Disposal of Existing Concrete Sidewalk & Ramps, complete and in place,	SY	D5	\$65.59	\$30,827.30
6	2	Removal & Disposal of Existing Sign Assembly, complete and in place.	EA	D6	\$437.09	\$874.18
7	6	Removal & Disposal of Existing Sign Assembly &Foundation, complete and in place	EA	D7	\$857.20	\$5,143.20
						\$322,441.58
Storm Drain Items						
1	5	10'x5' Reinforced Concrete Curb Inlet, furnished,installed, complete and in place	EA	SD1	\$14,118.00	\$70,590.00
2	40	24" Reinforced Concrete Pipe (RCP), furnished, installed, complete and in place	LF	SD2	\$383.76	\$15,350.40
3	40	Open Trenching of Storm Drain, furnished, installed, complete and in place,	LF	SD3	\$386.14	\$15,445.60
						\$101,386.00
Paving Items						
1	9190	Subgrade Preparation (Depth ≤ 8"), furnished,installed, complete and in place,	SY	P1	\$7.94	\$72,968.60
2	6590	8" Jointed Concrete Pavement, furnished, installed, complete and in place,	SY	P2	\$210.39	\$1,386,470.10
3	1190	8" Jointed Concrete Pavement Truck Apron, furnished, installed, complete and in place	SY	P3	\$482.02	\$573,603.80
4	340	Concrete Asphalt Pavement Transition Sleeper Slab, Furnished, Installed, Complete and in Place	SY	P4	\$493.78	\$167,885.20
5	37	3" Type C HMAc Asphalt Pavement Surface Course (PG64-22, 110Lbs/SY @ 1" Thick) Furnished, Installed, Complete and in Place	SY	P5	\$255.40	\$9,449.80
6	330	8" Flexible Base (Type A, Grade 4), Furnished, Complete and in Place	SY	P6	\$54.47	\$17,975.10
7	7.4	Bituminous Prime Coat (MC-30, 0.20 GAL / SY), Furnished, Installed, Complete and in Place.	GAL	P7	\$14.35	\$106.19
8	80	6" Concrete Median, furnished, installed, complete and in place,	SY	P8	\$546.48	\$43,718.40
9	210	8" Concrete Fillet, furnished, installed, complete and in place,	SY	P9	\$234	\$49,140.00
10	80	6" Concrete Alley Approach, Furnished, Installed, Complete and in Place	SY	P10	\$282.51	\$22,600.80
11	240	6" Residential Concrete Driveway Approach, furnished, installed, complete and in place	SY	P11	\$287.77	\$69,064.80
12	270	Type A Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$78.48	\$21,189.60
13	540	Type C Concrete Curb & Gutter, furnished, installed,complete and in place,	LF	P12	\$78.48	\$42,379.20
14	50	Type F Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$3,710.00
15	2850	Type R Concrete Curb & Gutter, furnished, installed, complete and in place,	LF	P12	\$74.20	\$211,470.00
16	340	Vertical Concrete Curb, furnished, installed, complete and in place	LF	P12	\$206.89	\$70,342.60
17	60	Concrete Pedestrian Access Ramp, furnished,installed, complete and in place	SY	P13	\$428.05	\$25,683.00
18	70	6" Concrete Sidewalk, furnished, installed, complete and in place,	SY	P14	\$256.83	\$17,978.10
19	670	4" Concrete Sidewalk, furnished, installed, complete and in place	SY	P14	\$231.15	\$154,870.50
20	7	Storm Inlet Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,902.64	\$13,318.48
21	3	Manhole Ring & Cover Adjustment, furnished, installed, complete and in place	EA	P15	\$1,906.91	\$5,720.73
22	14	Water Valve Box Ring & Cover Adjustment, furnished,installed, complete and in place	EA	P15	\$979.95	\$13,719.30
23	50	Flowable Fill / 2-Sack Backfill, furnished, installed, complete and in place,	SY	P16	\$212.22	\$10,611.00
						\$3,003,975.30
Total						\$4,187,756.14

Bidding Summary:
82 Bid Request wer issued
3 Bids Listed Above
0 No Bids were received
79 Bidders did not respond
0 Incomplete Proposals

PROPOSAL

Project Name: Garfield Street Paving Bond Project - Break Out Set 03

Project Number: BPU18-02

TO: Honorable Mayor and City Council
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the drawings, specifications, and contract documents, the location of the proposed work, and being fully advised as to the extent and character of the work, proposes to furnish all material, equipment, and to perform all labor and work necessary for the completion of the construction of the work described by and in accordance with the attached drawings, specifications, and contract, for the following prices, to wit:

(See Bid Items sheets for Proposal's item breakdowns, descriptions, quantities, units, unit prices, total amounts, and Pay Notes references.)

For the sum of Four Million One Hundred Eighty-Seven Thousand Seven Hundred Fifty-Six dollars and Fourteen cents total.

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the contract documents pertaining to the work covered by the above bid. The selected contractor will receive written notice to proceed.

Bidders agree to substantially complete all work within 210 calendar days after receipt of notice to proceed.

PUBLIC INFORMATION

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

Enclosed herewith in this proposal is a cashier's check, cash or bid bond on a form approved by the City Attorney, for 5% of Total Bid Amount dollars and _____ cents total. (\$_____)

which it is agreed shall be collected and retained by the owner as liquidated damages in the event this proposal is accepted by the Owner within thirty days (30) after the date advertised for the reception of bids and the undersigned fails to execute the contract and required bonds with the owner, under the conditions thereof, within (15) days after the date said proposal is accepted; otherwise said check or bond shall be returned to the undersigned on demand.

24004078

Project Name: Garfield Street Paving Bond Project
Project: BPU18-02

Which it is agreed shall be collected and retained by the owner as liquidated damages in the event this proposal is accepted by the Owner within thirty days (30) after the date advertised for the reception of bids and the undersigned fail to execute the contract and required bonds with the owner, under the conditions thereof, within (15) days after the date said proposal is accepted; otherwise said check or bond shall be returned to the undersigned on demand.

REECE ALBERT, INC.
Name of Contractor

Mike Schmitt MIKE SCHMIOT, VICE PRESIDENT
Submitted By: Print Name and Title

3001 FOSTER ST.
Mailing Address

SAN ANGELO, TX 76903
City State Zip Code

PAY NOTES
BPU18-02
Garfield Street Paving Bond Project - Break Out Set 03

Bid Item		Pay Quantity Note
<i>Miscellaneous Items</i>		
1	Mobilization	M1
2	3" AWWA C-900 DR18, PVC, Conduit	M2
3	Erosion/Sediment Control	M3
4	Traffic Control	M4
5	Job Site Safety	M5
6	Material Mark-up	M6
7	Labor Mark-up (Regular Work Hours)	M7
8	Equipment Rental Markup (Non-Standard Equipment Only)	M8
<i>Demolition Items</i>		
1	Unclassified Roadway Excavation (Depth ≤ 18")	D1
2	Removal & Disposal of Existing Unclassified Pavement	D2
3	Removal & Disposal of Existing Unclassified Concrete Pavement	D3
4	Removal & Disposal of Existing Concrete Curb & Gutter	D4
5	Removal & Disposal of Existing Concrete Sidewalk & Ramps	D5
6	Removal & Disposal of Existing Sign Assembly & Foundation	D6
7	Removal & Disposal of Existing Signal Assembly & Foundation	D7
<i>Storm Drain Items</i>		
1	10'x5' Reinforced Concrete Curb Inlet	SD1
2	24" Reinforced Concrete Pipe (RCP)	SD2
3	Open Trenching of Storm Drain	SD3
<i>Paving Items</i>		
1	Subgrade Preparation (Depth ≤ 8")	P1
2	8" Jointed Concrete Pavement	P2
3	8" Jointed Concrete Pavement Truck Apron	P3
4	Concrete-Asphalt Pavement Transition Sleeper Slab	P4
5	8" Flexible Base (Type A, Grade 4)	P5
6	8" Concrete Median	P6
7	8" Concrete Fillet	P7
8	6" Concrete Alley Approach	P8
9	6" Residential Concrete Driveway Approach	P9
10	Type A Concrete Curb & Gutter	P10
11	Type C Concrete Curb & Gutter	P10
12	Type F Concrete Curb & Gutter	P10
13	Type R Concrete Curb & Gutter	P10
14	Vertical Curb	P10
15	Concrete Pedestrian Access Ramp	P11
16	6" Concrete Sidewalk (Median)	P12
17	4" Concrete Sidewalk	P12
18	Storm Inlet Ring & Cover Adjustment	P13
19	Manhole Ring & Cover Adjustment	P13
20	Water Valve Box Ring & Cover Adjustment	P13
21	Flowable Fill / 2-Sack Backfill	P14

PAY QUANTITY NOTES

- M1 Includes the necessary equipment, labor, materials, and incidentals for all Mobilization to the job site complete and in place. Measurement and payment to be made per month.
- M2 Includes the necessary equipment, labor, materials, and incidentals for the installation of Pipe Conduit per the construction drawings and City of Midland standards and specifications, including all trenching, embedment, backfill, and appurtenances. Measurement and payment to be per linear foot measured along the ground surface following the pipe centerline through all boxes, fittings, structures, and appurtenances.
- M3 Includes the necessary equipment, labor, materials, and incidentals to implement the Erosion Control Plan per the construction drawings and City of Midland standards and specifications. Measurement and payment to be made per month.
- M4 Includes the necessary equipment, labor, materials, and incidentals to implement the Traffic Control per the approved Traffic Control Plan. Any required traffic control devices are to meet the City of Midland Traffic Division Standards. Measurement and payment to be made per month.
- M5 Includes the necessary equipment, labor, materials, and incidentals to implement Job Site Safety and to provide a safe work environment for the project work area (including all personal protection equipment, trench safety, etc.) per the construction drawings and in compliance with all applicable Federal, State, and Local requirements or regulations including those of OSHA and the City of Midland. JOB SITE SAFETY IS THE RESPONSABILITY OF THE CONTRACTOR. Measurement and payment to be made per month.
- M6 Includes the Material Mark-up for materials and material sizes (pipe, valve, manhole, etc.) required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of the material in question plus the set percent increase established by this bid item. The Contractor must provide a copy of the invoice for the material cost from the supplier to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any material. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.
- M7 Includes the Labor Mark-up (Regular Work Hours) for labor required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of labor in question plus the set percent increase established by this bid item. The Contractor must provide a typical hourly pay rate for work crews prior to the percent increase along with the number of workers on the crew and the number of hours worked by the crew for the project in question to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any labor. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.
- M8 Includes the Equipment Rental Mark-up (non-standard equipment only) required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of the equipment rental in question plus the set percent increase established by this bid item. The Contractor must provide a copy of the invoice for the rented equipment from the equipment supplier to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any rented equipment. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.

- D1 Includes the necessary equipment, labor, materials, and incidentals for Unclassified Excavation per the construction drawings and City of Midland standards and specifications including all existing pavement and sub-structure removal, unclassified excavation, material removal, and appurtenances. Measurement and payment to be per square yard measured along the ground surface.

- D2 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Unclassified Pavement per the construction drawings and City of Midland standards and specifications including all pavement removal, saw-cutting, and appurtenances. Depths given are approximate and pavement material is to be removed in its entirety. No additional compensation will be made for increased pavement depth removal. Measurement and payment to be made per square yard measured along the ground surface.
- D3 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Unclassified Concrete Pavement per the construction drawings and City of Midland standards and specifications including all pavement removal, saw-cutting, and appurtenances. Depths given are approximate and pavement material is to be removed in its entirety. No additional compensation will be made for increased pavement depth removal. Measurement and payment to be made per square yard measured along the ground surface.
- D4 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Concrete Curb & Gutter per the construction drawings and City of Midland standards and specifications, including all appurtenances. Measurement and payment to be made per linear foot measured along the back of curb.
- D5 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Concrete Sidewalk & Ramps per the construction drawings and City of Midland standards and specifications, including all appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- D6 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Sign Assembly & Foundation per the construction drawings and City of Midland standards and specifications, including all appurtenances. Measurement and payment to be made per each sign assembly removed.
- D7 Includes the necessary equipment, labor, materials, and incidentals for the Removal & Disposal of Existing Signal Assembly & Foundation per the construction drawings and City of Midland standards and specifications, including all appurtenances. Measurement and payment to be made per each signal assembly and foundation removed.

- SD1 Includes the necessary equipment, labor, materials, and incidentals for the installation of a Reinforced Concrete Curb Inlet per the construction drawings and City of Midland standards and specifications, including all excavation, embedment, base, forms, reinforcement, placement, sealing, finishing, necessary testing, and appurtenances. Measurement and payment to be made per each curb inlet installed.
- SD2 Includes the necessary equipment, labor, materials, and incidentals for the installation of Storm Drains per the construction drawings and City of Midland standards and specifications, including all embedment, detector wire, tracer tape, necessary testing, and appurtenances. Measurement and payment to be made per linear foot measured along the ground surface following the pipe centerline through all structures and appurtenances.
- SD3 Includes the necessary equipment, labor, materials, and incidentals for Open Trenching of Storm Drain per the construction drawings and City of Midland standards and specifications, including all unclassified excavation, backfill not including flowable fill backfill, providing trench safety and protection for workers to install pipe, structures, and appurtenances. Measurement and payment to be made per linear foot measured along the ground surface following the pipe centerline through all structures, fittings, and appurtenances.

- P1 Includes the necessary equipment, labor, materials, and incidentals for Subgrade Preparation per the construction drawings and City of Midland standards and specifications, including all proof-rolling, sub-grade reworking, scarifying, compaction, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P2 Includes the necessary equipment, labor, materials, and incidentals for placement of Jointed Concrete Pavement per the construction drawings and City of Midland standards and specifications, including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.

- P3 Includes the necessary equipment, labor, materials, and incidentals for placement of Jointed Concrete Truck Apron Pavement per the construction drawings and City of Midland standards and specifications, including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P4 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete-Asphalt Pavement Transition Sleeper Slab per the construction drawings and City of Midland standards and specifications, including all concrete, HMAC asphalt, bituminous prime coat, tack coat, forming, reinforcement, placement, jointing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P5 Includes the necessary equipment, labor, materials, and incidentals for placement of Flexible Base compacted to 95% Density, ASTM D1557, per the construction drawings and City of Midland standards and specifications including all placement, compaction, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P6 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Median per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P7 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Fillet per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Curb section is formed and poured monolithically with fillet and is not a separate bid item. Measurement and payment to be made per square yard measured along the ground surface.
- P8 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Alley Approach per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Pedestrian access ramps at the alley approach are considered part of the approach and are not a separate bid item. Measurement and payment to be made per square yard measured along the ground surface.
- P9 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Driveway Approach per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. Pedestrian access ramps at the driveway approach are considered part of the approach and are not a separate bid item. Measurement and payment to be made per square yard measured along the ground surface.
- P10 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Curb & Gutter per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, finishing, and appurtenances. Measurement and payment to be made per linear foot measured along the back-of-curb.
- P11 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Pedestrian Access Ramp per the construction drawings and City of Midland standards and specifications, including all forming, reinforcement, placement, jointing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P12 Includes the necessary equipment, labor, materials, and incidentals for placement of Concrete Sidewalk per the construction drawings and City of Midland standards and specifications, including all forming, reinforcement, placement, jointing, finishing, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.
- P13 Includes the necessary equipment, labor, materials, and incidentals for Ring & Cover Adjustment per the construction drawings and City of Midland standards and specifications including all forming, reinforcement, placement, jointing, sealing, finishing, and appurtenances. This includes a minimum 1.0' wide concrete collar whose width is measured from the outer edge of the cover to the outer edge of the concrete ring. Measurement and payment to be made per each adjustment made.
- P14 Includes the necessary equipment, labor, materials, and incidentals for installation of Flowable Fill / 2-Sack Backfill (Portland Cement 2 Sack = 188 LBS/CY) per the construction drawings and City of Midland standards and specifications, including all reinforcement, placement, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT

REECE ALBERT, INC. (Hereinafter called the Principal), as
Principal, and CONTINENTAL CASUALTY COMPANY

(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
FIVE PERCENT OF THE GREATEST AMOUNT BID----- Dollars

(\$ -----5%-----) 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 submitted a Bid or Proposal to enter into a certain written contract for the
construction of Garfield Street Paving Bond Project – Break Out Set 03.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall
faithfully, enter into such written Contract, then this obligation shall be void; otherwise to remain in full force
and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREE that if said Principal should withdraw its Bid anytime after
such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said
Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond,
the Obligee, in either of such events, shall be entitled and is hereby given the right to collect the full amount of
this Bid Bond as liquidated damage.

Texas.

1st day of MAY, 2024.

Principal

By

Address P. O. BOX 3238

MIDLAND, TEXAS 79701-3238

Surety

By

Address P. O. BOX 54020

LUBBOCK, TEXAS 79453

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Howard Cowan, Marla Hill, Individually

of Lubbock, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 15th day of July, 2021.

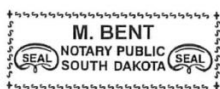


Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 15th day of July, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires March 2, 2026

M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 1st day of MAY, 2024.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson Assistant Secretary

Form F6853-4/2012

PACKET

4.36

June 25, 2024

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

CONTRACT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

THIS CONTRACT, made and entered into this 26 day of June, 2024, by and between the City of Midland of the County of Midland and State of Texas, acting through its Mayor thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Reece Albert, Inc. of the City San Angelo, County of Tom Green, State of Texas, Party of the Second Part, herein-after termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the first Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows: Garfield Street Paving Bond Project – Break Out Set 03 together with appurtenances and incidentals.

Conditions of the Contract and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendent, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to the Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore as prepared by Engineering and Transportation Department of the City of Midland, Texas, herein entitled the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Contract, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

The CONTRACTOR hereby agrees to commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within 210 calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this Contract, such payments to be subject to the General and Special Conditions of the Contract.

The SUM TOTAL of this Contract shall be: \$4,187,756.14.

INSURANCE

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$500,000.00 per occurrence

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

Workers' Compensation: Statutory limits

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

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

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

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

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

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

The Contractor certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The Contractor shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of the Contractor.

WAIVER OF ATTORNEY FEES

WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE CONTRACTOR SPECIFICALLY AGREES THAT IF THE CONTRACTOR 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 AMEDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CONTRACTOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

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

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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.

COMPLIANCE – Contractor agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Contractor agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

VERIFICATION

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

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

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

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, Contractor shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the City of Midland for the duration of the contract, (2) promptly provide to the City of Midland any contracting information related to the Contract that is in the custody or possession of Contractor on request of the City of Midland, and (3) on completion of the Contract, either (i) provide at no cost to the City of Midland all contracting information related to the Contract that is in the custody or possession of Contractor, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the City of Midland.

PUBLIC INFORMATION

To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Contractor 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.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

Parties of the First Part (Owner)

ATTEST:

By: _____
Lori Merritt Blong, Mayor

Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM:

By: _____
John Ohnemiller, City Attorney

By: _____
Party of the Second Part (CONTRACTOR)

By: _____
Title

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__ personally appeared _____, an officer of **Reece Albert, Inc.**, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as an 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 ____ day of _____, 20__

Notary Public

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 _____ Garfield Street Paving Bond Project – Break Out Set 03 _____, 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

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 Garfield Street Paving Bond Project – Break Out Set 03, 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

CERTIFICATE OF PAYMENT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

Garfield Street Paving Bond Project - Break Out Set 03

The undersigned states that all debts, bills, and expenses that were incurred by the undersigned, his agents, or subcontractors employed by him, for labor, wages, materials and other purposes furnished for the above project have been paid and satisfied in full.

The undersigned, as general contractor for the above described project agrees to indemnify, hold harmless and defend the City, its officers, agents, and employees, from and against all claims and suits for damages, expenses, including court costs and attorney fees, arising out of or resulting from the undersigned contractor, his agents or subcontractors employed by him for expenses, warranties for items furnished, or labor performed and for any party that has supplied materials in connection with the repair or construction of the above referenced premises.

The undersigned contractor agrees to waive any and all claims it may have against the City, associated with, resulting from or arising out of the work performed at the above premises.

Further, the undersigned states that all labor performed by the undersigned, his agents, and subcontractors employed by him, has been completed in the usual and customary workmanlike manner and all work performed is accompanied with the usual and appropriate warranties for such work or repair, absent any disclaimer previously approved by the City of Midland.

I, the undersigned, release and relinquish unto the City of Midland, and their assigns the above described lien upon the above referenced property and hereby certify that all debts, bills, and expenses incurred by the undersigned, his agents, or subcontractors employed by him in connection with work done at the above

premises have been fully paid, in exchange for payment in full to be made by the City of Midland for the performance on the above described premises.

WITNESS MY HAND on this _____ day of _____, 20____.

Signature

Typed or Printed Name

Title

Name of Company

SUBSCRIBED AND SWORN to before me on the _____ day of _____, 20____.

Notary Public, State of Texas

Typed or printed name

My Commission expires:

GENERAL CONDITIONS AND PROVISIONS

1. DEFINITIONS

The following terms as used in this contract shall be defined and interpreted as follows:

- (a) "Contract" or "This Contract" or "Agreement": The particular Contract executed by the Contractor and the Owner of which these general conditions are integral parts.
- (b) "Contractor": The person, firm or corporation to whom this Contract is awarded by the Owner and who is a party thereto.
- (c) "Owner", "City", or pronouns instead: The entity that is a party to this Contract, contracting under the official name of the City of Midland, Texas or the City Council of the City of Midland.
- (d) The words "as directed", "as required", "as permitted", "acceptable to", "satisfactory", and the words of like import, shall mean that the direction, requirement or permission of the Engineer is intended.
- (e) "Engineer": The word "Engineer" used in these specifications or in this Contract means the duly authorized representative or agent of the Owner supervising the performance of the Contract and representing the Owner in his Contractual relations and negotiations with the Contractor during the period of construction. The Engineer will be represented by assistants and inspectors authorized to act for him. On all questions concerning the acceptability of material or equipment, the classifications of material, the execution of the work, conflicting interest of Contractors performing related work and the determination of costs, the decision of the Engineer shall be final, but shall not relieve the Contractor of his responsibility for completion of the entire work in a good and workmanlike manner and in full compliance with the plans and specifications.

Inspectors are required to see that all the provisions of the Contract specifications are faithfully adhered to. Any inspector may, if authorized by the Engineer, stop the work entirely if there is not sufficient quantity of suitable and approved material on the ground to carry it on properly, or for any other good and sufficient cause. Any work done in the absence of an inspector may be ordered opened up for thorough examination, and must be rebuilt or replaced at the Contractors sole expense if found to be deficient or not in accordance with the plans and specifications. But no approval by an inspector shall be construed as an acceptance of defective or improper work or material, which must be rebuilt or properly replaced whenever discovered. Inspectors have not the power to give orders or directions under any possible circumstances, except as herein defined and provided, and on authority of the Engineer

- (f) "Subcontractor": Any person, firm or corporation other than an employee of the contractor, supplying, for and under agreement either with the Contractor or any subcontractor of the Contractor, labor or material, or both, at the site of the project in connection with this Contract.
- (g) "Project": The structure or improvement to be constructed in whole or in part through the performance of this Contract.
- (h) "Work on the Project": Such work as is performed or ordinarily would be performed at the site of the project.

- (i) "Surety": Any firm or corporation executing a Surety Bond or Bonds payable to the Owner securing the performance of the Contract either in whole or in part.
- (j) Whenever certain articles are specifically mentioned, by brand name or name of the manufacturer, such materials shall be taken as standard and guide for quality, operation, capacity, etc. The term "or equal" shall mean that articles of equal characteristics as required, but of different brand or manufacturer, may be substituted and accepted, subject in all instances to the approval of the Engineer.
- (k) "Special Provisions", "Special Conditions", "Project Specific Specification" or "Job Specific Specifications" are included as amendment of and/or additions to the General Conditions and/or Standard Specifications for the particular project in which they are included and will take precedence over the General Conditions and Standard Specifications only in so far as the amendments and/or additions. All other provisions in the General Conditions and/or Standard Specifications will not be affected.
- (l) "Drawings" "Contract Drawings", "Plans" "Detail Drawings" "Detail Sheets" or "Plans and Details" refers to the set of drawings which show the details for the construction and related work anticipated on this project and upon which bids are being solicited.

2. CONFLICT OF PROVISIONS

Unless it is specifically provided otherwise, any provision in any other part of this Contract which may be in conflict or inconsistent with any provision in the General Conditions and Provisions shall be void to the extent only of such conflict or inconsistency.

3. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall have charge of and shall be responsible for the entire work under this Contract until its completion and acceptance by the city. A competent superintendent, foreman or other representative, invested with sufficient authority to conduct the work properly, shall be maintained on the work at all times.

It is expressly agreed and understood that no decision of the Engineer or any certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with this Contract, nor constitute a waiver of the Contractor's responsibility to perform the entire work in a good and workmanlike manner and in accordance with the plans and specifications.

4. TIME ELEMENT

The work shall be commenced and finished within the time set out in the Form of Contract.

The time of completion of this Contract is an essential element and consideration. Since, therefore, time is of the essence thereof, and in the event of delay in the completion of the entire work required hereunder beyond the period prescribed, or beyond the period for which time may be extended by authority of the Owner for good cause shown, the Owner shall be paid damages for such delay. Inasmuch as the amount of such damages is difficult to ascertain, it is hereby stipulated and agreed that such damages shall be liquidated and the Owner shall be paid damages at the rate as set forth in the Special Provisions, said damages to be paid to the Owner for each and every day that the Contractor be in default in completing the entire work required under this Contract. The Owner shall have the right to deduct such amounts from any monies due, or which may become due, under

this Contract. In the event that no amount for such damages is shown in the Special Provisions of these specifications, it is agreed that the amount of damages shall be Five Hundred dollars (\$500.00) per day.

If during the progress of the work weather conditions, or other circumstances beyond the control of the Contractor should prevail to the extent that the work cannot be prosecuted and completed within the time specified in the Contract, the Contractor shall file with the Engineer within one week of the occurrence of such delay a request for a credit on the time of completion. Unless the Contractor files such request, the liquidated damages specified above will be enforced.

5. PAYMENT TO CONTRACTOR

ESTIMATED QUANTITIES:

This Contract, including the specifications, plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that where the basis for payment under this Contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and the estimated quantities contemplated and contained in the proposal provided, however, that in case the actual quantity of any major item should become as much as twenty percent (20%) more than, or twenty percent (20%) less than the estimated or contemplated quantity for such items, then either party of this agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (20%) of the estimated quantity.

A "Major Item" shall be construed to be any individual item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total Contract cost, computed on the basis of the proposal quantities and the Contract unit price.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Contract, as provided under "Extra Work".

PAYMENT; RETAINAGE:

On or before the 1st day of each month the Contractor shall prepare an itemized statement showing the total value of the work completed by the Contractor up to and including the 25th day of the preceding month; said statement shall also include the value of all sound materials delivered on the site of the work that are to be fabricated into the work. NO ESTIMATE WILL BE MADE ON UNCOMPLETED PORTIONS OF THE WORK.

After all work is completed by Contractor, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the City may thereafter issue payment to Contractor in the amount of the contract and all Change Orders. The City shall be the final judge of when the

work is completed by Contractor. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

The City may make periodic payments to Contractor; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Contractor and approved by the City. The approval shall be in the City's sole discretion. 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 City or the City'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.

FINAL COMPLETION AND ACCEPTANCE:

Within ten (10) days after the Contractor has given the Engineer written notice that the work has been completed, or substantially completed, the Engineer and the Owner shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract documents, the Engineer shall issue to the Owner and the Contractor his Certificate of Completion.

FINAL PAYMENT:

Upon the issuance of the Certificate of Completion, the Engineer shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Contract and shall certify same to the Owner, who shall pay to the Contractor the balance due the Contractor under the terms of this Contract, provided he has fully performed his obligations under the terms of this Contract. Notwithstanding any provision of these Contract Documents to the contrary, it is expressly understood and agreed by the parties hereto that neither the certificate of acceptance, nor the final or any other payment hereunder, nor any partial or total occupancy or possession of the project by the Owner, shall relieve the Contractor of his responsibility for completion of the entire project in a good and workmanlike manner and a full compliance with the plans and specifications and the fulfillment of any warranties which may be required in the Contract Documents.

6. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

In addition to the amount which the Owner may otherwise retain under the Contract, the Owner may withhold a sufficient amount or amounts of any payment or payment otherwise due to the Contractor, as in this judgment may be necessary to cover:

- (a) Payments which may be past due and payable for just claims against the Contractor or any subcontractor for labor or materials furnished for the performance of this Contract.
- (b) For defective work not remedied.
- (c) For failure of the Contractor to make proper payments to his subcontractors.

7. CERTIFICATE OF PAYMENT

Contractor shall, prior to issuance of final payment pursuant to the terms herein stated, provide proof satisfactory to the owner that all debts, bills and expenses incurred by the Contractor, his agents, employees or subcontractors employed by him, for labor, wages, materials and other purposes, in the furtherance of this

project, have been paid and satisfied in full. Satisfactory proof shall consist of an executed Certificate of Payment.

8. EXTRA, ADDITIONAL OR OMITTED WORK PAYMENT

The Owner, upon proper action by its governing body, may require changes in this Contract, or additions to, or deductions from the work to be performed or the materials to be furnished pursuant to this Contract. No employee, agent or representative of the Owner, with the exception of the governing body authorized to award this Contract, has any power to approve any change in this Contract and it is the responsibility of the Contractor before proceeding with any change to satisfy himself that the change has been properly authorized on behalf of the Owner. No charge for any extra work or other change in the Contract will be allowed unless the extra work or change has been authorized in writing by the Owner, or its duly authorized representative, and the price therefore is stated in such written authority.

Adjustments, if any, in the amounts to be paid the Contractor where such adjustments are made by reason of additions to or deductions from the quantities of units or items bid upon in the proposal schedules, shall be paid for in accordance with the provisions of the Specifications, at the unit and/or lump sum prices bid in such proposal schedules.

Adjustments, if any, in the amounts to be paid the Contractor where such adjustments are made by reason of additions of items not appearing in the proposal schedules, or addition of work of such a nature that unit and/or lumps sum prices contained in the proposal schedules cannot reasonably or equitably be applied to provide proper payment therefore, the payment to the Contractor for such work shall be determined by one or more of the following methods:

- (a) By an acceptable lump sum proposal from the Contractor.
- (b) By unit prices contained in the Contractor's proposal and incorporated in the Contract or fixed by subsequent agreement between the Owner and the Contractor.
- (c) By a cost method pursuant to which the Contractor shall be paid the costs of the change or addition. He shall be required to keep and present in such form as the Owner may direct, a correct account of the cost of the change or addition, together with all vouchers therefore. The cost may include an allowance for overhead and profit not to exceed fifteen percent (15%) of the net cost.

In computing the cost, there shall be considered reasonable and proper net expenditures for labor, materials, power tools and equipment, pro rata charges for foremen, deductions for social security, old age and unemployment benefits and workmen's compensation insurance and surety bond premium. In computing cost of machinery and equipment involved in additional work, the amount to be paid shall be not more than one hundred percent (100%) of the latest schedule of "Equipment Ownership Expense" adopted by Associated General Contractors of America. No overhead and profit shall be allowed on the deductions for Social Security, old age and unemployment benefits. All other expenditures shall be treated as overhead costs.

No extra work shall be performed or change made unless in pursuance of a written order from the Owner stating that the extra work or change is authorized and no claim for an addition to the Contract sum shall be valid unless so ordered; provided, however, that nothing in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

The Contractor shall, when required by the Owner, furnish an itemized breakdown of the quantities and prices used in computing the value of any change, addition or deduction that might be ordered.

If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligated or may obligate the Owner to pay additional compensation to the Contract, or constitutes a waiver of any provision in the Contract, he shall notify the Owner in writing of such claim within ten (10) days from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the Owner within such ten (10) days period shall be deemed a waiver and relinquishment of any such claim against the Owner. The procedure for consideration of such claims shall be as stated in this Article.

9. ASSIGNMENT OF CONTRACT

The Contractor shall not assign this Contract or any part thereof, nor any monies due or to become due thereunder without the prior written consent of the Owner. No assignment of this Contract shall be valid unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or material supplied for performance of the work called for under this Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

10. SUBCONTRACTORS

Specialty subcontractors may be utilized for the performance of such parts of the work under this Contract as, under normal practices, are performed by Specialty subcontractors, unless the Owner determines that the Contractor has heretofore customarily performed such specialty work with his own organization and is equipped to do so, or unless the Owner determines that performance of the specialty work by Specialty subcontractors will result in increased costs or inordinate delays.

The Contractor shall not subcontract any work to be performed or any materials to be furnished in the performance of this Contract without the prior written consent of the Owner. If the Contractor shall subcontract any part of this Contract, the Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor and of the persons either directly or indirectly employed by the subcontractor as he is for the acts and omissions of persons directly employed by himself. Nothing contained in this Contract shall create any Contractual relations between any subcontractor and the Owner. The Contractor shall ensure that the subcontractor has the insurance coverage required by this contract.

The Owner's consent to or approval of any subcontract under this Contract shall not in any way relieve the Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provisions of this Contract.

11. SUSPENSION OF WORK

Pending settlement of disputes on any point of controversy, the Engineer may suspend action on all or any part of the work. The Contractor shall not be entitled to any claim for loss or damage by reason of such, nor shall he be entitled to extension of time, although such extension of time may be granted by the Engineer if he deems it in the interest of the work.

12. RIGHT OF OWNER TO TERMINATE CONTRACT

If, in the opinion of the Engineer, the Contractor shall be improperly performing the work under this Contract, or shall neglect or refuse to take out or rebuild such work as shall have been rejected by the Engineer as being defective or unsuitable, or if, any time, the Engineer shall be of the opinion that the work is unnecessarily delayed and will not be finished within the prescribed time, or if the Contractor shall abandon the work, or shall neglect or refuse to comply with the instructions of the Engineer relative thereto, or shall fail in any manner to comply with the Specifications or Stipulations herein contained, the Engineer shall notify the Contractor to that effect in writing, and if the Contractor shall not within five (5) days thereafter take such measures as will, in the judgment of the Engineer, insure the satisfactory performance or construction of the work, the City may annul and cancel the Contract, in which event it shall notify the Contractor to discontinue all work under this Contract, and the Contractor shall immediately respect such notice and stop work and cease to have any rights to the possession of the ground and shall forfeit his Contract. Such annulment shall not entitle the Contractor to any claim for damages on account thereof, nor shall it affect the right of the City of Midland to recover damages on account of such failure. The City Council may thereupon advertise and re-let a new Contract for the uncompleted work without further ordinance, in the same manner as was followed in the letting of this Contract, and any excess of cost arising there from over and above what would have resulted from the prices set forth in this Contract will be charged against the Contractor and his surety or sureties hereto, who shall be liable therefore.

13. RIGHT OF CONTRACTOR TO TERMINATE CONTRACT

If the work should be stopped under an order of any court or other public authority for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him, or if the City should fail to make payment to the Contractor within thirty (30) days after such payment is due, as set out in the Contract, then the Contractor may, upon seven (7) days written notice to the City and the Engineer, stop work or terminate his Contract and recover from the City payment for all work executed and for any loss sustained upon any plant or materials and reasonable profit and damages.

14. INCIDENTAL WORK

Any and all minor details 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 and included with the work for which the prices are named in the Contract Documents. The Contractor will not be entitled to any extra or additional compensation therefore, unless specifically stated otherwise.

15. PERMITS – COMPLIANCE WITH LAW

The Contractor shall, at his expense, obtain all permits and licenses necessary for the performance of this Contract, and give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the Contract.

Portions of this contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. The Contractor shall obtain a sales tax exemption certificate from the City. All labor performed on the project and all materials incorporated into the project qualify for such tax exemption. However, equipment and parts for equipment purchased to be used on the project, but are not incorporated into the project; do not qualify for said tax exemption. Contractor shall issue a resale certificate in lieu of paying such sales tax for all

materials incorporated into the project. Further Contractor shall separate the charges for materials incorporated into the project from the charges for labor.

16. INSPECTION BY OWNER

The Owner and its representatives shall at all times have access to all parts of the work and to the shops wherein the work is in preparation for the purpose of inspection, and the Contractor shall at all times maintain proper facilities and provide safe access for such inspection.

The Owner shall have the right to reject materials and workmanship which are defective, or to require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the Owner. If the Contractor does not correct such rejected work within a reasonable time, fixed by written notice, the Owner may correct same and charge the expense to the Contractor. No inspector shall have the power to waive the obligation resting upon the Contractor to furnish good material or do work as herein prescribed, and any failure or omission of any inspector or the Engineer to condemn any defective material or work shall not release the Contractor from the obligation to at once tear out, remove and properly rebuild the same at any time upon discovery of the defect and upon receipt of notice of the Engineer to do so.

Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out any portion thereof, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any respect due to the fault of the Contractor or his subcontractor, he shall defray all the expenses of such examinations and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the additional cost of labor and materials necessarily involved in such examination and replacement, plus fifteen percent (15%) for overhead and profit, shall be allowed the Contractor.

Where the Specifications require work to be specifically tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval or consent thereto by the Owner. Should any such work be covered up without such notice, approval or consent, it must, if required by the Owner, be uncovered for examination at the Contractor's expense.

17. PATENTS

The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including all costs and legal expenses, for or on account of, any patented or unpatented invention, process, article or appliance, manufactured for or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract.

18. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration, if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other Contracts that have been or may be awarded by the Owner in the prosecution of the project to the end that the Contractor may perform this Contract in the light of such other Contract, if any.

Nothing herein contained shall be interpreted as granting the Contractor exclusive occupancy of the site of the project. The Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on the project. If the performance of any Contract for the project is likely to be interfered with by the simultaneous execution of some other Contract or Contracts, the Owner shall decide which Contractor shall cease work temporarily and which shall continue, or whether the work under the Contracts can be coordinated so that the Contractors may proceed simultaneously. The Owner shall not be responsible for any damages suffered or extra costs incurred by the Contractor, resulting directly or indirectly from the award or performance or attempted performance of any other Contract or Contracts on the project, or caused by any decision or omission of the Owner respective to the order of precedence in the performance of Contracts.

19. NOTICE AND SERVICE THEREOF

Any notice from one party to another under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, if the notice is given to the Owner, (a) by personal delivery thereof to the individual duly authorized to direct and supervise the project of the Owner, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the City of Midland, 300 North Loraine Street, Midland, Texas, 79701, postage prepaid and certified; or if the notice is given to the contractor (a) by personal delivery thereof to the project superintendent or other person authorized to act for the contractor, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the Contractor at his regular place of business or at such other address as may have been established for the conduct of the work under this Contract, postage prepaid and certified; or (c) if the notice is given to the Surety or any other person by personal delivery to such Surety or other person, or by depositing the same in the United States Mail, enclosed in a sealed envelope addressed to such Surety or other person, at the address of such surety or other person last communicated by him to the party giving the notice, postage prepaid and certified.

20. QUALITY OF MATERIALS AND WORKMANSHIP

It is the intention of this Contract to have only first class materials and the best workmanship throughout, and the methods and appliances adopted by the Contractor must be such as will secure a satisfactory quality of work and will enable him to complete the work in the time agreed upon. If at any time such methods and appliances appear inadequate, the Engineer may order the Contractor to improve their character or increase their efficiency, and the Contractor must conform to such order; but the failure of the Engineer to order such improvement of methods or increase of efficiency will not relieve the Contractor from his obligations to perform good work or finish it in the time agreed upon. The Contractor shall submit samples or specimens of any and all materials proposed to be used in the work when required to do so by the Engineer. All materials must be of specified quality and fully equal to approved samples. All work must be done and completed in a thorough and workmanlike manner. All materials furnished and all work done must be satisfactory to the Engineer and will be subject to rigid inspection, and if not in accordance with the Specifications in the opinion of the Engineer, shall be made to conform thereto.

It is understood that except as otherwise specifically stated in the Contract, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence of temporary

construction of every nature, and all other services and facilities required for the completion of the Contract within the specified time.

21. SPECIAL METHODS

The Engineer may consent to special methods for carrying out the work in difficult cases, but the Contractor will not be relieved of responsibility for the result. The Contractor shall be responsible for the result of all work performed by him whether directed by the Engineer or not.

22. REMOVAL OR REPLACEMENT OF WORK DONE WITHOUT LINES OR GRADES

Any work done without lines or grades given by the Engineer or under his direction or without the supervision of an inspector, may be ordered removed and replaced by the Engineer at the Contractor's expense.

23. COVERING WORK

No work shall be covered until it has been examined and approved by the Engineer.

24. UNFAVORABLE WEATHER

During unfavorable weather and other adverse conditions, only such portions of the work may be done which will not be damaged thereby, unless by special means or precautions approved by the Engineer.

25. ALL WORK SUBJECT TO FINAL INSPECTION

Failure to neglect on the part of the Engineer or his inspectors to condemn or reject bad or inferior work or materials shall not be construed to imply his acceptance of such work or materials if it becomes evident at any time prior to the final acceptance of the work and the release of the Contractor.

26. PUBLIC CONVENIENCE

When materials for construction are brought on the work site they shall be neatly piled so as to cause as little obstruction to travel as possible, and so that they may be conveniently inspected.

No material or other obstruction shall be placed within five (5) feet of fire hydrants, which must at all times be readily accessible to the fire department, nor shall any material be piled within two (2) feet of any trees.

The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the Contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion, and final acceptance by the Owner.

The Contractor shall provide such heat, covering and enclosures as are necessary to protect all work and materials against damage by weather conditions.

The Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavement, utilities, adjoining property, and structures, and avoid damage thereto, and he shall at his own expense completely repair any damage thereto caused by his operations.

If required by the Engineer, the Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations, and other parts of all existing structures adjacent and adjoining the site of the Project, which are in any way affected by the excavations or other operations connected with the completion of the work under this Contract. Whenever any notice is required to be given by the Owner or the Contractor to any adjoining or adjacent landowner or other party before commencement of any work under this Contract, such notice shall be given by the Contractor. The Contractor shall indemnify the Owner and save it harmless from any damages on account of settlement or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

During the progress of the work the convenience of the public and of the residents along streets must be provided as far as practicable. Convenient access to driveways, houses and buildings along streets must be maintained whenever possible.

Temporary approaches and crossings of streets and sidewalks must be provided and kept in good condition whenever practicable.

The Contractor shall provide and maintain such fences, barriers, "Street Closed" signs, red lights and watchmen as may be necessary to prevent avoidable accidents to residents and to the public.

The Contractor alone shall be held responsible for all injuries to persons, and for all damages to property of the City or others, caused by or resulting from the negligence of himself, his employees or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. He must restore all injured public or private property to a condition as good as it was when he entered upon the work, purchasing new materials to replace all that which is injured or destroyed during the course of the work.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from the Owner is authorized to act at his discretion to prevent such threatened loss or injury and he shall so act.

27. TRAFFIC CONTROL

It is the policy of the City of Midland to keep at least two travel lanes open to traffic at all times and where possible to have three travel lanes between 7:30 a.m. and 9:00 a.m. and 4 p.m. and 6 p.m. (Two (2) lanes in the direction of peak travel).

At least 48 hours before beginning work the contractor shall present a traffic control and/or barricade plan prepared as per the approved Barricading Standards to the Traffic Engineering Division for review and approval. When approved and barricades are in place, they shall be inspected by the Traffic Engineering Division prior to beginning work.

Traffic control signs, such as stop signs, yield signs, etc., are placed in various intersections for the safety and protection of the traveling public. The contractor shall not move, alter or damage said signs for any reason. If said signs must be removed for construction purposes, contractor shall notify the City of Midland, Traffic Division Operations Superintendent at least 48 hours (not including weekends) before construction activities are scheduled to begin. All construction barricading, warning signs, and other construction traffic control devices shall be in place and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices and approved Barricading Standards included in plans before traffic signs can be removed. The contractor shall notify the Traffic Division Operations Superintendent at least 72 hours (not including weekends) before

scheduled removal of construction barricades, warning signs, and traffic control devices. But in all cases the contractor shall not remove said barricades, warning signs, and traffic control devices until the City of Midland's Traffic Department has replaced stop signs, yield signs, etc., in their proper location. The Contractor shall notify Traffic Engineering Division at least 24 hours in advance of any Traffic Signal modification due to construction (i.e. eliminating left turn phases). Notice shall also be given to the Traffic Engineering Division at least 24 hours prior to removing barricades at signalized intersections.

28. PROTECTION OF NEW WORK

All new work shall be carefully protected by the Contractor, and any work injured from any cause before the completion of the whole project must be rebuilt by the Contractor at his own expense.

29. MONUMENTS OR STAKES

The Contractor must carefully protect from disturbance or injury all monuments, stakes and bench marks, of City County, State or Federal Government and shall not excavate nearer than five (5) feet to any of them without the permission of the Engineer, or until they have been removed, witnessed or otherwise disposed of by the Engineer.

30. USE OF COMPLETED PORTIONS

The City shall have the right to take possession of and use any completed or partially completed portions of the work notwithstanding the time for completing the entire work on such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of, or delays the work, the Contractor shall be entitled to such extra compensation or extension of time, or both as the Engineer may determine.

The Owner, in taking possession of completed portions, shall agree to accept the decision of the Engineer on matters relating to responsibility for damages that may occur to any portions of the work during the period of possession preceding acceptance and final payment.

31. USE OF PREMISES

The Contractor shall confine his apparatus, storage of materials and construction operations to such limits as may be directed by the Owner, and shall not unreasonably encumber the premises with his materials.

The Contractor shall enforce any instructions of the Owner regarding advertising, fires, danger signals, barricades and smoking, and shall require all persons employed on the work to comply with all building, post or institutional regulations while on the premises.

32. SAFETY RESTRICTIONS

The following procedures will be followed regarding the subject item on this contract:

A warning sign painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

Equipment that may be operated within ten feet of high voltage lines shall have an insulating cage type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.

When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company who will erect temporary mechanical barriers, de – energize the line, or raise or lower the line. The notifying department

The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor’s sole cost and expense.

No person shall work within six feet of high voltage line without precautions having been taken and protection provided as outlined in Paragraph (3) above.

33. INSURANCE REQUIREMENTS AND WORKERS COMPENSATION

INSURANCE REQUIREMENTS

Contractor 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:

<u>Commercial General Liability</u> (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 an occurrence basis. This insurance shall name the City as an additional insured and waive subrogation in favor of the City.

The Business Automobile Liability insurance provided by Contractor 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 the City as an additional insured and waive subrogation in favor of the City.

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

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

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

The Contractor certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The Contractor shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of the Contractor.

34. INDEMNIFICATION

INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, 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 THE CONTRACTOR, 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 CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'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 THE OWNER, THE OWNER'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 THE CONTRACTOR OR THE CONTRACTOR'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 CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN OWNER SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE OWNER 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 THE CONTRACTOR 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 THE OWNER OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

35. RELEASE

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

36. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Owner; that Contractor 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 respondent superior shall not apply as between Owner and Contractor, its officers, agents, employees, contractors and subcontractors; and

that nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Contractor. No person performing any of the work and services described hereunder by Contractor shall be considered an officer, agent, servant or employee of the Owner. 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. Contractor 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. The Owner does not have the power to direct the order in which the work is done. The Owner shall not have the right to control the means, methods or details of the Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

37. QUALIFICATIONS FOR EMPLOYMENT

Preference shall be given to qualified local residents in the employment of laborers and mechanics for work on the Project under this Contract. No person under the age of sixteen (16) years shall be employed on the project under this Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the Project under this Contract: Provided, that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. No person currently serving sentence in a penal or correctional institution and no inmate of an institution for mentally defective shall be employed on the project under this contract.

38. PAYROLLS OF CONTRACTOR AND SUBCONTRACTORS

The Contractor and each of his subcontractors shall prepare payrolls for the workers on the Project. Not later than the seventh (7th) day following the payment of wages, the Contractor shall transmit to the Owner, if requested, a certified legible copy and two confirmed copies of such payroll.

Such copies of payrolls shall be accompanied by substantial proof that all bills for services rendered and materials supplied have been duly paid and by such other data as the Owner may require.

39. POSTING WAGE RATES

The Contractor shall post at appropriate conspicuous points at the site of the Project a schedule showing the wage rates for the various classes of laborers and mechanics to be engaged in work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

40. PAYMENT OF EMPLOYEES

The Contractor shall post at appropriate conspicuous points at the site of the Project a schedule showing the wage rates for the various classes of laborers and mechanics to be engaged in work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

41. WAGE UNDERPAYMENT AND ADJUSTMENTS

The Contractor agrees that, in case of underpayment of wages to any worker on the project under this Contract by the Contractor or any subcontractor, the Owner shall withhold from the Contractor out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked and that the Owner may disburse such amount so withheld by it for and on account of the Contractor to the employee to whom such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this Article may be in addition to other amounts that may be retained by the Owner pursuant to other provisions of this Contract.

42. COMPUTATION OF WAGES ON 8 – HOUR DAY

The wages of each laborer and mechanic engaged in work on the project under this Contract shall be computed on a basis of eight (8) hours per day, eight (8) hours continuous employment except for lunch periods, constituting a day's work.

Legal holiday work shall be paid for at the regular governing per diem wage rates.

Work in excess of 40 hours per week shall be paid for at 1 ½ times the basic rate of pay.

43. OVERTIME WORK AND WORK ON SUNDAYS AND LEGAL HOLIDAYS

The Contractor will not be permitted to work on Sundays or legal holidays except in an emergency and then only upon written permission of the Engineer.

Any work necessary to be performed after regular working hours and when permitted on Sundays or legal holidays, shall be performed without additional expense to the Owner.

No work on any Contract item will be permitted before daylight or later than one hour after sundown.

44. CONTRACT SECURITY

The Contractor shall furnish a performance bond and payment bond in an amount equal to one hundred percent (100%) of the amount of the Contract as security for the faithful performance of the Contract, including the payment of all persons performing labor on the project and furnishing of materials in connection with this Contract. All Bonds must be executed in five (5) original counterparts by a corporate surety authorized to do business in the State of Texas. Bonds executed by individuals or any other than recognized and authorized corporate surety companies will not be acceptable.

45. DELAYS

The Contractor shall receive no compensation for delays or hindrances to the work, except when, in the judgment of the Engineer, direct or unavoidable extra cost to the Contractor is caused by such hindrances or delays. When such extra compensation is claimed, a written statement thereof shall be presented by the Contractor, as provided in Paragraph 18 hereof. Such claim, if found correct, will be approved, and the decision of the Engineer whether extra cost has been incurred and the amount thereof, shall be final. If delays are caused by specific orders to stop work, given by the Engineer, or by the performance of extra work, or by unforeseen causes beyond the control of the Contractor, or by the failure of the Owner to provide materials or necessary instructions for carrying on the work, or to provide the necessary right-of-way or site for installation,

then delay will entitle the Contractor to an equivalent extension of time. Application for extension of time must be approved by the Owner and, shall not release the Sureties from their obligations, which shall remain in full force until the discharge of the Contract.

LATE COMPLETION; LIQUIDATED DAMAGES:

It is hereby understood and mutually agreed, by and between Contractor and the City, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Contractor and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

In the event Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then Contractor and Contractor's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the City \$500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that Contractor shall be in default after the time stipulated in the contract for completing the work. Further, the City shall have the right to cancel this contract for such delay. In the event the City cancels this contract pursuant to the terms of this section, the City shall pay to Contractor only those monies deemed appropriate by the City, in its sole discretion, to compensate Contractor for any work actually performed, less any liquidated damages Contractor owes the City.

The said amount is fixed and agreed upon by and between Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that Contractor shall not be charged with liquidated damages or any excess cost when the City determines, in its sole discretion, that Contractor is without fault and Contractor's reasons for the time extension are acceptable to the City. Provided, further, that Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the City shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Contractor within a reasonable time of its decision in the matter.

CONTRACTOR AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, CONTRACTOR 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 ARISING FROM THE CITY WITHHOLDING PAYMENT FROM CONTRACTOR AS LIQUIDATED DAMAGES FOR CONTRACTOR'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, 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.

CONTRACTOR SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO CONTRACTOR OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. CONTRACTOR'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

46. ERRORS AND OMISSIONS

The Contractor will not be permitted to take advantage of any error or omission in these specifications. Suitable instructions will be given by the Engineer when such error or omission is discovered.

47. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the Specifications and Drawings, and shall at all times give the Engineer access thereto. Any drawings or plans listed in the detailed specifications shall be regarded as part thereof and of the Contract. Anything mentioned in these specifications and not mentioned or shown in the drawings, or shown in the drawings and not mentioned in these specifications, shall be done as though shown or mentioned in both. The Engineer will furnish from time to time, such detailed drawings, plans, profiles and information as he may consider necessary for the Contractor's guidance.

In the event of any discrepancy between the plans and these specifications, the decisions of the Engineer will be decisive thereon. The written dimensions on the plans are to be taken as correct, but the Contractor is required to check carefully all dimensions before beginning work thereon. Should any errors or omissions be discovered, the Engineer's attention shall be called to the same, and the proper corrections made. All notes on the plans shall be carefully observed by the Contractor and are a part of the Contract.

48. CONSTRUCTION STAKING

The Engineer will furnish a complete set of plans and profiles and set control stakes at fifty foot (50') intervals along the entire length of the project and at such control points he deems necessary for proper execution of the work. The Contractor will thereafter be required to lay out the work accurately and furnish at his own expense, all lines, levels, and dimensions necessary to the proper and correct execution of the entire work and be responsible for any errors resulting from his own work.

The Contractor shall give the Engineer at least 36 hours notice in writing before requiring stakes to be set on any new portion of the work, and he shall state clearly in such notice the exact locality or localities where such stakes are needed for immediate use.

The Contractor must satisfy himself, before commencing work, as to the meaning or correctness of all stakes or marks, and no claim will be entertained by the Owner for or on account of any alleged inaccuracies, or for the alterations subsequently rendered necessary on account of such alleged inaccuracies unless the Contractor notifies the Engineer thereof in writing before commencing to work thereon.

The Contractor will at all times conduct the work in such a manner as to prevent damage to construction stakes set by the Engineer. When construction stakes are damaged to such extent that they must be reset, as a result of carelessness or negligence on the part of the Contractor or his workmen, the costs thereof shall be kept by the Engineer and shall be deducted from the moneys due or to become due the Contractor under the terms of his contract.

Benchmark and survey stakes shall be preserved by the Contractor, and in case of their destruction or removal by him or his employees, they will be replaced by the Engineer at the Contractor's expense.

49. SANITATION

The Contractor shall provide suitable drinking water receptacles or containers equipped with dust-tight covers and spigots or faucets. A supply of sanitary paper drinking cups shall be kept on hand for general use near the drinking water containers. The use of common drinking cups or tin cups will not be permitted.

The Contractor shall furnish "Porta-Johns" or other approved sanitary facilities for use by all workers on the Project. Such facilities shall be placed and kept in close proximity of the site where work is being performed. Such facilities shall be properly serviced and maintained.

The Engineer may establish such other sanitary rules and regulations as may seem necessary and desirable to the safe prosecution of the work, such rules and regulations to apply to all forces employed under this Contract, and if, the Contractor fails to observe and enforce these rules, the Engineer may enforce them at the expense of the Contractor.

50. WATER FOR CONSTRUCTION

The Contractor may obtain all water necessary for construction purposes from the Municipal Waterworks System at the regular customer service rate, but the Contractor must make all necessary arrangements with the Director of Utilities for necessary connections and meters. The Contractor must make his own provisions and provide such equipment as is necessary for conveying water from point of service to point of use. No extra compensation will be allowed and the Contractor shall anticipate the expense connected herewith and absorb said expense in the prices bid for the various bid items.

51. SEQUENCE AND SPEED OF WORK

The Engineer shall direct the order and sequence of the work. If at any time before the commencement or during the progress of the work, the materials and appliances used appear to the Engineer as insufficient and improper for securing the quality of work required or the required rate of progress, he may order the Contractor to increase their efficiency or to improve their character and the Contractor shall conform to such order. The

failure of the Engineer to demand any increase of such efficiency or improvement shall not release the Contractor from his obligations to secure the quality of work or the rate of progress specified.

52. INSPECTION AND TESTING OF MATERIAL

The sampling and testing of materials used or proposed to be used in the construction of this project will be made by the Engineer, his designated representative or certified testing laboratory personnel in accordance with methods prescribed by the American Society of Testing Materials and/or the American Association of State Highway Officials, with subsequent approved revisions made prior to the date of the Proposal. The selection of the method of test shall be designated by the Engineer. The Contractor shall bear the cost of all tests required before a material or a method is approved for use on the job, unless the Owner specifically agrees to bear the cost of these tests.

All tests required by the Owner after materials and/or methods have been approved and after they have been incorporated or used in the job will be paid for by the Owner, except if the Owner's tests reveal non-conformance with the specifications, subsequent tests on that part of the work required to determine if the replaced or reworked material meets the specifications, will be paid for by the Contractor. The City will pay only one time for any required testing.

The following is a summary of test required for the approval of materials or methods:

Material	Test
Subgrade	Maximum density, optimum moisture
Caliche Base:	Maximum density, optimum moisture, hardness, gradation, liquid limit, plasticity index, Texas Triaxial Classification
Aggregates for hot-mix:	Gradation, unit weight, abrasion, soundness, liquid limit, plasticity index, density
Asphalt, emulsions and tars:	Certified plant test and certificates of compliance with each shipment
Hot- Mix asphaltic concrete:	Design mix, swell test, stripping test
Portland cement concrete pavement:	Design mix with test cylinders

Any materials shipped by the Contractor from the factory prior to having satisfactorily passed such testing and inspection by the Owner’s representative or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the work.

The Owner may, at its discretion, approve materials and/or methods for use on this project without testing when they are from sources previously tested and approved for City of Midland projects.

53. CONSTRUCTION SCHEDULE

It shall be the responsibility of the Contractor to furnish the Construction Engineer prior to construction a schedule out – lining the anticipated time each phase of construction will begin and be completed, including sufficient time being allowed for clean – up.

54. PROFILES AND ELEVATIONS

Profiles and elevations of the ground are shown on the plans hereto attached. These profiles and elevations are believed to be reasonably correct, but are not guaranteed to be absolutely so, and are represented only as an approximation. Elevations are referred to datum given by the Engineer.

55. CLEANUP

During the progress of the work, the Contractor shall maintain the work area in a reasonably clean and safe condition. Dirt, debris, excess excavation and other objectionable materials shall be removed from the site and disposed of on a daily basis.

After completion of all the work contemplated to be done in accordance with the detailed plans and these specifications, the premises and area along the entire line of the work shall be thoroughly cleaned up and all remaining structural materials, excess or surplus excavation and debris of any nature shall be removed and disposed of in a satisfactory manner and as directed by the Engineer. The site of all work shall appear neat and finished. All portions of the project when completed shall be ready for use or occupancy.

No compensation or payment shall be made for any cleanup work. The price for such cleanup work shall be absorbed in the items covered in the proposal.

56. GUARANTEE

The contractor shall and hereby does guarantee: (1) all work performed by him directly and all work performed by his subcontractors; (2) that all material specified; and (3) that any defect due to improper workmanship or material discovered and made known to him within one year (1) f the date of final acceptance of the improvements shall be repaired, replaced, corrected or otherwise made good by him without additional expense to the Owner. The Contractor shall, in case of work performed by his subcontractors and where guarantees are required, secure guarantees from said subcontractors and deliver copies of same to the Engineer upon completion of the work.

57. WAIVER OF ATTORNEY FEES:

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

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

THE OWNER AND THE CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

58. 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 that would direct application of the laws of another jurisdiction.

59. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

60. NO THIRD – PARTY BENEFICIARY

The 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.

61. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Contractor's failure to comply with the requirements herein shall perpetually bar Contractor'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. Contractor agrees that the requirements of this entire Agreement are reasonable.

62. ASSIGNMENT

Contractor 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 the owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the owner.

63. FEDERAL WAGE REQUIREMENTS

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

64. PROMPT PAY ACT

The owner and contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

65. OTHER FEDERAL REQUIREMENTS

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

Updated December 2023

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

NOT APPLICABLE

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

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

NONE

Name of Officer

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

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

7

REECE ALBERT, INC.

PACKET 474
Signature of vendor doing business with the governmental entity

5-6-24
Date June 25, 2024

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

SPECIAL PROVISIONS

ATTENTION: All Bidders are directed to pay special attention to the NOTICE TO BIDDERS section of the bid packet. Bidders have sole responsibility for complying with the current bid process requirements. Bidders also have sole responsibility for verifying that any bid submitted is completed correctly and includes all of the required documentation, including addendums.

1. SCOPE OF WORK:

Included in this Project will be **Garfield Street Paving Bond Project – Break Out Set 03** to be performed as outlined in the Plans and Specifications, which are necessary to satisfactorily complete the work.

The project will include the removal, replacement, relocation, placement, and installation of existing and proposed paving, sidewalk, storm drain, and structural infrastructure and appurtenances including all necessary mobilization, material storage and protection, saw-cutting, pavement removal, sidewalk removal, excavation, trenching, utility removal, utility abandonment, utility installation, embankment, embedment, backfill, compaction, form work, pavement placement and repair, sidewalk placement and repair, concrete joint sealing, utility cover adjustments, temporary pavement tag placement and removal, erosion control and stabilization, traffic control, job site safety, as well as coordination with City of Midland staff and organizations such as OSHA, Midland Memorial Hospital, Midland Fire Department, Midland Independent School District, franchise utilities, etc. as needed, One Call (Texas 811) notifications for pending work, notifications to adjacent property owners as directed by City of Midland Staff, and all other work to be performed as outlined in the Construction Drawings and Specifications, to satisfactorily complete the work.

This project is the one of the final phases of the larger overall Garfield Street bond project extending from Michigan Avenue to Gold Course Road. The previous phases were completed separately from this phase and included the installation of water, wastewater, and storm drain improvements from Michigan Avenue to Golf Course Road, as well as the installation of new signal infrastructure at the intersections of Garfield Street with Michigan Avenue, Louisiana Avenue, the pedestrian crossing just north of Louisiana Avenue, and Golf Course Road. They also included the installation of new pavement from Michigan Avenue to Louisiana Avenue and from Golf Course Road to Country Club Drive. Finally, Cuthbert Avenue extending east from Garfield Street was repaved around late 2019 to early 2020 and is still considered a newly paved road.

The Owner reserves the right to abandon, without obligation to the Contractor, any part of the project, or the entire project, at any time before the Contractor begins any construction work authorized by the Owner.

Standard Specifications for Construction of the City of Midland will govern all construction, except as modified by these Special Provisions.

2. ORDER OF PRECEDENCE:

The Special Provisions take precedence over the General Conditions in this bid packet anywhere these two sections are not in agreement.

The Special Provisions take precedence over the City of Midland Specifications in this bid packet anywhere these two sections are not in agreement.

The Contractor is to bid the quantities in the Proposal section of the bid packet even if there is a discrepancy between the Proposal quantities and those noted or measured in the construction drawing set.

In the Proposal the long-hand dollar amount written in the Description column for each bid item will take precedence over the numerical dollar amount listed in the Unit Price column if there is a discrepancy between the two.

In the construction drawing set any written or noted dimension takes precedence over dimensions measured based on the drawing scale unless otherwise directed by the Engineer.

Any changes or revisions made as part of an Addendum for this project take precedence over the original bid packet and construction drawing set where the documents are in conflict.

3. EXAMINATION OF SITE:

Prospective bidders are to make a careful examination of the entire site of the project and are to make such explorations as may be necessary to determine the subsoil and/or water conditions to be encountered; improvements and obstructions which may be encountered; methods of providing ingress-egress to private as well as public property; methods of handling traffic during construction and maintenance of the entire project as well as any section thereof, protection of all existing structures both above and below ground; and how the plans fit the proposed project and especially if any discrepancies exist.

4. PAYMENT:

Payment and retainage (five percent, 5%) shall be per the General Conditions.

Payment will be made for material installed, not for material delivery.

5. SAFETY REQUIREMENTS:

It is the responsibility of the Contractor to follow and comply at all times with Occupational Safety and Health Administration (OSHA) and all other applicable safety regulations and requirements throughout the course of the project's work. The City of Midland reserves the right to require additional safety measures on the project site at any time if they are needed in the opinion of the Engineer for the safety of the work crews or public.

6. SAFETY RESTRICTIONS – WORK NEAR HIGH VOLTAGE LINES:

The following procedure will be followed regarding the subject item on this contract:

- 1) A warning sign painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING – UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES"

- 2) Equipment that may be operated within ten feet of high voltage lines shall have an insulation cage-type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.

- 3) When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company of who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.
- 4) The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.
- 5) No person shall work within six feet of a high voltage line without protection having been taken as outlined in Paragraph (3).

7. TRAFFIC CONTROL:

All proposed traffic control shall be approved by the City where applicable. All traffic control plans must be submitted to and approved by the Construction Manager no less than two (2) business days prior to starting the construction work. Traffic control for each phase of work must be approved prior to starting that work.

Generic traffic control plans or typical details may be submitted for shoulder work on any class of roadway, or for work on local or collector streets that does not require the closure of any travel lanes (i.e., all lanes are open to traffic on striped roadways, or adequate width remains available for two-way traffic on unstriped roadways). Once a generic traffic control plan or typical detail for a certain type of setup has been approved one time, the Contractor shall only be responsible for notifying the Construction Manager of the location, type of setup, and dates on which they intend to utilize the pre-approved traffic control for the duration of the contract. No additional plan submittals will be required in these cases, except that the City reserves the right to suspend this exception at its discretion. For any work not fitting the above exception, or in the event that the exception is suspended by the City, a site-specific traffic control plan will be required for each work location and time period.

1. All temporary traffic control shall be in general conformance with the *Texas Manual on Uniform Traffic Control Devices* (TMUTCD) (latest edition as adopted by the Texas Department of Transportation), except as specifically directed by the City Engineer or City Traffic Engineer.
2. All temporary traffic control shall be designed, installed, and maintained by competent and qualified personnel with adequate experience in traffic control.
3. All temporary traffic control involving multiple lane closures or traffic shifts, full closures of collector or arterial streets, traffic control extending through a railroad crossing, or any setup reasonably determined by the City to be "complex", shall be implemented only by a contractor with specific experience and expertise in the field of traffic control (i.e., a qualified "barricade company").
4. A Traffic Control Plan (TCP) shall be submitted to the Engineering Services Department, Construction Manager, in advance of any work in the right-of-way that impacts traffic. No work shall occur until an approved TCP has been returned to the Contractor.
5. A copy of the approved TCP shall be kept in the possession of the person responsible for supervising the traffic control at all times while working in the right-of-way. The approved TCP shall be presented to City staff or law enforcement upon demand at any time.
6. Depending on site conditions and the nature of the work, temporary traffic control may be approved by the City for either of the following:
 - a. All Times – All traffic control, including closures, may remain in place 24 hours per day until expiration of the approved TCP.

- b. Off-Peak Only – Lane or road closures are NOT permitted from 6:00-9:00 AM and 4:00-7:00 PM on weekdays (Monday through Friday). Other traffic control not related to lane or road closures may remain in place 24 hours per day until expiration of the approved TCP.
- 7. The contractor setting the temporary traffic control shall be responsible for the maintenance and upkeep of all signs, barricades, and other devices, at all times.
 - a. All temporary traffic control setups shall be maintained at least one time per day, including weekends and holidays.
 - b. More frequent maintenance shall be performed as needed, with particular emphasis to following up after severe weather events or during times of high winds.
 - c. Maintenance shall include:
 - i. Verifying and correcting the location and orientation of all signs, barricades, and other devices;
 - ii. Keeping signs and reflective areas of barricades and other devices clean and free of dirt buildup so as to maintain appropriate visibility and legibility; and
 - iii. Ensuring the proper location, orientation, and operation of arrow boards or message boards, if present.
- 8. Arrow boards shall be required for lane closures under the following conditions:
 - a. On roadways with a posted speed limit of 55 MPH or greater, for closures lasting more than one (1) hour;
 - b. On roadways with a posted speed limit of 45 MPH or greater, for closures lasting more than four (4) hours;
 - c. On any roadway if lanes will remain open to traffic travelling in the same direction on both sides of a closed lane during any overnight hours (from 7:00 PM to 6:00 AM); and

At other times as shown on the approved TCP, or as otherwise directed by the City.

8. DETOURS:

The Contractor is to prosecute his work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the project area.

9. PROPERTY AND RIGHT-OF-WAY ACCESS:

Access to adjacent properties must be maintained at all times unless otherwise directed by the Engineer. If the contractor will not be working in an area for a period of one week or more, special care is to be taken to address any unsafe conditions such as excavated areas or obstructions outside the worked area that could be tripping hazards, etc. Contractor must notify affected properties no less than two (2) business days prior to any planned access interruptions.

Contractor must coordinate with the City of Midland regarding any planned access interruptions for public Right-of-Way, or to restore any public infrastructure damaged during construction activities.

10. PROPERTY AND RIGHT-OF-WAY SERVICE:

Service to adjacent properties must be maintained at all times unless otherwise directed by the Engineer. Such services include water, wastewater, fiber, cable, electric, and gas. Contractor must notify affected properties no less than two (2) business days prior to any planned service interruption.

Contractor must coordinate with the City of Midland regarding any planned service interruptions for public water or wastewater, or to restore any public infrastructure damaged during construction activities.

Contractor must coordinate with private service providers for any necessary service interruptions to their infrastructure or to restore service to their infrastructure in the event that a private service is disrupted, damaged, etc. during construction.

11. CONSTRUCTION SCHEDULE:

It is the responsibility of the Contractor to furnish the Construction Engineer, prior to construction, with a schedule outlining the anticipated time each phase of construction will begin and be completed, including sufficient time being allowed for clean-up.

12. CONSTRUCTION STAKING:

It is the responsibility of the Contractor to provide the project construction staking at fifty-foot (50') intervals along the entire length of the project as well as at such control points as the Contractor deems necessary for proper execution of the work. Construction staking is to include grading and cuts as well as horizontal alignments and construction control points. Cut sheets are to be provided to the Engineer by the Contractor for review and approval.

13. SURVEY:

The Contractor is to provide GPS survey shots for all meters replaced to the City of Midland with each completed work order submittal. Survey data is to be shot in Texas Central Zone with 1983 NAD at 1.0' accuracy or better. Survey data is to be provided in Excel csv. file format with all rounding functions turned off.

14. CONSTRUCTION MATERIALS:

The Contractor is to only provide new materials for permanent installation in any and all parts of this project, and all such materials must comply with the General Conditions, the Bid Packet Specifications, and all applicable City of Midland Standards and Specifications.

For this project, the Standard Specification is hereby amended to read:

Qualifications of Material Sources – Contractor is only to use pavement mixtures that have a proven record of acceptance by the City of Midland, or another Texas municipality, or have a proven record of meeting similar standards for state highway projects.

Concrete is only to be placed when the ambient temperature is between 40 degrees and 95 degrees Fahrenheit and the ambient temperature in the shade is higher than 40 degrees Fahrenheit or is 40 degrees Fahrenheit and rising.

All concrete pavement joints are to be sealed with Texas Department of Transportation (TxDOT) DMS-6310 SL-2 sealant, an American Society for Testing and Materials (ASTM) D 1190 Hot-Applied Single Component Joint Sealant, or a City of Midland approved equal. This will not apply to curb or sidewalk joints.

No construction materials are to be placed or installed during rain events unless they are necessary to resolve an emergency situation or to facilitate the project site erosion control measures.

15. EROSION CONTROL:

Erosion control is the responsibility of the Contractor and erosion control measures are to be implemented so as to prevent sediment erosion from wind, rain, and other elements from the project site. Should the Owner feel that supplementary erosion control measures are required in addition to those implemented by the Contractor then the Contractor will include additional erosion control measures within reason to the Owner's satisfaction and/or TCEQ requirements.

Reasonable erosion control measures include but are not limited to: construction entrance(s), concrete washout(s), perimeter silt fence or fiber wattle, rock rip-rap dams for concentrated runoff control, gutter and inlet protection measures such as sand bags, and stabilization of the construction area surfaces when construction work is not actively occurring by means of vegetative cover or seeded erosion control blankets.

Supplemental erosion control measures are ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes.

Site cleanup work is to be done for this project as soon as possible as per the General Conditions and will be ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes. Site cleanup is to take place throughout the project's construction as needed to maintain a clean and professional looking work area. No more than three calendar days are to elapse after completion of construction before the final roadway and right-of-way cleanup has been completed to the satisfaction of the Engineer.

16. WASTE MATERIAL:

Excess material from excavation and other construction or demolition activity will become the property of the Contractor. Excess excavation will be disposed of at locations secured by the Contractor and if necessary, approved by the Engineer. No material is to be placed on private property or City property without the approval of the Engineer and the property owner. Removal of excess material, excavation, and waste material are ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes.

Excess concrete material must be washed out in a concrete washout within the project's job site area, or else any and all other concrete material washout must occur away from the job site area in the Contractor's or concrete Supplier's own operation yards or properties. Under no circumstances are concrete trucks allowed to washout in any job site excavations, channels, public right-of-way, or on private property.

17. TESTING:

It is the Contractor's responsibility to perform all required testing for any and all materials and workmanship performed or installed as part of the project's work. The cost of all such testing is to be borne solely by the Contractor unless required by the Engineer for work or materials that had previously been tested and approved and had not experienced any change in condition since that time as a result of the Contractor's work or actions; or unless additional testing outside of the project scope is performed at the request of the Engineer.

Required testing includes:

Concrete Pavement – A Slump Test is required for every cylinder set (3 test cylinders) taken, and no less than 1 cylinder set per day is to be taken for testing when concrete is placed. Test results are to be given to the engineer upon completion of each test, with 1 cylinder set taken for:

- A. Every 50 cubic yards of concrete placed for concrete pavement between street intersections.
- B. Every 50 cubic yards of concrete placed for concrete pavement at a street intersection.
- C. Every 2 sets of fillets and valley gutters at street approaches. (1 set = 2 fillets and 1 valley gutter)
- D. Every 4 alley approaches or driveway approaches.
- E. There will be no testing for curb, ramps, and sidewalks.

Asphalt Hot-Mix Pavement – A Nuclear Gauge Density Test is required for either each day that asphalt hot-mix is placed or for every 250 linear feet of asphalt hot-mix pass, whichever results in more frequent testing. The laboratory density limits will be a minimum limit of 96%, a maximum limit of 98%, and an optimum limit of 97%. The acceptable field density range for construction of this project is 93% - 98% with a target density of 95%. Test results are to be given to the Engineer upon completion of each test.

Storm Drain Pipes & Structures – Perform as-built survey and closed circuit televising (CCTV) for all storm drain pipes and structures.

- As-Built Survey of Storm Drain Pipes & Culverts – Provide as-built survey shots at fifty-foot (50') intervals along the storm drain pipe or culvert at the top of the pipe or culvert installed.
- As-Built Survey of Storm Drain Structures – Provide as-built survey shots at the inverts of all storm drain structures that are installed to verify the storm drain grades, including all manholes, junction boxes, and inlets.

18. COMPLIANCE:

The said Contractor further agrees to comply with all applicable provisions of the laws and building and construction codes of the City of Midland and the State of Texas, and with any regulations for the protection of workers which may be promulgated by the Government, and will protect such work with all necessary lights, barriers, safeguards, and warnings as provided for in said specifications and the Ordinance regulations.

Contractor is to comply with all accepted industry standards for means, methods, and details of work to be performed, as well as with any specific requirements of the City of Midland.

Contractor is to comply with any specific order of construction as directed by the City of Midland, but is otherwise free to conduct the work in the order which the Contractor sees fit.

Contractor agrees to comply with any specific direction or requirement of the City of Midland for the construction of this project, but is otherwise free to perform the work in its own way.

19. PERSONNEL:

It is the Contractor's responsibility to have a supervising representative of the Contractor on the construction site any time that construction work is taking place. The Contractor's representative must be on the Contractor's direct payroll. Sub-contractors or paid consultants will not satisfy this requirement.

It is also the Contractor's responsibility to provide the City with a reliable contact for issue escalation coordination. Such contacts would include the Contractor's site foreman, the Contractor's construction project manager, etc.

20. INTENT OF THE PROPOSAL AND SELECTION SCORE:

The intent of the proposal is to determine the lowest responsible bidder as described in the attached Instructions and Information for Bidders. Once the lowest responsible bidder is selected, the project will be awarded based on the terms and requirements of the contract outlined in the bid packet and construction drawings.

21. CONTRACT DEADLINE:

The deadline for substantial completion of this project is 210 calendar days total starting from the Notice to Proceed date.

Extensions of the project deadline may be requested by the Contractor for documented excepting conditions such as weather days, delays due to conflicts with existing franchise lines, etc. which are reasonably beyond the Contractor's control. Any and all deadline extensions must be submitted by the Contractor in writing to Engineer for review, and the approval or denial of the request rests solely with the Engineer.

Unless specifically granted in writing by the Engineer, there will be no suspension of project time between phases of construction.

22. WARRANTY PERIOD:

There is a one (1) year calendar warranty period on this project for all work performed or materials installed effective immediately upon acceptance of the improvements by the Owner. The warranty period will be based on the acceptance date of the project as a whole, and not any individual phases of the project.

23. BID PACKET COMPLETION ITEMS OF NOTE:

Bidders must be willing to sign the Contract as is if a bid is submitted. Revisions, alterations, deletions, additions, or any other changes of any kind by the bidder to the bid packet or other bid documents (such as the construction drawing set, addendums, etc.) will result in the bid submittal being deemed 'Non-Responsive' and the bid will not be accepted.

Bidders are reminded to make sure that the Conflict of Interest forms are completed if applicable before submitting a bid.

All bid items in the Proposal section must be completed for a bid submittal to be considered complete. Any bid item left blank, only partially completed, or that the bidder indicates they chose to not provide a bid for will be considered incomplete, and the entire bid submittal will also be deemed incomplete, the bid submittal will be

deemed 'Non-Responsive', and the bid will not be accepted. Bidders bear sole responsibility for making sure that the Proposal is complete and in accordance with the instructions provided to bidders in the bid packet.

All acknowledgement forms for all addendums that are issued during the bid process for this project must be filled out and be included with any bid submittal for that bid submittal to be considered complete. Any bid submittal lacking these completed addendum acknowledgement forms will be deemed 'Non-Responsive' and the bid will not be accepted. Bidders bear sole responsibility for making sure that they have obtained all addendums issued prior to submitting their bid.

City of Midland Specifications

PREPARATION OF RIGHT OF WAY

1. GENERAL

Includes the preparation of right-of-way for construction by clearing, grubbing, removing and disposing of all obstructions and objectionable material from the right-of-way and designated easements, which is not specifically provided for on the plans.

Obstructions and objectionable material refer to all objects or material that do not meet the quality of standards for the courses of pavement to be constructed or which protrude into the excavation for slopes.

Measurement and Payment - Measurement and payment will be at the units and prices for the applicable bid item in the proposal.

When no specific bid items are included in the bid proposal for work specified under this section this work shall be considered as incidental to other items of work and the cost shall be included in the bid for these items. No separate payment will be made.

2. CONSTRUCTION METHODS

Removal - Obstructions and objectionable material to be removed by blading, plowing, bulldozing, or other methods approved in writing by the Engineer. The use of explosives will not be permitted. Solid objects must be removed to a depth of at least one (1) foot below the finished slope or subgrade elevation. Hollow objects must be removed entirely.

Disposal - Material to be removed from the right-of-way becomes the property of the Contractor. If disposal areas are available, they will be indicated on the plans.

Preservation of Trees and Shrubs - Trees and shrubs to be preserved in the right of way are shown on the plans and must be protected from injury during construction.

Removal of Concrete - Cut concrete at the right-of-way line straight and vertical by sawing or other approved methods prior to the removal of concrete in the right-of-way.

8/07

EXCAVATION, EMBANKMENT AND PREPARATION OF SUBGRADE.....1

1. GENERAL2

2. CONSTRUCTION METHODS.....2

EXCAVATION, EMBANKMENT AND PREPARATION OF SUBGRADE

1. GENERAL

Includes the excavation, embankment and preparation of subgrade determined by the lines, grades and sections shown on the plans and in accordance with the provisions of the specifications.

Excavation - Includes excavation to planned grade, disposal of the material, removal of unsuitable subgrade material and borrow material when required in the construction. All excavation to be classified as common.

Embankment - Consists of excavated or borrow materials placed and compacted in horizontal layers in accordance with the specifications.

Subgrade - The upper eight inches (8") of embankment or the upper eight inches (8") below the roadway excavation finished grade. The subgrade shall extend from six inches (6") back of curb to six inches (6") back of curb where curb and gutter is to be constructed.

Measurement and Payment - Measurement and payment to be at the units and prices for the applicable bid items in the proposal.

2. CONSTRUCTION METHODS

Excavation - Made at the location and to the lines and grades shown on the plans in areas previously prepared in accordance with provisions of Section 2A. Dispose of excess material not required in the embankment and material that is unsuitable for subgrade. Excavation tolerance to be plus or minus 1/10 foot from the plan grade.

The area between the curb and property line shall be excavated or filled, whichever is necessary, to curb height at back of curb and finished to a straight even surface to the property line. The minimum elevation at the property line shall be the elevation of the top of the curb. The maximum elevation at the property line shall be equal to a rise of 1/4 inch per foot from the back of the curb to the property line.

During the excavation of this project, it will be required that all parkways be excavated and shaped at the same time the roadway is excavated. Excess excavation will be disposed of at locations approved by the Engineer.

Embankment shall be constructed at the locations and to the lines and grades shown on the plans in areas previously prepared in accordance with Section 2A of these specifications. Top eight inches (8") of natural ground to be compacted

to embankment density requirements. Embankment shall be constructed from suitable material obtained from the excavation or borrow free of roots, rocks in excess of three inches (3"), debris and other objectionable material. Excavation deficiencies shall be supplemented from a borrow source approved by the Engineer. Embankment shall be constructed in uniform horizontal layers not to exceed eight inches (8") of loose depth and compact with suitable equipment to a minimum of ninety percent (90%) AASHTO T180. The materials shall be processed by aeration or watering to bring the material to the approximate optimum moisture. Dry layers will not be permitted. Soft spots that develop in the embankment shall be removed and replaced with suitable material. No payment will be made for removal of soft spots. Tolerance for embankment grading shall be one-half foot (1/2) plus or minus the plan grade.

Preparation of Subgrade - Eight inches (8") of the upper portion of the embankment or excavation shall be shaped and compacted to a minimum density of 95 percent (95%) AASHTO T180 and finished within a tolerance of one-half inch (1/2") in ten feet (10'). The finished subgrade shall be protected and maintained in a satisfactory condition until covered by succeeding construction.

Compaction Tests - Field density tests will be made by the Owner or by a laboratory selected by the Owner. The Contractor shall notify the Engineer when compaction has been achieved. The Contractor shall allow 24 hours for scheduling of test. Prior to the taking of subgrade density test, the entire subgrade will be tested by proof-rolling using a pneumatic roller weighing not less than 50,000 lbs. gross with tire pressure being not less than 110 psi. Any soft spots, pumping, or other evidence of weakness shall be remedied before density tests are made. Proof rolling shall be in the presence of the Engineer or his duly authorized representative.

The City will pay the cost of initial density tests made on the subgrade. If the subgrade fails to meet the density requirements on the first test, the contractor will be required to have subsequent density tests made by the commercial lab selected by owner. The cost of all subsequent density tests will be born by the contractor.

08/07

CONCRETE CURB AND GUTTER, SIDEWALKS AND DRIVEWAYS, VALLEY GUTTERS, CENTER DRAINS AND RIP RAP

1. GENERAL

Includes the construction of concrete curb and gutter, sidewalks, driveways, valley gutters, center drains and rip rap in accordance with lines, grades and the sections shown on the plans and constructed in full compliance with provisions of the specifications.

A proven performance record by the Texas Highway Department shall be supplied by material producers for all materials supplied by them.

2. MATERIALS

Concrete - All concrete other than rip rap shall be Class "A" concrete in accordance with Texas Highway Department specifications Item No. 421. Concrete for rip rap shall be the class as shown on the plans and detail drawings. When no concrete class is shown the plans concrete for rip rap shall be Class "B" concrete.

Concrete batch designs shall be furnished for each project and shall include all classes of concrete proposed for use on the project.

Reinforcing Steel - Reinforcing steel shall be deformed bars or wire mesh fabric conforming to the requirements of "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" Item No. 440 and shall be of the sizes and grades as shown on the plans.

The contractor, at his option, may use fiber reinforcing in lieu of the wire mesh for all concrete slab on grade. When fiber reinforcing is used, it shall be "Fiber Mesh" or "Caprolan RC" or approved equal. The material and rate of application shall be approved by the Engineer prior to its use.

Expansion Joints - Bituminous pre-molded joint filler shall be composed of top grade fiber, treated by special impregnation system with water repellent bituminous materials. It shall be a non-extruding type, resilient, expanding on release of compression, preventing open joint crevices. The pre-molded joint filler shall be of such character, that it will not be deformed by handling during hot weather, nor shall it become brittle in cold weather. It shall be free from visible external defects such as holes, ragged or untrue edges, breaks, cracks or tears. It may be covered on both sides with paper to facilitate handling.

The joint filler shall be accurately cut to the dimensions and shapes required. It shall be of the thickness required by the plans, or as specified elsewhere.

3. CONSTRUCTION METHODS

GENERAL

No concrete shall be placed when, in the Engineers opinion, weather or other conditions would be detrimental to the structure placed. No concrete shall be placed on grade when the ground temperature is 35° F or lower. Concrete may be placed when the ground temperature is rising from 35° F. Concrete placed in cold weather shall be protected from freezing for 72 hours after being placed.

CURB AND GUTTER

EXCAVATION AND SUBGRADE - Excavation for curb, gutter, and combined curb and gutter shall be done with the subgrade excavation for the street. Street subgrade shall extend from six inches (6") back of curb to (6") back of curb and shall be compacted for a full width to a minimum of 95% AASHTO T180-61. Where subgrade is more than three inches (3") below bottom of curb, fill shall be compacted caliche base constructed from six inches (6") back of curb to six inches (6") back of curb as specified for base course.

Whenever subgrade or base is dry or dusty, it shall be thoroughly moistened, not made muddy, before the concrete is placed.

Forms - Forms shall be of steel, of a type to be approved by the Engineer, except that curves may be formed with wood sections built up or laminated, upon prior approval by the Engineer.

The forms shall be attached securely to stakes, shall be set true to line and grade, and braced sufficiently to remain true during the placing and tamping of the concrete. Forms shall be thoroughly cleaned and oiled before each use.

Curves - All changes in direction of the curbs shall be by means of true circular curves of the radii as shown on the plans.

Expansion Joints - Expansion joints shall be placed between curb and gutter sections at the tangent points of all curves, at each side of the inlet boxes, drives, alleyways, and at intervals of not more than forty feet (40') in straight runs. The expansion material shall be pre-molded three-fourths inch (3/4") in thickness, and shall conform to the requirements of expansion material as specified herein. It shall be cut to the full size and shape or the cross section of the curb and gutter, less one-half inch (1/2") from the finished surface thereof. The edges of sections against the joint shall be finished with an edging tool and the joint raked clean of concrete.

Finishing - There shall be provided on the job a metal screed or mule designed to give proper shape to the curb and gutter. It shall be bent to the exact shape of the finished curb and gutter and the forward edge turned up slightly to prevent disturbing the mortar. It shall be designed to ride on the forms and when properly manipulated shall leave the curb and gutter in its proper shaped condition. An "S" trowel shall be used to finish the surface and minor imperfections shall be corrected with a mason's trowel. Care shall be taken to finish

the gutter flow line to a true, uniform grade. All edges shall be finished with an edging tool, and joints marked with a jointer. Joint marks shall coincide with actual joints and shall be straight and true.

Curing - The completed curb and gutter, shall be cured in accordance with the requirements of the item "Membrane Curing", Texas Highway Department Item 531.

DRIVEWAYS AND ALLEY RETURNS

Driveways and alley returns shall be constructed of Class "A" concrete to the lines and grades as shown on the plans and detail sheets. All driveways and alley returns shall be reinforced as shown on the detail drawings.

Excavation and Subgrade - Excavation shall be accomplished in the same manner as for streets and curbs. The subgrade for all driveways and alley returns shall be compacted to 95% modified proctor density for 8 inches depth.

Driveways for single family residences and property used for two family residential purposes (duplexes) may be placed on the compacted subgrade. All other driveways shall be considered as commercial driveways and shall be constructed on 6 inches compacted flexible base.

Flexible Base - Commercial driveways and alley returns shall be constructed on 6 inches of flexible base conforming to Section 2-C- Flexible Base, Caliche.

Forms - Forms shall be constructed of steel or, when approved by the engineer, wood conforming to the requirements for curb and gutter forms.

Expansion Joints - Expansion joints shall be placed at the ends of abutting curb and gutter at the end of radii for all driveways and alley returns. In addition, expansion joints shall be placed at the ends of abutting sidewalk sections and at any point where the driveway or alley return abuts another concrete structure. Expansion joint material shall be pre-molded three fourths inch (3/4") in thickness, cut to the shape and dimensions required and shall extend the full depth of the concrete.

Finishing - Shaping and finishing of driveways and alley returns shall be accomplished by using a screed to shape the driveway or alley return to the lines and grade required. Finishing shall be accomplished by use of wooden floats and stiff bristled brushes or brooms. The last finish shall be by brushing or brooming in
A direction transverse to the direction of traffic.

During the entire finishing process care shall be taken to maintain the true gutter invert in line with the street curb and gutter.

Curing - Finished driveways and alley returns shall be cured in accordance with the requirements "membrane curing" "Texas Department of Highways and Public Transportation, 1982 Standard Specifications for Highways, Streets and Bridges", Item Number 531.

CONCRETE VALLEY GUTTERS, CENTER DRAINS AND DRAINWAYS

Concrete slab type street drainage structures with or without curbs, shall be constructed of Class "A" concrete to the lines and grades as shown on the plans and detail sheets or as may be established in the field by the engineer.

Subgrade excavation preparation and compaction and flexible base shall be the same as specified for street construction. All drainage structures within the roadway shall be constructed on a flexible caliche base so that the thickness of the concrete slab plus base is equal to the thickness of the hot mix asphaltic concrete surface plus base.

Forms - Forms shall be as specified for curb and gutter.

Reinforcing - All slab type drainage structures shall be reinforced as shown on the plans and detail drawings. Care shall be taken to maintain all reinforcing in good condition and at its proper location within the slab.

Expansion Joints - Expansion joint material shall be as specified for curb and gutter and for driveways and alley returns.

Expansion joints for valley gutter shall be placed at the ends of radii and at the juncture between the fillet and the cross valley as shown on the detail sheet.

For center drains, expansion joints shall be placed at the ends of widened or transition sections and at each end of a section containing a manhole or other structure and at intervals of sixty feet (60') measured along the center line of the drain.

Additional expansion joints shall be placed where drainage slabs abut backs of curbs, sidewalks and at contact points with other concrete structures.

Contraction Joints - Contraction joints shall be spaced at 15' intervals along the center line of center drains. These contraction joints shall be saw cut 3/8" wide minimum and 1/4 the depth of the slab using an approved concrete saw.

Saw cut contraction joints shall be made after the concrete has set sufficiently to prevent excessive raveling during sawing and shall be completed before the concrete is 48 hours old.

Finishing - Finishing shall be the same as for alley returns and driveways with the last finishing operation for structures subject to vehicular traffic being by broom or stiff brush in a direction transverse to the direction of traffic.

Curing - Curing shall be the same as for curb and gutter and driveways and alley returns.

SIDEWALKS

Sidewalks shall be constructed of Class A" concrete to the lines and grades as shown on the plans and detail drawings or as may be established in the field by the engineer. Sidewalks shall be constructed parallel to the back of the curb and on a grade parallel to

the top of curb grade. The minimum thickness for any sidewalk is 4 inches. The minimum width of any sidewalk is 4 feet.

Excavation and Subgrade - Excavation for sidewalk shall be made with street excavation where applicable. Care shall be exercised in excavating for sidewalks. Any over excavation or any fill required for sidewalk must be brought to grade in lifts not to exceed two inches (2") and thoroughly tamped. Subgrade for sidewalks shall be compacted to at least the density of the adjacent soil or to 85% modified proctor whichever is greater.

When a sidewalk is to be constructed on an embankment the fill must extend at least 3 feet beyond the edge of the sidewalk.

If the subgrade is dry or dusty it must be thoroughly moistened but not made muddy before concrete is placed.

Forms - Forms for sidewalks may be either steel or wood. Forms must be in good shape and true to line and grade. If nominal 2" x 4" lumber is used the subgrade must be finished one half inch (1/2") below the bottom of the form to provide the required 4 inch thickness.

Expansion Joints - Expansion joint material shall be pre-molded conforming to these specifications and shall be one half inch (1/2") thick. The expansion joint shall extend the full depth of the sidewalk.

Expansion joints shall be placed at points where the sidewalk contacts the back of curb, at all junctures between sidewalks all directions, and at all points where the sidewalk abuts a driveway, alley return or other concrete structure including fence foundations.

Transverse expansion joints shall be constructed in the sidewalk at intervals not exceeding twenty eight feet (28') as measured along the centerline of the walk except for sidewalks that are constructed wider than four feet (4') in which case expansion joints may be placed at intervals that are multiples of the width but not exceeding thirty feet (30').

Contraction Joints - Contraction joints consisting of trowel cuts one and one half inches (1-1/2") deep shall be spaced at four foot (4') intervals along the sidewalk. Contraction joints shall be edged using an edging tool with a 1/4 inch or 3/8 inch radius.

For sidewalks wider than four feet (4') contraction joints may be placed at intervals equal to the width of the walk up to but not exceeding ten feet (10').

Finishing - Sidewalks shall be "struck off" with a screed to provide an even surface and float finished using a wooden float.

The final finish on the sidewalk shall be accomplished by brooming or brushing using a stiff bristled brush or broom with the final strokes being in the transverse direction.

Curing - Curing shall be as specified for curb and gutter and driveways and alley returns.

CONCRETE RIP RAP

Concrete rip rap shall be constructed of concrete of the class and to the line and grades as shown on the plans.

Excavation and Subgrade - Care shall be taken not to over excavate for rip rap. The subgrade for rip rap shall be compacted to at least the density of the adjacent undisturbed soil or 85% modified proctor whichever is higher.

Forms - Forms, where required, may be either steel or wood. Forms must be in good condition and true to line and grade.

Expansion Joints - Expansion joints, where required, will meet the requirements of expansion joints materials as specified herein and will be placed as shown on the plans or directed by the engineer.

Finishing - Finishing shall be by screed and wooden float to produce true uniform surface.

Curing - Curing shall be as specified for other concrete herein.

Slope Paving - Slope paving may be required behind the curb or behind sidewalks where street paving requires deeper cuts in developed areas. Slope paving shall be constructed of Class "A" concrete and shall be constructed to the lines and grades as shown on the plans or as established in the field. Slope pavement shall be four inches (4") thick and shall be constructed in accord with the specifications for sidewalks.

When no slope grade is given on the plans the slope gradient shall be 1:1.

Unless listed separately on the bid proposal, slope pavement shall be measured and paid for as sidewalk.

4. BACKFILL AND CLEANUP

GENERAL

Backfill and clean up are an integral part of the various items covered by this specification and must be completed for each item before that item will be considered for payment.

CONCRETE STRUCTURES WITHIN THE PAVED AREA OF STREETS

Backfill and clean up for concrete structures within the paved areas of streets, alleys, etc. shall receive special attention to assure the integrity of the street pavement.

Structures constructed in previously paved areas shall have sufficient surface removed along with base and subgrade where necessary to set full face forms for the concrete. As soon as the forms are removed all loose material shall be removed from the form trench and the trench filled to the base level with Portland cement stabilized backfill material

consisting of two (2) sacks Portland cement to one (1) cubic yard of caliche base material or one (1) cubic yard "blow sand". When the cement stabilized backfill has cured the pavement edge shall be saw cut to provide true and straight lines and the pavement restored to its original or revised grade using Hot mix asphaltic concrete conforming to the requirements of Section 2-F of these specifications.

For structures constructed on previously prepared subgrade or base course, clean up and backfill shall be considered complete when the subgrade or base course has been made ready to receive the next course.

When a structure is constructed on a finished base course and it is necessary to remove base material to set forms, backfill and cleanup shall be as described for previously paved areas and shall be considered complete when the base course is made ready to receive the surface course or courses.

BACKFILL BEHIND CURBS AND ALONG SIDEWALKS

Backfill behind curbs and along sidewalks that is to be grassed shall be made using good top soil. Top soil shall be free of caliche, rocks, clods, lumps, debris and other objectionable material. This backfill shall be compacted to at least the density of undisturbed adjacent soil but not less than 85% modified proctor.

Backfill behind curbs and along sidewalks that is to receive paving shall be constructed to conform to the base and subgrade of the adjacent paving and shall be compacted to 95% modified proctor. Or the contractor may elect to backfill to the top of the base with two (2) sack cement stabilized backfill.

In undeveloped areas and in areas where no sidewalks exist the contractor shall slope from the back of the curb to a maximum height of 1/4 inch per foot rise from the top of the curb to the property line on a straight line grade. The minimum elevation at the property lines shall be top of curb elevation.

In deeper cut areas slope paving may be required. When slope paving is required it shall be constructed to the lines and grades shown on the plans. Backfill and shaping beyond the slope paving shall be in accord with the applicable portions of this specification.

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CONCRETE CURB AND GUTTER, SIDEWALKS AND DRIVEWAYS.....1

VALLEY GUTTERS, CENTER DRAINS AND RIP RAP1

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CONCRETE STRUCTURES

1. GENERAL

This specification covers concrete structures including but not limited to junction boxes, culverts, head walls, cast in place manholes, valve vaults, meter vaults and retaining walls.

2. MATERIALS

CONCRETE

Concrete for cast in place manholes, junction boxes, storm sewer inlet boxes, valve vaults and direct traffic culvert and bridge decks shall be a modified class "C" concrete using a minimum of 6 sacks cement per cubic yard with a maximum water content of 5 gallons per sack of cement and producing a concrete with 4000 psi 28 day compressive strength.

Concrete for other structures shall be class "A" as specified in "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" item number 421. Concrete for riprap shall be class "B".

Reinforcing steel shall conform to the requirements of item number 440 or "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" and shall be of the sizes and grades as shown on the plans.

3. CONSTRUCTION

Construction of concrete structures shall be in accordance with the provisions of item 420 "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges".

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FLEXIBLE BASE, CALICHE

1. GENERAL

This item consists of the construction of a caliche flexible base course to the lines, grades and thickness shown on the plans and in accordance with the provisions of the specifications.

Qualification of Material Source - There will be no designated material sources, but the source proposed by the Contractor must be approved by the Engineer. The contractor shall furnish evidence of capability to crush and screen the material with suitable equipment.

Measurement and Payment - Measurement and payment to be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Material from the approved source shall meet the following requirements when tested in accordance with the referenced testing standards:

Gradation - Tested by ASTM C 136-67 to meet the following gradation limits:

Sieve Size	Percent Passing
1-3/4"	100.0
7/8"	65-90
3/8"	50-70
No. 4	30-60
No. 40	15-35

Liquid Limit and Plasticity Index - Tested by ASTM D423-66 and D 424-59.

Liquid Limit - 30.0 Maximum

Plasticity Index - 10.0 Maximum

Triaxial Classification - Tested by Texas Highway Department Method TEX 117-E, Part II - minimum class 3.0.

Source Quality Control - The contractor shall exercise caution in the operation of the material source to prevent the inclusion of inferior materials.

Caliche 2

3. CONSTRUCTION

- A. The subgrade shall be finished true to the lines and grades as shown on the plans or as established by the Engineer and finished within specified tolerances and properly maintained to prevent drying and/or loosening of the surface.

No base material may be dumped on any subgrade until it has been tested and approved by the Engineer.

- B. Flexible caliche base material shall be placed in uniform courses and processed to provide a uniformly mixed base course of the proper moisture content for compaction. The processing and compaction procedure used shall provide a uniform base course compacted to ninety-five percent (95%) modified proctor density (YACHT T180) minimum. The minimum thickness of any one compacted course shall be three inches (3"). The maximum thickness of any one compacted course shall be eight inches (8").

Any soft or segregated spots that appear in the base shall be removed, replaced or reprocessed and recompact prior to final finishing of the base.

The finished base shall conform to the lines and grades as shown on the plans or established by the Engineer. Finished tolerances shall not exceed one half inch (1/2") in ten feet (10').

The finished base shall be primed as soon after finishing as practical and shall be protected until the hot mix asphaltic concrete surface is applied. In no case will prime be applied until the finished base has been approved by the Engineer.

4. TESTING

- A. All test for approval of the source shall be performed by a commercial lab selected by the owner and shall be paid for by the contractor.
- B. Gradation and soil constants tests (ASTM C-136, D423 and D424) and THD Triaxial Test (THD TEX117-E Part II) will be performed for source approval. Should the appearance, workability or other visual checks indicate a possible change in the material being furnished, the Engineer may require the contractor to retest the material for source approval.

Caliche 3

- C. Field quality control test will consist of the finish tolerance test and density test.

The finish tolerance test will be performed by the contractor at his expense using a 10' rolling straight edge. This test shall be performed at the direction of the Engineer or his representative. When required, the test shall consist of checking one path in each lane with the rolling straight edge.

Density test will be made by the City or a commercial laboratory chosen by the City using Troxler 3411-B nuclear density gauges or approved equal at the minimum rate of one test for each 1000 square yards of base. In no case shall less than three tests be run on any one area processed as a unit. The City will bear the cost of the first test or set of tests only. If the base fails the first test the contractor, at his own expense, will be required to have all subsequent tests performed by the commercial laboratory chosen by the city.

8/07

Caliche 5

PACKET

4.103

June 25, 2024

BITUMINOUS PRIME

1. GENERAL

This item consists of the application of a bituminous prime coat to the finished caliche base in accordance with the provisions of the Specifications.

Qualification of Material Source - Material shall be supplied by a producer with a proven performance record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment will be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Cut-back asphalt grade MC-30, Texas Highway Department Item 300.

Source Quality Control - Certificates of compliance to be furnished by the producer to the Engineer.

3. CONSTRUCTION METHODS

Condition of Base - The surface of the base shall be tightly compacted to the line and grade shown on the plans and within the tolerances of the specifications. The surface shall be clean and the base shall contain sufficient moisture to assure the proper penetration of the prime.

The prime shall be applied with an approved distributor to the surface of the base at a rate of between 0.15 and 0.40 gallon per square yard. The application rate shall be varied to meet field conditions and to obtain uniform coverage, and adequate penetration. Properly applied prime coat should penetrate from 3/8" to 1/2" into the base and should cure in approximately 72 hours with ambient temperatures at or near 70 degrees F. The prime shall be applied at a temperature within the range of temperatures recommended in Item 300 of Texas Highway Department Standard Specifications. The temperature shall be varied within this range to provide a viscosity that will assure even spreading and penetration of the base. Air Temperatures at the time of application shall be above 50°F.

BITUMINOUS TACK

1. GENERAL

This item consists of the application of a bituminous tack coat to the primed base or existing asphaltic concrete or Portland cement concrete pavement in accordance with the provisions of the specification.

Qualification of Material Source - Material shall be supplied by producer with a proven performance record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment will be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Cut-back asphalt grade RC-250, Texas Highway Department Item 300.

3. CONSTRUCTION METHODS

Conditions of Surface - Prior to application of tack to the base course the prime must be completely penetrated into the base and the surface cleaned of foreign objects.

The tack shall be applied with an approved distributor at a rate of between 0.05 and 0.10 gallons per square yard. The temperature of application shall be within the range recommended by the Texas Highway Department in Item 300. The surface temperature to which tack is being applied shall be above 50 degrees F. at the time of application.

When the asphaltic concrete surface is being placed on primed caliche base, use of the tack coat may be waived by the Engineer if the contractor can show that adequate adhesion of the surface being placed to the base course is achieved without it.

Tack coat shall be placed on all asphaltic concrete or portland cement concrete surfaces on which an additional course of asphaltic concrete surfacing is to be placed. The tack coat shall be rolled with a pneumatic roller to assure even distribution over the entire surface and to achieve proper penetration into and adhesion to the surface being overlaid.

HOT MIX ASPHALTIC CONCRETE

I. GENERAL

Includes the construction of the hot mix asphaltic concrete surface in accordance with lines, grades and the sections shown on the plans and with the provisions of the specifications.

Qualification of Material Sources - Producers of oil asphaltic concrete mixture to have a proven record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment to be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Oil Asphalt - Oil asphalt grade AC-10 or AC-20, Texas Highway Department Item 300. When no asphalt grade is shown on the plans, and unless directed otherwise by the Engineer, asphalt for this project shall be grade AC-10.

Coarse Aggregate - Crushed stone or crushed gravel with a minimum of 75 percent of the aggregates having two or more crushed faces. Additional requirements:

- (a) Los Angeles Abrasion: ASTM C 131, Wear not to exceed 40.
- (b) Decantation: Maximum 2.0 percent by weight

Fine Aggregates - Natural sand and screenings crushed from the same or similar material meeting the requirements of the coarse aggregates. Additional requirements.

- (a) Plasticity Index: Maximum of 6.
- (b) Sand Equivalents: Minimum of 50 for each individual fine aggregate.

Paving Mixtures - The paving mixture(s) shall be as shown on the plans and details. If no mixtures are shown on the plans surface or wearing courses up to 1-3/4 inches thick shall be Type D, base courses up to 2 inches thick shall be Type C and base courses over 2 inches thick shall be Type B or Type A.

(a) Gradation: The master gradations for the paving mixtures are:

TYPE "A" (Coarse Graded Base Course):	Percent Aggregate by weight or volume
Passing 2" sieve	100
Passing 1-3/4" sieve	95 to 100
Passing 1-3/4" sieve, retained on 7/8" sieve	16 to 42
Passing 7/8" sieve, retained on 3/8" sieve	16 to 42
Passing 3/8" sieve, retained on No. 4 sieve	10 to 26
Passing No. 4 sieve, retained on No. 10 sieve	5 to 21
Total retained on No. 10 sieve	68 to 84
Passing No. 10 sieve, retained on No. 40 sieve	5 to 21
Passing No. 40 sieve, retained on No. 80 sieve	3 to 16
Passing No. 80 sieve, retained on No. 200 sieve	2 to 16
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

TYPE "B" (Fine graded Base or Leveling-up course)	Percent Aggregate by Weight or Volume
Passing 1" sieve	100
Passing 7/8" sieve	95 to 100
Passing 7/8" sieve, retained on 3/8" sieve	21 to 53
Passing 3/8" sieve, retained on No. 4 sieve	11 to 42
Passing No. 4 sieve, retained on No. 10 sieve	5 to 26
Total retained on No. 10 sieve	58 to 74
Passing No. 10 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 21
Passing No. 80 sieve, retained on No. 200 sieve	3 to 21
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

Type "C" (Coarse Graded Surface Course):

Percent Aggregate
by Weight or Volume

Passing 7/8" sieve	100
Passing 5/8" sieve	95 to 100
Passing 5/8" sieve, retained on 3/8" sieve	16 to 42
Passing No. 4 sieve, retained on No. 10 sieve	11 to 37
Total retained on No. 10 sieve	54 to 74
Passing No. 10 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 27
Passing No. 80 sieve, retained on No. 200 Sieve	3 to 27
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

TYPE "D" (Fine Graded Surface Course):

Percent Aggregate
by Weight or Volume

Passing 1/2" sieve	100
Passing 3/8" sieve	85 to 100
Passing 3/8" sieve, retained on 4" sieve	21 to 53
Passing No. 4 sieve, retained on No. 10 sieve	54 to 74
Total retained on No. 10 sieve	54 to 74
Passing No. 10 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 27
Passing No. 80 sieve, retained on No. 200 sieve	3 to 27
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 4 to 8 percent of the mixture by weight.

TYPE "F" (Fine Graded Surface Course):

Percent Aggregate
by Weight or Volume

Passing 3/8" sieve	100
Passing No. 4 sieve	95 to 100
Passing No. 4 sieve, retained on No. 10 sieve	58 to 73
Passing No. 10 sieve, retained on No. 40 sieve	6 to 26
Passing No. 40 sieve, retained on No. 80 sieve	3 to 13
Passing No. 80 sieve, retained on No. 200 sieve	2 to 11
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 6.5 percent of the mixture by weight.

- (b) Tolerances: Deviations from job mix formula limited to:
- (1) Sizes larger than the 10 sieve- Plus or Minus 4 percent.
 - (2) No. 10 sieve and smaller - Plus or Minus 3 percent.
 - (3) The deviation from the job mix formula shall be further limited in that the total deviation from the job mix formula between any two adjacent aggregate grades shall not exceed the allowable deviation for either one.
 - (4) Asphalt - Plus or Minus 0.3 percent.
- (c) Density - The mixture shall be designed to produce an acceptable mixture within tolerance, at or near optimum density. The mixture molded in the laboratory should have the following percent of maximum theoretical density:
- | | | |
|---------|---------|---------|
| Minimum | Maximum | Optimum |
| 96 | 98 | 97 |
- (d) Stability: Minimum of 35 Hveem

Source Quality Control - Paving mixture and plant tests to be performed by laboratory selected and paid by the Owner, except as noted.

Job Mix Formula - The contractor shall submit a job mix formula, prepared by laboratory chosen by the owner, at least 10 days in advance of laying operations to allow time for review by the engineer. Substitution of one or more materials will require a new job mix formula and must be approved by the engineer.

The design of job mix formula whether for original submittal or revisions shall be paid for by the contractor.

Plant Tests - Check of raw material uniformity, quality and flow, hot bin gradations, temperature of mixture, mixture tests for density, stability and percent asphalt and other necessary tests to be performed by the laboratory selected by the owner for each day's production.

Oil Asphalt - Producer to furnish certificates of compliance to the Engineer.

3. CONSTRUCTION METHODS

A. GENERAL

Condition of Base - The surface of the base shall be tight and free of debris. The prime coat shall be uniformly distributed, well penetrated and completely cured prior to application of the tack coat. If the mixture will adhere to the surface of the base without the application of a tack coat, the tack coat can be eliminated. If the surface of the base is one half (1/2") inch or more lower than the proposed bottom of the asphaltic concrete it shall be corrected by placing and compacting a level up course of the asphaltic concrete before the mat is placed on it.

Stockpiling, Storage, Batching and Mixing - Shall meet the requirements of Item 340, "Texas Highway Department 1982 Standard Specifications for Road and Bridge Construction.

Weather Limitations - Shall be the requirements of Item 340, "Texas Highway Department 1982 Standard Specifications for Road and Bridge Construction." With the added provision that no asphaltic concrete shall be placed when the surface on which the mat is to be placed is below 50 degrees F.

Thickness - Shall be as shown on plans. Unless shown otherwise on the plans, the maximum compacted thickness of any one course of asphaltic concrete shall be two and one-half (2-1/2) times the maximum aggregate size of the mixture being placed. The minimum shall be one (1) inch or one and one fourth (1-1/4) times the maximum particle size which ever is greater.

B. PLACING

Placing of Asphaltic Concrete shall be accomplished using an approved self propelled spreading and finishing machine with a heated vibrating screed capable of producing a surface that will meet the requirements of the typical cross section and the surface test, and when the mixture is dumped directly into the finishing machine shall have adequate power to propel the delivery vehicles in a satisfactory manner. The finishing machine shall be equipped with a flexible spring and/or hydraulic type hitch sufficient in design and capacity to maintain contact between the rear wheels of the hauling equipment and the pusher rollers of the finishing machine while the mixture is being unloaded.

The use of any vehicle which requires dumping directly into the finishing machine and which the finishing machine cannot push or propel in such a manner as to obtain the desired lines and grades without resorting to hand finishing will not be allowed. Vehicles dumping directly or indirectly into the finishing machine shall be so designed and equipped that unloading into the finishing machine can be mechanically and/or automatically operated in such a manner that overloading the finishing machine being used cannot occur and the required lines and grades shall be obtained without resorting to hand finishing.

Automatic screed controls will be required and shall meet the requirements item, 528 "automatic screed controls for asphaltic concrete spreading and finishing machines "Texas Department of Highways and Public Transportation 1982 Specifications for Construction of Highways, Streets and Bridges".

The screed shall be ski controlled using a ski of not less than 18' in length. Curb shoe control will not be allowed.

The spreading and finishing machine shall be maintained in good working order and operated by competent trained personnel.

The Engineer may require the contractor to place a test strip to prove the capability of the machine and the competency of the operating personnel to produce a satisfactory finished surface.

In dips and on curved surfaces where the ski control cannot be used, the surface will be controlled using a 10' straight edge.

Fillet areas, turn outs and other areas not accessible to the spreading machine may be hand laid provided a satisfactory surface is produced.

C. COMPACTION AND FINISHING

Compaction Requirements - The asphaltic concrete surface shall be compacted so that the compacted mixture will contain not more than seven percent (7%) nor less than three percent (3%) air voids.

The surface of the pavement, after compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a 10 foot rolling straightedge, except as provided herein, the maximum deviation shall not exceed 1/8 inch in 10 feet, and any surface not meeting this requirement shall be corrected as directed by the engineer.

Raking and Leveling - Minor leveling may be accomplished using asphalt rakes prior to compacting the surface. The surface shall be leveled by loosening the surface of the asphaltic concrete using an asphalt rake then adding or removing material and smoothing the surface. Any large aggregate worked to the surface in this process shall be removed before compaction. The large aggregate shall not be spread over the new asphaltic concrete surface.

Edges and joints with compacted asphalt or concrete gutters shall be carefully squared and excess material removed before compaction. Care shall be taken to see that NO excess material laps over onto the surface of existing asphaltic concrete paving or concrete gutters. Large aggregate worked to the surface in this process shall be removed. It shall not be spread over the new asphaltic concrete surface.

Rolling - In general rolling shall conform to the requirements of item 340 of the Texas Department of Highways and Transportation 1982 Specifications for Construction of Highways, Streets and Bridges except as modified herein.

It shall be the responsibility of the contractor to have rolling equipment available on the job to properly compact the paving mixture in place as required without delay to the lay down operation. Rollers provided shall meet the qualifications for their type as follows:

PNEUMATIC TIRE ROLLERS: The rollers shall be acceptable medium pneumatic tire rollers conforming to the requirements of the item, "Rolling (pneumatic tire)", Type B, unless otherwise specified on plans.

TWO AXLE TANDEM ROLLER: This roller shall be an acceptable power driven tandem roller weighing not less than 8 tons.

THREE WHEEL ROLLER: This roller shall be an acceptable power driven three wheel roller weighing not less than 10 tons.

THREE AXLE TANDEM ROLLER: This roller shall be an acceptable power driven three axle roller weighing not less than 10 tons.

Vibrating rollers will not be used without prior written approval of the engineer. Written approval will be granted only upon demonstration by the contractor that the roller and operator can produce a satisfactory surface within the tolerances of these specifications. Only the operator or operators thus approved will be allowed to operate the vibrating roller on this project.

Areas not accessible to standard rollers shall be compacted using trench rollers, impact tampers, hand tamps or other approved means that will produce the density and surface required.

JOINTS- Shall be carefully rolled to provide compaction of the asphalt against the existing surface or face of the concrete gutter. Joints between concrete gutters and Hot Mix Asphaltic Concrete shall be placed so that the HMAC will be approximately 1/2 inch higher than the concrete when compaction is completed. At transverse joints such as valley gutters and fillet areas where finishing asphalt paving 1/2 inch above the edge of concrete will adversely affect ride quality the asphalt shall be finished 1/4 inch above the edge of the concrete.

Transverse joints shall be rolled in the transverse direction with the first pass extending approximately six (6") inches onto the new asphalt each additional pass shall extend approximately twelve (12") inches further onto the new asphalt until the full width of the roller is on the new asphalt. Longitudinal rolling may begin then.

All transverse joints shall be checked with a 10" straight edge while the material is

still hot enough to roll. Any corrections shall be made by loosening the material using an asphalt rake and adding or removing material and recompact the surface. The surface shall be rechecked and when the joint is acceptable the asphalt spreading machine may proceed with the pass.

Final or finish rolling shall be accomplished using a two axle tandem roller to remove roller marks. This rolling shall be accomplished after the surface has cooled sufficient to minimize further marking but before it is too cool to respond to rolling.

STRAIGHTEDGES AND TEMPLATES - The contractor shall provide acceptable 10 foot straightedge for surface testing. Satisfactory templates shall be provided as required by the Engineer.

4. FIELD QUALITY CONTROL

Test Lots - Field Quality Control Tests shall be made by lot with a lot being the amount of contiguous surface laid in one day. No lot shall exceed 10,000 S.Y. If a days laying exceeds 10,000 S.Y., that days laying shall be divided into two approximately equal lots. The same lot divisions shall be used for all Quality Control Tests. Each separate block or combination of contiguous (blocks) of paving shall be considered as a separate lot even though they may be placed in a single day and do not comprise 10,000 S.Y. of surface.

Surface Tests - Surface tolerance tests will be performed in both longitudinal and transverse directions. The test for longitudinal surface tolerance will be performed with a ten-foot rolling straightedge furnished by the contractor, and calibrated and used in accordance with the manufacturer's recommendation or other approved method.

The maximum allowable deviation in surface shall be 1/8 inch in 10 feet. Tests for longitudinal surface tolerance will be performed by the contractor, accompanied by the engineer within 24 hours of the completion of a lot. One path in each lane for the length of the entire lot will be tested. The location of the test path (Distance from centerline or pavement edge) will be determined by the engineer through the use of random numbers. Any deviations in the surface finish of a roadway wearing course which exceeds 1/4 inch must be corrected. After corrections have been made, the entire lot must meet the 1/8 inch surface tolerance.

Thin course "scab on" patching will NOT be permitted. Corrections may be made by planning, milling and patching or by removing and replacing affected surface area.

When milling and patching is used to correct surface defects the minimum depth of removal shall be 1".

For milling and patching or surface removal the area removed or milled shall be sufficiently large to avoid the appearance of patching.

When planning is used to correct defects the thickness of the remaining paving shall meet the thickness requirements as shown on the plans.

Surface tolerance test will be performed on the last or wearing course only.

Asphaltic concrete pavement constructed under these specifications that does not meet the surface tolerance requirements and is allowed to remain in place will be paid for at a reduced rate determined by multiplying the price bid for the wearing surface course by a surface tolerance quality factor. This rate shall apply to the entire lot.

Lower courses will not be affected by this quality factor but will be paid for at the price bid or such price as it may be affected by other quality factors.

The surface tolerance quality factor will be determined according to the following schedule:

Linear % of pavement exceeding 1/8 inch surface tolerance			Surface tolerance quality factor
0.0	to	1.0	1.0
1.1	to	1.5	0.9
1.6	to	2.5	0.8
over		2.5	0.5

Roadway surface requirements will not be applied for paved drives, aprons, turnouts, and other irregular sections, however, asphaltic concrete shall be placed in such a manner as to provide a neat and uniform appearance and shall be compacted by methods satisfactory to the engineer.

The contractor may request permission to reconstruct a portion of the pavement when, in his opinion, the surface tolerance quality factor can be improved. Upon approval of the engineer, the contractor shall take sufficient tests to isolate the portion or portions of pavement to be pre-constructed and remove and reconstruct the pavement. All costs in connection with this reconstruction are to be born by the contractor. The minimum width of this reconstruction shall be 1/2 the street width unless approved otherwise in writing by the engineer. The portions reconstructed shall be re-tested and the surface tolerance quality factor recomputed using the new information along with the test from the area within the portion of the lot not reconstructed.

When other quality factor reductions are provided for on the plans or in the specifications the effect shall be cumulative ie: $QF1 \times QF2 \times QF3 \times \dots \times QFn \times \text{unit price}$.

No payment will be made for pavement with a combined quality factor of less than 0.5.

Thickness Test - Thickness test will be made by the engineer on each course of asphaltic concrete laid. Test specimens shall be made by a commercial laboratory selected by the owner. Test specimens shall be cores having a minimum nominal diameter of 6". These cores shall be made in the presence of the inspector at locations designated by the inspector using an approved power operated coring machine.

For thickness and compaction test, each lot shall be divided into approximately equal sublots corresponding in width to each pass of the lay down machine and containing up to but not exceeding 2,000 square yards each. If a lot contains less than 2,000 square yards the engineer may, at his option, divide the lot into two equal sublots, or, if the contractor has a record of satisfactory workmanship, the engineer may waive tests on said lots.

The engineer will locate one test spot for each 1,000 S.Y. and/or fraction thereof in each sub-lot using random numbers. If a spot thus located falls within one foot of a longitudinal joint or lip of gutter or within two feet of an unsupported edge or within 15 feet of the beginning or ending edge of a pass, the engineer will relocate the spot using random numbers. The commercial laboratory chosen by the owner will remove the test specimen from each designated spot, mark the specimen and the adjacent pavement for future reference and perform the required tests. Test specimens shall be removed with special caliper type tongs having circular jaws of the diameter of the specimen being removed. These jaws shall grip at least 1/2 of the circumference of the specimen. Screw drivers or other type of prying instruments shall not be used to remove the specimens.

The thickness of a specimen shall be determined by averaging four (4) measurements made at ninety degree (90) intervals around the specimen. Any thickness less than design thickness shall be considered as deficient.

For hot mix asphaltic concrete pavement less than 2 inches thick the maximum allowable deficiency in any one test specimen is 1/8 inch provided that no more than twenty five percent (25%) of the specimens tested show a deficiency. For pavement in excess of 2 inches in thickness the maximum allowable deficiency in any one specimen shall be 1/8 inch plus 1/16 inch for each additional inch of thickness provided that no more than twenty five percent (25%) of the test specimens show a deficiency.

When a test specimen has a greater deficiency and less than (25%) of the test specimens show a deficiency the contractor shall, at his own expense, determine the extent of the deficiency and correct it by removing and replacing the surface. The minimum width for such correction will be the full width of the pass or passes of the lay down machine in which the deficiency occurs.

The minimum length of such correction shall be three times the width removed. When more than (25%) of the test specimens show a deficiency the surface may at

the engineers option be declared uniformly deficient and the contractor shall correct the deficiency by removing and reconstructing the surface or by constructing an overlay of not less than 1 inch thickness over the deficient area. The construction of an overlay will require milling at lip lines and dips.

The corrected surface shall meet all the requirements of these specifications.

Asphaltic concrete pavement constructed under these specifications that is less than design thickness, if allowed to remain in place, will be paid for at a reduced rate determined by multiplying the unit price bid in the bid proposal by a thickness quality factor. This rate shall apply to the entire lot in which the deficiency is found.

The thickness quality factor for hot mix asphaltic concrete pavement less than 2 inches in thickness shall be:

Thickness Deficiency	Quality Factor
Maximum 1/8" for any one specimen with no more than 25% of the specimens showing a deficiency.	1.0
Pavement not meeting the 25% limitation with an average specimen deficiency up to 1/8 inch.	0.75
Average specimen deficiency of 1/8 inch to 1/4 inch	.55
Average deficiency of more than 1/4 inch	0.0

The thickness quality factor for hot mix asphaltic concrete more than 2 inches thick will be 1.0 if the maximum deficiency for any one specimen is 1/8 inch plus 1/16 inch for each additional inch of thickness over 2 inches and not more than twenty five percent (25%) of the test specimens in the lot are deficient. For thickness test that fall outside this area either by single specimen thickness deficiency or more than twenty five percent (25%) of the specimens showing deficiency the thickness quality factor shall be computed as follows:

$$\text{Thickness Quality Factor} = \frac{1}{\left(\frac{1}{\text{Thickness Ratio}} \right)^2}$$

The thickness ratio for a lot is the average specimen thickness for that lot, with no allowance for thickness in excess of design, divided by the design thickness. For determining the average specimen thickness, those specimens in excess of design thickness shall be considered at design thickness.

The minimum thickness quality factor for which payment will be allowed is .55. Any pavement with a thickness quality factor below .55 will be considered as having a thickness quality factor of 0. This shall apply only if the contractor requests, in writing, to have this paving remain in place and this request is approved in writing by the engineer.

When the deficient area is in a lower course of a multi-course paving structure the contractor may reduce or correct the deficiency by increasing the thickness of the subsequent course or courses as follows:

When subsequent course is	Maximum increase in course thickness
Type B	1/2"
Type C	3/8"
Type D	1/4"

When corrected in this manner the thickness quality factor shall be determined using the combined thickness of the corrected courses and shall apply to all unit prices applicable to this lot.

The contractor may request permission to reconstruct a portion of the pavement when, in his opinion, the thickness quality factor can be improved. Upon approval of the engineer, the contractor shall take sufficient tests to isolate the portion or portions of pavement to be reconstructed and remove and reconstruct the pavement. All cost in connection with this reconstruction are to be born by the contractor. The minimum width of this reconstruction shall be 1/2 the street width unless approved otherwise in writing by the engineer. The portions reconstructed shall be retested and the thickness quality factor recomputed using the new information along with the test from the area within the portion of the lot not reconstructed.

When other quality factor reductions are provided for on the plans or in the specifications the effect shall be cumulative ie: $QF1 \times QF2 \times QF3 \times \dots \times QFn$ x unit price.

No payment will be made for pavement with a combined quality factor of less than 0.5.

Compaction Test: Compaction test will be made by the commercial laboratory chosen by the owner on the core samples removed from the paving for thickness testing.

The percent air voids will be calculated using maximum theoretical specific gravity of the mixture.

The contractor may attempt to correct deficiencies in compaction by additional pneumatic rolling upon written permission of the engineer. Requests for permission to conduct additional rolling shall be submitted, in writing, to the engineer no later than three days following notification of the deficiency by the commercial laboratory and the additional rolling shall be completed within ten (10) days following said notification weather permitting.

In no case shall the additional rolling be delayed beyond thirty (30) days from the date the surface was laid. All cost for additional rolling and additional coring and testing of the re-rolled surface shall be born by the contractor.

Asphaltic concrete pavement not meeting this specification and that is allowed to remain in place shall be paid for at a reduced rate determined by multiplying the price bid in the bid proposal by a compaction quality factor determined according to the following schedule:

Percent air voids (average of all specimens for the lot)	Compaction Quality factor	
less than 3	0	
3.0 to 8.0	1.0	
8.1 to 9.0	0.9	
9.1 to 10.0	0.7	
10.1 to 11.0	0.5	and the engineer may require a chip seal to be applied at the contractor's expense
More than 11	0	and the engineer may require a chip seal to be applied at the contractor's expense.

NOTE: HMAC surfacing with between 11% and 15% air voids may, upon written request by the Contractor, be reviewed by the Engineer to determine if it may be left in place. The Engineer's review will consider the type of street and expected traffic conditions among other factors and a written determination will be issued. If the surface is allowed to remain in place, a chip seal will be required at the Contractor's expense. The quality factor for this paving will remain at 0.

The reduced rate shall apply to the entire lot.

The effect of compaction quality factors shall be cumulative and shall be applied as described for surface quality factors and thickness quality factors.

Cost for Field Quality Control - The surface tolerance test shall be made by the contractor at his expense.

The initial thickness and compaction test will be made at no cost to the contractor except for the cost of materials and labor to repair the holes left when cores are removed.

The cost of all thickness test to isolate a deficient area and the cost of retesting the corrected area shall be born by the contractor.

The cost of all retesting of compaction after additional rolling to correct compaction deficiencies shall be born by the contractor.

Areas reconstructed to remedy deficiencies shall meet all the requirements of these specifications and shall be tested in the same manner as original construction. The cost of all tests on reconstructed areas shall be born by the contractor.

5. ADDITIVES

Anti-stripping: An approved liquid anti-stripping agent shall be added to the asphalt used in the hot mix asphaltic concrete. The rate of application shall be in accordance with the manufacturer's recommendation. The minimum anti-stripping agent added shall be one-half (1/2) of 1%.

The anti-stripping agent used shall have a proven record when used with similar aggregate and shall be approved by the engineer in writing prior to the date set for reception of bids.

08/07

P.V.C. PIPE CASINGS

1. SCOPE

This item consists of furnishing and installing PVC pipe for casing for future water and electric lines at locations shown on the plans or as directed by the Engineer.

2. MATERIAL

Pipe shall be ASTM D 1785 schedule 40 PVC pipe or ASTM D 2241 PVC SDR 32.5 pressure pipe. The ASTM designation and schedule or SDR shall be clearly marked on the outside of the pipe.

3. CONSTRUCTION

Pipe shall be laid in straight alignment and grade in trenches as narrow as the diameter of the pipe can be laid. Pipe shall be placed after the sub grade is prepared but before base material is placed. Bedding under the pipe shall be a minimum of 2 inches in thickness and shall be carefully graded and leveled before pipe is placed. Joints shall be water tight. They may be solvent cement welded using approved materials, or may be made using a gasketed collars or push on gasketed bell and spigot. When collars are used care shall be exercised to assure that the collar is centered over the joint. All joints shall be made in accord with the manufacturer's recommendations. After pipe has been joined and inspected the pipe shall be encased in bedding/encasement material to a thickness of 3 inches above the pipe. Care shall be exercised to be sure the encasement material is worked in under the haunches of the pipe and compacted along the side of the pipe to assure adequate lateral support. The balance of the trench shall be back filled using cement stabilized backfill consisting of 2 sacks of Portland cement to 1 cubic yard of blow sand or crushed caliche mixed with sufficient water to form a stiff place able mixture that can be consolidated in the trench by rodding or vibrating. The back fill shall be "struck off" at the finished sub grade level using square point shovels or suitable screeds. The ends of the pipe shall be tightly plugged to prevent the entrance of water debris or other foreign material. These plugs shall be PVC or rubber stoppers designed to endure until the water lines and/ or electric lines are places.

4. MEASUREMENT AND PAYMENT

Casing pipe shall be measured by the linear foot along the center of the pipe and shall be paid for at the unit price in the bid proposal.

WATER LINE SPECIFICATIONS

1. SCOPE OF WORK

The work covered by this section consists of all water pipe lines and piping, including valves, valve boxes, tapping sleeves, fire hydrants and other accessories, required to complete the project. The contractor shall furnish all materials, labor, superintendence, tools, equipment and incidentals necessary for the complete construction of this work in accordance with the drawings and these specifications.

2. PIPE AND MATERIAL

2.1 General

Pipe shall be polyvinyl chloride (PVC) AWWA C900, ductile iron AWWA C-151 or steel cylinder concrete pipe AWWA C-303.

2.2 Polyvinyl Chloride (PVC) Pipe

A. PVC pipe furnished for use on this project shall conform to the requirements of AWWA C900 Polyvinyl Chloride (PVC) Pressure Pipe, 4 in. through 12 in., for water distribution pressure class 150, DR18. and shall be NSF approved for potable water supply.

B. The pipe furnished shall have an integral bell designed for joint assembly using elastomeric seals.

C. Markings for the pipe shall include all the requirements of AWWA C900 and the NSF approval stamp.

D. Elastomeric seals shall be furnished by the pipe manufacturer. Seals shall be manufactured to conform with the requirements of ASTM F4 77 and shall be specifically designed for use with the pipe furnished.

E. Lubricants intended for use with PVC pipe and seals (gaskets) shall be compatible with both PVC and the seal material. Lubricant shall not support growth of bacteria and shall not adversely affect the potable quality of the water that is to be transported.

F. Pipe laying lengths shall be 20'.

G. Service taps on PVC water lines shall be made using hinged type or double strap type saddles. Tapping saddles shall support the full circumference of the pipe and shall have a bearing area of sufficient width along the axis of the pipe to prevent distortion of the pipe when saddle is tightened.

No direct taps into the wall of PVC pipe will be permitted.

Seals for tapping saddles shall be recessed into the body of the saddle and shall be

a rubber - compound conforming to the requirements of ASTM F477.

Tapping saddles shall be SMITH-BLAIR Taper Seal Style 313 or DMD Dresser style 194 or approved equal.

H. Tapped connections for water mains and fire lines made on PVC water mains shall be accomplished using full bodied ductile iron tapping sleeves of a pressure rating equal to or greater than the pressure rating of the pipe specified.

I. Bedding for AWWA C900 PVC water pipe shall extend from a minimum depth of 4 inches below the outside of the water line to a minimum cover of 6 inches over the top outside of the water line.

J. AWWA C900 PVC water pipe shall be installed in accord with the applicable requirements for installing ductile iron pipe.

Care shall be taken to install each joint of PVC water pipe to, but not beyond the factory insertion mark on the pipe.

When a joint of PVC water pipe must be cut, the end of the pipe shall be carefully beveled to match the factory bevel on the uncut pipe. An insertion mark matching the factory insertion mark on the uncut pipe must be made before the pipe is inserted into the bell.

When PVC water pipe is to be inserted into a ductile iron fitting or valve, the factory bevel must be removed to form a square plain end pipe.

2.2 (a) Metallic Marking Tape (For PVC Water Pipe)

2.2(a).1 General

When non-metallic pipelines are to be installed, then the Contractor shall furnish and lay, above the pipeline, a continuous strip of metallic identification tape.

2.2 (a).2 Tape Material

The metallic identification tape shall be at least two inches (2") in width and shall be of corrosive resistant metal of sufficient thickness to be stable and reflect electronic signals to electronic pipeline detector when buried to a dept of twenty-four (24") below normal ground level.

The metallic tape shall be painted blue on one side and shall have 1-inch high letters painted continuously on the same side of the tape which read, "CAUTION: BURIED WATER LINE BELOW" or other words to this effect.

The marking tape shall be "Detectable Warning Tape", as manufactured by the Omega Marking Company, or equal approved by the Engineer.

2.2(a).3 Construction Methods

The Contractor shall backfill over non-metallic pipelines to a depth which is less than twenty-four (24") and not more than twelve inches (12) from the top of the cut of the ditch section in which the pipeline is laid. Contractor shall stop the backfilling material to a generally uniform level. All machine tamping, jetting and other compaction activities shall be accomplished up to this point of height in the backfilling the marking tape is placed in the trench.

The Contractor shall then lay the marking tape in the pipe trench and shall be held in position by the spot placement of backfill materials over it to keep it from sliding to the sides and/or from being blown about in the ditch by the wind. The tape shall be laid with the painted side, which shall also be the side with the identification lettering on it, in the "up" position. The tape shall be laid in the flat position and kept there until backfill is accomplished.

The Contractor shall then complete the backfilling operation in such a manner that the marking tape is not cut, crimped, ruptured or separated by the backfilling work.

2.2(a).4 Measurement and Payment

No separate pay item will be provided for furnish and placing the marking tape. This item shall be considered subsidiary to the non-metallic pipe being placed.

2.3 Ductile Iron Pipe

A. All ductile iron pipe used in the construction of water works improvements shall be Cement Lined and shall be manufactured in accordance with and shall meet the requirements of AWWA Specification C-151.

B. Pipe shall be cast in lengths of not less than 12 feet and shall be designed for a working pressure of 150 pounds per square inch. Thickness of ductile iron pipe shall be as shown on the plans and bid proposal or shall be computed in accordance with AWWA Specification C-150, based on 150 pounds per square inch working pressure for 10 feet of cover and laying condition 2.

C. All ductile iron pipe shall have an exterior, bituminous coating and an inside cement-mortar lining in accordance with the requirements of AWWA Specification C-104.

2.4 Polyethylene Plastic Tubing

Service lines shall be constructed with polyethylene plastic tubing as specified in ASTM D 2737 with a rating of 160 psi.

2.5 Ductile Iron Pipe Fittings

All fittings for ductile iron pipe and PVC pipe shall be ductile iron and shall be mechanical joint all connections except tees for fire hydrant leads unless shown otherwise on the plans. Tees for connecting fire hydrant leads shall be MJ- with a flange outlet.

All ductile iron fittings shall conform to AWWA Specification C-110, designed for a working pressure of 250 psi. All ductile iron fittings shall have an external coating and shall be cement lined in accordance with the specifications for coating and lining the pipe.

2.6 Pretensioned Concrete Cylinder Pipe

A. The contractor shall furnish and install all concrete cylinder pipe and fittings, including connections and appurtenances complete as shown on the plans and specified herein.

B. The contractor shall submit six (6) sets of full and complete shop drawings on the concrete cylinder pipe and fittings. All of the drawings and data shall be complete and shall include a complete description of the pipe offered, including cuts, tabulated layout and all pertinent engineering data required for a complete evaluation of the submittal. Submittal data shall be in such form and so presented that the Engineer may readily review the data.

C. Prior to delivery of the pipe to the project site, the manufacturer shall furnish an affidavit certifying that all pipe, fittings, and specials, and other products and materials furnished, comply with the applicable provisions of this specification.

D. The pipe manufacturer shall furnish a factory trained, job experienced field representative who shall visit the project periodically during the course of installation. He shall also be subject to call by the contractor and/or engineer to advise and assist with the solution of field problems.

During visits, the representative shall observe all phases of the project including location and condition of pipe strung ahead of the contractor, trench width, if applicable, bedding and backfill, assembly of pipe joints and protection of steel. If, in the opinion of the representative any phase of the installation is unsatisfactory, he shall so advise the contractor's superintendent and also advise the owner or engineer's representative on the job site.

E. All closure sections shall be the jack on type and "field welding" will not be permitted without the written permission of the engineer.

F. Pipe manufacturer will install all necessary taps for the contractor to disinfect and field hydrostatic test the pipe.

G. Pretensioned concrete cylinder pipe, fittings and specials shall be designed, fabricated and tested in accordance with the latest requirements of AWWA C-303, "Reinforced Concrete Pressure Pipe Steel Cylinder Type, Pretensioned, for Water and Other Liquids" with additional requirements or modifications as described herein.

H. Pretensioned concrete cylinder pressure pipe shall be designed for 150 psi, working pressure and manufactured in 32 foot nominal lengths in accordance with the provisions of AWWA Standard C-303.

I. Inspection and Testing

(1) The owner reserves the option to have an independent testing laboratory, at the owner's expense, inspect pipe and fittings at the pipe manufacturer's plant to ensure compliance with the applicable specifications. The owner's testing laboratory and Engineer shall have free access to those parts of the manufacturer's plant that are necessary to ensure compliance with the governing standard. The pipe manufacturer shall notify the owner, in writing, at least two weeks ahead of pipe fabrication as to start of fabrication and fabricating schedule so that the owner can advise the manufacturer as to owners' decision regarding tests to be performed by an independent testing laboratory. In event the owner elects to retain an independent testing laboratory to make material tests and weld test, it is the intent that the tests be limited to one spot testing of each category unless the tests do not show compliance with the standard. If these tests do not show compliance, the owner reserves the right to have the laboratory make additional tests and observations to ensure compliance of the finished product with the standard.

(2) In any event, the manufacturer shall perform the tests described in AWWA C 303, and furnish the owner with a copy of the test reports, if requested, at the expense of the pipe manufacturer. The pipe manufacturer shall furnish the owner with affidavit of compliance as outlined in the standard.

(3) All welds for water tightness in special pipe and fittings that have not been hydrostatically tested may be examined by use of visible dye penetrant system meeting requirement of ASTM EI65; however, collar reinforcement and all other lap welds shall be tested by introducing air under 10 psi pressure between the collar and cylinder and checking for leaks around and through the welds with soap solution.

The area to receive the dye penetrant shall be cleaned free from contaminants that might interfere with the penetrant process. The temperature of the steel in the weld area shall be between 60 and 125 degrees F. when the penetrant is applied. Dwell time of six hours shall be allowed after application of the penetrant and developer before interpreting the results.

Defects that are found shall be repaired and the test repeated until all defects

are eliminated. Colored penetrant shall be removed before fittings are lined.

2.7 Casing Pipe

Casing pipe to be installed in bore or open cut may be limited service pipe, corrugated galvanized steel pipe or new straight seam or spiral welded steel pipe. Casing pipe shall be furnished in thickness or gage as shown on the plans.

Limited service pipe proposed for use on this project must be approved a minimum of four (4) working days prior to the time of opening bids and shall be in good condition and shall meet the same service requirements as the corrugated galvanized steel or welded steel pipe.

Welded steel casing pipe shall be coated inside and out using a coal tar epoxy or shall be bituminous coated in side and out by the hot dip method.

2.8 Bedding Materials

A. All water pipelines placed on this project shall be bedded with crushed stone bedding materials to the minimum as shown on the plans and in the Detail Drawings.

B. Granular material furnished for foundation, bedding, encasement, backfill, or other purposes as may be specified, shall consist of any natural or synthetic mineral aggregate such as, crushed gravel, crushed rock, crushed stone, or slag, and shall conform to the following specifications and/or gradation.

Note, all materials used for these purposes shall be crushed and shall have at least two broken faces. Pea gravel will NOT be allowed.

	Foundation	Bedding	Encasement	Backfill
ASTM c33 Grade #57	X			
ASTM C33 Grade #67	X			
ASTM C33 Grade #8		X	X	
THD 1982 ITEM 302				
Type "D" Grade #4		X	X	
THD 1982 Item 302				
Type "D" Grade #5			X	
Crusher Fines**			*X	X

* 100 percent of crusher fines that are to be used within 12 inches of the top of pipe must pass the 3/4" sieve.

**** Approximate Gradation for Crusher Fines**

Sieve Size	% Passing
2 inch	100
#4	35 - 100
#10	20 - 100
#40	5 - 35
#200	4 - 10

Crushed stone material proposed as an alternate for use on this project and not meeting the above specifications must be approved in writing at least 48 hours prior to the time scheduled for opening bids.

C. Granular materials provided for Foundation, Bedding, Encasement, or backfill use as required by the contract, either as part of the pipe item work unit or as a separate contract item, shall be classified as to use in accordance with the following:

MATERIAL USE DESIGNATION	ZONE DESIGNATION
Granular Foundation	Placed below the bottom of pipe grade as replacement for unsuitable or unstable soils, to achieve better foundation support.
Granular Bedding	Placed below the midpoint of the pipe prior to pipe installation, to facilitate proper shaping and achieve uniform pipe support. Also for Class B Bedding where specified.
Granular Encasement	Placed below an elevation one half (6") foot above the top of pipe, after pipe installation, for protection of the pipe and to assure proper filling of voids and thorough consolidation of backfill.
Granular Backfill	Placed below the surface base course, if any, as the second stage of backfill, to minimize trench settlement and provide support for surface improvements.

In each case above, unless otherwise indicated, the lower limits of any particular zone shall be the top surface of the next lower course as constructed. The upper limits of each zone are established to define variable needs for material gradation and compaction or void content, taking into consideration the sequence of construction and other conditions. The material use and zone designations described above shall only serve to fulfill the objectives and shall not be construed to restrict the use of any particular material in other zones where the gradation requirements are met.

3. VALVES AND VALVE BOXES

3.1 General

A. Valves 4" through 12" shall be resilient seated gate valves with non-rising stems and shall open by turning to the left (counter clock wise).

B. Valves 14" and larger shall be resilient seated butterfly valves and have operators suitable for direct burial and shall open by turning to the left (counter clock wise).

All valves except valves for use in fire hydrant leads shall have mechanical joint ends unless shown otherwise on the plans. Valves for use in fire hydrant leads shall be flange by mechanical joint.

C. All valves and fire hydrants shall be spray coated with a two component thermal setting epoxy to cover all interior wetted ferrous surfaces. Finished coating shall have a minimum thickness of 4 mils. The coating shall conform to the coating section of these specifications.

D. All valves for buried service shall be equipped with 2" square AWWA operating nuts.

3.2 Gate Valves

A. Gate valves shall be iron body, resilient **wedge gate** and shall be in compliance with AWWA Standard C-509-80 or latest revision thereof and shall have the following design features:

B. All valves shall have a working pressure of 200 psi and shall be bottle tight tested at this pressure from both directions. The gate body shall also be hydrostatically tested at 400 psi. Zero leakage will be required in all tests. The body, bonnet, and stuffing box shall be flange together with ASTM A-307 Grade B bolts and nuts to insure repairability.

C. Stems shall be machined from modified manganese bronze rod with an integral forged thrust collar machined to size.

D. Stem seals shall be dual "O" ring type.

E. Valve discs shall be rubber encapsulated or have disc seat rings molded of natural rubber, internally steel reinforced retained to the disc by self-locking type 304 stainless steel screws. Valve gates shall seat against a machined epoxy coated mating surface in the body of the valve.

F. All internal ferrous metal surfaces (machined or cast) shall be factory spray coated with a two component thermosetting epoxy to a nominal thickness of 4 mils and the exterior shall be coated with asphalt varnish as specified for coating of the pipe. (See Sec. 3.4 of these specifications for epoxy coating).

G. Valves shall be Mueller A-**2360** or Dresser-M&H **4067** or approved equal. Any alternate (approved equal) to these specifications **shall have completely interchangeable parts with either of the specified valves.**

3.3 Butterfly Valves

A. General - All butterfly valves shall be of the rubber seated tight-closing type. They shall meet or exceed AWWA Standard C-504, Class I50B. Both valve ends shall be mechanical-joint per AWWA Standard C-III. Accessories (bolts, glands, and gaskets) shall be supplied by the valve manufacturer.

B. All valves must use full AWWA C-504 Class I50 B valve shaft diameter, and full Class I50 B underground service operator torque rating throughout entire travel, to provide capability for operation in emergency service.

C. Valve body shall be high strength cast iron ASTM A 126 Class B with I8-8 type 304 stainless steel body seat. Valve vane shall be high strength cast iron ASTM A 48 Class 40 or ASTM A 536, Grade 65-45-I2 ductile iron having rubber seat mechanically secured with an integral I8-8 stainless steel clamp ring and I8-8 stainless steel self locking screws.

D. Rubber seat shall be a full circle 360° seat not penetrated by the valve shaft. Valve shall have permanently set two way thrust bearing. Packing shall be designed for permanent duty in underground service.

E. Valve operator shall be of the traveling nut type, sealed, gasketed and lubricated for underground service. It shall be capable of withstanding an overload input torque of 450 ft. lbs. at full open or closed position without damage to the valve or valve operator. It shall be designed to resist submergence in water to 25 ft. head pressure. Number of turns to operate valve shall be as listed below in order to closely resemble conventional distribution valve practices and to minimize water hammer:

Pipe and Valve Size	Turns to close	Pipe and Valve Size	Turns to Close
4" - 6"	16-1/2	14" - 16"	48"
8"	24	18" - 20"	72
10" - 12"	36	24"	90

F. Valves shall be capable of easy closure by one man using standard valve key, even under emergency line-break conditions as severe as those that would - cause a valve maximum opening torque requirement of as much as two times AWWA Class I50 B.

G. All valves shall be tested bottle-tight at rated working pressure by the manufacturer as follows:

14" up. 150 psi

In addition a hydrostatic test with vane partially open shall be given to the assembled valve as follow:

14" up. 300 psi

H. Valve shafts shall be 18-8 type 304 stainless steel. Shaft bearings shall be of the self lubricating sleeve type.

I. Valve discs or vanes for valves 30" and larger shall be the flow through (bridge or truss) type.

J. Butterfly valves shall be Dresser-M&H Model "450", "4500" or "1450" or Mueller line seal III or approved equal. Alternates (approved equal) to these specifications must be approved in writing 48 hours prior to time bids are received.

3.4 Coating

A. The coating shall be a two part thermosetting epoxy protective coating and shall function as a physical, chemical and electrical barrier between the base metal to which it is applied and the surroundings.

B. The coating shall be non-toxic and shall not impart taste to water. The coating must be formulated from materials deemed acceptable per the FOOD AND DRUG ADMINISTRATION DOCUMENT TITLE 21 of the FEDERAL REGULATIONS ON FOOD ADDITIVES SECTION 121.2514 entitled, RESINS AND POLYMERIC COATINGS.

C. The coating shall have a satin finish and shall be suitable for field over coating and touchup with same coating material without sanding or special surface preparation, or application of heat in excess of room temperature.

D. The coating shall have a successful record of performance in valves, pipe or other allied equipment for a minimum of two years.

E. The coating adhesion to the substrate shall exceed cohesion of the coating film as demonstrated by the following test:

(1) Prepare test panel and apply coating per manufacturer's recommendation.

(2) After sample has properly cured per manufacturer's recommendation, scribe an "X" using a sharp knife or scalpel through the coating to the metal substrate.

(3) Then with the point of the knife at the juncture of two scribes, attempt to lift off coating. Coating should not lift off substrate or between coats readily, but should break up leaving coating material on the substrate of this damaged area.

(4) No disbandment of the film shall be noted as tested above after immersion in tap water for 1500 hours at 100°F.

F. A falling sand abrasion test using ASTM D968 shall produce an abrasion coefficient of 25-30 liters/mil. As an alternative, a Taber Abrader Test should find 3.5 - 3.7 milligrams coating loss per 100 cycles when using a CSF 10 Wheel (1000 gram weight).

3.5 Valve Boxes

All valves to be used in buried service shall be enclosed in cast iron valve boxes. Care shall be taken to place and maintain the 2" square operating nut in the center of the valve box. The valve box shall be two piece cast iron suitable for use with PVC pipe box risers. The 6 inch diameter cover shall be marked "Water". The PVC riser pipe shall be furnished in lengths as required (minimum pipe cover 42") PVC pipe for valve box riser may be ASTM C-900, ASTM D1785 schedule 40, ASTM D2241 pressure class 125 or ASTM D3034 DR 35. Valve boxes shall have a concrete ring 8" thick and having a radius equal to the radius of the valve box plus one foot (1') cast around them. Valve boxes placed in unpaved areas shall be set level with or slightly higher than the finished ground elevation. Valve boxes set in paved areas shall match the finished pavement surface.

3.6 Fire Hydrants

A. Fire hydrants shall conform to the requirements of AWWA C 502 dry barrel type. The fire hydrants shall be designed for a depth of bury of 4.5 feet, however the depth of bury may vary according to field conditions and extensions or shorter bury depth may be required.

B. The hydrants shall have a 5-1/4 inch valve opening, two 2-1/2 inch hose nozzles and one 4-1/2 inch pumper nozzle.

C. Hose threads shall be National Standard threads.

D. The hydrants shall be sized for 6-inch mains and shall have an inlet connection compatible with the type pipe used. All gaskets, nuts, bolts and other jointing materials shall be considered part of the fire hydrant installation.

- E. Operating nut shall be standard 1-1/2 inch pentagon opening counter-clockwise. The hydrant shall close with the pressure.
- F. Hydrants shall be painted Federal Safety Yellow.
- G. Fire hydrants shall have all interior wetted ferrous surfaces epoxy coated as required in the general and coating section of this item.
- H. The hydrants shall have a minimum of two (2) drain holes located on opposite sides of the hydrant. The entire drainage channel must be made of non-corrosive material and sealed by acceptable resilient material (metal and/or leather seals are not acceptable).
- I. The hydrants shall have a breakable safety flange and breakable stem coupling which breaks cleanly upon impact.
- J. The hydrants shall be AWWA improved type hydrants and shall have self-oiling reservoirs.
- K. Fire hydrants shall be the Mueller Centurion, the Dresser -M & H 929 Reliant, or The American Darling.

4. EXCAVATION, TRENCHING BEDDING AND BACKFILLING

4.1 Trenching

- A. The trench shall be excavated to the lines and grades as established by the engineer and as shown on the plans. The depth of cover for all main lines on which the grades and elevations are not shown on the plans, shall in general be Forty-two (42) inches. The amount of cover may vary over or under 42 inches as directed by the engineer but in no case will the amount of cover be less than thirty-six (36) inches. Depth of cover for service lines shall be as shown on the detail drawings.
- B. Water lines constructed in proposed streets and service drives shall have the depth of cover measured from the finished grade. The contractor is hereby cautioned that proposed street finished grades are sometimes cut below the existing ground elevation.
- C. The minimum width of the trench shall be the outside diameter of the pipe plus twelve (12) inches for pipe diameter through 18", the outside diameter of the pipe plus eighteen (18) inches for pipe diameters over 18". The trenching equipment shall be maintained on a sufficiently level road bed to provide substantially vertical trench walls. The maximum horizontal offset of the trench wall from bottom of trench to the top of the trench (under-cutting) shall be four (4) inches.

D. The trench shall be over excavated to an even grade to the depth of required bedding so that the bottom of the pipe will rest on a uniform thickness of bedding material on the bottom of trench throughout the entire length of the pipe. In order to obtain a true even grade, the bedding material shall be fine graded by hand. On lines that are to be laid to established grades batter boards shall be set at fifty foot intervals and the trench graded to the established grade.

E. Any part of the trench excavated below grade shall be corrected by filling with bedding material. The bedding material shall be thoroughly compacted.

E. If large rock, rock fragments or other unyielding materials are encountered in the bottom of the trench they shall be removed to a depth of six inches below grade, and the void filled with thoroughly compacted approved bedding material.

G. Bell holes of ample dimensions shall be dug at each joint to permit the jointing of pipe to be made properly and of sufficient depth to prevent the bell of the pipe from resting on undisturbed materials.

H. Wherever necessary to prevent caving, the trench shall be adequately braced and sheeted. Trench safety shall be in accordance with item I4 "Shoring and Sheeting of this specification.

I. Trench digging machinery may be used to make the trench excavations except in places where operation of same would cause damages to trees, buildings or other existing structures either above or below ground. In such instances hand trenching methods shall be employed.

J. All excavated material shall be stockpiled in a manner that will not endanger the work or existing structures and that will cause the least amount of obstructions to walks and driveways.

K. There will be no classification of the excavated materials and the term excavation shall include all materials encountered in excavating the trenches or structural excavations.

L. The contractor shall take all necessary precautions for protecting paved areas from being damaged by the trenching and backfilling equipment. Any damage done to any paved area, outside of the area set forth in the plans, as a result of the construction work shall be repaired by the contractor at his own expense.

M. Where the lines are located behind curbs, the contractor shall take special precautions to protect trees and shrubs. Care shall be exercised to cause as little damage to lawns as possible.

Where lines cross under curbs, gutters or curbs and gutters, tunneling will be required.

N. Blasting for excavation of solid rock will be permitted only after securing the

approval of the Director of Engineering and Transportation and the engineer and only when proper precautions are taken for protection of persons and property. The hours of blasting will be fixed by the engineer. Any damage caused by blasting shall be paid for by the contractor. The method or procedure relative to blasting shall conform to all state laws and local ordinances.

O. The contractor will be required to locate all known utility lines, including consumer service lines, far enough in advance of the trenching to make proper provisions for protecting the lines and to allow for any deviations that may be required from the established lines and grades.

P. The contractor shall not be allowed to disrupt the service on any utility lines except consumers service lines, which may be taken out of service for short periods of time, if the contractor obtains permission from the engineer and from the owner of the premises being served by the utility.

Q. The contractor shall immediately notify the proper utility company of any damage to utility lines, in order that service may be reestablished with the least possible delay. Repair of any damage to existing lines and the repair of consumer lines which are authorized to be cut or temporarily taken out of service shall be made by the contractor at his own expense, and as directed by an official representative of the utility company involved.

R. All utility lines shall be properly supported to prevent settlement or damage to the line both during and after construction.

S. Any permanent relocations of existing utility lines shall be done by the proper utility company without expense to the contractor.

4.2 Backfill General

A. All pipeline excavations shall be backfilled in a manner that will restore pre-existing conditions as the minimum requirement and fulfill all supplementary requirements indicated in the Plans and Specifications. The backfilling operations shall be started as soon as conditions will permit on each section of pipeline to provide continuity in subsequent operations and restore normal public service as soon as practicable on a section-by-section basis. All operations shall be pursued diligently, with proper and adequate equipment, to assure acceptable results.

B. Depositing of the backfill shall be done so the shock of falling material will not injure the structure. Grading over and around all parts of the work shall be done as directed by the Engineer.

C. Whenever soil types which are determined by the Inspector to be undesirable for backfill are excavated from the trench, such material shall be hauled away and deposited where directed by the Inspector at no additional compensation.

D. In the absence of special work item requirements the backfilling shall be accomplished with the use of suitable materials selected from the excavated

materials to the extent available and practical. Should the materials available from the trench section be unsuitable or insufficient, the required additional materials shall be furnished from outside sources at the Owners expense.

E. Suitable material shall be defined as a mineral soil reasonable free of foreign materials (rubbish, debris, etc.) frozen clumps, oversize stone, rock, concrete or bituminous chunks and other unsuitable materials, that may damage the pipe installation, prevent thorough compaction, or increase the risks of after settlement unnecessarily. Material selection shall be such as to make the best and fullest utilization of what is available, taking into consideration particular needs of different backfill zones. Material containing stone, rock, or chunks of any sort shall only be utilized where and to the extent there will be no detrimental effects.

F. Backfill materials shall be carefully placed in relatively uniform depth layers spread over the full width and length of the trench section in a manner and/or sequence that will provide simultaneous support on both sides of the pipeline. Each layer shall be compacted effectively, by approved mechanical or hand methods, until there is no further visual evidence of increased consolidation. Compaction of the in place layer shall be completed acceptably before placing material for a succeeding layer thereon. The manner of placement, layer thickness, compaction equipment, and procedure effectiveness shall be subject to approval of the Engineer. Water jetting or flooding shall NOT be used to compact trench backfill.

G. Within the pipe bedding and encasement zones described as that portion of the trench which is below an elevation one foot above the top of the pipe, the materials placed shall be limited in particular size to 3/4 inch maximum. For larger pipe in excess of 18 inches in diameter the Engineer may allow particle sizes up to 2 inches maximum if it can be shown that the backfill can be satisfactorily compacted without leaving voids or damaging pipe or joints. Above these zones, the placement of material containing stones, boulders, chunks, etc. shall be governed by the layer thickness and compaction equipment capabilities.

H. Compaction of materials placed within the pipe bedding and encasement zones shall be accomplished with portable or hand equipment methods to achieve thorough consolidation under and around the pipe and avoid damage to the pipe. Above the pipe zone material, the use of heavy roller type compaction equipment shall be limited to safe pipe loading.

I. The maximum loose thickness of each backfill layer shall be 12 inches, except that 16 inches will be permitted for Granular Materials placed above an elevation one foot above the top of pipe, and with the provision that, by authority of the Engineer in consideration of the demonstrated capability of special type vibratory compactors, these maximums may be increased at his discretion. "Hydro tamps" or "vibra tamp" or other heavy vibrating equipment shall not be used until the backfill has reached a depth of four (4) feet above the top of the pipe.

J. All surplus or waste materials remaining after completion of the backfilling operations shall be disposed of in an acceptable manner within 24 hours after

completing the backfill work on each particular pipeline section. Disposal at any location within the project limits shall be as specified, or as approved by the Engineer; otherwise, disposal shall be accomplished outside the project limits at the Contractor's discretion. The backfilling and surplus or waste disposal operations shall be a part of the work required under the pipeline installation items, not as work that may be delayed until final cleanup.

K. Until final acceptance of the project, the Contractor shall assume full Responsibility and expense for all backfill settlement and shall refill and restore the work as directed to maintain an acceptable surface condition. All additional materials required shall be furnished without additional cost to the Owner.

4.3 Backfill Procedure above Pipe Zone, in Public Rights-of-way and other areas where settlement is important.

A. Backfill above the pipe zone shall be made using Portland cement stabilized backfill or crushed stone screening (crusher fines).

B. Backfill around structures such as manholes, junction boxes, transformer boxes and valve boxes shall be made using portland cement stabilized backfill material or crushed stone screening (crusher fines).

C. The minimum depth of stabilized backfill or crusher fines shall be twelve (12") inches.

When utilities are being constructed under existing paving, the stabilized backfill or crusher fines shall extend from top of the pipe zone to the top of the base course.

When utilities are being constructed under existing unpaved streets that are not scheduled for immediate pavement construction, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the existing roadway surface.

When utilities are being constructed in new streets that are scheduled for immediate paving or in streets in a new subdivision for which a paving contract with the property developer has been approved the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the bottom edge of the eight (8") inches of subgrade, or, if the paving contractor has constructed a portion of the roadway prior to the construction of the utilities stabilized backfill shall extend to the top of the course the contractor has finished. In no case shall the backfill extend above the top of the base course.

If the final course of asphaltic concrete has been placed, the street or alley surface shall **NOT** be cut for utility installation.

In new streets where stabilized backfill is required only to the bottom of the subgrade course, the minimum depth of stabilized backfill may be reduced to six (6") inches in which case the maximum depth of the "pipe zone" shall be limited to six (6") inches above the top of the utility line or conduit.

D. Backfill Materials

(1) Portland cement stabilized backfill shall consist of caliche base material, blow sand or native soil stabilized by the addition of Portland cement. Crushed stone or concrete aggregate shall **NOT** be used.

The Contractor shall submit a mix design prepared by an approved Commercial Laboratory that will produce a minimum 7 day compressive strength of 150 psi. In no case shall the minimum cement content of the mix be less than 1 sack per cubic yard.

(2) Cement used in Portland cement stabilized backfill shall be Type I or Type II conforming to the requirements of ASTM Designation C150.

(3) Caliche used for Portland cement stabilized backfill shall be crushed material con-forming to Texas State Department of Highways and Transportation 1982Standard Specifications for Construction of Highways, Streets and Bridges Item 248 Type F, Grade 2.

(4) Blow sand used for Portland cement stabilized backfill shall be clean, free from organic matter, clay lumps, rock and other deleterious matter.

(5) Native soil used for Portland cement stabilized backfill shall be clean, free from clods and organic matter, and rock in excess of 2".

(6) Crushed stone screening (crusher fines) used for back fill shall be sharp grained particles of crushed stone conforming to the following gradation

Sieve Size	% Passing
2"	100
#4	35-100
#10	20-100
#40	5-35
#200	4-10

and may be the by product of crushing stone for other purposes or may be stone specifically crushed for use in backfill. Crusher fines not meeting these specifications may be approved for backfill upon demonstration that the desired results will be obtained.

E. Backfill Construction

(1) Portland cement stabilized caliche backfill or Portland cement stabilized native soil backfill may be constructed using either the "dry" method or the "wet" method.

(a) The dry method of stabilized backfill construction consists of dry mixing of the cement and caliche, sand or soil to produce a homogenous mixture then adding and mixing sufficient water for proper compaction and hydration of the cement. The water content of the mixture will be approximately one to two percent above the optimum moisture for soil compaction. The mixing may be accomplished by using batch mixers or on the job site by "blade Mixing" or other suitable method to produce the desired backfill material. The mixed material shall be placed in lifts of up to a maximum of 12 inches and compacted to ninety five (95%) modified proctor density by use of suitable compacting equipment.

(b) In the "wet" method of cement stabilized backfill construction, the materials shall be mixed in an approved concrete batching plant or mixer to the consistency of concrete and placed as concrete would be placed. The slump of the backfill material shall be such that all voids will be filled, approximately four (4") to six (6") inches. The backfill shall be consolidated by rodding or by the use of mechanical vibrators.

(c) The mix design used must be for the method of placement chosen.

(2) Portland cement stabilized blow sand backfill shall be mixed and placed by the "wet" method as described above.

(3) Crushed stone screening (crusher fines) shall be wetted uniformly throughout with sufficient moisture to assure proper compaction before being placed in the trench.

The moistened crushed stone screening (crusher fines) shall be placed in maximum lifts of twelve (12") inches and consolidated using vibratory type compaction equipment except when it has been demonstrated that the compaction equipment employed will adequately compact deeper lifts in which case the maximum depth of a lift shall be limited by the capabilities of the equipment used.

Tests to determine the compacted density of the backfill shall be ordered by the Engineer if in his opinion the compaction is not adequate. Test showing a minimum compacted density of 90% modified proctor will be deemed adequate compaction.

5. INSTALLATION OF DUCTILE IRON PIPE

5.1 Pipe Laying - General

A. All pipe and accessories shall be unloaded, handled, laid, jointed, tested for defects and for leakage and chlorinated in the manner herein specified.

B. The pipe, fittings, valves, and accessories shall be inspected upon delivery and during the progress of the work and any material found to be defective will be rejected by the engineer and the contractor shall remove such defective material from the site of the work.

C. The contractor shall be responsible for all material furnished by him and he shall replace at his own expense all such material that is found to be defective in manufacturer or has become damaged in handling after delivery.

D. All pipe, fittings, valves, and other accessories shall, unless otherwise directed, be unloaded at the point of delivery, hauled to and distributed at the site of the work by the contractor. Loading and unloading, of pipe and fittings shall be by hoisting or by sliding, or rolling on skidways in such a manner as to avoid shock or damage to the material. Under no circumstances shall pipe or fittings be dropped. Pipe handled on skidways must not be skidded or rolled against pipe already on the ground.

The pipe, fittings and accessories shall be placed along the site in such a manner as to be kept as free as possible from dirt, sand, mud, and other foreign matter.

E. All pipe shall be laid and maintained to the lines and grades shown on the plans
or as established on the ground by the engineer.

F. Wherever it is necessary to deflect pipe from a straight line either in a vertical or horizontal plane to avoid obstructions, to plumb valves and hydrants, or where vertical or horizontal curves are shown or permitted, the degree of deflection at each joint shall not exceed the maximum deflection recommended by the manufacturer of the particular kind of pipe being laid and the degree of deflection shall be approved by the engineer.

G. After the trench grade has been completed and all bell holes dug and the grade inspected, the pipes and accessories may be placed in the trench. All pipe, fittings, valves, and hydrants shall be carefully lowered into the trench piece by piece by means of derricks, ropes, or other suitable tools or equipment, in such a manner as to prevent damage to the material in any way. Under no circumstances shall pipe or accessories be dropped or dumped in the trench.

H. Before lowering into trench the pipe shall be again inspected for defects and the pipe while suspended shall be lightly hammered to detect cracks. Any defective, damaged or unsound pipe and materials shall be rejected.

I. All foreign matter or dirt shall be removed from the inside of the pipe and from all bells, spigots or parts of the pipe used in forming the joint, before the pipe is lowered into the trench, and it shall be kept clean by approved means during and after laying.

5.2 Laying and Jointing Ductile Iron Pipe

A. Unless otherwise directed, pipe shall be laid with bells facing in direction of laying; and for lines on appreciable slopes, bells shall, at the discretion of the engineer, face up grade. Cutting of pipe for inserting valves, fittings or closure pieces shall be done in a neat and workmanlike manner without damage to the pipe or the cement lining.

B. The jointing shall be completed for all pipe laid each day. No open joints will be left in the trench overnight. At times when pipe laying is not in progress, the open ends of pipe shall be closed by approved means. No trench water shall be permitted to enter the pipe.

C. No pipe shall be laid in water, or when the trench conditions or weather is unsuitable for such work, except by written permission of the engineer.

D. Rubber Gasket joints for cast iron or ductile iron pressure pipe and fittings shall conform to AWWA Standard C-III.

E. Before laying the pipes, all lumps, blisters and excess coal tar coating shall be removed from the bell and spigot ends of each pipe; the outside of the spigot and the inside of the bell shall be wire brushed and wiped clean and dry. Pipe ends shall be kept clean until joints are made.

F. The pipe and fittings shall be properly aligned and free to move in any direction while bolting, and the bolts shall be gradually tightened at a uniform rate around the entire flange.

G. Flange joints where used shall be bolted with flange bolts of best quality mild steel and of the size and length required by AWWA C-II5: Bolts and nuts shall be provided with standard hexagonal heads. Gasket rings shall be used and shall be made of best quality rubber composition sheet packing one-eighth (1/8) inch thick, of a brand and quality approved by the engineer.

H. Standard plugs shall be inserted into the bells of all dead end pipes, tees, or crosses and spigot ends shall be capped. Plugs or caps shall be jointed to the pipe or fittings in the same manner used in joining the pipe.

6. SPECIFICATIONS FOR INSTALLING PRETENSIONED CONCRETE CYLINDER PIPE

6.1 General

The applicable portions of the specifications for installing ductile iron pipe shall apply except as amended or supplemented herein.

6.2 Pipe Laying

A. Pipe and fittings shall be handled with care at all times to avoid damage. They shall be lifted by hoists or slide or rolled on skid-ways in such manner as to avoid shock. Under no circumstances shall they be dropped. Pipe must not be skidded or rolled against other pipe or object.

B. Just before making the joint, the bell and spigot rings shall be thoroughly cleaned by wire-brushing until clean and dry. The gasket and the inside surface of the bell shall be lubricated with a light film or soft vegetable soap compound (flax soap) to facilitate telescoping the joint. The rubber gasket shall be stretched uniformly as it is placed in the spigot groove to insure a uniform volume of rubber around the circumference of the groove.

C. The joint shall be telescoped by pulling directly along the centerline of the pipe so that the spigot enters squarely into the bell. After the spigot has been telescoped into the bell, the bell end of the pipe being laid shall be moved in accordance with the plans to secure proper grade and alignment. After the joint is in place, a thin metal feeler gauge shall be used to check the position of the rubber gasket around the circumference of the joint.

D. The inside joint recess shall be filled immediately prior to placing the pipe together by buttering the bell end with mortar. After the joint is engaged, the joint mortar of pipe 18" in diameter and larger shall be finished off smooth by hand. The mortar in pipe smaller than 18" in diameter shall be smoothed and cleaned with a swab.

E. After the spigot has been telescoped into the bell, the joint checked and found satisfactory, a canvas wrapper shall be placed around the pipe, covering the joint. The canvas type wrapper shall be of the quality manufactured by the Mar-Mac Manufacturing Company or approved equal burlap type, and shall be hemmed at each edge to allow threading with a steel strap to securely fasten the wrapper around the pipe by means of a stretcher and sealer.

The wrapper shall have a minimum width of 7" and sufficient length to encircle the pipe leaving enough space between the ends at the top to allow the cement mortar to be poured. The entire joint shall be poured with cement mortar and rodded or agitated to eliminate voids and settlement. Prior to pouring the cement mortar the joint shall be thoroughly cleaned and saturated with clean water. Any joint showing shrinkage or excessive cracking shall be cleaned and remade. In hot weather,

additional measures may be required to obtain the best quality of joint, such as additional wet burlap, curing membrane, or immediate careful and well controlled backfilling of the joint with damp earth.

F. The mortar used at the exterior joint shall consist of one part Portland cement to 2-1/2 parts fine, sharp, clean sand and mixed with water to the consistency of thick cream. Mortar required at the joint shall not be placed in freezing weather unless adequately protected from freezing.

G. The joints for pipe to be installed in casing shall be made as for pipe laid in trench except that the outside portion of the joint shall be wrapped in a special polyurethane wrap impregnated with unhydrated cement manufactured for this purpose, prior to being jacked into the casing pipe. The wrap shall be "Flex-Protex" as manufactured by Mar-Mag Mfg. Corporation or approved equal. The interior of the joints shall be mortared after the pipe to be installed in casing has been jacked into place. The pipe shall not be moved after interior mortaring is completed. After the water line has been installed in the casing the ends of the casing shall be sealed using concrete or cement mortar.

H. Steel cylinder reinforced concrete pipe shall not be pressure tested until it has been in place a minimum of 14 days.

I. The contractor shall fill the steel cylinder reinforced concrete pipe under slight pressure and allow approximately 24 hours for water absorption by concrete lining before performing pressure test.

7. SETTING VALVES, VALVE BOXES, FIRE HYDRANTS AND FITTINGS

7.1 General

Valves and fittings shall be set at the locations shown on the plans or at locations as established by the engineer, and shall be set and jointed to the pipe in the manner heretofore specified for pipe installation. All valves buried in the ground shall have a cast iron valve box set over the valve and set to grade. All valves shall be set vertical, unless otherwise specified, and shall be thoroughly inspected and checked for operation before installation.

7.2 Valve Boxes

Cast Iron valve boxes shall be firmly supported and maintained centered and plumb over the wrench nut of the valve, with box cover flush with the surface of the ground or street paving.

Valve boxes shall be supported by a ring of concrete as shown on the plans and Detail Drawings. This ring shall be Class "A" concrete having a minimum thickness of six (6") inches and shall extend a minimum of twelve (12") inches in all directions from the outside diameter of the valve box and shall be supported on thoroughly compacted backfill.

7.3 Setting Fire Hydrants

A. Fire hydrants shall be located at points shown on the plans, the exact location of the hydrant to be established by the engineer. All hydrants shall be set plumb, to the grade as established by the engineer, and shall have their nozzles parallel with and/or at right angles to the curb, with the pumper nozzle facing the curb. The hydrants shall be supported in such a manner as not to cause a strain on the fire hydrant lead or branch.

The bowl of the hydrant shall be well braced against unexcavated earth at the end of the trench with concrete blocking. The concrete blocking shall be placed so as not to interfere with the hydrant drains and so that the joints or flanges are accessible.

B. Each hydrant shall be connected to the main with a six (6) inch ductile iron branch controlled by an independent six (6) inch gate valve. Each hydrant shall be set upon a stone or concrete slab not less than four (4) inches thick and not less than one square foot of surface area. Where solid rock exists in the bottom of the trench and same is excavated to the proper depth to form a foundation for the hydrant, the slab of stone or concrete may be omitted.

C. There shall be placed around the base of the hydrant not less than seven (7) cubic feet of sound broken stone or clean gravel, or other suitable material to provide reservoir capacity so that the hydrant will completely drain when closed. The gravel or broken stone shall reach from the bottom of the trench to at least six (6) inches above the waste opening in the hydrant. Each hydrant shall be operated by the contractor to prove to the inspector that the drain hole has not been plugged with concrete or other material.

8. ANCHORAGE OF BENDS, TEES AND PLUGS, ETC.

Reaction or thrust blocking shall be applied to all pipe lines at all tees, plugs, caps, valves, fire hydrants, and at bends deflecting 11-1/4 degrees or more. Concrete shall be used for blocking the pipe and fittings. Concrete for thrust block shall have a minimum compressive strength of 3,000 psi and shall conform to Texas Highway Department Class "A" concrete. Before thrust blocking is placed the element to be blocked shall be carefully wrapped in polyethylene sheeting having a minimum thickness of 3 mils. The blocking shall be placed between solid ground and the fitting to be anchored; the area of bearing on pipe and on the ground in each instance shall be that required by the engineer. The blocking shall be so placed that the pipe and fitting joints will be accessible for repair.

9. DISINFECTION OF PIPE LINES

The contractor shall furnish all labor, equipment, and materials necessary to the disinfecting of the new pipe lines which shall be disinfected before being placed in service. The lines shall be disinfected by the application of a chlorinating agent. The chlorinating agent may be a liquid chlorine, liquid chlorine gas water mixture, or a calcium hypochlorite solution, which shall be fed into the lines through a suitable solution feed device, or other methods approved by the engineer. The chlorinating agent shall be readily dissolvable and of a type that will rapidly mix with the water as it is loaded into the water line. Tablets or other solid form shall not be used unless they are dissolved before being placed into the line. The chlorinating agent shall be applied at or near the point from which the line is being filled, and through a corporation stop or other approved connection inserted in the horizontal axis of the newly laid pipe. The water being used to fill the line shall be controlled to flow into the section to be disinfected very slowly, and the rate of application of the chlorinating agent shall be in such proportion to the rate of water entering the pipe that the chlorine dose applied to the water entering the line shall be at least 50 parts per million. The treated water shall be retained in the pipe lines for a period of not less than twenty four (24) hours. At the end of the retention period all treated water shall be thoroughly flushed from the lines until the replacement water in the lines shall have a chlorine residual of not more than 0.2 parts per million. Where it is necessary to place the new lines in service in less than 24 hours, the concentration of chlorine may be increased to 300 ppm and the lines flushed and placed in service in 3 hours. Disinfecting procedures shall conform to AWWA C 601.

10. HYDROSTATIC TESTS

All pipe lines constructed under this contract before being accepted, shall be tested at 120% design pressure as described in the following paragraphs. This test shall apply to all newly laid pipe or any valved sections thereof.

The required test pressure (180 pounds per square inch) shall be maintained over a continuous period of not less than eight (8) hours.

Each valved section of pipe shall be slowly filled with water, being certain that all air is expelled from the pipe by using hydrants, blow-offs or taps at points of highest elevation in the line. The specified pressure shall be applied by means of a pump and flow meter (gpm and amount) connected to the pipe in a manner satisfactory to the engineer. The contractor shall furnish all necessary equipment, materials and labor to satisfactorily make the hydrostatic tests.

After the line section to be tested has been brought to pressure, a visual inspection shall be made of all joints, fittings, valves, and appurtenance. Any leaks thus located shall be corrected before continuing with the test.

If the test indicates a leakage in excess of a rate equal to twenty-five (25) gallons per inch of nominal diameter of pipe line per mile per day (maximum 600 gallon per mile per day total leakage) the cause of such leaks shall be determined and corrected and the line retested until satisfactory results are obtained.

11. REMOVING AND REPLACING PAVEMENT

A. When it is necessary to cut existing paving to install utilities the paving shall be repaired as soon after the backfill is consolidated or the cement stabilized backfill has reached sufficient strength as practical. The repair shall be made using Texas Highway Department Type "D" Hot Mix Asphaltic Concrete and shall have a minimum thickness equal to the thickness of the existing surface.

B. Edges along the trenches and around pits shall be saw cut to remove damaged edges and/or surface. Saw cuts shall be straight and parallel to or at right angles to the street or alley center line in so far as practical. Meandering, zig-zag or notched saw lines will not be permitted. The saw cuts shall be such that a minimum of 6" of surface is removed beyond the edges of the trench.

C. The edges of the saw cut and surface of the backfill material shall be tack coated prior to the placing of hot mix asphaltic concrete. The tack coat shall be either RC-250 cut back asphalt or RS2h emulsified asphalt or approved equal. When emulsified asphalt is used for tack coat the asphaltic concrete shall not be placed until the break of the emulsion is complete and all free water has evaporated or has been removed.

D. After the tack coat is cured the hot mix asphaltic concrete shall be placed uniformly throughout the repair area. The edges of the repair shall be squared up and the hot mix asphaltic concrete thoroughly compacted. Any large aggregate that is separated from the mix during the leveling process shall be removed from the surface and disposed of off the project. Care shall be taken that none of the mix overlaps the old paving. Any mix that has "scabbed" onto the paving shall be removed before the section is reopened to traffic.

Sufficient mix shall be placed so that the finished repair is from one eighth (1/8") inch to one quarter (1/4") inch above the old paving surface to allow for further consolidation by traffic.

12. TUNNELING UNDER UTILITY LINES, ETC.

Where pipes, conduits or concrete curbs, gutters or other obstructions are encountered in the construction, the cost of tunneling under such obstructions shall be included as a part of the cost of the pipe line, or other pay items, complete in place.

13. HIGHWAY CROSSING

A. The City of Midland will obtain any required permits from the State Highway Department for installation of the water line along and across the highway right-of-way. It shall be the contractor's duty and responsibility to coordinate the time of making the crossing and the manner of handling traffic.

B. Installations of the casing pipe shall be accomplished by boring or open cut trench as indicated on the drawings and in accordance with the Texas Department of Transportation permit and requirements. Equipment used shall be of such size and capacity as to allow the placement of the casing to proceed in a safe and expeditious manner. Installation of the casing and the excavation and removal of the materials

within the casing shall proceed simultaneously.

The boring shall proceed from a pit provided for the boring equipment and workmen. Excavation and location of the pit shall be approved by the Engineer. Boring without the concurrent installation of the casing pipe will not be permitted. The use of water or other fluids in connection with the boring operation will be permitted only to the extent of lubricating cuttings. Jetting will not be permitted. Overcutting in excess of one inch shall be remedied by concrete pressure grouting the entire length of the installation. All joints for casing pipe installed in bore shall be welded. Care shall be taken to keep the casing pipe on the proper line and grade.

C. After the casing pipe has been installed and is accepted by the Engineer, the pipe shall be shoved through the casing. The pipe shall be pushed or pulled through the casing by exerting pressure on the barrel of the pipe and not on the bell, and shall be done in such a manner that the joint is always in compression during the shoving operation. Hardwood, or other suitable material skids shall be banded with stainless steel bands to each joint of pipe in accordance with the pipe manufacturers recommendation. The hardwood skids shall be of sufficient dimensions to allow the bell of the pipe to clear the casing pipe by at least one-half inch. The length of the skid shall be in accordance with the pipe manufacturers recommendations. A minimum of three bands shall be used to secure the skids to the pipe. The skids shall be such that the carrier pipe will be centered in the casing pipe. The design of skids and bonding techniques shall be submitted to the Engineer for approval prior to use.

In general waterline installation in the casing pipe shall conform to AWWA C 600-Section 6 requirements.

After completion of pipe installation in casing, the ends of the casing shall be sealed off by use of concrete grout. The minimum compressive strength of the grout shall be 2,000 psi in 28 days.

14. SHORING & SHEETING

14.1 Description

This item shall govern for the Trench Safety Systems required for the construction of all trench excavation to be utilized in the project and including all additional excavation and backfill necessitated by the safety system. A trench shall be defined as a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet. The depth is five feet or more.

Trench Safety Systems include but are not limited to sloping, sheeting, trench boxes or trench shields, sheet piling, cribbing, bracing, shoring, dewatering or diversion of water to provide adequate drainage.

14.2 Construction Methods

Trench safety systems shall be accomplished in accordance with the detailed specifications set out in the provisions of Excavation, Trench, and Shoring, Federal Occupational Safety and Health Administration (OSHA) Standards, 29CFR, Part 1926, Subpart P, as amended, including Proposed Rules published in the Federal Register (Vol. 52, No. 72) on Tuesday, October 31, 1989. The sections that are incorporated into these specifications by reference include Sections 1926-650 through 1926-652. Legislation that has been enacted by the Texas Legislature, being Tex. Rev. Civ. Stat. Ann. arts. 1015q, 2368a.6 (Vernon Supp. 1988) with regard to Trench Safety Systems, is hereby incorporated, by reference into these specifications.

A reproduction of the OSHA Publication 2226 is attached for the convenience of the Contractor. The City assumes no responsibility for the accuracy of the reproduction or that it reflects current law. The Contractor is responsible for obtaining a copy of this section of the Federal Register for his use.

If the contractor elects to use a trench protective system that, in the Proposed Rules, requires "Design by a qualified person or a qualified engineer," [For example see 1926.652(b) (3) and 1926.652(c) (4)], "a qualified person or qualified engineer" shall be a Professional Engineer registered in the State of Texas. The Contractor is responsible for obtaining boring and soil analysis as required for the planned design. The trench excavation is to be designed in conformance with OSHA standards and regulations.

14.3 Safety Program

The Contractor shall submit a safety program specifically for the construction of trench excavation. The trench safety program shall be in accordance with OSHA standards governing the presence and activities of individuals working in and around trench excavation.

14.4 Inspection

The Contractor shall make daily inspections of the Trench Safety Systems to ensure that the systems meet OSHA requirements. Daily inspection is to be made by a "competent person" provided by the Contractor. If evidence of possible cave-ins, or slides, is apparent, all work in the trench shall cease until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench. It is the sole duty, responsibility and prerogative of the Contractor, not the owner or the Engineer, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project. The Contractor shall maintain a permanent record of daily inspections.

14.5. Safety Restrictions - work near high voltage lines

The following procedures will be followed regarding the subject item on this contract:

A. Warning signs painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

B. All equipment except back hoes or dippers that may be operated within ten feet of high voltage lines shall have an insulating cage-type of guard about the boom or arm and insulator links on the lift hook connections.

C. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.

D. The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

15. MEASUREMENT AND PAYMENT

15.1 General

The unit price or lump sum price bid on each item, as stated in the proposal, shall include furnishing all labor, superintendence, machinery, equipment, and materials necessary to complete the various items of work in accordance with the plans and specifications. Cost of work or materials shown on the plans and called for in the specifications and on which no separate payment is made shall be included in the bid price on the various pay items.

15.2 Water Lines

A. Measurement

The length of pipe lines for the various sizes, classes and types to be paid for will be determined by measurement along the center lines of the pipe installed, measurement being made from the center of fitting to center of fitting or end of pipe, without any deduction for the length of intermediate fittings or valves including pipe installed in casing.

B. Payment

Furnishing and installing approved type pipe of the various sizes and classes shown on the plans or as required will be paid for at the unit price bid per linear foot for furnishing and installing the various sizes and classes of approved pipe complete in place. The unit price bid shall be complete compensation for furnishing and installing the pipe complete in place including all excavation, backfilling, testing and disinfection of lines and shall include any and all incidental work not otherwise included in the bid items or otherwise provided for in the specifications.

I5.3 Solid Rock Excavation

All excavation for pipe trenches shall be unclassified and no extra compensation will be made for solid rock excavation. The contractor is expected to make boring of his own and satisfy himself to the character of material which will be encountered.

I5.4 Gate Valves or Butterfly Valves

A. Measurement

Gate valves or butterfly valves will be counted in the field after installation by the size and type specified and actually installed.

B. Payment

The unit price bid for each type and size valve shall be complete compensation for furnishing and installing the valves, complete in place, including the furnishing and installation of cast iron valve boxes on all valves to the finished grade of the adjacent surface. All valves in paved areas shall be set to finish pavement grades

I5.5 Fire Hydrants

A. Measurement

Fire hydrants will be counted in the field after installation in accordance with the plans and specifications.

B. Payment

The unit price bid shall be complete compensation for furnishing and installing the fire hydrants, complete in place, each, including lead pipe the gravel drain, concrete blocking, extension or additional bury depth as required for a complete installation.

I5.6 Service Connections

A. Measurement

The number of service connections of the type and size specified to be paid for will be counted in the field after complete installation.

B. Payment

The unit price bid shall be complete compensation for furnishing and installing the service connections, complete in place, including the meter box and lid, service line, corporation stop, meter stop and incidentals required for a complete installation.

I5.7 Ductile Iron Fittings

A. Measurement

The weight of the various ductile iron fittings and specials were estimated by using the standard weights for cast iron fittings as established by the American Water Works Association or American Standard Association. Measurement of ductile iron fittings will be made by counting the actual number of fittings installed and multiplying the number of fittings by the catalog weights for those types of fittings actually installed. Allowance will be made for glands and bolts.

B. Payment

The ductile iron fittings or specials required in the construction of the various size pipe lines as shown on the plans or as required will be paid for at the unit price bid per ton for furnishing and installing the ductile iron fittings complete in place. The unit price shall also include all materials, excavation, backfilling, concrete blocking and other incidental work required for the complete installation.

I5.8 Steel Cylinder Concrete Pipe Fittings

A. Measurement

No separate measurement or count of fittings and specials for steel cylinder concrete pipe will be made.

B. Payment

No separate payment will be made for fittings or specials for steel cylinder concrete pipe used on this project, but the cost of same shall be included in the price bid per linear foot for the various classes and sizes of pipe in the bid proposal.

15.9 Casing Pipe In Bored Hole Or Open Cut

A. Measurement

Measurement of the casing pipe, of the type and size specified, shall be made by the linear foot of casing installed complete in bored hole or installed complete in open cut.

B. Payment

The unit price bid per linear foot for casing in bored hole or for casing in open cut shall be complete compensation for furnishing and installing the casing, complete in place, including all pits, boring equipment, materials and labor required for a complete installation. Payment for carrier pipe installed in the casing will be made as stated under Waterlines above.

15.10 Paving Cut and Repair

A. Measurement

Measurement of paving cut and repair will be made by the square yard for replacing pavement of the type specified. The area of the pavement replaced shall be determined by actual measurements on the ground; however, measurement will be limited to areas within widths of cuts as shown on the plans unless additional widths are authorized by the engineer. Any pavement removed or damaged outside of the aforementioned limits shall be replaced as prescribed with these specifications, but will not be measured for payment.

B. Payment

The unit price bid, per square yard, shall be complete compensation for cutting and removing the pavement, and constructing the concrete base and surfacing of the type specified, all as specified herein and as shown on the plans.

15.11 Trench Safety Systems, Sheeting and Shoring

A. Measurement

Trench Safety Systems shall be measured by the linear foot along the centerline of trench including manholes and other line structures.

B. Payment

Payment for Trench Safety Systems, measured as prescribed above, shall be made at the unit price bid per linear foot of "Trench Safety Systems: Payment of all work prescribed under this item shall be full compensation for the Trench Safety Systems including all Engineering cost and any additional excavation and backfill required, for furnishing, placing, maintaining and removing all shoring, sheeting, or bracing; for dewatering or diversion of water; for all jacking and jack removal; and for all other labor, materials, tools, equipment and incidentals necessary to complete the work.

Revised 08/07

GRAVITY FLOW PIPE SEWERS AND FITTINGS FOR WASTE WATER AND STORM WATER

PART I – GENERAL

1.01 SCOPE

- A. The work covered by this specification shall include the furnishing of all material, labor and equipment to construct, complete in place, all Gravity sewers including jointing, gaskets, fittings, castings, mortar, concrete, the placing of sewer pipe, and the construction of manholes and other appurtenance, all in accordance with the details shown on the plans and these specifications for the drainage of sanitary and/or storm sewage.
- B. Sanitary and storm sewer lines constructed under these specifications shall be straight in grade and alignment between manholes. Manholes shall be constructed at any change in grade and at any change in alignment. In general manholes are to be constructed at 300 feet intervals or less with the maximum distance between manholes being 350 feet when approved by the Engineer.

1.02 QUALITY ASSURANCE

- A. The Contractor, at the Engineer's request, shall furnish a certificate from the manufacturer of the pipe and fittings that the manufacturer is fully competent and capable of manufacturing sewer pipe, fittings, and accessories of the type, size and grade proposed for use in this project that are of uniform texture and strength that will fully comply with these specifications and have so manufactured this class of pipe in sufficient quantities to be certain that it will meet all normal field conditions of usage. The manufacturer must have adequate equipment and quality control facilities to be sure that each extrusion casting or run of pipe is uniform in texture, dimensions, and strength.
- B. All PVC, HDPE, or plastic resin based pipe and fittings shall be covered during storage to protect them from excessive heat and direct sunlight.
- C. All pipe and accessories shall be stored above ground and fully supported so that they will not bend or deflect excessively under their own weight.
- D. Pipe in any way damaged or deformed during storage shall not be incorporated into this project, but at the direction of the Engineer, shall be permanently removed from the job site and project area.

1.03 TYPE OF PIPE

- A. Pipe for sanitary sewers 15 inches in diameter and less shall be PVC. Pipe for storm drains 15 inches in diameter and less may be corrugated steel pipe when called for on the plans and in the bid proposal. Pipe 18 inches in diameter and larger shall be of the type shown on the plans and bid proposal.

- B. The contractor may be allowed to bid a choice of two or more of the pipe materials when pipe 18 inches in diameter and larger are proposed for use on a project. When such choice is allowed the permissible choices will be clearly stated on the plans and/or bid proposal and a blank space will be provided for the contractor to write in the type of pipe proposed for use on the project. When such blank spaces are provided, the contractor must choose one of the permitted pipe materials as specified in part 2 "Materials" of these specifications and write in the type of pipe bid. Failure to write in the type of pipe bid may be reason to disqualify the bid. One or more types of pipe 18 inches in diameter and larger may be excluded from consideration on any given project by notes on the plans and/or the bid proposal.

PART 2 – MATERIALS

2.01 POLYVINYL CHLORIDE (PVC) PIPE AND FITTINGS FOR SANITARY AND STORM SEWERS

A. GRAVITY SEWERS

- (1) Pipe and fittings in nominal diameters from 4-inch through 15-inch shall be manufactured in accordance with ASTM D3034, "Type PSM Polyvinyl Chloride (PVC) Sewer Pipe and Fittings" and pipe and fittings in diameter 18" through 36" shall be manufactured in accordance with ASTM F-679 or ASTM F-794, closed profile, subject to the modifications and limitations below.

B. MODIFICATIONS AND LIMITATIONS

- (1) The concrete slab manhole tops shall be reinforced with number 4 steel reinforcing bars spaced at 12 inches on center each way. Additional diagonal bars shall be placed on 4 sides around the manway opening. The diagonal bars shall be number 4 rebar with a minimum length equal to the diameter of the manway opening plus 4 inches. The steel reinforcing mat shall be placed in the bottom of the slab with 1-1/2 inches protective covering.
- (2) The term Dimension Ratio (DR) or standard dimension ratio (SDR) is the ratio of the average outside pipe diameter to the minimum wall thickness rounded to the nearest 0.5. The maximum DR for PVC sewer pipe shall be 35. PVC pipe sewers that will have less than 4 feet of cover shall be DR26.
- (3) PVC pipe manufactured under ASTM F679 or F794 shall have a wall thickness that will meet or exceed the D.R. and stiffness specified herein. The minimum pipe stiffness for pipe having a DR of 26 shall be 115 psi. The minimum pipe stiffness for DR 35 pipe shall be 46 psi.
- (4) Where DR 26 pipe is specified, all necessary fittings shall be the same as for SDR 35 PVC pipe.

(5) Minimum wall thickness for ASTM D-3034 PVC pipe shall be as follows:

Nominal Size (in.)	Min. Wall Thickness (in.)	
	DR 26	DR 35
4	0.162	0.120
6	0.241	0.180
8	0.323	0.240
10	0.404	0.300
12	0.481	0.360
15	0.588	0.437

The minimum wall thickness for PVC pipe meeting ASTM F-679 or F-794 requirements shall be the thickness as set forth in said ASTM specification that will meet or exceed the pipe stiffness and DR required.

- (5) The identification markings as shown in Section 12 of ASTM 3034 shall note the specified DR of 26 where applicable.
- (6) All pipe and fittings shall have the dimensions for inside diameter, outside diameter, etc. as shown in ASTM D3034 and/or ASTM F-679 except that the inside diameter DR 26 may be reduced by the added wall thickness.
- (7) The pipe and fittings shall be homogeneous throughout and free from visible cracks, holes, foreign inclusions, or other injurious defects. The pipe shall be as uniform as commercially practical in color, opacity, density, and other physical properties.
- (8) The Contractor shall provide wyes, tees, bends, adapters, and any other fittings called for in the specifications and/or shown on the plans or directed by the Engineer.
- (9) The standard length of ASTM, D-3034 SDR 35 or SDR 26 PVC pipe under this specification shall be 20 feet with a minimum of 10 feet, except that all pipe used in service lines shall not exceed 10 feet in length unless otherwise approved by the Engineer. The standard laying length for ASTM F-679 PVC pipe shall be 13 feet. The Engineer must approve other laying lengths.

C. SEWER LATERALS AND CONNECTIONS

Pipe and fittings for service lines shall be the same material and thickness class as required for the main sewer. Schedule 40 PVC pipe may be used for 4" service lines when PVC pipe meeting requirements of ASTM 3034, SDR 35 is required.

D. JOINING SYSTEMS

(1) PIPE JOINTS

The pipe shall be joined with an integral bell, bell and spigot type rubber gasket joint. Each integral bell joint shall consist of a formed bell complete with a single rubber o-ring gasket. Gaskets shall be manufactured in accordance with ASTM F477 and shall be installed in accordance with the pipe manufacturer's instructions using all the necessary materials, lubricants and equipment recommended by the manufacturer.

For pipe 18" through 36" gaskets shall be factory installed and chemically bonded to the bell end of the pipe.

Lubricant shall be water soluble, non-toxic and have no deteriorating effects on gasket or pipe materials and shall not support the growth of bacteria. Lubricant shall be suitable for use at temperatures from 5° to 120° F (-15° to 50° C). Containers shall be labeled with the manufacturer's name and identified as PVC pipe joint lubricant. Each lubricant container shall have printed instructions for usage and joint assembly.

Field welded joints will not be allowed.

(2) FITTING JOINTS

All fittings shall utilize rubber gasket joints of the same type design and specifications as pipe joints.

(3) PIPE SPIGOT

The pipe spigot shall have a bevel and an insertion stop mark. The assembled joint shall be designed so the gasket shall be radially compressed to assure a positive water-tight seal for all installation conditions recommended by the manufacturer and under all combinations of production tolerances for the joint components. Each size joint shall be qualified to no leakage under various test conditions in conformance with ASTM Specification D-3212, "Joints for Drain and Sewer Plastic Pipes Using Flexible Elastomeric Seals."

E. INSPECTION AND TESTING

(1) INSPECTION REQUIREMENTS

Certification: as the basis of the acceptance of the material, the manufacturer will furnish a certificate of conformance to these specifications. The manufacturer will furnish other conformance certification in the form of affidavit of conformance, test results, and copies of test reports.

(2) PHYSICAL TEST REQUIREMENTS

For each 4,000 linear feet of pipe manufactured of each class and size of pipe, the following certified test data shall be required:

1. The basic dimensions shall be measured.
2. The allowable crush load (lbs/ft²) shall be calculated.
3. Impact resistance, fusion quality and ductility shall be tested.

F. MARKING AND DELIVERY

Each pipe shall be identified with the name of manufacturer, nominal size, cell classification, ASTM designation F794, Uni-Bell Plastic Pipe Association designation Uni-B-9, the pipe stiffness designation "PS-46 psi" and manufacturer's date code.

1. MANHOLE CONNECTIONS

The Contractor shall provide smooth pieces of pipe for connecting sewer line into manholes. The Contractor shall be required to assist the manhole gasket supplier with the nominal outside diameter of these smooth pieces of pipe, as manufactured. There shall be only one plain end thickness for each diameter of pipe specified for the project.

2. DELIVERY

All pipe couplings and fittings shall be prepared for standard commercial shipment.

The pipe shall be inspected upon delivery to the job site for final acceptance. The contractor shall be responsible for all material furnished by him and he shall replace, at his own expense, all such material that is found to be defective in manufacture or which has become damaged in handling until final acceptance has been made. Pipe, which exhibits excessive ovality or curvature, shall be rejected.

PVC pipe and fittings shall be covered during storage to protect them from excessive heat and direct sunlight.

All pipe and accessories shall be stored above ground and fully supported so as not to bend or deflect excessively under its own weight.

2.01(a) Metallic Marking Tape (For PVC Sewer Pipe)

2.01 (a).1 General

When non-metallic pipelines are to be installed, then the Contractor shall furnish and lay, above the pipeline, a continuous strip of metallic identification tape.

2.01 (a).2 Tape Material

The metallic identification tape shall be at least two inches (2") in width and shall be of corrosive resistant metal of sufficient thickness to be stable and reflect electronic signals to electronic pipeline detector when buried to a dept of twenty-four (24") below normal ground level.

The metallic tape shall be painted green on one side and shall have 1-inch high letters painted continuously on the same side of the tape which read, "CAUTION: BURIED SEWER LINE BELOW" or other words to this effect.

The marking tape shall be "Detectable Marking Tape", as manufactured by the Omega Marking Company, or equal approved by the Engineer.

2.01(a).3 Construction Methods

The Contractor shall backfill over non-metallic pipelines to a depth which is less than twenty-four (24") and not more than twelve inches (12) from the top of the cut of the ditch section in which the pipeline is laid. Contractor shall stop the backfilling material to a generally uniform level. All machine tamping, jetting and other compaction activities shall be accomplished up to this point of height in the backfilling the marking tape is placed in the trench.

The Contractor shall then lay the marking tape in the pipe trench and shall be held in position by the spot placement of backfill materials over it to keep it from sliding t the sides and/or from being blown about in the ditch by the wind. The tape shall be lid with the painted side, which shall also be the side with the identification lettering on it, in the "up" position. The tape shall be laid in the flat position and kept there until backfill is accomplished.

The Contractor shall then complete the backfilling operation in such a manner that the marking tape is not cut, crimped, ruptured or separated by the backfilling work.

2.01(a).4 Measurement and Payment

No separate pay item will be provided for furnish and placing the marking tape. This item shall be considered subsidiary to the non-metallic pipe being placed.

2.02 CORRUGATED STEEL PIPE (CSP) FOR STORM SEWERS AND CULVERTS ONLY

1. PIPE

A. STEEL SHEET STOCK

- (1) Corrugated steel pipe shall be manufactured using galvanized steel sheet AASHTO M 218 or aluminized steel sheet AASHTO M 274.

- (2) The lining for smooth lined corrugated steel pipe shall be polymer coated on both sides. The minimum thickness of the polymer coating shall be 10 mils.

B. PIPE DESIGNATION

- (1) Pipe furnished shall be manufactured in accordance with AASHTO Specification M 36.
- (2) Corrugated steel pipe shall be one or more of the following type as designated in AASHTO M 36.

Type I - Full circular cross section having helical corrugations.

Type IA - Full circular smooth lined pipe constructed of an outer shell having helical corrugations with a smooth sheet lining attached to the outer shell at helical lock seams.

Type IR - Full circular cross section with helical rib protruding outward.

Type II - Type I pipe formed into a pipe arch.

Type IIA - Type IA pipe formed into a pipe arch.

The type of pipe furnished on this project will be as shown on the plans and in the bid proposal.

When no type of pipe is called for on the plans or in the bid proposal helically corrugated circular single wall pipe (Type I or Type IR) shall be furnished.

C. MANUFACTURERS CERTIFICATION

- (1) The pipe manufacturer will be required to certify the adequacy of the pipe furnished for the application and design life of the project.
- (2) The design life for storm sewers constructed under this specification is 50 years.
- (3) The pipe manufacturer will be required to run soil pH, soil resistivity and such other test as they deem necessary to design pipe thickness and protective coatings required to assure the adequacy of the pipe supplied.

D. CORRUGATION AND MINIMUM THICKNESS

- (1) Thickness used in this specification refers to the bare steel thickness before coating is applied. The minimum thickness for any single wall corrugated steel pipe furnished under this specification is 16 gage.

- (2) All corrugated steel pipe furnished under these specifications shall have helical corrugations.
- (3) Circular corrugated steel pipe 48" in diameter and smaller shall have 2-2/3" x 1/2" corrugation and shall be a minimum of 16 gage in thickness.

Circular corrugated steel pipe larger than 48" in diameter may have either 2-2/3 x 1/2" or 3" x 1" corrugations. The minimum thickness for corrugated steel pipe larger than 48" in diameter and having 2-2/3 x 1/2" corrugation shall be as follows:

54" Diameter - 12 gage
60" Diameter - 10 gage
66" through 90" Diameter - 8 gage

The minimum thickness for circular corrugated steel pipe having 3" x 1" corrugation and diameters of 54" through 90" shall be 14 gage.

- (4) For smooth lined corrugated steel pipe the minimum thickness for the lining shall be 20 gage and the minimum thickness for the outer shell shall be 18 gage.

The corrugations for the outer shell shall be 2-2/3" x 1/2" for pipe 48" diameter and smaller. Larger diameter pipe may use 3" x 1" corrugations in the outer shell. The sum of the thickness for the outer shell and the liner shall be a minimum of one thickness unit greater than the thickness that would be required for single wall pipe of the same diameter or span.

- (5) Spiral rib steel pipe (Type IR) shall have outward projecting spiral corrugations of 3/4" x 1" at 11-1/2" on center in accord with AASHTO specification M 36 or 3/4" x 3/4" at 7-1/2" on center as described in AASHTO specification M 196.

The minimum thickness for spiral rib pipe 48" in diameter and smaller shall be 16 gage.

The minimum thickness for spiral rib pipe 54" and 60" in diameter shall be 14 gage.

The minimum thickness for spiral rib pipe 66" and 72" in diameter shall be 12 gage.

The minimum thickness for spiral rib pipe larger than 72" in diameter shall be as shown on the plans.

- (6) The corrugations and minimum thickness of corrugated steel pipe arch shall be in accord with the following table:

EQUIV. Dia. (in.)	2-2/3" x 1/2" Corrugations			3" x 1"			
	Span (in.)	Rise (in.)	Gage	Nominal Size Span (in.)		Gage Rise (in.)	
15"	17	x 13	14				
18"	21	x 15	14				
24"	28	x 20	14				
30"	35	x 24	14				
36"	42	x 29	14	40	x	31	16
42"	49	x 33	12	40	x	36	14
48"	57	x 38	10	53	x	41	12
54"	64	x 43	10	60	x	46	12
60"	71	x 47	8	66	x	51	12
66"	77	x 52	8	73	x	55	12
72"	83	x 57	8	81	x	59	12
78"				87	x	63	12
84"				95	x	67	12
90"				103	x	71	12

When 2-2/3" x 1/2" corrugations are called for on the plans and/or on the bid schedule the substitution of 3" x 1" corrugations will be allowed only upon the demonstration by the contractor that there is sufficient head room to accommodate the higher rise for arch pipe of this cross section.

E. END TREATMENT AND JOINING

- (1) The ends of all corrugated steel pipe furnished for this project shall be rolled to provide circumferential corrugations for coupling. The end corrugations for all pipe 48" in diameter and less shall be 2-2/3 x 1/2". The end corrugations for single wall helically corrugated steel pipe or for smooth lined corrugated steel pipe 54" in diameter and larger shall be the same pitch as the pipe furnished and may be either 2-2/3" x 1/2" or 3" x 1". The end corrugations for spiral rib (Type IR) corrugated steel pipe shall be 2-2/3" x 1/2" or 3" x 1" for pipe 54" and larger in diameter.
- (2) Coupling bands shall be made of the same material as the pipe and shall be not more than 3 nominal sheet thicknesses lighter than the pipe joined and in no case less than .052 inch.

Jointing devices for joining corrugated steel pipe shall have a gasket and shall produce a joint meeting the infiltration/exfiltration requirements of these specifications.

If it should be necessary to cut a joint of Helically corrugated pipe and join the unreformed end to another section of pipe or fitting extra width bands will be required and special care must be taken to insure a water tight connection.

Locking bands shall be corrugated and shall securely fit into at least one full annular corrugation. The corrugations on the locking band must match the corrugations on the pipe being joined.

The minimum width for locking bands is as follows:

for 2-2/3 x 1/2 inch corrugations	10-1/2 inches
3 x 1 inch corrugation	12 inches

For helical corrugations that have not been reformed the coupling bands must be at least 2 inches wider than the widths listed above.

Unless shown otherwise on the plans all bolts for coupling or locking bands shall be 1/2 inch in diameter. Bands 12 inches wide or less shall have a minimum of 2 bolts. Bands wider than 12 inches shall have a minimum of 3 bolts.

Bolts must be galvanized in accordance with AASHTO Designation M232 or ASTM A164 Type RS.

- (3) Gaskets for corrugated steel pipe shall be closed cell expanded rubber and shall be formed into a continuous band. Gaskets may be either "O" ring or flat band as recommended by the pipe manufacturer. Flat band gaskets shall be a minimum of 7" wide and 3/8" thick. "O" ring gaskets shall be 13/16" diameter minimum for pipe 36" in diameter or less and 7/8" for pipe larger than 36" diameter and having 1/2" deep corrugations. "O" ring gaskets shall be a minimum of 1-3/8" diameter for pipe having 1" deep corrugations. When "O" ring gaskets are furnished, an additional flat gasket shall be furnished and placed between the overlapping ends of the coupling band. This flat gasket shall completely fill the gap between the "O" rings. All gasket materials shall be capable of producing a water tight joint that will meet the leakage requirements of these specifications.

2. CORRUGATED STEEL MANHOLE FITTINGS, AND CLEAN OUTS

A. FABRICATION

- (1) Corrugated steel manholes and fittings shall be constructed of the same material and type of pipe furnished for the storm sewer line with the exception that manhole risers shall be helical corrugated single wall circular pipe when used with pipe arch sewers or smooth lined corrugated steel pipe. The thickness of the manhole riser shall be the same as would be required for the same type and diameter pipe if it were used for the storm sewer.
- (2) Cleanouts for use on shallow storm sewer and inlet leads shall be manufactured from pipe meeting the requirements of these specifications. Cleanouts shall be constructed to the dimensions and in accord with the details shown on the plans.

B. CONNECTION TO MANHOLES AND CLEANOUTS

- (1) Stub outs from manholes and cleanouts for connection to storm sewers and inlet leads shall have annular corrugations and shall be compatible with the type and size of pipe being connected. Stub outs provided for connection to PVC pipe storm sewers and inlet leads shall be sized so that the PVC pipe can be inserted into the stub leaving the least amount of annular space between the PVC pipe and the CSP practical. The PVC pipe shall be connected using an approved molded rubber or PVC sleeve connector clamped to both pipes with stainless steel straps.

The connector shall be a flexible coupling as manufactured by Fernco, 300 S. Dayton St., Davison, MI., or approved equal.

C. LEAKAGE

Manholes, fittings and cleanouts shall meet the leakage requirements of these specifications.

D. SHOP DRAWINGS

The contractor shall submit shop drawings of all manholes, fittings and cleanouts for approval prior to their fabrication. A minimum of 5 sets of drawings for each manhole, each fitting and each cleanout shall be submitted.

E. CONCRETE SLAB TOPS

A reinforced concrete slab top shall be constructed for each manhole and cleanout. The slab shall extend to one foot (1') outside the riser section on all sides and shall have an eccentric 2' diameter opening for the manway located at the outside edge of the riser section. For manholes and cleanouts designated for standard manhole rings and covers the concrete top shall be 8 inches thick and shall be finished smooth to receive the manhole ring.

For manholes designated to receive pressure type manhole rings and covers the concrete slab top shall be a minimum of 12 inches thick and shall have L bolts imbedded in the concrete to fit the requirements of the manhole ring furnished. The slab shall be finished smooth to receive the manhole ring. The manhole ring shall be securely bolted to the slab and sealed using "Ram Nek" or an approved equal bitumastic sealer between the manhole ring and the concrete slab.

The concrete slab manhole tops shall be reinforced with number 4 steel reinforcing bars spaced at 12 inches on center each way. Additional diagonal bars shall be placed on 4 sides around the manway opening. The diagonal bars shall be number 4 rebar with a minimum length equal to the diameter of the manway opening plus 4 inches. The steel reinforcing mat shall be placed in the bottom of the slab with 1-1/2 inches protective covering.

F. PRESSURE MANHOLE RING AND COVER

- (1) Pressure type manhole rings and covers shall be Western Iron Works No. 380-24P or approved equal. The manhole cover shall be sealed with an "O" ring gasket in a ring groove and shall be secured to the ring by six (6) 5/8-inch stainless steel bolts.
- (2) The ring shall have six (6) 1-1/4 inch bolt holes in the flange for securing the ring to the concrete slab top on the manhole.

3. CORRUGATED STEEL PIPE SLOTTED DRAIN

- (1) Corrugated steel pipe slotted drains shall be fabricated from full circle corrugated steel pipe conforming to these specifications.
- (2) C.S.P. Slotted drains shall be of a type as manufactured by "Contech Construction Products, Inc.", "Texas Corrugators", "Caldwell Culvert Company" or approved equal.
- (3) The upstream end of CSP slotted drains shall be equipped with a bend and a ring and cover of the same size as the pipe from which the slotted drain was fabricated to allow cleaning equipment to be inserted into the slotted drain. The ring and cover shall be Nenah Foundry Co. R-5901 open grate or R-5900 solid lid or approved equal. Unless shown otherwise on the plans the open grate shall be furnished.
- (4) When slotted drain is to be connected to PVC leads, molded rubber or PVC flexible connector as specified for connections to manholes and cleanouts shall be furnished.

4. DAMAGED COATING

A. PROTECTION OF PIPE

- (1) Pipe fittings and specials shall be handled and stored in a manner that will minimize damage to the coating.
- (2) The fabrication process shall be designed to minimize the burning of coatings during welding.
- (3) Pipe and/or fittings showing excessive abuse or damage will be rejected.

B. REPAIRING DAMAGE

- (1) Pipe on which the metallic coating has been burned by welding or has been otherwise damaged in fabricating or handling, shall be repaired. The repair shall be done so that the completed pipe shall show careful finished workmanship in all particulars.

- (2) The damaged area shall be cleaned to bright metal by blast cleaning, power disk sanding, or wire brushing. The cleaned area shall extend at least ½ inch into the undamaged section of the coating. The cleaned area shall be coated within 24 hours and before any rusting or soiling.
- (3) Zinc-rich paint shall be applied to a dry film thickness of at least 0.005 inches over the damaged section and surrounding cleaned area. Zinc-rich paint shall be used for repair of damage to all types of metallic coating -zinc, aluminum, and aluminum-zinc alloy.

2.03 CAST-IN-PLACE CONCRETE SEWER PIPE (NON-REINFORCED) FOR STORM SEWERS ONLY

1. DESCRIPTION

This item shall cover machine cast-in-place monolithic non-reinforced concrete pipe, which shall consist of Portland cement concrete placed in a prepared trench at such locations and grades shown on the plans and intended to be used for the conveyance of storm water. Items and item numbers referred to in this specification are the items as given in the "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges."

2. MATERIALS

The cast-in-place pipe shall be constructed of Class "C" concrete. The concrete shall meet the requirements of Item 421, "Concrete for Structures," and Special Provision thereto, except as otherwise noted herein or on the plans. Type III Portland Cement shall be used.

The minimum compressive strength for concrete used in this item is 4000 psi. Backfilling operations may proceed when the concrete has reached 2000 psi compressive strength.

The coarse aggregate grading for pipe diameters 48 inches or less shall conform to that of Aggregate Grade No. 3, one inch (1") maximum size aggregate under Item 421. For pipe diameters over 48 inches, Coarse Aggregate No. 2, one and one third inch (1-1/3") maximum size aggregate shall be used.

No concrete having a slump in excess of 2" will be permitted for use in pipes with diameters of 48 inches and over. For pipes with diameters less than 48 inches, no concrete having a slump in excess of 3" will be permitted for use. At the option of the Contractor, sections of precast reinforced concrete pipe (D-load) may be substituted for cast-in-place concrete pipe. Pipe and installation shall conform to the requirements of Item 465, "Pipe Sewers." Backfill shall be in accordance with the requirements for other storm sewers in these specifications using crusher fines (chat).

3. PIPE MAKING EQUIPMENT

The pipe shall be constructed with equipment specially designed for constructing cast-in-place monolithic concrete pipe. The equipment shall be acceptable to the Engineer and the Contractor may be required to furnish evidence of successful operation in other work of the equipment he proposes to use. Equipment not suitable to produce the quality of work required for the pipeline will not be permitted to operate on the project.

4. DIMENSIONS AND TOLERANCES

The design shell thickness shall be as specified in Table 1.

TABLE I	
Internal Diameter inches	Min. Shell Thickness inches
18	2
24	2-1/2
30	3
36	3-1/2
42	4
48	5
54	5-1/2
60	6
66	6-1/2
72	7
84	8
96	9
108	10
120	11

Variation in the internal diameter shall not exceed plus or minus 3 percent. The maximum allowable deviation from the true grade of the design invert of the pipe shall not exceed 1/2 inch either side of true grade. Where deviation from true grade occurs, true grade shall be re-established at a maximum departure of one-eighth inch per foot.

5. EXCAVATION AND BACKFILL

Excavation shall be in accordance with the requirement for other types of storm drains, except as modified herein. The trench shall be excavated in the lines and grades shown on the plans or as directed by the Engineer. The width of the trench shall be sufficient to accommodate travel of the pipe machine only. The bottom of the trench shall be shaped to the nominal outside circumference of the pipe. Excavation shall be performed from the outlet to the inlet. If the trench is over-excavated for the bottom 210 degrees of the pipe the excess area shall be filled with concrete. If rock is encountered, it will be removed at least 6 inches below the bottom of the pipe and the trench refilled with material sufficiently compacted to

allow operation of the machine and provide a smooth firm surface. The sidewall of the pipe shall be placed against undisturbed material.

Backfill material will be a crusher fine (chat) as described elsewhere in these Specifications. No backfill other than permitted for curing purposes shall be placed until the line has been inspected and approved by the Engineer. The trench may be completely backfilled after the pipe has been in place at least 24 hours and concrete strength requirements have been reached. Light traffic, axle load less than 6,000 pounds, may be routed over the pipe after backfill has been completed for twenty-four (24) hours. Unrestricted traffic may be permitted over the pipe after the backfill has been in place for forty-eight (48) hours.

All backfill material shall be mechanically compacted to 95% modified proctor or as directed by the Engineer.

6. CONSTRUCTION

All surfaces against which concrete are to be placed shall be free from standing water, mud, and debris. Absorptive surfaces against which concrete are to be placed shall be moistened thoroughly so that moisture will not be drawn from the freshly placed concrete.

The concrete shall be placed in one operation around the full circumference of the pipe by means of a traveling form. The forms shall be of sufficient strength to withstand vibrating or tamping the concrete and to permit workmen to walk on the forms without causing springing or bulging at any point.

As the traveling form moves forward, forms shall be placed inside the newly formed pipe to support a minimum of 230 degrees of the upper portion of the pipe.

The concrete shall be vibrated, rammed, tamped or worked with suitable appliances until the concrete has been consolidated to the maximum practicable density, free of rock pockets, and closes snugly against all surfaces or forms and provides a bond between the pipe shell and supporting earth.

When placing operations cease for any reason, the end of the pipe shall be left rough with a slope of approximately 45 degrees. The ends of the pipeline shall be covered with canvas or other suitable cover material to prevent excessive loss of moisture from the interior of the pipe already placed.

When starting pipe laying operation from a previously laid cast-in-place pipe or section of pre-cast pipe, a construction joint shall be made by excavating a "bell" completely around the end of the existing pipe and constructing a concrete collar to extend at least one foot either side of the joint with a minimum thickness equal to that of the wall of the pipe. The end of the existing pipe shall be clean and damp before continuing pipe making operations. Cleaning of the construction joint shall consist of removing all latency, loose or defective concrete, coatings, and any other deleterious materials.

All forms shall be clean and shall be placed at the trench side at the location of their proposed use for inspection by the Engineer. Forms, which are defective in any way, will not be used, and upon condemnation they shall be removed from the site of the work. The forms shall not vary more than ½ inch from the lower edge of a straightedge laid parallel to the centerline of the form, and shall be free of any holes larger than 5/8 inch in greatest dimension. The pipe machine shall be thoroughly clean and serviced prior to the placing of the concrete. Particular attention will be given to all parts of the machine with which concrete comes into contact.

Concrete chutes or trunks shall be provided to reach within 1 foot of the pipe machine hopper. The end of the chute or trunk shall discharge the concrete at the center of the hopper. Provisions shall be maintained to minimize segregation of the concrete mix in all phases of the operation.

Delays in placing shall be handled as follows or as otherwise directed. The concrete hopper on the pipe laying machine shall be kept ½ full at all times, provided, however, that when placing operations cease or are delayed for any reason for more than 20 minutes, the pipe machine shall be pulled forward until all the concrete is exhausted and until the top troweling skirt is clear of the concrete. If the pipe laying operation proceeds within one hour of the time of the last placement, no further steps need to be taken. However, if longer than one hour has elapsed, then a construction joint must be made as previously described. The end of the pipe shall be left rough and at the natural slope when the machine is moved forward.

All junctions of pipe shall be provided for at the time the cast-in-place pipe is placed.

Inside forms shall be removed from the pipe not sooner than 4 hours nor longer than 24 hours after placement of the concrete. Care shall be taken when removing forms to prevent damage to the pipe. The inside of the pipe shall be carefully inspected for imperfections in placement, and any required repairs or smoothing shall be made immediately to provide a uniform interior surface. No wash, mortar or concrete shall be applied to a surface not properly moistened or cleaned. Visible cracks shall be brushed with cement paste or chipped out and pointed up with cement mortar. Any cracks that appear to go through the shell shall be grooved and filled with mortar. All construction operations and methods for providing a watertight pipeline shall be the responsibility of the Contractor. Mortar shall consist of one part cement; two parts well graded sand passing 1/8-inch sieve. Wash shall consist of four parts cement, one part fire clay. The finished surface of the concrete pipe shall be substantially free of fractures, cracks and surface roughness.

7. CURING CONCRETE

Immediately after the concrete is placed the exposed surface of the concrete shall be cured by covering the top with a sheet of polyethylene film sealed with dirt along the edges. During the curing period following the placement of the concrete, the ends of the pipeline and all other openings into the pipeline shall be covered with canvas or other suitable material, except at locations where work is actually in progress. The inside surface of the pipeline shall not be cured.

8. MANHOLES AND BENDS

Manhole bases shall be hand formed on top of the pipe as soon as the pipe-placing machine has passed. Where required, the extra width for manholes shall be excavated ahead of the pipe placing operation. The base for the manhole shall be formed to receive a standard precast concrete barrel section and shall be shaped and smoothed so that the joint can be sealed water tight by use of "Ram Nek" or other approved joint sealing material.

Bends may be formed and cast in place or fabricated using precast reinforced concrete pipe (load D). Design and shop drawings shall be submitted to and approved by the Engineer before the bends are fabricated or cast.

9. MEASUREMENT

Measurement of manholes shall be as specified elsewhere in these specifications. Measurement of bends shall be as for other storm sewer pipe. The method of pipe measurement shall conform to that for other types of storm drainpipe in the section or storm drains in these specifications.

10. PAYMENT

Payment for cast-in-place non-reinforced pipe sewers, measured as prescribed above, will be made at the unit price bid per linear foot for the various sizes of "Pipe Sewers (Cast-in-Place)" complete in place. Payment for manholes shall be as specified elsewhere in these specifications.

Such payment shall be full compensation for furnishing all concrete materials, precast reinforced concrete pipe used in place of cast-in-place pipe, and for all other materials, tools, labor, equipment, and incidentals required to perform the applicable work prescribed herein.

When precast reinforced concrete pipe at the Contractor's option is used in a line of cast-in-place pipe the additional excavation for the pipe will be subsidiary.

2.04 CENTRIFUGALLY CAST FIBERGLASS REINFORCED RESIN PIPE SEWERS

A. DIRECT BURY PIPES

1. GENERAL

All pipes, joints and fittings shall be manufactured in accordance with the requirements of the applicable standard given below except as noted herein:

Service	Standard
Non pressure Sanitary Sewer	ASTM D3262
Sewer Force Main and Effluent Lines	ASTM D3754

Pipes shall be centrifugally cast, fiberglass-reinforced polyester resin as manufactured by Hobas USA, Inc. or approved equal.

Minimum pipe stiffness when tested in accordance with ASTM D2412 shall be 46 psi.

2. MATERIALS

The manufacturer shall use only approved polyester resin systems for which he can provide a proven history of performance in these particular applications. The historical data shall have been acquired from a composite material of similar construction and composition as the proposed product.

The reinforcing glass fibers used to manufacture the components shall be of highest quality commercial grade of E-glass filaments with binder and sizing compatible with impregnating resins. Sand shall be minimum 98% silica with a maximum moisture content of 0.2%

3. DIMENSIONS

Pipe outside diameters shall be in accordance with AWWA Standard C151 and C950. For diameters larger than covered in those documents, OD's shall be as shown in Table 1.

TABLE I

*WP/s		0/46		50/46		100/46		150/46		200/46	
Nomin Pipe Sz. (in.)	Pipe OD (in.)	Min. wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt (lb/ ft.)
18	19.50	.42	20	.41	20	.40	19	.38	18	.37	18
20	21.60	.46	25	.45	24	.43	23	.42	22	.40	21
24	25.80	.54	35	.53	34	.51	33	.49	31	.47	30
30	32.00	.66	54	.65	53	.62	51	.60	49	.57	47
36	38.30	.78	77	.77	76	.74	73	.71	70	.68	67
42	44.50	.90	104	.88	101	.85	98	.82	94	.78	89
48	50.80	1.02	134	1.00	131	.96	126	.93	122	.88	115
54	57.10	1.14	169	1.12	166	1.08	160	1.04	155	.99	147
60	62.90	1.26	209	1.23	204	1.19	197	1.14	188	1.09	180
66	69.20	1.38	249	1.35	243	1.30	234	1.25	228		
72	75.40	1.50	298	1.47	292	1.41	280	1.36	270		
78	81.60	1.62	352	1.58	343	1.52	331	1.47	320		
84	88.00	1.74	409	1.70	399	1.64	385				
90	94.30	1.86	468	1.82	458	1.75	440				
96	100.6	1.98	531	1.94	520	1.87	501				

- Maximum nominal working pressure in psi/pipe stiffness in psi

Pipe shall be supplied in nominal lengths of 20 feet. Actual laying length shall be the nominal plus or minus 2 inches. At least 90% of the total footage of each size and class of pipe, excluding special order lengths, shall be furnished in nominal length sections.

4. PRESSURE CLASS & TESTING FOR SEWER FORCE MAINS AND EFFLUENT LINES

The pipe nominal pressure class (PN) shall be equal to or greater than the maximum sustained operating pressure of the line. The minimum pressure rating for non-pressure pipe shall be 15 psi.

The maximum transient (operating plus surge) pressure of the line shall not exceed the pipe nominal pressure class by more than 40%.

Pipe hoop tensile strength for pressure pipe shall be verified as specified in the applicable standard (D3754 or C950) or by random burst testing at the same sampling frequency. All pipes shall be capable of withstanding a test pressure of 2 times the maximum sustained operating pressure of the line without leaking or cracking. This performance shall be periodically verified at the factory for pressure pipe at least once per lot as defined in D3754, section 7.1.

A. JOINTS

Unless otherwise specified, the pipe shall be field connected with fiberglass sleeve couplings that utilize elastomeric sealing gaskets made of EPDM rubber compound as the sole means to maintain joint water tightness. The joints must meet the performance requirements of ASTM D4161.

B. FITTINGS

Flanges, elbows, reducers, tees, wyes, laterals and other fittings shall, when installed, be capable of withstanding all operating conditions. Acceptable configurations include contact molded or metered fiberglass or properly protected standard ductile iron.

Unbalanced thrust forces shall be restrained with thrust blocks or other approved suitable methods. Fiberglass tees, wyes, laterals, or other similar fittings shall be fully encased in reinforced concrete designed to withstand the pressure forces.

2.05 POLYETHYLENE SEWER PIPE

A. SCOPE

- (1) This specification covers Polyethylene (PE) pipe with a corrugated outer wall and a smooth interior wall, for use with non-pressure sanitary sewer systems. The PVC fittings and joints are included in the specification.

B. MATERIAL AND MANUFACTURING

1. PIPE MATERIALS

The pipe shall be made from clean virgin Polyethylene compounds having a cell classification of 324420C as defined by ASTM D-3350.

2. FITTING MATERIALS

The fittings shall be made from clean virgin polyvinyl chloride (PVC) compounds having a cell classification of 12454B, 1245C or 13343C as defined by ASTM D-1784.

Pipe shall be manufactured by simultaneous extrusion of the corrugated and smooth walls with the smooth inner wall fused to the outer corrugated wall.

Fittings shall be molded or fabricated.

3. JOINING MATERIALS

- a. Gaskets
- b. Elastomeric gaskets shall meet the requirements of ASTM F-477.
- c. Lubricants

The lubricants used for assembly shall have no detrimental effect on the gasket or the pipe, and shall be per published recommendations of the pipe manufacture.

4. MATERIAL CERTIFICATION

A manufacture's or an independent laboratory certification shall be furnished to the purchaser/engineer that the products were manufactured, sampled, tested, and inspected at the time of manufacture in accordance with this specification.

C. PIPE DIMENSIONS

Pipe dimensions shall meet the following requirements when tested in accordance with ASTM D-2122.

Nominal Size	Avg. O.D.	Avg. I.D.
4	4.790 (121.7)	4.00 (101.6)
6	6.930 (176.0)	6.00 (152.4)
8	9.145 (232.2)	8.00 (203.2)
10	11.405 (289.7)	10.00 (254.0)
12	14.450 (367.0)	12.00 (304.8)
15	17.530 (445.3)	15.00 (381.0)
18	21/150 (537.2)	18.00 (457.2)

D. INSTALLATION

1. Joint Tightness

Minimum joint performance shall show no leakage when tested in accordance with ASTM D-3212.

2. Supplier Assistance

A manufacturers representative of the above referenced pipe material shall be present at the beginning of the installation as required by the Design Engineer or Contractor and shall remain on site until released by the Design Engineer or Field Inspector/Engineer.

2.06 INLETS FOR STORM SEWERS

A. CURB TYPE INLETS

- (1) Curb inlets shall be constructed at the locations and to the lines and grades or shown on the plans or as directed by the Engineer.
- (2) Curb inlets shall be constructed of reinforced class "C" concrete in accordance with Section 1-B "Concrete Structures" and the plans and detail drawings.
- (3) The curb section and the curb inlet shall conform to the curb and gutter section in which it is placed in so far as it is possible.

B. GRATE TYPE INLETS

- (1) Grate inlets shall be constructed at the locations and the lines and grades as shown on the plans or as directed by the Engineer.
- (2) Concrete boxes for grate inlets shall be constructed of reinforced Class "C" concrete in accordance with Section 1-B "concrete Structures" and the plans and detail drawings.
- (3) Grates shall be constructed of ASTM A-48 gray iron having minimum tensile strength of 35,000 psi or ductile iron having a minimum tensile strength of 60,000 psi and a yield strength of 40,000 psi.

The size, style, shape, type, weight and class shall be as shown on the plans.

Grate frames shall be as manufactured for the grate by the grate fabricator. If more than one type or style or frame is available, the type and/or style shall be as indicated on the plans.

C. COMBINATION INLETS

- (1) Combination curb and grate inlets shall be constructed at the locations and to the lines and grades as shown on the plans or as directed by the Engineer.
- (2) Combination inlets shall be constructed in accordance with the applicable requirements for "Curb type inlets" and "Grate type inlets" above.

D. INLET LEADS

- (1) Inlet leads may be PVC pipe or CSP as shown on the plans and called for in the bid proposal.
- (2) Inlet leads shall be constructed in accordance with the specifications for type of material used and the plans and detail drawings.
- (3) Where two or more leads are joined together to form a single lead to the storm sewer they shall be joined at a cleanout unless shown otherwise on the plans.
- (4) Inlet leads shall be connected to the storm sewer at a manhole. The leads shall enter the manhole at a point that will match the .8 points of the two pipes as near as practical.

E. CLEANOUT FOR STORM SEWER INLET LEADS

Cleanouts at the juncture of inlet leads shall be constructed in accordance with the dimensions and requirements shown on the plans and detail drawings.

F. CORRUGATED STEEL SLOTTED DRAINS

- (1) Corrugated steel slotted drains shall be as specified in section 2.02-3 of these specifications and shall be furnished in the lengths and diameters as shown on the drawings and in the bid proposal.
- (2) Corrugated steel slotted drains are approved for nuisance water inlets only and are sized to allow for considerable clogging before they will cease to function in this capacity.

2.07 MANHOLES

1. GENERAL

- A. **CONCRETE MANHOLES ARE NOT TO BE USED FOR SANITARY SEWERS AFTER DECEMBER 31, 2002. FIBERGLASS MANHOLES ARE TO BE USED FOR ALL SANITARY SEWERS.** Concrete manholes can be used for storm water sewers.

All manholes furnished for this project shall be precast unless noted otherwise on the plans and or bid proposal.

Precast manholes shall conform to the requirements of ASTM Specification C-478 with the modifications given in this article.

Concrete used for precast manholes shall have a minimum 28-day compressive strength of 4,000 psi and shall have a minimum cement content of 7 sacks per cubic yards.

All manhole sections shall be furnished with tongue and groove type joints suitable for sealing water tight with rubber or bituminous joint sealer or gaskets.

- B. When cast in place components for manholes are called for on the plans the concrete used shall have a minimum 28 day compressive strength of 4,000 psi and a minimum cement content of 7 sacks per cubic yard and shall conform to the requirements of ASTM Specification C-478 with wall thickness as shown on the plans and detail drawings.

Aggregate for the concrete shall meet the sodium sulfate and magnesium sulfate test as required in ASTM Specification C-33.

- C. Mortar for filling and shaping the inverts in precast manhole bases and for mortaring precast grade rings and cast iron rings and covers shall consist of one part Portland cement ASTM C150 Type 1 to 3 parts washed sand mixed with just enough water to make a workable mix.
- D. Manholes for corrugated steel pipe may be precast concrete or corrugated steel as described in Article 2.02. The type and material shall be as shown on the plans and called for on the bid proposal.

2. PRECAST MANHOLES

- A. Manhole base sections shall be cast with an integral floor and shall be constructed in accordance with the details shown on the plans.
- B. Manhole riser sections shall be constructed in accordance with the plans and details and these specifications. When pipe openings are required in manhole riser sections they shall be of the same type and meet the same requirements as the pipe openings in the precast bases.

Manhole riser sections for each manhole shall be furnished in the proper combination of lengths to construct the manhole in conjunction with the other components to the finished grade shown on the plans.

- C. Eccentric cone sections shall be constructed in the same manner as other components except the top of the cone will have a flat surface to accommodate the manhole ring and cover or grade adjusting rings instead of a tongue or groove.

Generally openings will not be required in the wall of the cone section of the manhole.

- D. Manhole grade rings shall comply with all the requirements for manhole riser sections except they shall be cast smooth both sides without tongues and/or grooves.

Manhole grade rings shall be sized to fit the smooth small end of the cone section and shall be cast in heights of 2", 4" or 6".

- E. Joint seals for precast concrete manholes shall be a bitumastic sealer such as Ram-Nek or approved equal, a soft rubber sealer such as Butyl-Lok or approved equal or an approved "O" ring gasket or a combination of the above if required to achieve a water tight joint.

- F. All water tight Storm Sewer Manholes constructed on this project shall have Neenah R-1755-C watertight manhole rings and covers or approved equal.

No separate payment will be made for the protective plastic manhole linings or for the water tight manhole rings and covers but the cost of these items shall be included in the price bid for water tight Storm Sewer Manholes.

In addition to the markings required by ASTM Specification C-478, all components of each manhole shall be, marked with location identifying information such as manhole number or line number and station value where manhole is to be installed. If the manhole has openings for installation of branch lines above the base section, each manhole section shall be clearly marked with the sequence of installation to assure the branch opening will be at the correct elevation.

3. FIBERGLASS MANHOLES

A. SCOPE

Fiberglass reinforced polyester manholes shall be manufactured from commercial grade polyester resin or other suitable polyester or vinyl resins, with fiberglass reinforcements and in accordance with the latest edition of ASTM D 3 753 (Standard Specification for Glass-Fiber Reinforced Polyester Manholes). Fiberglass manholes shall be used with fiberglass or plastic sewer pipe.

B. MATERIALS

1. **Resin**: The resins used shall be a commercial grade unsaturated polyester resin.
2. **Reinforcing Materials**: The reinforcing materials shall be commercial Grade "E" type glass in the form of mat, continuous roving, chopped roving, roving fabric, or a combination of the above, having a coupling agent that will provide a suitable bond with the resin and leave a resin rich surface.
3. **Surfacing Materials**: If reinforcing materials are used on the surface exposed to the contained substance, they shall be a commercial grade chemical-resistant glass organic surfacing mat having a coupling agent that will provide a suitable bond with the resin and leave a resin rich surface.
4. **Fillers and Additives**: Fillers, when used, shall be inert to the environment and wet well construction. Additives, such as thixotropic agents, catalysts, promoters, etc., may be added as required by the specific manufacturing process to be used. The resulting reinforced plastic material must meet the requirement of this specification.

C. FABRICATION

1. **Exterior Surface**: The exterior surface shall be relatively smooth with no sharp projections. Handwork finish is acceptable if enough resin is present to eliminate fiber show. The exterior surface shall be free of blisters larger than ½ inch in diameter, de-lamination and fiber show.
2. **Interior Surface**: The interior surface shall be resin rich with no exposed fibers. The surface shall be free of crazing, de-lamination, blisters larger than ½ inch in diameter, and wrinkles of 1/8 inch or greater in depth. Surface pits shall be permitted up to 6 per square foot if they are less than ¾ inch in diameter and less than 1/16 inch deep.
3. **Defects not permitted:**

Exposed fibers: glass fibers not wet out with resin.

Resin runs: runs of resin and sand on the surface

Dry areas: areas with glass not wet out with resin.

De-lamination: separation in the laminate.

Blisters: light colored areas larger than ½ inch in diameter.

Crazing: cracks caused by sharp objects

Pits or Voids: air pockets.

Wrinkles: smooth irregularities in the surface.

Sharp projection: fiber or resin projection necessitating gloves for handling.

D. PHYSICAL REQUIREMENTS

1. **Load Rating**: The complete manholes shall have a minimum dynamic-load rating of 16,000 ft-lbs. when tested in accordance with this standard. In order to establish this rating, the complete manhole shall not leak, crack, or suffer other damage when load

tested to 40,000 ft-lbs. and shall not deflect vertically downward more than ¼ inch at the point of load application when loaded to 24,000 lbs.

2. **Stiffness**: The manhole cylinder shall have a minimum pipe stiffness value as shown below when tested in accordance with A.S.T.M. 3753 8.5 (note 1)

Depth Ft.	F/dy.psi
3 – 6.5	0.75
7 – 12.5	1.26
13 – 20.5	2.01
21 – 25.5	3.02
26 – 35	5.24

3. **Soundness**: In order to determine soundness, apply an air or water pressure test to the manhole test sample. Test pressure shall not be less than 3 psig or greater than 5 psig. While holding at the established pressure, inspect the entire manhole for leaks. Any leakage through the laminate is cause for failure of the test. Refer to A.S.T.M. 3753 8.6.

4. **Chemical Resistance**: The fiberglass manhole and all related components shall be fabricated from corrosion proof material suitable for atmospheres containing hydrogen sulfide and dilute sulfuric acid as well as other gases associated with the wastewater collection.

5. **Physical Properties**:

	Hoop Direction	Axial Direction
a. Tensile Strength (pi)	18,000	5,000
b. Tensile Modulus (pi)	0.6×10^6	0.7×10^6
c. Flexural Strength (psi)	26,000	4,500
d. Flexural Modulus (psi)	1.4×10^6	0.7×10^6
e. Compressive (psi)	18,000	10,000

6. **Minimum Wall Thickness**: Shall be 0.48" nominal at all depths of the manholes.

E. TEST METHODS: All tests shall be performed as specified in A.S.T.M 3753 latest edition, section 8. Test method D-790 (see note 5) and test method D-695.

F. QUALITY CONTROL: Each completed manhole shall be examined for dimensional requirements, hardness, and workmanship. All required A.S.T.M 3753 testing shall be completed and records of all testing shall be kept and copies of test records shall be presented to customer upon formal written request within a reasonable time period.

G. CERTIFICATIONS: As a basis of acceptance the manufacturer shall provide a independent certification which consist of a copy of the manufacturer's test report and accompanied by a copy of the test results that the manhole has been sampled, tested,

and inspected in accordance with the provisions of this specification and meets all requirements.

H. SHIPPING AND HANDLING: Do not drop or impact the fiberglass manhole. Fiberglass manhole may be lifted by inserting a 4" x 4" x 30" timber into the top of manhole with cable attached or by a sling or "choker" connection around center of manhole, lift as required. Use of chains or cables in contact with the manhole surface is prohibited.

I. CONCRETE:

1. **Fiberglass Bottom:** Manholes may have fiberglass bottoms that are a minimum of 6" below the OD of the pipe invert when concrete is used to form the invert. Manufactured fiberglass inverts and bench areas are allowed, or concrete may be used to form bench area and invert. Concrete is to be used on top of anti-flotation ring and around the reducer section as required for buoyancy.

2. **Concrete Bottom:** Lower manhole into wet concrete until it rests at the proper elevation, with a minimum of 4 inches of fiberglass manhole inserted into the wet concrete below flow line, then move manhole to plumb. The concrete shall extend a minimum of one foot from the outside wall of the manhole and a minimum of 6 inches above incoming lines. On the inside concrete shall form the bench and invert area and rise a minimum of 4 inches above incoming lines. If required by Engineer concrete may be used around reducer section for buoyancy control.

BACKFILL:

1. **Backfill Material:** Unless shown otherwise on drawings and approved by the Engineer, sand, crushed stone, or crushed gravel shall be used for backfill around the manhole for a minimum distance of one foot from the outside surface and extending from the bottom of the excavation to the top of the reducer section. Suitable material chosen from the excavation may be used for the remainder of the backfill. The material chosen shall be free of large lumps or clods, which will not readily break down under compaction. This material will be subject to approval by Engineer.

2. **Backfill Procedure:** Backfill shall be placed in layers of not more than 12 loose measure inches and mechanically tamped to 95% Modified Proctor Density, unless otherwise approved by Engineer. Backfill shall be placed in such a manner as to prevent any wedging action against the fiberglass manhole structure.

K. MARKING and IDENTIFICATION: Each manhole shall be marked on the inside and outside with the following information:

Manufacturer's name or trademark
Manufacturer's factory location
Manufacturer's serial number
Total length

4. MANHOLE RINGS AND COVERS

- A. Manhole rings and covers furnished for this project shall be pattern No. 300-24 as produced by Western Iron Works, Inc., 21 E. 6th St., San Angelo, Texas 76903-5493 or Bass and Hays Foundry, Inc., 238 South Bagdad Rd., Grand Prairie, Texas 75050, or approved equal.

B. WATER TIGHT MANHOLE COVERS

(1) Water tight manhole rings and covers furnished for this project shall be number R-1755-C as manufactured by Neenah Foundry Company, P.O. Box 729, Neenah, Wisconsin 54957, or approved equal.

(2) When watertight replacement sanitary sewer manhole rings and covers are called for on the plans and in the bid proposal they shall be Neenah Foundry Co. No. R-1755-C or approved equal.

No separate payment will be made for adjusting to grade of the replacement watertight manhole rings and covers. The contractor shall schedule this work to coincide with other manhole and water valve adjustments and any costs that might be involved shall be included in the price bid for replacement water tight manhole rings and covers.

(3) Manhole vents shall be used in conjunction with watertight rings and covers spaced every third manhole or as indicated on the plans. Vents shall be constructed as indicated on City design and construction standards.

- C. Pressure type manhole rings and covers may be required for certain storm sewer applications. When pressure type manhole rings and covers are called for on the plans and/or bid schedule they shall be Western Iron Works Pattern #380-24P or approved equal. The manhole cover shall be sealed with an "O" ring gasket in a ring groove and shall be secured to the ring by six (6) five-eighths inch (5/8") stainless steel bolts. The ring shall have six (6) one and one quarter inch (1-1/4") bolt holes in the flanges for securing the ring to the concrete slab top on the manhole.
- D. All manhole covers except grate type shall have two blind pick holes or pick bar cast into them. The blind pick holes or pick bars shall be placed on opposite sides of the cover.
- E. All manhole covers except grate type shall have cast into their tops in letters 2 inches high minimum one of the following:

CITY OF MIDLAND
SANITARY SEWER
OR
CITY OF MIDLAND
STORM DRAIN

which ever is applicable.

2.08 GRANULAR MATERIALS

A. GRANULAR MATERIAL GRADATION CLASSIFICATIONS:

Granular materials furnished for foundation, bedding, encasement, backfill, or other purposes as may be specified, shall consist of any natural or synthetic mineral aggregate such as sharp grained sand, crushed gravel, crushed rock, crushed stone, or slag, and shall conform to the following specifications and/or gradation.

Note all materials used for these purposes shall be crushed and shall have at least two broken faces. Pea gravel will NOT be allowed.

	Foundation	Bedding	Encasement	Backfill
ASTM C33 Grade #57	x			
ASTM C33 Grade #67	x			
ASTM C33 Grade #8		x	x	
THD 1982 Item 302 Type D Grade 4		x	x	
THD 1982 Item 302 Type D Grade 5			x	
Crusher fines**			*x	x

*100 percent of crusher fines that are to be used within 12 inches of the top of pipe must pass the $\frac{3}{4}$ " sieve.

** Approximate Gradation for Crusher Fines.

Sieve Size	% Passing
2 inch	100
# 4	35 - 100
# 10	20 - 100
# 40	5 - 35
#200	4 - 10

Crushed stone material proposed as an alternate for use on this project and not meeting the above specifications must be approved in writing at least 48 hours prior to the time scheduled for opening bids.

B. GRANULAR MATERIAL USE DESIGNATIONS:

Granular materials provided for Foundation, Bedding, Encasement, or Backfill use as required by the contract, either as part of the pipe item work unit or as a separate contract item, shall be classified as to use in accordance with the following:

MATERIAL USE DESIGNATION

ZONE DESIGNATION

Granular Foundation	Placed below the bottom of pipe grade as replacement for unsuitable or unstable soils, to achieve better foundation support.
Granular Bedding	Placed below the midpoint of the pipe prior to pipe installation, to facilitate proper shaping and achieve uniform pipe support. Also for Class B bedding where specified.
Granular Encasement	Placed below an elevation one half foot (6") above the top of pipe, after pipe installation, for protection of the pipe and to assure proper filling of voids and thorough consolidation of backfill.

In each case above, unless otherwise indicated, the lower limits of any particular zone shall be the top surface of the next lower course as constructed. The upper limits of each zone are established to define variable needs for material gradation and compaction or void content, taking into consideration the sequence of construction and other conditions. The material use and zone designations described above shall only serve to fulfill the objectives and shall not be construed to restrict the use of any particular material in other zones where the gradation requirements are met.

PART 3 – EXECUTION

3.01 LOCATION OF WORK

- A. The work will be located as shown on the plans.
- B. It may be necessary for the Engineer to shift lines as reasonable amount to avoid an obstruction to the construction or to reduce right of way difficulties. The Contractor will not be allowed any additional compensation due to shift of lines. Additional compensation will be allowed only for lengthening of lines.

3.02 PROTECTION OF SURFACE STRUCTURES

- A. All surface structures and features located outside the permissible excavation limits for underground installations, together with those within the construction areas which are indicated in the Plans as being saved, shall be properly protected against damage and shall not be disturbed or removed without approval by the Engineer.
- B. Obstructions such as street signs, guard posts, mail boxes and other items of prefabricated construction may be temporarily removed during construction provided that essential service is maintained in a relocated setting as

approved by the Engineer and that non-essential items are properly stored for the duration of construction. Upon completion of the underground work, all such items shall be replaced in their proper setting. This removal, relocation and replacement shall be at the sole expense of the Contractor.

In the event of damage to any surface structures or improvements, either privately or publicly owned, in the absence of construction necessity, the Contractor will be required to replace or repair the damaged property to the satisfaction of the Engineer and without cost to the Owner.

3.03 INTERFERENCE OF UNDERGROUND STRUCTURES

- A. When any underground structure interferes with the planned placement of the pipeline or appurtenances to such an extent that alterations in the work are necessary to eliminate the conflict or avoid endangering effects on either the existing or proposed facilities, the Contractor shall immediately notify the Engineer and the Owner of the affected structure. When any existing facilities are endangered by the Contractor's operations, he shall cease his operations at the site and take such precautions as may be necessary to protect the in place structures until a decision is made as to how the conflict will be resolved.
- B. Without specific authorization from the Engineer, no essential utility service shall be disrupted, nor shall any change be made in either the existing structures or the planned installations to overcome the interference. Alterations in existing facilities will be allowed only to the extent that service will not be curtailed unavoidably and then only when the encroachment or relocation will satisfy all applicable regulations and conditions.
- C. Wherever alterations are required as a result of unforeseen underground interference not due to any fault or negligence of the Contractor, the Engineer will issue a written order covering any additional or extra work involved and specifying the revised basis of payment, if any. Any alterations made strictly for the convenience of the Contractor shall be subject to prior approval and shall be at the Contractor's expense.
- D. No extra compensation will be allowed for delays caused by the interference of underground structures.

3.04 SEPARATION BETWEEN SANITARY SEWERS AND WATER MAINS

- A. Sanitary sewers and service lines shall be installed so that the separation between the sewer and water mains is not less than 9 feet in all directions. The 9 feet shall be measured between the nearest outside edges of the pipe.
- B. When the required 9 foot minimum separation cannot be maintained and a sanitary sewer must be constructed parallel to a water main, the sanitary sewer shall be constructed of ductile iron or PVC pipe meeting AWWA specification or having NSF approval for potable water pipe, with a pressure rating of 100 psi for both the pipe and the joint. The sanitary sewer line shall

be installed in a separate trench and may be placed no closer than 2 feet vertically and 4 feet horizontally from the water main, with the separation being measured from the nearest outside walls of the pipes. The sanitary sewer shall be constructed lower than the water main.

- C. When a sanitary sewer must cross a water main and the 9 feet required separation cannot be maintained, the sanitary sewer may be constructed with a minimum clear separation between the outside diameters of the two pipes of 6 inches if that part of the sanitary sewer within 9 feet of the water main is constructed of ductile iron pipe or PVC pipe meeting AWWA specifications, having a 150 psi pressure rating and equipped with pressure type joints. One length of the sewer pipe must be centered on the water main and where possible, the sanitary sewer should pass under the water line.
- D. When the 9 foot required separation cannot be maintained and a sanitary sewer force main must be constructed parallel to a water main, the sanitary sewer force main shall be constructed of ductile iron or PVC pipe meeting AWWA specifications and having a pressure rating of 150 psi and equipped with pressure type joints. The force main must be constructed with a minimum vertical separation of 2 feet and a minimum horizontal separation of 4 feet measured between the outside diameters of the pipes. The force main must be constructed lower than water main.

Table I showing separation of water and sewer lines and construction materials allowed:

TABLE 1 SEPARATION OF WATER AND SEWER LINES						
Condition	Location	Material		Separation (Min.)		Comments
		Water	Sewer	Vertical	Horizontal	
NEW WATER AND NEW SEWER SYSTEM						
New Water & New Sewer Gravity Sanitary Sewer Parallel to Water Main	Water above Sewer	Std.	CI DI PVC 150 PSI	2'	4'	Separate Trenches
Gravity Sanitary Sewer Crossing Water Main	Water above Sewer or Sewer above Water	Std.	CI DI PVC. 150 PSI	6"	NA	Center one joint of sewer pipe on water main
Gravity Sewer Crossing Water Main	Water above Sewer	Std.	ABS, Clay Conc. composite	2'	NA	Cement stabilize sand initial backfill zone each side of crossing. Center of sewer for 9 ft one joint of sewer pipe on water Main
NEW WATER AND EXISTING SANITARY SEWER						
New Water Parallel Existing Sewer	Water above Sewer	Std.	Clay, Conc. ABS CI DI PVC	2'	4'	If sewer shows no sign of leakage, then leave sewer alone. If Sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Water above Sewer	Std.	Clay, ABS Conc. composite	2"	NA	If sewer shows no sign of leakage, then leave sewer alone if sewer shows signs of leakage then repair or replace.
New Water Crossing Existing Sewer	Sewer above Water	Std.	Clay, ABS Conc. composite	2'	NA	Replace existing sewer with one joint CI,DI,PVC-150 Centering over waterline
New Water Parallel to Existing Sewer	Sewer above Water	Std.	Clay, ABS Conc. composite	2'	4'	Replace existing sewer with CI, DI, PVC – 150 PSI or Cement Stabilized sand back- fill initial Backfill none of sewer where parallel closer than 9 ft., or Encase the water in 150 PSI Pipe two nominal sizes larger.

EXISTING WATER AND NEW SANITARY SEWER						
New Sewer parallel Existing Water	Water above Sewer Or Sewer above Water	Std	CI DI PVC 150 PSI	2'	4'	Separate trenches
New Sewer crossing Existing Water	Water above Sewer or Sewer above water	Std	CI DI PVC 150 PSI	6"	NA	Center one joint of sewer pipe on water main.
New Sewer crossing Existing Water	Water Above Sewer	Std	Clay, ABS Conc. composite	2'	NA	Cement Stabilize sand initial backfill zone of sewer for 9 ft each side of crossing. Center one joint of sewer pipe on water main.

3.05 EXCAVATION

- A. Excavation of every description and of whatever materials encountered shall be made to the alignment and depth shown on the plans or as directed by the Engineer. Excavation shall be made by open cut. Sides of trenches shall be kept as nearly vertical as possible and the trench shall be so braced, sheeted and drained that workmen may work safely and efficiently therein. The trenches shall be sufficiently straight between designated angle points to permit the pipe to be laid true to line in the approximate center of the trench.
- B. The trench width may vary with and depend upon the depth of trench, the diameter of pipe to be laid and the nature of the material to be excavated; but in any case shall be of ample width to permit the pipe to be laid and jointed properly and the backfill to be placed and compacted properly. The minimum width of unsheeted trench shall be 18 inches. The maximum clear width of trench at the top of the pipe shall be not more than two (2) feet greater than the outside diameter of the pipe for pipes up to 33" diameter except by consent of the Engineer. Whenever, for any reason, the maximum trench width is exceeded, the Contractor shall provide, at his own expense, pipe of higher class and/or bedding adequate to sustain the increased soil load as calculated by the Engineer.
- C. Trenches shall be undercut to provide for the class bedding specified and/or shown on the plans. Bell holes shall be excavated to insure the pipe resting for its entire length upon the bedding material. Where trenches are under-cut beyond the depth required for bedding the trench shall be brought to grade by using crushed aggregate as specified for foundation herein. The use of loose native soil will NOT be permitted for this purpose.
- D. No pipe shall be laid in water. Where the ground water table is at or above trench bottom, the Contractor shall de-water the trench to permit the pipe to be laid on a solid foundation.

Costs for de-watering by whatever method selected shall be considered incidental to the price bid per foot of pipe.

The Contractor shall discharge pumps to the natural drainage channels, or if permitted, to other sewer or drains.

Where sewer pipelines are located in or across streambeds or drainage ditches, the Contractor shall divert the stream flow and de-water each section as the work progresses.

- E. Temporary support, adequate protection and maintenance of all underground and surface utility structures, drains, sewers, and other obstructions encountered in the progress of the work shall be furnished by the Contractor at his own expense under the direction of the Engineer.
- F. Whenever wet, soft or unstable soil, incapable of properly supporting the pipe, manholes or other structure is encountered in the trench, a further depth and/or width shall be excavated and refilled to trench bottom grade with gravel or other approved suitable material thoroughly compacted to assure a firm foundation for the pipe.
- G. Rock, boulders and large stones shall be removed to provide a clearance of at least six (6) inches below the outside barrel of the pipes, valves, or fittings and to a clear width of six (6) inches on each side of all pipe and appurtenances for pipe 15 inches in diameter or less, and a clear width of nine (9) inches on each side of all pipe and appurtenances for pipe larger than 15 inches in diameter. Adequate clearance for properly joining pipe laid in rock trenches shall be provided at bell holes. The space between the rock at the bottom of the trench and the bottom of the pipe barrel shall be filled with compacted bedding material.
- H. The Engineer shall be notified of any need for blasting to remove materials which cannot be broken up mechanically, and there shall be no blasting operations conducted until the Engineer's approval has been secured. Blasting operations will be allowed only when proper precautions are taken to protect life and property, and then shall be restricted as the Engineer directs. The Contractor shall assume full responsibility for any damage caused by blasting, regardless of the requirements for notification and approval. The Contractor shall secure any required permits for blasting and shall conduct blasting operations in conformance with all applicable State and local laws, regulations and ordinances.
- I. In the event the Contractor desires to employ tunneling in locations other than as shown on the Plans in order to avoid replacement of sidewalks, etc., he shall do so only upon receipt of specific permission from the Engineer. Tunneling of this nature shall be considered incidental.
- J. Excavated materials will be classified for reuse as being either suitable or unsuitable for backfill or other specified use.

3.06 SPECIAL SAFETY PROVISIONS

1. TRENCH SAFETY SYSTEMS

A. DESCRIPTION

This item shall govern for the Trench Safety Systems required for the construction of all trench excavation to be utilized in the project and including all additional excavation and backfill necessitated by the safety system. A trench shall be defined as a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet. The depth is five feet or more. Trench Safety Systems include but are not limited to sloping, sheeting, trench boxes or trench shields, sheet piling, cribbing, bracing, shoring, de-watering or diversion of water to provide adequate drainage.

B. CONSTRUCTION METHODS

Trench safety systems shall be accomplished in accordance with the detailed specifications set out in the provisions of Excavation, Trench, and Shoring, Federal Occupational Safety and Health Administration (OSHA) Standards, 29CFR, Part 1926, Subpart P, as amended, including Proposed Rules published in the Federal Register (Vol. 52, No. 72) on Tuesday, October 31, 1989. The sections that are incorporated into these specifications by reference include Sections 1926-650 through 1926-652. Legislation that has been enacted by the Texas Legislature, being Tex. Rev. Civ. Stat. Ann. Arts. 1015q, 2368a.6 (Vernon Supp. 1988) with regard to Trench Safety Systems, is hereby incorporated, by reference into these specifications.

A reproduction of the OSHA Publication 2226 is attached for the convenience of the Contractor. The City assumes no responsibility for the accuracy of the reproduction or that it reflects current law. The Contractor is responsible for obtaining a copy of this section of the Federal Register for his use.

If the contractor elects to use a trench protective system that, in the Proposed Rules, requires "Design by a qualified person or a qualified engineer," [For example see 1926.652 (b) (3) and 1926.652 (c) (4)], a "qualified person or qualified engineer" shall be a Professional Engineer registered in the State of Texas. The Contractor is responsible for obtaining boring and soil analysis as required for the planned design. The trench excavation is to be designed in conformance with OSHA standards and regulations.

C. TRENCH SAFETY PROGRAM

The Contractor shall submit a safety program specifically for the construction of trench excavation. The trench safety program shall be in accordance with OSHA standards governing the presence and activities of individuals working in and around trench excavation.

D. INSPECTION

The Contractor shall make daily inspections of the Trench Safety Systems to ensure that the systems meet OSHA requirements. Daily inspection is to be made by a "competent person" provided by the Contractor. If evidence of possible cave-ins, or slides, is apparent, all work in the trench shall cease until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench. It is the sole duty, responsibility and prerogative of the Contractor, not the owner or the Engineer, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project. The Contractor shall maintain a permanent record of daily inspections.

2. SAFETY RESTRICTIONS - work near high voltage lines

The following procedures will be followed regarding the subject item on this contract:

A. Warning signs painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

B. All equipment except back hoes or dippers that may be operated within ten feet of high voltage lines shall have an insulating cage-type of guard about the boom or arm and insulator links on the lift hook connections.

C. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.

D. The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

3.07 PIPE LAYING

A. All gravity pipe shall be laid using approved grade boards, furnished and set by the Contractor at no additional cost to the Owner, according to the grade stakes established by the Engineer. The maximum spacing of grade boards shall be fifty (50) feet. No sewer shall be laid unless there is a minimum of three grade boards set to check the proper grade and alignment ahead. The Contractor shall provide and use a suitable grade rod to insure the proper grade of the pipe.

B. The Contractor may use the laser beam method of setting a line and grade for the sewer by using the laser beam coaxially through the center of the sewer being laid. The laser beam projector is to be rigidly mounted to its support platforms, with a two-point suspension, or equivalent, assuring that all ground and equipment vibrations are kept to an absolute minimum. The Contractor shall furnish all equipment including equipment necessary to control atmospheric conditions in the pipe to keep line and grade to acceptable standards of accuracy. Competent experienced people who have been properly trained to operate the equipment used must operate the laser beam system.

C. The Contractor shall stake check pegs at all manholes throughout the job. Check pegs midway between manholes and any other checkpoints deemed necessary to assure accuracy of the equipment shall be provided by the contractor.

D. Each piece of pipe and special fitting shall be carefully inspected before it is placed and no defective pipe shall be laid in the trench. Pipe laying shall proceed upgrade, starting at the lower end of the grade and with the bells uphill. No pipe shall be laid except in the presence of an inspector representing the Engineer. Any pipe laid except in the presence of an inspector representing the Engineer shall be subject, at the contractor's expense, to a television camera inspection and survey by the city. Trench bottoms found to be unsuitable for foundations after pipe laying operations have started shall be corrected and brought to exact line and grade with approved compacted granular material as specified for foundation in Item 2.07 A. of these specifications.

E. Pipe laying shall proceed up-grade with spigot or tongue ends pointing in the direction of flow. The spigot shall be centered in the bell, and pipe shoved into position, and brought into true alignment. It shall be secured there with bedding material carefully tamped under and on each side of it, excepting at bell holes. Care shall be taken to prevent dirt from entering the joint space.

F. Any defective or damaged pipe discovered after the line is laid or any gravity pipe, which has had its grade or joint, disturbed after laying shall be removed and replaced or relayed. The section of line in which such damaged or displaced section is discovered shall be retested after corrections are made.

G. Where excavation for buildings or other portions of the work have been carried below the line and grades of the pipe, thorough tamping of approved crushed stone backfill and the use of adequate bracing and blocking under the pipe will be required to insure against settling and shearing of the pipe. In areas where noted on plans, Portland cement stabilized material or concrete shall be used for backfill to provide adequate bracing for pipe and protection of structures.

H. All manhole connections for PVC or other Polymer based pipe shall be made using "A Lok Gaskets" or "Kor-N-Seal" boots or other approved water stop devices. Only Portland cement grout that expands upon curing or approved non-shrink grout will be incorporated into any manhole connection.

I. Connections to manholes for other types of pipe shall be in accord with the pipe manufacturers specifications and other applicable requirements of these specifications. The resulting joint shall meet the leakage test requirements of these specifications.

J. The exposed end of all pipes shall be fully protected with a stopper or bulkhead at the end of each day's work to prevent earth, debris, small animals, or other substances from entering the pipe. The interior of the sewer shall be carefully freed from all dirt, jointing compound, or superfluous material of every description as the work progresses.

3.08 CONNECTION AND ASSEMBLY OF JOINTS

1. JOINING PVC OR OTHER POLYMER BASED PIPE

A. The type of joint and the material to be used shall be as shown on the plans or specified herein. Factory cast compression joints shall be free of dirt and lubricated before inserting the barrel into the bell. After the spigot is centered in the bell, the pipe shall be shoved home solidly by using a wood block and bar. The Contractor shall keep the ends of the pipe closed to prevent dirt and other material from entering the pipe during placement. All joints must be water tight, and any leaks or defects discovered must be repaired immediately. Any pipe, which has been disturbed after being laid, must be taken up, the joint cleaned and properly relayed as directed by the Engineer.

Lubricant used shall be as recommended by the pipe manufacturer.

B. Field-cut pipe must be beveled for insertion into the gasketed bell or coupling. Bevels can be made with a hand or power tool. Bevels shall be made to pipe manufacturer's specifications. If pipe manufacturers specifications are not available the bevel may be made at 15 degrees to the longitudinal axis of the pipe through one half (1/2) the wall thickness.

C. After pipe has been cut and beveled, a new full insertion mark located as recommended by the pipe manufacture shall be made using a felt tip pen. The contractor may determine the location of the insertion mark by measuring the mark location on a factory marked joint of pipe if manufacturer's specifications are not available.

2. JOINTING CORRUGATED STEEL PIPE

A. Gaskets for corrugated steel pipe shall be "O" Ring or sleeve types. Sleeve gasket shall be carefully placed on one joint of pipe. When the pipe is aligned and brought end to end the gasket shall be carefully centered over the joint between the ends of the pipe. "O" ring gasket shall be installed in accordance with the manufacturer's recommendation.

B. When "O" ring gaskets are furnished a flat gasket shall be furnished and placed between the overlapping portions of the band. The gasket shall extend the full width of the band and shall be of sufficient depth to assure a watertight joint.

C. The coupling band shall be carefully centered over the joints and tightened to the pipe manufacturer specifications. Care shall be taken during the tightening process to assure a snug uniform fit for the entire circumference of the pipe.

3. PROTECTING AND COVERING JOINTS

- A. The contractor shall keep the ends of the pipe closed during the time of construction to prevent the entry of dirt, debris, small animals and other foreign objects.
- B. Joints shall not be covered until approved by Engineer or his representative. Connections, which are for future use, shall be properly capped.

3.09 CONNECTIONS TO EXISTING STRUCTURES

A. Where shown on the plans, the contractor shall connect the new sewer to existing manholes. If no stub out is present in the existing manhole for such connection, the contractor shall construct such connection by making a hole in the side of the existing manhole using a coring machine or other approved method and installing a "KOR N Seal" boot as manufactured by N.P.C. Systems, Inc. or other approved water tight manhole connector.

The contractor shall use caution in constructing the connection to the existing manhole. Damage to the manhole that, in the opinion of the Engineer, would impair the use and/or function of the manhole shall be just cause to require the contractor to reconstruct the manhole at contractor's expense. Such damage shall include but not be limited to cracking of the manhole riser section, spalling around the connection significantly reducing manhole wall thickness or excessive oversize in the opening for the new connection requiring any filler other than the manhole connector and/or non-shrink grout specified.

The contractor shall make such changes in the invert of the manhole as may be necessary to provide a smooth flow of the water through the manhole. Any connection to existing structures required in the Plans shall be accomplished by the Contractor and shall be incidental item with no direct compensation being made unless listed as a pay item in the bid proposal.

- B. If the work consists of the construction of a sewer that is to replace an existing sewer, all of the existing service lines shall be kept in operation and connected to the new line.
- C. Connections shall be made to all existing sewer lines in the vicinity of the work by removing a section of the sewer for the existing line and inserting in the space a tee branch of proper size, or by the construction of a manhole, regulator chamber of other structure as shown on the Drawings.
- D. Connections to building services shall be made in a neat and workman like manner. Clean out plugs shall be installed wherever feasible, by making the connections with a standard wye or tee-wye. When clean out plugs are installed they should be located as near the right of way line as practical.

3.10 BACKFILL OPERATIONS

1. GENERAL

A. All pipeline excavations shall be backfilled in a manner that will restore pre-existing conditions as the minimum requirement and fulfill all supplementary requirements indicated in the Plans and Specifications. The backfilling operations shall be started as soon as conditions will permit on each section of pipeline, so as to provide continuity in subsequent operations and restore normal public service as soon as practicable on a section-by-section basis. All operations shall be pursued diligently, with proper and adequate equipment, to assure acceptable results.

B. For this specification backfill is defined as any material placed in the trench above the bedding zone other than the pipe or conduit and appurtenance.

For flexible pipe the backfill between the bedding material and the crown of the pipe shall be crushed stone suitable for encasement as specified in article 2.07 of the specifications. When Portland cement stabilized backfill is used above the pipe zone; the crushed stone encasement shall extend to 1' above the crown of the pipe.

C. Depositing of the backfill shall be done so the shock of falling material will not injure the structure. Grading over and around all parts of the work shall be done as directed by the Engineer.

D. Whenever soil types which are determined by the Inspector to be undesirable for backfill are excavated from the trench, such material shall be hauled away and deposited at locations shown on the plans or as directed by the Engineer at no additional compensation.

E. Backfill materials placed in the pipe zone shall be carefully placed in relatively uniform depth layers spread over the full width and length of the trench section in a manner and/or sequence that will provide simultaneous support on both sides of the pipeline. Each layer shall be compacted effectively, by approved mechanical or hand methods, until there is no further visual evidence of increased consolidation. Above the pipe zone the backfill material shall be placed uniformly across and along the trench in depth suitable for the compaction method used and compacted to a minimum of the density specified for the material used and the trench location. Compaction of the in place layer shall be completed acceptably before placing material for a succeeding layer thereon.

The manner of placement, layer thickness, compaction equipment, and procedure effectiveness shall be subject to approval of the Engineer. Water jetting or flooding shall NOT be used to compact trench backfill.

F. Compaction of materials placed within the pipe bedding and encasement zones shall be accomplished with portable or hand equipment methods, so as to achieve thorough consolidation under and around the pipe and avoid damage to the pipe. Above the pipe zone, the use of heavy roller type compaction equipment shall be limited to safe pipe loading.

G. The maximum loose thickness of each backfill layer placed above the pipe zone shall be 12 inches, except that 16 inches will be permitted for Granular Materials placed above an elevation one foot above the top of pipe, and with the provision that, by authority of the Engineer and in consideration of the demonstrated capability of special type vibratory compactors, these maximums may be increased at his discretion. "Hydro tamps", "vibra tamps" or other heavy compacting equipment shall not be used until the backfill has reached a depth of four (4) feet above the top of the pipe.

H. All surplus or waste materials remaining after completion of the backfilling operations shall be disposed of in an acceptable manner within 24 hours after completing the backfill work on each particular pipeline section. Disposal at any location within the project limits shall be as specified, or as approved by the Engineer; otherwise, disposal shall be accomplished outside the project limits at the Contractor's discretion. The backfilling and surplus or waste disposal operations shall be a part of the work required under the pipeline installation items, not as work that may be delayed until final cleanup.

I. For the duration of the warranty period of the project, the Contractor shall assume full responsibility and expense for all backfill settlement and shall refill and restore the work as directed to maintain an acceptable surface condition. All additional materials required shall be furnished without additional cost to the Owner.

2. BACKFILL IN PUBLIC RIGHTS-OF-WAY AND OTHER AREAS WHERE SETTLEMENT IS CRITICAL

A. GENERAL REQUIREMENTS

(1). Backfill above the pipe zone in public rights-of-way and under paved parking lots, near structures or other utilities where settlement can cause damage shall be made using Portland cement stabilized backfill or crushed stone screenings (crusher fines).

The pipe zone is defined as that portion of the trench extending from the bottom of the trench to 12" above the crown of the pipe or conduit.

(2) Backfill around structures such as manholes, junction boxes, transformer boxes and valve boxes shall be made using Portland cement stabilized backfill material or crushed stone screening (crusher fines).

(3) The minimum depth of stabilized backfill or crusher fines shall be twelve (12") inches.

When utilities are being constructed under existing paving, the stabilized backfill or crusher fines shall extend from top of the pipe zone to the top of the base course.

When utilities are being constructed under existing unpaved streets that are not scheduled for immediate pavement construction, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the existing roadway surface.

When utilities are being constructed in streets that are scheduled for immediate paving, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the bottom edge of the eight (8") inches of subgrade, or, if the paving contractor has constructed a portion of the roadway prior to the construction of the utilities the backfill shall extend to the top of the course the contractor has finished, or the top of the base course, which ever is lower.

If the final course of asphaltic concrete has been placed, the street or alley surface shall not be cut for utility installation.

In streets where stabilized backfill is required only to the bottom of the subgrade course, the minimum depth of stabilized backfill may be reduced to six (6") inches in which case the maximum depth of the "pipe zone" shall be limited to six (6") inches above the top of the utility line or conduit.

B. BACKFILL MATERIALS

(1) Portland cement stabilized backfill shall consist of caliche base material, blow sand or native soil stabilized by the addition of Portland cement. Crushed stone or concrete aggregate shall NOT be used.

When Portland cement stabilized backfill is to be used, the contractor shall submit a mix design prepared by an approved commercial laboratory for approval before the trenching operation is begun. When native soil is to be used samples may be taken along the proposed route by boring or other approved means. Samples must be representative of the full trench depth.

The mix design shall be such that the minimum 7-day compressive strength is 150 psi when tested according to test method Tex 418-A.

The minimum cement content for Portland cement stabilized backfill shall be 1 sack per cubic yard.

Cement used in Portland cement stabilized backfill shall be Type I or Type II conforming to the requirements of ASTM Designation C150.

Caliche used for Portland cement stabilized backfill shall be crushed material conforming to Texas State Department of Highways and Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges Item 248 Type F, Grade 2.

Blow sand used for Portland cement stabilized backfill shall be clean, free from organic matter, clay lumps, rock and other deleterious matter.

Native soil used for Portland cement stabilized backfill shall be clean, free of clods and organic matter, and free of rock in excess of 2".

(2) Crushed stone screening (crusher fines) used for back fill shall be sharp grained particles of crushed stone conforming to the requirements of Article 2.07 of these specifications.

(3) Trencher excavated rock material shall be screened so that the largest diameter material is less than 2". The screened rock material used for backfill shall have sufficient moisture added so that the backfill will bind with the fines. The rock material backfill shall be tamped or compacted in two (2) foot lifts. A sheeps foot roller shall not be used unless there is two (2) feet or more compacted backfill above the pipe bedding.

C. BACKFILL CONSTRUCTION

(1) Portland cement stabilized caliche backfill or Portland cement stabilized native soil backfill may be constructed using either the "dry" method or the "wet" method.

(a) The dry method of stabilized backfill construction consists of dry mixing of the cement and caliche or soil to produce a homogenous mixture then adding and mixing sufficient water for proper compaction and hydration of the cement. The water content of the mixture will be approximately one to two percent above the optimum moisture for soil compaction. The mixing may be accomplished by using batch mixers or on the job site by "blade mixing" or other suitable method to produce the desired backfill material. The mixed material shall be placed in lifts of up to a maximum of 12 inches and compacted to ninety-five (95%) modified proctor densities by use of suitable compacting equipment.

(b) In the "wet" method of cement stabilized backfill construction, the materials shall be mixed in an approved concrete batching plant or mixer to the consistency of concrete and placed as concrete would be placed. The slump of the backfill material shall be such that all voids will be filled, approximately four (4") to six (6") inches. The backfill shall be consolidated by rodding or by the use of mechanical vibrators.

Portland cement stabilized blow sand backfill shall be mixed and placed by the "wet" method as described above.

Crushed stone screening (crusher fines) shall be wetted uniformly throughout with sufficient moisture to assure proper compaction before being placed in the trench. The moistened crushed stone screening (crusher fines) shall be placed in maximum lifts of twelve inches and consolidated using vibratory type compaction equipment except when it has been demonstrated that the compaction equipment employed will adequately compact deeper lifts in which case the maximum depth of a lift shall be limited by the capabilities of the equipment used.

Tests to determine the compacted density of the backfill shall be ordered by the Engineer if in his opinion the compaction is not adequate. Test showing a minimum compacted density of 90%-modified proctor will be deemed adequate.

3. BACKFILL OUTSIDE OF PUBLIC RIGHTS-OF-WAY WHERE SETTLEMENT IS NOT CRITICAL

A. In areas outside of public rights-of-way and in the absence of special work item requirements the backfilling shall be accomplished with the use of suitable materials selected from the excavated materials to the extent available and practical. Should the materials available from the trench section be unsuitable or insufficient, the required additional materials shall be furnished from outside sources at the Owners expense.

B. Suitable material shall be defined as a mineral soil reasonably free of foreign materials (rubbish, debris, etc.) frozen clumps, oversize stone, rock, concrete or bituminous chunks and other unsuitable materials, that may damage the pipe installation, prevent thorough compaction, or increase the risks of after settlement unnecessarily. Material selection shall be such as to make the best and fullest utilization of what is available, taking into consideration particular needs of different backfill zones. Material containing stone, rock, or chunks of any sort shall only be utilized where and to the extent there will be no detrimental effects.

C. The backfill material placed in this area shall be compacted by suitable means to a minimum density equal to the density of the undisturbed surrounding soil. City Engineer MUST approve water flooding as a means of compaction.

4. TRENCH BACKFILL BEHIND CURB AND GUTTER

A. When utilities are placed behind the curb in paved streets and other landscaped areas the backfill shall be the same as elsewhere in the right-of-way or other applicable location except that in grassed areas and in flower beds the top six (6") inches of backfill shall be good quality top soil. When utilities are placed behind the curb in grassed or landscaped areas where no sidewalk is to be constructed and the edge of the trench is a minimum of 2 feet from the back of curb or where sidewalk is to be constructed and the minimum distance from both the back of curb and the edge of the sidewalk to the edge of the trench is 2 feet the contractor may elect to use suitable native soil for backfill. The native soil backfill shall be compacted to 95% modified proctor density to within 6" of the top of curb height. The top 6" of backfill shall be good topsoil and shall be compacted to the density of the adjacent soil.

B. Sidewalks shall be repaired by removing and replacing the complete section or sections that have been damaged. Strip patching through sidewalks will not be permitted.

The replacement sidewalk shall be of the same design and section as the walk removed and shall be of equal or better workmanship.

C. When utilities are placed in paved areas behind curbs the pavement shall be repaired as specified for street pavement.

D. Grassed areas and flowerbeds shall be restored as nearly as possible to the original condition. Care shall be taken to avoid damage to sprinkler systems.

Mail boxes and other appurtenance in the construction area. Any damage to said items shall be repaired immediately.

E. All repairs made behind the curb shall be to the satisfaction of the property owner responsible for their maintenance and/or to the satisfaction to the City Engineer.

3.11 INLET STRUCTURES AND LEADS AND CLEANOUTS FOR STORM SEWERS

A. Corrugated Galvanized Steel Slotted Drains for Nuisance water inlets only.

(1) Slotted drains shall be the sizes and lengths as shown on the plans and constructed at the locations as shown on the plans or at locations to be established on the job site.

(2) Slotted drains shall not be installed under asphalt pavement but shall have a section of concrete gutter constructed around it as shown on the detail drawings.

Slotted drains shall be protected from the entrance of debris, concrete or HMA by closing the slot with one or two layers of heavy duct tape or similar material. In addition, the slot for slotted drain shall have a 2-½ inch or ¾ inch board attached to use as a guide for placing and edging the concrete.

Unless otherwise approved or directed by the Engineer the removal of tape and planking from the slotted drain should be accomplished as part of the final clean up.

B. Curb inlets, grate inlets and combination inlets

(1) General

Curb inlets, grate inlets and combination inlets may be pre-cast or cast-in-place at the contractor's option unless specifically shown otherwise on the plans and bid proposal.

(2) Pre-cast inlet boxes

- (a) Construction and finish for pre-cast inlet boxes shall conform to details shown on the plans and all applicable requirements for pre-cast manholes.
- (b) Tops for curb inlets and combination inlets may be cast in place or pre-cast. Extra care will be required in setting pre-cast tops to assure curb and gutter match.
- (c) Pipe connections, bedding, setting and backfill for pre-cast inlets shall be in accord with the applicable requirements for pre-cast manholes article 3.12 of these specifications.

(3) Cast in place inlets

- (a) Cast in place inlets shall be constructed of class "C" reinforced concrete as specified in item 1-B "Concrete for Structure" in these specifications.

- (b) Forms for cast in place inlets shall be straight, clean and in good condition. Forms shall be properly cleaned and oiled before concrete is placed.
- (c) Construction joints may be placed in cast in place inlets at locations shown on the plans. When construction joints are used, extra care will be required to assure that the joints are watertight.
- (d) Cast in place inlets may be cast without outside forms if the soil conditions are such that true vertical walls can be cut and will stand during construction without sloughing or otherwise incorporation foreign materials into the concrete.
- (e) When inlets are cast without outside forms, a plastic sheet lining may be required to prevent excessive loss of moisture from the concrete and/or to prevent incorporation of foreign material into the concrete.

A. Inlet Leads

- (1) Inlet leads shall be constructed of corrugated steel pipe, PVC pipe or other material as called for on the plans and in the bid proposal.
- (2) Construction of inlet leads shall be in accord with the applicable requirements for the type of pipe used.
- (3) Junctions where two or more inlet leads are joined shall be made at clean outs or manholes.

B. Cleanouts

- (1) Clean outs shall be constructed in accord with the plans and detail drawings.
- (2) Construction and connections shall be in accord with the applicable specifications for construction of corrugated steel pipe manholes.

3.12 SANITARY SEWER SERVICES AND PLUGGED STUBS

A. Sanitary Sewer Services:

- (1) On new sewer main construction all sewer laterals shall be constructed as part of the initial installation. Sewer wye fittings for sewer laterals in new construction shall be molded or fabricated with all gasketed connections. Four (4") inch laterals shall be installed at all single-family residences and duplex. Laterals installed for apartment complexes, commercial and industrial areas shall be a minimum of six (6") inches. Depth of laterals will be determined by depth of sewer main and applicable building codes. Laterals shall be installed using tee wyes or wyes and bends so that they will be at 90 degrees to the sewer main. Laterals shall extend to 3' minimum beyond the property line of the served lot or tract. The contractor shall install sewer laterals according to the typical sewer lateral detail and the most current revisions of the Plumbing Code.

(2) Taps into existing lines shall use a gasketed fitting in conjunction with a full circle repair sleeve coupling, except that taps into existing ductile iron sewer may be made using the Genco Model DF sewer pipe saddle (The General Engineering Co., Frederic, MD Drawing No. R-3220-D dated 12/29/82) or approved equal.

(3) Cemented mitered connections without socket reinforcement shall not be permitted. The contractor will be permitted to use fittings, which are prefabricated, using pipe sections, molded saddles and PVC solvent cement, provided the solvent cement used in fabrication has cured for at least 24 hours prior to the installation. All solvent cement fittings shall be manufactured in the shop under controlled conditions.

(4) All caps and plugs shall be braced, staked, anchored, wired on or otherwise secured to the pipe to prevent leakage under maximum anticipated thrust from internal abnormal operating conditions or test pressures from water or air.

(5) It shall be the duty of the Contractor to keep a record of sewer service wye locations with respect to the nearest downstream manhole, but the Engineer will record ties on the end of all sewer services at the property line. When installing sewer services the Contractor shall, before backfilling, contact the Engineer or his representatives, and assist him in making ties to the end of the service in the open trench. At least two ties shall be made for each service, and if backfilling proceeds before such ties are made, the Contractor shall dig up the end of all such services, with no additional compensation, for the purpose of making ties. During backfilling the Contractor shall furnish and place a vertical steel post or 2 inch by 2 inch wooden stake set flush with finished ground surface, and extending down to the end of the sewer service, a nail shall be placed in the top of the stake to allow location of the service by metal finder.

(6) The main sewer service connection shall consist of installing an in-line wye section in the main sewer line at designated locations. Saddle wye installations will be permitted only when specifically called for. Orientation of service connection fittings shall be as shown in the standard drawings unless otherwise directed by the Engineer.

(7) Where the depth of cover over the main sewer invert is greater than 8 feet (or such other maximum as may be indicated), the service connection shall be extended outward then upward by use of bends to prevent excess loading on the sewer main in accordance with the details shown in the drawings.

(8) The Contractor shall provide the necessary wyes, tees and bends to bring the service to the proper place at the property line.

(9) Wherever service line connections to the main sewer are permitted or required to be made by the open cutout method in the absence of a built-in tee or wye fitting, the connection shall be made by using an approved type coring machine or by other approved methods producing a uniform, smooth circular cut-out as required for proper fit. The cutout discs shall be retrieved and shall not be allowed to remain within the main sewer pipe. The saddle tee shall be securely fastened to the main sewer pipe by means of epoxy resin or other approved adhesive. The entire connection fitting shall be encased in concrete to a minimum thickness of six inches and as may be shown in the standard drawings.

(10)Wherever service line connections to the main sewer are required to be made by means of built-in branch tee or wye fittings, the Contractor shall, in the absence of such fitting, remove a section of the main sewer pipe and replace it with the required branch tee wye or wye section connected by means of an approved sleeve coupling.

(11)Connections of service lines to the main sewer are required to be made by means of built-in branch tee or wye fittings, the Contractor shall, in the absence of such fitting, remove a section of the main sewer pipe and replace it with the required branch tee wye or wye section connected by means of an approved sleeve coupling.

(12)The end of all service connections shall be plugged with PVC plug and sealed with plastic joint material.

(13)Crushed stone bedding and backfill material, concrete encasement and protection, etc., for service line installation shall be the same as for the sewer lines.

(14)No service connections or laterals shall be covered until they have been inspected and located by the Engineer.

B. INSTALLATION OF PLUGGED STUBS ON SANITARY SEWERS

Plugged pipe stubs for future connections to manholes and sewerage structures shall be installed where shown on the Drawings or directed by the Engineer. The pipe stubs shall be installed in accordance with the specifications and details shown on the Drawings for connecting the type of pipe used to manholes.

3.13 MANHOLES

1. General

The manholes shall be constructed at the locations shown on the plans or as directed by the Engineer and in accordance with the details shown on the plans and as specified herein. After the excavation has been completed, the subgrade for the manhole base shall be graded and leveled. A crushed stone foundation having a minimum thickness of 6 inches shall then be placed on the subgrade. The crushed stone foundation shall be leveled and consolidated before the section of the manhole is placed. Pre-cast base sections shall sit in place level and plumb and to the lines and grade as shown on the plans. Cast in place bases shall be placed around the existing sewer line in accord with the plans and detail sheet. When pre-cast manhole bases are used, riser construction may proceed when the base is set on line and grade. When cast in place manhole bases are used, riser construction may proceed when the base has set sufficiently to support the weight of the riser.

Manholes shall be of the type and material shown on the plans and called for in the bid proposal and shall conform to these specifications.

All lift holes shall be filled with approved non shrink grout and bituminous material before final acceptance. Use of bituminous material or other flowable material alone to plug lift holes will not be permitted. Voids in the invert around the sewer pipe on the

inside wall of the manhole shall be grouted with cement rich grout, to conform to the rest of the wash, in accordance with the standard manhole details.

The backfill around the manhole shall be done in accordance with the details shown on the plans and trench backfill specifications.

The Contractor shall take whatever precautions necessary to protect the manholes that are under construction. At the end of the day or at such time as the Contractor deems necessary, all manholes not completed shall be covered, sealed, plugged, etc. to prevent the inflow of storm water or other objectionable material, and to prevent animals and humans from getting into the manhole.

2. PRE-CAST CONCRETE

A. Pre-cast tub bottom sections of manholes shall be set on a crushed stone foundation or bedding according to the details shown on the plans. Care shall be exercised to assure true alignment and grade for the pipe openings.

The invert of the manhole shall be constructed of cement rich grout and shall be formed to true lines; grades and curvature to assure smooth flow through the manhole. The invert shall have a steel trowel finish.

Joints for pre-cast concrete manhole riser sections shall be made Watertight by use of bitumastic or rubber sealers or "O" ring gaskets. Both sides of the tongue and groove joint shall be painted with a bitumastic primer before assembly.

The bitumastic or rubber sealer shall be clean and pliable and shall deform under the pressure of joint closure to assure a complete water tight seal. Care shall be exercised to assure proper alignment of the joint. The walls of the completed manhole shall be straight and vertical.

B. Pre-cast eccentric cone sections and precast slab manhole tops with eccentrically located manway shall be set with the manway adjacent to the up stream side of the manhole. The joints between the cone or slab top and the manhole riser shall be sealed in the same manner as the joints between the riser section. Care shall be taken in placing the cone and or slab tops to assure the manhole ring and cover can be set to match the finished paving.

C. Pre-cast grade rings will be used, when required, to bring the manhole ring and cover up to the finished grade. Grade rings may be set using cement rich grout or bitumastic seal and such as Ram-Nek or approved equal. When cement rich grout is used, care shall be taken that the space between the cone or slab top and the first grade ring and between the grade rings are completely filled without voids.

When bitumastic sealer is used the joints shall be constructed in the same manner as the joints between the riser sections.

When pre-cast manholes with PVC or other approved polymer lining are called for on the plans and bid proposal and are furnished under this contract they shall be constructed as other pre-cast concrete manholes.

In addition the joints in the lining shall be sealed by hot air welding, use of epoxy coating, or other approved means.

3. CAST IN PLACE MANHOLE BASES

A. Cast in place manhole bases shall be used only where shown on the plans or as directed by the Engineer and shall be constructed in accord with the details shown on the plans.

B. Special care shall be taken in casting the surfaces that will mate with the first riser section to assure a smooth even fit and a watertight joint.

C. The first riser section to be used with cast in place manhole bases shall be cast without tongue or groove. The joint between the riser section and the cast in place base shall be sealed with a bitumastic or rubber sealant in the same manner as the joints in the pre-cast riser sections.

D. Care shall be taken in forming the invert of the manhole around existing sewers to assure adequate opening for the insertion of a "go – no go" mandrel or other testing equipment and cleaning tools.

4. MANHOLE RING AND COVER

A. The tops of the manhole frame and cover (ring) shall be built to the grade shown on the plans. The cast iron frame shall be firmly embedded in mortar.

B. When pressure type manhole rings and cover are specified on storm sewer manholes they shall be bolted to the concrete slab top using the "L" bolts cast into the slab for this purpose. The joint between the ring and the concrete slab top shall be made watertight using a bitumastic or rubber seal and conforming to the requirements of these specifications.

5. CORRUGATED STEEL MANHOLES

A. Corrugated steel manholes shall be constructed in accord with the details shown on the plans and in accord with the applicable requirements for the construction of corrugated steel pipe sewers.

B. Care shall be taken during the placing of backfill around corrugated steel pipe manholes to maintain the horizontal and vertical alignment of the manhole.

C. Since full contact of the flat top slab with the cement stabilized backfill is critical the backfill shall be finished smooth and to the proper grade. A thin layer of cement rich grout shall be placed on the cement stabilized backfill immediately prior to placing the concrete slab top. The grout shall be sufficient to fill all voids between the backfill and the slab and of a consistency to be forced into the voids under the weight of the slab.

3.14 TESTING GRAVITY SEWER MAINS AND MANHOLES

A. Upon completion of the sewer construction including all wyes and service laterals and before any house drains or services are connected, all sewers shall be cleaned and lamped. All runs of sewer between manholes shall be straight and true. Leakage tests shall be made to determine the amount of ground water infiltration into the sewers. Infiltration tests shall be made when groundwater level is 18 inches or more above the top of the outside of the pipe. Measurement will be taken by means of a weir placed in the lines. The maximum allowable rate of leakage shall be 25 gallons per inch diameter per mile of pipe per 24 hours, for any section of pipe with a maximum total leakage of 200 gallons per mile per 24 hours for sanitary sewers with the exception that the maximum leakage for storm drains shall be 200 gallons per inch of diameter per mile per 24 hours with a total maximum leakage of 6,000 gallons per mile per 24 hours.

When the groundwater is not at sufficient height for infiltration testing the Contractor shall use exfiltration to test the sewer lines.

B. In lieu of the infiltration or exfiltration tests the Contractor may perform air tests on the sewers.

C. If the infiltration, exfiltration, or air tests fail to meet requirements specified herein, the Engineer reserves the right to request television work to be done to locate leaks. The Contractor shall furnish all materials and equipment necessary to accomplish all infiltration, exfiltration, air or television testing.

The Contractor shall receive no additional compensation for this testing or inspection work or for repairs of corrective work required to be done to the sewers. The exfiltration tests shall be used in areas where no ground water is present.

D. Test Procedure Hydrostatic (Exfiltration)

(1) The test section shall be bulk headed and the pipe subject to a hydrostatic pressure produced by a head of water at a depth of three (3) feet above the invert of the sewer at the upper manhole under test. In areas where ground water exists, this head of water shall be three feet above the existing water table.

(2) This head of water shall be maintained for a period of one hour during which it is presumed that full absorption of the concrete manhole body has taken place and thereafter for a further period of one (1) hour for the actual test of leakage. Fiber glass manholes are exempt from the one hour absorption requirement. During this one (1) hour test period, the measured maximum allowable rate of exfiltration for any section of sewer shall be the same as allowed for the infiltration test.

E. TEST PROCEDURE AIR

(1) Where the Contractor elects to air test, he shall perform these tests with equipment similar to Air-Loc equipment manufactured by Cherne Industrial, Inc. Hopkins, Minnesota.

(2) The air test shall be made when the sewer is clean. The line shall be plugged at each manhole with pneumatic balls. Low pressure air shall be introduced into the plugged line until the internal air pressure reaches 4.0 psig greater than the average

back pressure of any ground water pressure that may submerge the pipe. At least two (2) minutes shall be allowed for the air temperature to stabilize before readings are taken and the timing started.

(3) When testing pipes 14 inches and less in diameter between consecutive manholes, the portion being tested shall pass if it does not lose air at a rate to cause the pressure to drop from 4.0 to 3.0 psig (greater than the average back pressure of any groundwater that may submerge the pipe) in less time than listed as calculated from Table 1.

When testing pipes greater than 15 inches in diameter between consecutive manholes the portion being tested shall pass if it does not lose air at a rate to cause the pressure to drop from 3.5 psig 3.0 psig (greater than the average back pressure of any groundwater that may submerge the pipe) in less time than that shown in or calculated from Table II.

TABLE I
Specification Time Required for a 1.0 PSIG Pressure Drop for Size and Length of Pipe indicated for Q = 0.0015

Specification Time for Length (L) Shown (min: sec)											
1	2	3	4 (xL)	100 ft.	150 ft.	200 ft.	250 ft.	300 ft.	350 ft.	400 ft.	450 ft.
4	3:46	597	.380	3:46	3:46	3:46	3:46	3:46	3:46	3:46	3:46
6	5:40	398	.854	5:40	5:40	5:40	5:40	5:40	5:40	5:42	5:42
8	7:34	298	1.520	7:34	7:34	7:34	7:34	7:36	8:52	10:08	11:24
10	9:26	239	2.374	9:26	9:26	9:26	9:53	11:52	13:51	15:49	17:48
12	11:20	199	3.418	11:20	11:20	11:24	14:15	17:05	19:56	22:47	25:38
15	14:10	159	5.342	14:10	14:10	17:48	22:15	26:42	31:09	35:36	40:04
18	17:00	133	7.692	17:00	19:13	25:38	32:03	38:27	44:52	51:16	57:41
21	19:50	114	10.470	19:50	26:10	34:54	43:37	52:21	61:00	69:48	78:31
24	22:40	99	13.674	22:47	34:11	45:34	56:58	68:22	79:46	91:10	102:33
27	25:30	88	17.306	28:51	43:16	57:41	72:07	86:32	100:57	115:22	129:48
30	28:20	80	21.366	35:37	53:25	71:13	89:02	106:50	124:38	142:26	160:15
33	31:10	72	25.852	43:05	64:38	86:10	107:43	129:16	150:43	172:21	193:53
36	34:00	66	30.768	51:17	75:55	102:34	128:12	153:50	179:29	205:07	230:46

1. Pipe Diameter (in.)
Minimum Time (min:sec)
Length for Minimum Time (ft.)
Time for Longer Length (sec)

NOTE: When using column 4 multiply the number in column 4 opposite the pipe diameter by the length of pipe of that diameter and sum the times for the various pipe size in the run being tested. Computations shall include lengths for service connection laterals.

Table II
Specification Time Required for 0.5 PSIG Pressure Drop for Size and Length of Pipe Indicated for Q + 0.0015

Specification Time for Length (L) Shown (min: sec)											
1	2	3	4 (xL)	100 ft.	150 ft.	200 ft.	250 ft.	300 ft.	350 ft.	400 ft.	450 ft.
4	1:53	597	.190	1:53	1:53	1:53	1:53	1:53	1:53	1:53	1:53
6	2:50	398	.427	2:50	2:50	2:50	2:50	2:50	2:50	2:51	3:12
8	3:47	298	.760	3:47	3:47	3:47	3:47	3:48	4:26	5:04	5:42
10	4:43	239	1.187	4:43	4:43	4:43	4:57	5:56	6:55	7:54	8:54
12	5:40	199	1.709	5:40	5:40	5:40	7:08	8:33	9:58	11:24	12:50
15	7:05	159	2.671	7:05	7:05	8:54	11:08	13:21	15:35	17:48	20:02
18	8:30	133	3.846	8:30	9:37	12:49	16:01	19:14	22:26	25:38	28:51
21	9:55	114	5.235	9:55	13:05	17:27	21:49	26:11	30:32	34:54	39:16
24	11:20	99	6.837	11:24	17:57	22:48	28:30	34:11	39:53	45:35	51:17
27	12:45	88	8.653	14:25	21:38	28:51	36:04	43:16	50:30	57:42	64:54

30	14:10	80	10.683	17:48	26:43	35:37	44:31	53:25	62:19	71:13	80:07
33	15:35	72	12.926	21:33	32:19	43:56	53:52	64:38	75:24	86:10	96:57
36	17:00	66	15:384	25:39	38:28	51:17	64:06	75:55	89:44	102:34	115:23

- 1 Pipe Diameter (in.)
2 Minimum Time (min:sec)
3 Length for Minimum Time (ft.)
4 Time for Longer Length (sec)

NOTE: When using column 4 multiply the number in column 4 opposite the pipe diameter by the length of pipe of that diameter and sum the times for the various pipe size in the run being tested. Computations shall include lengths for service connection laterals. All service plugs shall be secured in place to prevent displacement during testing operation.

F: DEFLECTION TEST

Deflection tests shall be performed on all flexible pipe, the tests shall be conducted after the backfill has been in place at least 30 days. No pipe shall exceed a deflection of 5 percent. The deflection tests shall be run using a Go-No-Go mandrel having a diameter equal to 95 percent of the inside diameter of the pipe. The tests shall be performed without mechanical pulling device, any pipe not meeting the deflection test shall be excavated and re-bedded at no cost to the owner.

The Contractor at no additional cost to the owner shall furnish the Go-No-GO Mandrel.

Upon completion of all tests, the Contractor shall provide personnel to remove each manhole cover in the presence of the Engineer's representative for inspection and depth measurement.

G. TESTING SANITARY SEWER MANHOLES

All sanitary sewer manholes shall be tested for water tightness by one of the following methods.

Manholes, except those in streets scheduled for immediate paving, shall be complete, having all adjusting rings and cover rings in place and shall be backfilled prior to testing.

Manholes in streets scheduled for immediate paving shall be complete as described above except those acceptance tests shall be made at the top of the cone section.

(1.) Vacuum Test

a. General

This item will govern the testing of all sanitary sewer manholes. All connections to manholes including drop connections shall be in place before testing.

b. Equipment

Equipment for vacuum testing manholes shall be:
MANHOLE VACUUM TESTER as manufactured by:

P.A. Glazier, Inc.
P.O. Box 1002
Worcester, MA. 01613

Or

THE CHERNE AIR-LOC MANHOLE TESTER as manufactured by:

Cherne Industries, Inc.
5700 Lincoln Dr.
Minneapolis, MN 55436-1695

Or approved equal.

c. Preparation for Testing

All connections to the manhole; except plugged stubs for future line extensions, shall be plugged using suitable pneumatic plugs. Line plugs shall be placed at a point outside of the manhole wall (approximately 8" to 10" into the sewer pipe). Drop connections shall be plugged at a point up stream from the drop.

All plugs, pipe connections and plugged stub outs shall be adequately braced to prevent them being drawn into the manhole when vacuum is applied.

d. Testing

The contractor shall set the test equipment in place and operate it in accord with the manufacturer instructions. A copy of these instructions shall be kept on the job site and shall be available to the inspector when tests are performed. When equipment is properly set up a vacuum of 10" of mercury (Hg) shall be drawn and the vacuum line valve closed. After the vacuum pump is shut off the hose shall be disconnected before the test is started.

Note: Vacuum must be at 10" Hg when test is started. The contractor may wish to draw up to 10.5" Hg vacuum and then bleed back to 10" Hg before starting the test. The test shall pass when the minimum time for the vacuum to drop from 10" Hg to 9" Hg is greater than the time shown in the following table:

TABLE 1: Minimum test times for various manhole diameters.

Depth Feet	DIAMETER		
	48"	60"	72"
8'	0:20	0:26	0:33
10'	0:25	0:33	0:41
12'	0:30	0:39	0:49
14'	0:35	0:46	0:57
16'	0:40	0:52	1:05
18'	0:45	0:59	1:13
20'	0:50	1:05	1:21
* ADD	0:05	0:06.5	0:08

Any manhole that fails the test shall be repaired and retested until it passes the test.

e. Contractors Optional Test

The contractor, at his option may wish to test manholes before they are backfilled to assure himself that the manhole is sound.

Manholes that fail the test prior to being backfilled may be repaired under vacuum by coating the area of the leak with a liquid quick setting grout allowing the grout to be drawn into the opening until the leak is stopped.

Manholes will not be accepted on the bases of this test.

f. Fiberglass Manholes

Fiberglass manholes may be tested in the same manner as concrete manholes except that all repairs to the fiberglass body of the manhole shall be made using materials furnished by the manufacturer. Repairs shall be made in accord with the manufacturer instructions.

g. No separate payment will be made for vacuum testing of manholes, but the cost shall be considered incidental to furnishing and construction of manholes as bid in the bid proposal.

2. HYDROSTATIC TESTING

a. General

This item shall govern the hydrostatic testing of manholes and may be used as an alternative to vacuum testing by the contractor.

All connections to manholes including drop connections shall be in place prior to testing manholes.

b. Testing

All connections to the manhole, except plugged stubs installed for future line extensions, shall be plugged upstream from the drop.

Plugs in pipe connections must be placed outside the manhole wall (approximately 8" to 10" into the pipe).

The manhole shall then be filled to the top of the cast iron ring (or top of the cone section for manholes in streets scheduled for immediate paving) and allowed to stand for a minimum of one hour to allow for absorption by the components of the manhole. The inspector may extend the absorption period if it appears that the manhole has not reached a stable state.

The manhole shall then be refilled to the top of the ring (or cone) and allowed to stand for up to 24 hours.

The manhole shall be checked at the end of 4 hours and will be deemed to have passed if no perceptible loss has occurred – if loss has occurred the manhole will be checked after the 24 hour period and will be considered to have passed if loss does not exceed the following schedule

Depth Ft.	Loss Inches
0 - 10'	.2
10 – 20'	.4
20 - 30'	.6

c. No separate payment will be made for Hydrostatic Testing of manholes but the cost shall be considered as incidental to furnishing and constructing manholes as bid in the bid proposal.

H. TELEVISIONING NEW SEWER LINES

It is the city's intention to televise all new sanitary sewer lines for record purposes.

Immediately after the contractor completes all testing of sanitary sewer lines and manholes he shall leave all manholes accessible for televising and make allowances for the city's camera crews working on the project site.

The contractor at his own expense before final acceptance must correct any defects discovered during the televising of sanitary sewers.

3.15 RESTORATION

A. Whenever any surface improvements such as pavement, curbing, pedestrian walks, fencing, or turf have been removed, damaged or otherwise disturbed by the Contractor's operations, they shall be repaired or replaced to the Engineers satisfaction, to restore the improvement in kind and structure to the pre-existing condition. Each item of restoration work shall be done as soon as practicable after completion of installation and backfilling operations on each section of pipeline.

B. In absence of specific payment provisions, as separate Contract Items, the restoration work shall be compensated for as part of the work required under those Contract Items, which necessitated the destruction and replacement or repair, and there will be no separate payment therefor. If separate pay items are provided for restoration work, only that portion of the repair or reconstruction, which was necessitated by the contract, will be measured for payment. Any improvements removed or damaged unnecessarily shall be replaced or repaired at the Contractor's expense.

C. Turf restoration shall be accomplished by sod replacement except where seeding is specifically allowed or required.

Caliche or gravel surfaced streets and driveway shall be restored to their original condition by salvaging and replacing the pre-existing caliche or gravel. If the Contractor does not salvage sufficient material during excavation operation, he will be required to furnish material to restore the surface to the depth of the original section. This caliche or gravel restoration shall be considered a part of excavation and backfill and no extra compensation will be made.

E. Bituminous and concrete surfaced streets and driveways will be restored to equal or better condition than existed prior to sewer construction. Measurement will be made of the actual quantities required to be replaced by the sewer construction and paid for at the price bid in the appropriate bid items in the proposal.

No measurement or payment will be made for work done outside the lines considered necessary for sewer construction. The Contractor will be required to replace damage outside these lines at his own expense.

F. Reconstruction of caliche base courses and concrete or bituminous surface courses shall be in substantial compliance with all applicable City of Midland Specifications pertaining to the item being restored.

3.16 CLEANUP

After completing each section of the sewer line, the Contractor shall remove all debris, construction materials, and equipment from the site of the work, grade and smooth over the surface on both sides of the line and leave the entire right-of-way in a clean, neat, and serviceable condition. No separate compensation shall be made for clean up.

3.17 PAYMENT

A. General

Payment in accordance with the following items, at the unit price bid for the work, shall constitute full and complete payment for the entire project including all incidental terms necessary for the complete and successful prosecution of the work in accordance with the intent of the plans and specifications.

Materials and work required to complete the project for which there is no bid item in the bid proposal shall be considered as incidental and the cost shall be included in the prices bid for the various items in the bid proposal.

Where payment is to be made on a unit price basis, it shall be made on the actual measured quantities as constructed in the work.

B. Sewer Pipe in Place

Unit prices bid shall cover furnishing and installation of pipe and jointing materials, including tests and all other necessary work and material to install the pipe complete in place at the depth specified. The unit of work shall be the lineal foot of the various types and sizes as shown in the proposal form. The pipe installation shall be measured

along the centerline of the sewer from center to center of manholes with no deduction in footage for manholes, wye branches, riser bases or other structure.

C. Foundation Corrections Materials

Payment for foundation correction materials shall be made at the unit price bid per cubic yard for material furnished and placed to provide adequate pipe base in unstable soil. The unit price shall include extra excavation below pipe grade, the material, placing and tamping.

Additional material required to backfill excess depth of excavation caused by neglect or error on the part of the Contractor or wet conditions, shall be furnished and placed at his own expense.

Removal of Street Surfacing

The Contractor shall receive no extra compensation for the removal of street surfacing including cutting of a straight edge.

E. Trench Safety Systems, Sheet piling and Shoring

Measurement: Trench Safety Systems shall be measured by the linear foot of "Trench Safety Systems": Payment for work prescribed under this item shall be full compensation for the Trench Safety Systems including any Engineering and/or consulting fees and any additional excavation and backfill required, for furnishing, placing, maintaining and removing all shoring, sheet piling, or bracing; for de-watering or diversion of water; for all jacking and jack removal; and for all other labor, materials, tools, equipment and incidentals necessary to complete the work.

F. Manholes

Payment will be made for the various types of manholes at the unit prices bid for the various types of manholes 0 to 6' deep which price shall include excavation, furnishing and installing all materials pumping where necessary, and backfilling and all incidentals for the complete manhole in place. Measurement for manholes over 6 feet in depth shall be made of the depth of manhole in excess of six (6) feet. Manholes will be measured from the invert to the top of the casting as set.

Payment will be made for the manhole depth in excess of 6 feet at the vertical foot price bid in the bid proposal for extra depth of manhole over 6 feet for each type of manhole furnished.

G. Drop Connections to Manholes

Payment shall be made for drop connections to manhole for each drop connection made as counted in the field at the price bid in the proposal.

Said payment shall be complete compensation for furnishing all materials and fittings and making all connections to the manhole including 2' of vertical depth as measured from the invert of the incoming line to the invert of the manhole.

H. Drop Section for Manholes

Drop sections shall be paid for on a vertical footage basis as measured from the invert of the incoming line to the invert of the manhole less 2 feet and shall be paid for at the price bid per vertical foot for the various size drop connections in the bid proposal.

The price bid per vertical foot includes all fittings, granular material, if used and concrete and shall be full compensation for the complete in service drop connection.

I. Service Lines

Service lines will be measured from centerline of the sewer main to the plug end and paid for at the unit price bid per linear foot of each type of pipe as specified and as shown on the typical details.

J. Barricading and Traffic Control

The lump sum price bid in the bid proposal shall be full compensation for furnishing flag persons when required and all barricades, signs and other barricading and traffic control devices and for furnishing barricading plans and erecting and maintaining all such devices and signs as required for the duration of the period.

Updated
08/07

REECE ALBERT, INC.

PROJECT REFERENCES

5/7/2024

COMPLETED PROJECTS:

Major Projects Completed in the Last 5 Years with Similar Scope of Work

<u>PROJECT NAME</u>	<u>LOCATION</u>	<u>OWNER / OWNER'S REP</u>	<u>DESCRIPTION</u>	<u>GC</u>	<u>CONTRACT AMOUNT</u>	<u>BONDED</u>	<u>DATE OF COMPLETION</u>
Park Ave Heights Paving	Midland, Tx	City of Midland - Bobby Wojciechowski 432-685-7519	Re-Construct Street with Asphalt and Concrete Paving	RAI	\$1,512,308.00	Yes	Nov-22
COM Wood & Oriole Drive	Midland, TX	City of Midland - Bobby Wojciechowski 432-685-7519	Re-Construct Street with Asphalt and Concrete Paving	RAI	\$3,153,217.00	Yes	May-20
Midland CR 1232 at Monahan's Draw	Midland County, Tx	Midland County - Andrew Avis 432-688-4505	Construct Drainage Structure and Concrete Paving	RAI	\$4,973,110.00	Yes	May-23
Midland County - CR 1270	Midland County, Tx	Midland County - Andrew Avis 432-688-4505	Re-Construct Street with Asphalt and Concrete Paving	RAI	\$3,790,739.00	Yes	May-22
Bell Street Improvements	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	Re-Construct Street with Concrete Paving	RAI	\$20,892,802.00	Yes	Aug-22
COO - University Blvd Reconstruction	Odessa, Tx	City of Odessa - Yervand Hmayakyan - 432-335-3242	Re-Construct Street with Asphalt and Concrete Paving	RAI	\$16,092,678.00	Yes	Oct-21
Ector Co - US 385 - NH 2020(572)	Odessa, Tx	TXDOT - Saul Romero, P.E. 432-498-4770	Re-Habilitate Street with Asphalt and Concrete Paving	RAI	\$12,243,340.00	Yes	Sept-21
Tom Green Co - US 67 - NH 1802(735)	San Angelo, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	Construct Overpass with Asphalt and Concrete Paving	RAI	\$38,833,750.00	Yes	Dec-21
West Concho Avenue Improvements	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	Re-Construct Street with Concrete Paving	RAI	\$1,738,947.00	Yes	Oct-19

Name of Surety Company:

Continental Casualty Company - Cowan-Hill Bonding Agency, Inc. 806-722-2663



ADDENDUM #01
Project Number BPU18-02

TO ALL BIDDERS ON THE SUBJECT BID:
GARFIELD STREET PAVING BOND PROJECT- BREAK OUT 03

ADDENDUM #01

DATE: April 26, 2024

1. Clarification
2. Non-Mandatory Pre-Bid Meeting Agenda
3. Non-Mandatory Pre-Bid Meeting Attendance

During the Pre-Bid Meeting, the following questions were raised by one or more bidders. Below is a list of the clarifications.

Clarification: The Bid Opening *date and time* is being moved to May 08, 2024, at 3pm

Clarification: The deadline for questions will remain Friday, April 26, 2024, at 12pm.

Clarification: A second addendum will be released by Wednesday, May 01, 2024.

Clarification: All addendum acknowledgement forms must be included with the bid for the bid to be considered complete. Bidders have sole responsibility for making sure they have and acknowledge all addendums provided for this project bid.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

REECE ALBERT, INC.

Company Name

Mike Schmiot

Bidder Authorized Signature

4-26-24

Date

MIKE SCHMIOT, VICE PRESIDENT

Please Print Above Name

325-653-1241

Phone

www.MidlandTexas.gov



ADDENDUM #02
Project Number BPU18-02

TO ALL BIDDERS ON THE SUBJECT BID:
GARFIELD STREET PAVING BOND PROJECT- BREAK OUT 03

ADDENDUM #02

DATE: May 1, 2024

Clarification: All information provided in Addendum 01 for this project will remain in effect unless specifically addressed in this addendum 02.

Clarification: A final addendum will be issued on Friday, May 3, 2024. This final addendum will address all outstanding questions submitted by potential Bidders regarding the MAIN ST PAVING BOND project. This will include all questions submitted to the City of Midland prior to, or at the Non-Mandatory Pre-Bid Meeting.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

REECE ALBERT, INC.

Company Name

Mike Schmidt

Bidder Authorized Signature

5-1-24

Date

MIKE SCHMIDT, VICE PRESIDENT

Please Print Above Name

325-653-1241

Phone

www.MidlandTexas.gov



ADDENDUM #03
Project Number PDU18-02

TO ALL BIDDERS ON THE SUBJECT BID: Garfield Street Paving Bond Project

ADDENDUM #03

DATE: May 3, 2024

1. Q/A and Clarification
2. Added Notice of Delegated Authority
3. Revised Instruction And Information For Bidders
4. Revised Proposal
5. Revised Bid Items
6. Revised Pay Notes
7. City of Midland Filler And Valley Gutter Detail 218(A)
8. City of Midland Filler And Valley Gutter Detail 218(B)
9. Non-Mandatory Pre-Bid Meeting Agenda
10. Non-Mandatory Pre-Bid Meeting Attendance

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

REECE ALBERT, INC.
Company Name

Mike Schmidt
Bidder Authorized Signature

5-6-24
Date

MIKE SCHMIDT, VICE PRESIDENT
Please Print Above Name

325-653-1241
Phone

www.MidlandTexas.gov



ADDENDUM #04
Project Number PDU18-02

TO ALL BIDDERS ON THE SUBJECT BID: Garfield Street Paving Bond Project

ADDENDUM #04

DATE: May 8, 2024

1. Q/A and Clarification
2. Revised Bid Items

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

REECE ALBERT, INC.
Company Name

Mike Schmidt
Bidder Authorized Signature

5-8-24
Date

MIKE SCHMIDT, VICE PRESIDENT
Please Print Above Name

325-653-1241
Phone

www.MidlandTexas.gov



ADDENDUM #05
Project Number PDU18-02

TO ALL BIDDERS ON THE SUBJECT BID: Garfield Street Paving Bond Project

ADDENDUM #05

DATE: May 8, 2024

1. Q/A and Clarification

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

REECE ALBERT, INC.

Company Name

Mike Schmidt

Bidder Authorized Signature

5-8-24

Date

MIKE SCHMIDT, VICE PRESIDENT

Please Print Above Name

325-653-1241

Phone

www.MidlandTexas.gov

Engineering ▪ 300 N. Loraine, Midland TX 79701 ▪ 432-685-7286

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June 25, 2024

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**Garfield Street Paving Bond Project
Non-Mandatory Pre-Bid Meeting Agenda
Project No. PBU18-02
April 24, 2024**

Discussion Items

1. Sign-In Sheet
2. Personnel Overview
 - Kerry Koehler – CIP Director / City Engineer
 - Bobby Wojciechowski – Capital Improvement Project Manager
 - Josh Ferguson – Assistant City Engineer
 - Taha Sakrani – Senior Traffic Engineer
 - Kirby Jones – Project Manager
 - Jesse Trejo – Construction Manager, construction management & inspections
 - Andy Navarro – Franchise Utility Coordinator
 - Michael Williams – Stormwater Manager
 - Natalie Burgard – Executive Assistant, document processing
 - Erika Munoz – Purchasing Manager
3. **Project Overview and Scope**
 - **This project will include the removal, replacement, and installation of existing and proposed paving and sidewalk infrastructure and appurtenances as well as all equipment, labor, materials, etc. necessary to complete the work outlined in the Construction Drawings and Specifications, and to satisfactorily complete the work. In general, this project involves paving Garfield Street from Country Club to Louisiana.**
4. Bid Process
 - Pre-Bid meeting attendance is non-mandatory to bid on this project.
 - ATTENTION: All questions submitted before or after the Non-Mandatory Pre-Bid Meeting must be submitted via email to the following email address:

kjones@midlandtexas.gov
 - Addendum distributed by email the Friday afternoon following the Pre-Bid Meeting.
 - The deadline to ask or send questions for the addendum is this Friday, April 26, 2024, at Noon.
 - Questions asked after the Noon deadline will be directed to the information already provided in the bid documents or included in the Addendum.
 - **ATTENTION:** Bidders are requested to submit bids electronically by logging into <https://midlandtexas.bonfirehub.com> and creating an account for your company. During this transitional period Bidders will still be allowed to submit bids either by mail or in person **until 01/01/2025**. If bidders choose to mail their bid packets in, then they are to mail the bid packet to one of the addresses listed below:

USPS Mailing Address:
City of Midland, Texas
Attn: City Secretary's Office
P.O. Box 1152
Midland, TX 79702

– OR –

Physical Address for mail carriers other than USPS:
City of Midland, Texas
Attn: City Secretary's Office
300 North Loraine St., Suite 330
Midland, TX 79701

If bid packets are delivered in person, then bidders must drop the bid packets off at the first-floor front desk of City Hall before the bid opening deadline.

- **Bid Opening is Wednesday, May 1, 2024, at 2:00 PM** in the City Hall Council Chamber located on the 1st Floor of Midland's City Hall.
 - The Bid Opening will be open to the public.
 - No late bids will be accepted.
 - Bidders must be willing to sign the contract as is.
 - Bidders must complete the conflict-of-interest forms if applicable.
 - Bidders must fill out all bid items in the Proposal. If bid items are left blank, then the bid will be considered non-responsive.
 - Bidders have sole responsibility for making sure they have and acknowledge all addendums provided. If all acknowledgement forms are not included with the bid packet submittal, then the bid will be considered non-responsive.
 - ***The winning bid will be awarded as described in the Project Manual, section Instruction and Information for Bidders, 9 Award of Contract.***
- 5. Notice to Proceed
 - Date of Notice to Proceed to be determined at the Pre-Construction Meeting.
 - Pre-Construction Meeting date will be set after the project bid is awarded.
- 6. Payment
 - Invoices should be submitted on or before the 1st day of each month and cover work completed up to the 25th day of the preceding month.
 - Invoice submittals are to be itemized and match the bid items listed in the bid packet Proposal.
 - Payment based on portion of work completed only. No payment for material delivery.
 - 5% retainage until project completion, acceptance, and final payment.
 - Recommended that invoices state "Invoice Due Upon Receipt" or have a due date that is two (2) weeks after the date the invoice is submitted.
- 7. Project Schedule
 - The City Inspector must be notified of all work occurring and be able to perform inspections on any construction or installation that occurs.
 - Typically work times are Monday – Friday from 8:00 AM – 5:00 PM. No work earlier than 7:00 AM or later than 8:00 PM without City permission unless for emergency conditions.
 - Work is not to occur on Sundays or legal holidays unless required for emergency situations.
 - Work is not to occur on Saturdays unless requested by Contractor in writing at least 48-hours in advance and approved by the CIP Manager.
- 8. Project Specifics
 - Always comply with all OSHA and other applicable safety requirements and regulations.
 - Construction staking is solely the responsibility of the Contractor.
 - Construction testing is solely the responsibility of the Contractor.
 - The contractor is responsible for all Erosion Control for this project.
 - The winning contractor must submit all TCEQ documentation etc., large or small site notice for linear projects. Please read all requirements in the Construction General Permit regarding linear projects and proper documentation. This is to be submitted to the City of Midland at least 2 days before ground is disturbed for small sites or 7 days before ground is disturbed for large sites.

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4/22/2024

June 25, 2024



City Council Meeting

Item Number: 5
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING A CONTRACT WITH LEXIPOL LLC THROUGH SOURCEWELL, FOR A THREE-YEAR SUBSCRIPTION OF THE FIRST RESPONDER MENTAL HEALTH APPLICATION FOR A TOTAL COST OF \$146,526.60 (DISTRICT: NONE) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Resolution approving a master agreement to Lexipol, LLC of Frisco, Texas for the First Responder Mental Health APP through Sourcwell contract 106268 for the three (3) year total cost of \$146,526.60 for the Fire and Police Departments.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Opioid project.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

Staff is recommending the approval of a master agreement to Lexipol, LLC of Frisco, Texas for the First Responder Mental Health APP through Sourcwell contract 106268. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local

government to seek competitive bids for those purchases. Which this software is designed to enhance mental health and wellness services for our police and fire department personnel. Please see attached memo from Charles Blumenauer, Fire Chief, and Greg Snow, Interim Police Chief, for additional information.

Therefore, please consider a resolution approving a master agreement to Lexipol, LLC of Frisco, Texas for the First Responder Mental Health APP through Sourcewell contract 106268 for the three (3) year total cost of \$146,526.60.



City Manager's Office



Interoffice Memorandum

Date: 6/13/2024
To: Regina Stephenson
From: Fire Chief Charles Blumenauer and Interim Police Chief Greg Snow
Subject: Mental Health and Wellness App

This memorandum is intended to provide strong support for the purchase of the Cordico app by Lexipol, which is designed to enhance mental health and wellness services for our police and fire department personnel. This initiative will be funded using the money from the recent opioid settlement, thereby ensuring that our first responders receive the necessary support without impacting our current budget.

The opioid crisis has significantly impacted our community, leading to increased workloads and stress levels among our police and fire department personnel. These first responders are often on the front lines, dealing with the direct consequences of the epidemic, which can result in heightened levels of stress, trauma, and burnout. The opioid settlement money provides an opportunity to address some of these challenges by investing in mental health and wellness resources.

The Cordico app by Lexipol is a comprehensive, confidential, and accessible tool specifically designed for first responders. Key features of the app include:

1. **24/7 Access to Wellness Resources:** Immediate access to self-assessments, instructional videos, and articles on a range of mental health topics.
2. **Confidentiality:** Ensures privacy and confidentiality, encouraging more personnel to utilize the resources without fear of stigma.
3. **Peer Support and Therapy Connections:** Facilitates connections with peer support teams and licensed therapists specialized in first responder mental health.
4. **Customizable Content:** Tailors resources to the specific needs of our departments, including issues related to opioid crisis interventions.
5. **Emergency Resources:** Provides quick access to crisis hotlines and immediate support options.

Benefits

1. **Improved Mental Health:** By offering resources that address stress, trauma, and burnout, the app will help improve the overall mental health of our first responders.
2. **Enhanced Performance:** Healthier personnel are more focused, efficient, and effective in their duties, leading to better service for the community.
3. **Retention and Recruitment:** Investing in mental health shows our commitment to the well-being of our personnel, aiding in both retention and recruitment efforts.

4. Cost-Effective: Utilizing settlement funds ensures that we are enhancing support without additional financial burden on the department's budget.

Funding Justification

Using the opioid settlement funds for this purchase is highly appropriate given the direct impact of the opioid crisis on our first responders. The settlement is intended to mitigate the consequences of the opioid epidemic, and supporting the mental health of those dealing with its aftermath aligns perfectly with this goal. By addressing the root causes of stress and trauma related to opioid responses, we are making a strategic investment in the long-term health and effectiveness of our police and fire departments.

Conclusion

The Cordico app represents a crucial investment in the mental health and wellness of our police and fire department personnel. By leveraging the opioid settlement funds, we can provide these essential services without additional budgetary strain. I strongly recommend proceeding with the purchase of the Cordico app to ensure our first responders receive the support they need to continue serving our community effectively and safely.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
LEXIPOL LLC THROUGH SOURCEWELL, FOR A
THREE-YEAR SUBSCRIPTION OF THE FIRST
RESPONDER MENTAL HEALTH APPLICATION FOR
A TOTAL COST OF \$146,526.60**

WHEREAS, Sourcewell 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, Lexipol LLC has submitted a total proposed cost to the City of \$146,526.60, through Sourcewell, for a three-year subscription of the first responder mental health application; and

WHEREAS, the City Council finds the cost proposed by Lexipol, LLC, for said subscription to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Lexipol LLC for said subscription;

**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 through Sourcewell with Lexipol LLC for a three-year subscription of the first responder mental health application for a total cost of \$146,526.60. 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 funding is available in the Opioid project.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Lexipol LLC in accordance with the terms of the above-referenced contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of

the City of Midland at a regular meeting on the _____ day of _____, A.D.,
2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Lori Merritt Blong Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



MASTER SERVICE AGREEMENT

Agency's Name: Midland Police Department (TX)
Agency's Address: 601 N Loraine St
Midland, Texas 79701

Agency's Sourcewell Member ID: 106268

Attention: Greg Snow

Sales Rep: Bill Switzer
Lexipol's Address: 2611 Internet Boulevard, Suite 100
Frisco, Texas 75034

Effective Date:

(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the department, entity, or organization referenced above ("Agency"). This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions of Service

This Agreement is entered into subject to the terms and conditions contained in **Sourcewell Contract Number 011822-LXP (the Sourcewell Contract)**. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions set forth in the Sourcewell Contract, the terms and conditions of the Sourcewell Contract shall control.

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

Midland Police Department (TX)

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Lexipol, LLC

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Exhibit A

SELECTED SERVICES AND ASSOCIATED FEES

Agency is purchasing the following:

Year 1 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (12 Months)	USD 24,000.00	39.67%	USD 9,520.80	USD 14,479.20
20	Peer Support Training and Certification Annual Subscription (12 Months)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,520.80	USD 22,459.20
				USD 9,520.80	USD 22,459.20
Year 1 Subscription Sourcewell Discount:					USD 9,520.80
Year 1 Subscription TOTAL:					USD 22,459.20

Year 2 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (Start: 8/1/2025 End: 7/31/2026)	USD 24,000.00	39.67%	USD 9,520.80	USD 14,479.20
20	Peer Support Training and Certification Annual Subscription (Start: 8/1/2025 End: 7/31/2026)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,520.80	USD 22,459.20
				USD 9,520.80	USD 22,459.20
Year 2 Subscription Sourcewell Discount:					USD 9,520.80
Year 2 Subscription TOTAL:					USD 22,459.20

Year 3 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (Start: 8/1/2027 End: 7/31/2028)	USD 24,000.00	39.67%	USD 9,520.80	USD 14,479.20
20	Peer Support Training and Certification Annual Subscription (Start: 8/1/2027 End: 7/31/2028)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,520.80	USD 22,459.20
				USD 9,520.80	USD 22,459.20
Year 3 Subscription Sourcewell Discount:					USD 9,520.80
Year 3 Subscription TOTAL:					USD 22,459.20

Discount Notes

Sourcewell / Loyalty

PACKET

5.9

June 25, 2024

Notes

14 months for the price of 12 months if signed by 6/28/24

Exhibit B
Terms and Conditions of Service

These Terms and Conditions of Service (the “Terms”) govern the rights and obligations of Lexipol and Agency under this Agreement. Lexipol and Agency may each be referred to herein as a “party” and collectively as the “parties.”

1. Definitions. Each of the following capitalized terms will have the meaning included in this Section 1. Other capitalized terms are defined within their respective sections, below.

1.1 “Agency” means the department, agency, office, organization, company, or other entity purchasing and/or otherwise subscribing to the Lexipol Services set forth in Exhibit A.

1.2 “Agency Data” means data, information, and content owned by Agency prior to the Effective Date, or which Agency provides during the Term of this Agreement for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service.

1.3 “Agreement” means the combination of the cover sheet (signature page); Exhibit A (“Selected Services and Associated Fees”); this Exhibit B; and any other documents attached hereto and expressly incorporated herein by reference.

1.4 “Effective Date” means the date specified on the cover sheet (signature page), or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

1.5 “Initial Term” means the period commencing on the Effective Date and continuing for the length of time indicated on Exhibit A. If not so indicated, the default Initial Term is one (1) year from the Effective Date.

1.6 “Lexipol Content” means all content in any format including but not limited to: written content, images, videos, data, information, and software multimedia provided by Lexipol and/or its licensors via the Services.

1.7 “Services” means all products and services, including but not limited to all software subscriptions, professional services, and ancillary support services, as may be offered by Lexipol and/or its affiliates from time to time.

2. Term; Renewal. This Agreement becomes enforceable upon signature by Agency’s authorized representative, with an Effective Date as indicated on the cover page. Unless expressly stated in the “Custom Agreement Terms” section of Exhibit A, this Agreement shall automatically renew in successive one-year periods (each, a “Renewal Term”) on the anniversary of the Effective Date unless a party provides written notice of non-renewal to the other party at least sixty (60) days prior to such renewal. The Initial Term and all Renewal Terms collectively comprise the “Term” of this Agreement.

3. Termination.

3.1 For Convenience; Non-Appropriation. This Agreement may be terminated at any time for convenience (including due to lack of appropriation of funds) upon sixty (60) days written notice.¹

3.2 For Cause. This Agreement may be terminated by either party, effective immediately, (a) in the event the other party fails to discharge any obligation, including payment obligations, or remedy any default hereunder for a period of more than thirty (30) calendar days after it has been provided written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

3.3 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, Agency’s access to Lexipol’s Services shall immediately cease unless Lexipol has, in its sole discretion, provided for their limited continuation. Termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration, including payment obligations.

¹ **Note:** fees paid for Online Services are not eligible for refund, proration, or offset in the event of Agency’s termination for convenience as Online Services are delivered in full as of the Effective Date. Fees pre-paid for Professional Services are eligible for refund, proration, or offset to the extent such Services have not been delivered or utilized by Agency.

4. **Fees; Invoicing.** Lexipol will invoice Agency at the commencement of the Initial Term and at the commencement of each Renewal Term. Agency agrees to remit payment within thirty (30) calendar days following receipt of Lexipol's invoice. Payments may be made electronically or by mailing a check to Lexipol at 2611 Internet Blvd, Ste. 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms. All fee amounts stated in Exhibit A are exclusive of taxes and similar fees now in force or enacted in the future. Agency is responsible for all third-party fees (e.g., wire fees, bank fees, credit card processing fees). Unless otherwise exempt, Agency is responsible for and will pay in full all taxes related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income.

5. **Terms of Service.** The following terms and conditions govern access to and use of Lexipol's Services:

5.1 **Online Services.** Lexipol's Online Services include all cloud-based services offered by Lexipol and its partners, affiliates, and licensors. Online Services include, without limitation, Lexipol's Knowledge Management System ("KMS") for policy, Learning Management System ("LMS")², GrantFinder, and Cordico wellness applications (collectively, the "Online Services"). Lexipol's Online Services are proprietary and, where applicable, protected under U.S. copyright, trademark, patent, and/or other applicable laws. By subscribing to Lexipol's Online Services, Agency receives a personal, limited, non-sublicensable and non-assignable license to access and use such Services in conformity with these Terms.

5.2 **Professional Services.** Lexipol's Professional Services include all Services that are not part of Lexipol's Online Services, and which require the professional expertise of Lexipol personnel and/or contractors, including implementation support for policy manuals, technical support for online learning, accreditation consulting, grant writing and consulting³, and projects requiring regular input from Lexipol's subject matter experts (collectively, "Professional Services"). Lexipol shall provide all Professional Services in accordance with industry best practices.

5.3 **Intellectual Property; License.** Lexipol's Services and all Lexipol Content are the proprietary intellectual property of Lexipol and/or its licensors, and are protected where applicable by copyright, trademark, and patent laws. Nothing contained in this Agreement or these Terms shall be construed as conferring any right of ownership or use to Lexipol's Services or Lexipol Content. Notwithstanding the foregoing, Agency may, in limited circumstances (e.g. creation, modification, and updating of Agency's policy manuals) create Derivative Works based on Lexipol's Content and shall retain a personal, non-commercial, non-sublicensable and non-assignable license to use such Derivative Works, including beyond the expiration or termination of this Agreement. "Derivative Works" include all work product based on or which incorporates any Lexipol Content, including any revision, modification, abridgement, condensation, expansion, compilation, or any other form in which Lexipol Content, or any portion thereof, is recast, transformed, or adapted. Agency acknowledges and agrees that Lexipol shall have no responsibility to update Lexipol Content used by Agency beyond the Term of this Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works.

5.4 **Account Security.** Access to Lexipol's Services is personal and unique to Agency. Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains responsible for maintaining the security and confidentiality of Agency's usernames and passwords and the security of Agency's accounts. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's account or Agency's usernames and/or passwords.

5.5 **Agency Data.** Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's Services use the Secure Socket Layer (SSL) protocol, which encrypts information as it travels between Lexipol and Agency. However, data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through Lexipol or the Services is 100% secure. Lexipol's use of Agency Data is limited to providing the Services, retaining records in the regular course of business, and complying with valid legal obligations.

6. **Confidentiality.** During the Term of this Agreement, each party may disclose information to the other party that would be reasonably considered confidential, including Agency Data (collectively, "Confidential Information"). The receiving party will: (a) limit disclosure of any such Confidential Information to the receiving party's authorized representatives; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement; and (c) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. Notwithstanding the foregoing, a party may disclose Confidential Information pursuant to a valid governmental, judicial or administrative order, subpoena, discovery request, regulatory request, Freedom of Information Act (FOIA) request, or Texas Public Information Act request, or similar method. Lexipol acknowledges and agrees that Agency is subject to the requirements of the Texas Public

² LMS Services include, but are not limited to: PoliceOne Academy, FireRescue1 Academy, EMS1 Academy, Corrections1 Academy, and LocalGovU.

³ Agency is responsible for submitting all information reasonably required by Lexipol's grant writing team in a timely manner and always at least five (5) days prior to each grant application submission date. Agency is responsible for submissions of final grant applications by grant deadlines. Failure to timely submit required materials to Lexipol's grant writing team will result in rollover of project fees to next grant application cycle, not a refund of fees. Requests for cancellation of grant writing services which have already begun will result in a 50% fee of the total value of the service.

Information Act (the "Act"), and that this Agreement in no way affects, limits, or modifies Agency's obligation to comply with the Act or any ruling/decision of the Texas Attorney General. Agency's compliance with the Act shall not constitute a breach of this Agreement, regardless of whether any disclosure of Confidential Information is authorized by Lexipol. The party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party's personnel or agents.

7. Warranty. LEXIPOL WARRANTS THAT ITS SERVICES ARE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS, THAT THEY SHALL BE FIT FOR THE PURPOSES SET FORTH HEREIN, AND THAT SUCH SERVICES SHALL NOT INFRINGE THE RIGHTS OR INTELLECTUAL PROPERTY OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, LEXIPOL'S SERVICES ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

8. Indemnification. Lexipol will indemnify, defend, and hold harmless Agency from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising directly and solely out of Lexipol's gross negligence or willful misconduct in providing Services pursuant to this Agreement. Agency shall likewise indemnify, defend, and hold Lexipol harmless from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising out of acts or omissions by Agency, Agency's personnel, or any party acting on Agency's behalf.

9. Limitation of Liability. Each party's cumulative liability resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Services, or the use of any Lexipol Content shall not exceed the larger of: the aggregate amount of fees paid to Lexipol by Agency during the twelve-month period immediately prior to the assertion of such claim, demand, or action; or \$10,000.00. In no event shall either party be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if such party has been advised of the possibility of such damages.

10. General Terms.

10.1 Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by either party that is not embodied herein. Terms and conditions set forth in any purchase order or other document that are inconsistent with or in addition to the terms and conditions set forth in this Agreement are rejected in their entirety and void, regardless of when received, without further action. No amendment, modification, or supplement to this Agreement shall be binding unless it is made in writing and signed by both parties.

10.2 General Interpretation. The terms of this Agreement have been chosen by the parties hereto to express their mutual intent. This Agreement shall be construed equally against each party without regard to any presumption or rule requiring construction against the party who drafted this Agreement or any portion thereof.

10.3 Invalidity of Provisions. Each provision contained in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Should any provision or portion thereof be held to be invalid or unenforceable, the parties agree that the reviewing authority should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

10.4 Compliance; Governing Law; Venue. Each party shall maintain compliance with all applicable laws, rules, regulations, and orders relating to its obligations pursuant to this Agreement. The validity, performance and interpretation of this Agreement shall be governed by the laws of the State of Texas, without regard to conflict of laws or rules that would direct application of the laws of another jurisdiction. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

10.5 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, this Agreement may be assumed by a party's successor in interest through merger, acquisition, or consolidation without additional notice or consent.

10.6 Waiver. Either party's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

10.7 Notices. Any notice required hereunder shall be in writing and shall be made by certified mail (postage prepaid) to known, authorized recipients at such address as each party may indicate from time to time. In addition, electronic mail (email) to established and authorized recipients is acceptable when acknowledged by the receiving party.



MASTER SERVICE AGREEMENT

Agency's Name: Midland Fire Department
Agency's Address: 1500 W Wall St
Midland, Texas 79701

Agency's Sourcewell Member ID: 106268

Attention: Assistant Chief Michael Cota

Sales Rep: Bill Switzer
Lexipol's Address: 2611 Internet Boulevard, Suite 100
Frisco, Texas 75034

Effective Date:

(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the department, entity, or organization referenced above ("Agency"). This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions of Service

This Agreement is entered into subject to the terms and conditions contained in **Sourcewell Contract Number 011822-LXP (the Sourcewell Contract)**. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions set forth in the Sourcewell Contract, the terms and conditions of the Sourcewell Contract shall control.

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

Midland Fire Department

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Lexipol, LLC

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Exhibit A

SELECTED SERVICES AND ASSOCIATED FEES

Agency is purchasing the following:

Year 1 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (12 Months)	USD 28,000.00	32.85%	USD 9,198.00	USD 18,802.00
20	Peer Support Training and Certification Annual Subscription (12 Months)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,198.00	USD 26,782.00
				USD 9,198.00	USD 26,782.00
Year 1 Subscription Sourcewell Discount:					USD 9,198.00
Year 1 Subscription TOTAL:					USD 26,782.00

Year 2 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (Start: 8/1/2025 End: 7/31/2026)	USD 28,000.00	32.85%	USD 9,198.00	USD 18,802.00
20	Peer Support Training and Certification Annual Subscription (Start: 8/1/2025 End: 7/31/2026)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,198.00	USD 26,782.00
				USD 9,198.00	USD 26,782.00
Year 2 Subscription Sourcewell Discount:					USD 9,198.00
Year 2 Subscription TOTAL:					USD 26,782.00

Year 3 Subscription

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Cordico Wellness App (Start: 8/1/2026 End: 7/31/2027)	USD 28,000.00	32.85%	USD 9,198.00	USD 18,802.00
20	Peer Support Training and Certification Annual Subscription (Start: 8/1/2026 End: 7/31/2027)	USD 399.00		USD 0.00	USD 7,980.00
	Subscription Line Items Total			USD 9,198.00	USD 26,782.00
				USD 9,198.00	USD 26,782.00
Year 3 Subscription Sourcewell Discount:					USD 9,198.00
Year 3 Subscription TOTAL:					USD 26,782.00

Discount Notes

Loyalty and Sourcewell

PACKET

5.14

June 25, 2024

Notes

14 months for the price of 12 months if signed by 6/28/24.

Exhibit B
Terms and Conditions of Service

These Terms and Conditions of Service (the “Terms”) govern the rights and obligations of Lexipol and Agency under this Agreement. Lexipol and Agency may each be referred to herein as a “party” and collectively as the “parties.”

1. Definitions. Each of the following capitalized terms will have the meaning included in this Section 1. Other capitalized terms are defined within their respective sections, below.

1.1 “Agency” means the department, agency, office, organization, company, or other entity purchasing and/or otherwise subscribing to the Lexipol Services set forth in Exhibit A.

1.2 “Agency Data” means data, information, and content owned by Agency prior to the Effective Date, or which Agency provides during the Term of this Agreement for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service.

1.3 “Agreement” means the combination of the cover sheet (signature page); Exhibit A (“Selected Services and Associated Fees”); this Exhibit B; and any other documents attached hereto and expressly incorporated herein by reference.

1.4 “Effective Date” means the date specified on the cover sheet (signature page), or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

1.5 “Initial Term” means the period commencing on the Effective Date and continuing for the length of time indicated on Exhibit A. If not so indicated, the default Initial Term is one (1) year from the Effective Date.

1.6 “Lexipol Content” means all content in any format including but not limited to: written content, images, videos, data, information, and software multimedia provided by Lexipol and/or its licensors via the Services.

1.7 “Services” means all products and services, including but not limited to all software subscriptions, professional services, and ancillary support services, as may be offered by Lexipol and/or its affiliates from time to time.

2. Term; Renewal. This Agreement becomes enforceable upon signature by Agency’s authorized representative, with an Effective Date as indicated on the cover page. Unless expressly stated in the “Custom Agreement Terms” section of Exhibit A, this Agreement shall automatically renew in successive one-year periods (each, a “Renewal Term”) on the anniversary of the Effective Date unless a party provides written notice of non-renewal to the other party at least sixty (60) days prior to such renewal. The Initial Term and all Renewal Terms collectively comprise the “Term” of this Agreement.

3. Termination.

3.1 For Convenience; Non-Appropriation. This Agreement may be terminated at any time for convenience (including due to lack of appropriation of funds) upon sixty (60) days written notice.¹

3.2 For Cause. This Agreement may be terminated by either party, effective immediately, (a) in the event the other party fails to discharge any obligation, including payment obligations, or remedy any default hereunder for a period of more than thirty (30) calendar days after it has been provided written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

3.3 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, Agency’s access to Lexipol’s Services shall immediately cease unless Lexipol has, in its sole discretion, provided for their limited continuation. Termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration, including payment obligations.

¹ Note: fees paid for Online Services are not eligible for refund, proration, or offset in the event of Agency’s termination for convenience as Online Services are delivered in full as of the Effective Date. Fees pre-paid for Professional Services are eligible for refund, proration, or offset to the extent such Services have not been delivered or utilized by Agency.

4. **Fees; Invoicing.** Lexipol will invoice Agency at the commencement of the Initial Term and at the commencement of each Renewal Term. Agency agrees to remit payment within thirty (30) calendar days following receipt of Lexipol's invoice. Payments may be made electronically or by mailing a check to Lexipol at 2611 Internet Blvd, Ste. 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms. All fee amounts stated in Exhibit A are exclusive of taxes and similar fees now in force or enacted in the future. Agency is responsible for all third-party fees (e.g., wire fees, bank fees, credit card processing fees). Unless otherwise exempt, Agency is responsible for and will pay in full all taxes related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income.

5. **Terms of Service.** The following terms and conditions govern access to and use of Lexipol's Services:

5.1 **Online Services.** Lexipol's Online Services include all cloud-based services offered by Lexipol and its partners, affiliates, and licensors. Online Services include, without limitation, Lexipol's Knowledge Management System ("KMS") for policy, Learning Management System ("LMS")², GrantFinder, and Cordico wellness applications (collectively, the "Online Services"). Lexipol's Online Services are proprietary and, where applicable, protected under U.S. copyright, trademark, patent, and/or other applicable laws. By subscribing to Lexipol's Online Services, Agency receives a personal, limited, non-sublicensable and non-assignable license to access and use such Services in conformity with these Terms.

5.2 **Professional Services.** Lexipol's Professional Services include all Services that are not part of Lexipol's Online Services, and which require the professional expertise of Lexipol personnel and/or contractors, including implementation support for policy manuals, technical support for online learning, accreditation consulting, grant writing and consulting³, and projects requiring regular input from Lexipol's subject matter experts (collectively, "Professional Services"). Lexipol shall provide all Professional Services in accordance with industry best practices.

5.3 **Intellectual Property; License.** Lexipol's Services and all Lexipol Content are the proprietary intellectual property of Lexipol and/or its licensors, and are protected where applicable by copyright, trademark, and patent laws. Nothing contained in this Agreement or these Terms shall be construed as conferring any right of ownership or use to Lexipol's Services or Lexipol Content. Notwithstanding the foregoing, Agency may, in limited circumstances (e.g. creation, modification, and updating of Agency's policy manuals) create Derivative Works based on Lexipol's Content and shall retain a personal, non-commercial, non-sublicensable and non-assignable license to use such Derivative Works, including beyond the expiration or termination of this Agreement. "Derivative Works" include all work product based on or which incorporates any Lexipol Content, including any revision, modification, abridgement, condensation, expansion, compilation, or any other form in which Lexipol Content, or any portion thereof, is recast, transformed, or adapted. Agency acknowledges and agrees that Lexipol shall have no responsibility to update Lexipol Content used by Agency beyond the Term of this Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works.

5.4 **Account Security.** Access to Lexipol's Services is personal and unique to Agency. Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains responsible for maintaining the security and confidentiality of Agency's usernames and passwords and the security of Agency's accounts. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's account or Agency's usernames and/or passwords.

5.5 **Agency Data.** Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's Services use the Secure Socket Layer (SSL) protocol, which encrypts information as it travels between Lexipol and Agency. However, data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through Lexipol or the Services is 100% secure. Lexipol's use of Agency Data is limited to providing the Services, retaining records in the regular course of business, and complying with valid legal obligations.

6. **Confidentiality.** During the Term of this Agreement, each party may disclose information to the other party that would be reasonably considered confidential, including Agency Data (collectively, "Confidential Information"). The receiving party will: (a) limit disclosure of any such Confidential Information to the receiving party's authorized representatives; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement; and (c) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. Notwithstanding the foregoing, a party may disclose Confidential Information pursuant to a valid governmental, judicial or administrative order, subpoena, discovery request, regulatory request, Freedom of Information Act (FOIA) request, or Texas Public Information Act request, or similar method. Lexipol acknowledges and agrees that Agency is subject to the requirements of the Texas Public

² LMS Services include, but are not limited to: PoliceOne Academy, FireRescue1 Academy, EMS1 Academy, Corrections1 Academy, and LocalGovU.

³ Agency is responsible for submitting all information reasonably required by Lexipol's grant writing team in a timely manner and always at least five (5) days prior to each grant application submission date. Agency is responsible submissions of final grant applications by grant deadlines. Failure to timely submit required materials to Lexipol's grant writing team will result in rollover of project fees to next grant application cycle, not a refund of fees. Agency's request for cancellation of grant writing services which have already begun will result in a 50% fee of the total value of the service.

Information Act (the "Act"), and that this Agreement in no way affects, limits, or modifies Agency's obligation to comply with the Act or any ruling/decision of the Texas Attorney General. Agency's compliance with the Act shall not constitute a breach of this Agreement, regardless of whether any disclosure of Confidential Information is authorized by Lexipol. The party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party's personnel or agents.

7. Warranty. LEXIPOL WARRANTS THAT ITS SERVICES ARE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS, THAT THEY SHALL BE FIT FOR THE PURPOSES SET FORTH HEREIN, AND THAT SUCH SERVICES SHALL NOT INFRINGE THE RIGHTS OR INTELLECTUAL PROPERTY OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, LEXIPOL'S SERVICES ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

8. Indemnification. Lexipol will indemnify, defend, and hold harmless Agency from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising directly and solely out of Lexipol's gross negligence or willful misconduct in providing Services pursuant to this Agreement. Agency shall likewise indemnify, defend, and hold Lexipol harmless from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising out of acts or omissions by Agency, Agency's personnel, or any party acting on Agency's behalf.

9. Limitation of Liability. Each party's cumulative liability resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Services, or the use of any Lexipol Content shall not exceed the larger of: the aggregate amount of fees paid to Lexipol by Agency during the twelve-month period immediately prior to the assertion of such claim, demand, or action; or \$10,000.00. In no event shall either party be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if such party has been advised of the possibility of such damages.

10. General Terms.

10.1 Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by either party that is not embodied herein. Terms and conditions set forth in any purchase order or other document that are inconsistent with or in addition to the terms and conditions set forth in this Agreement are rejected in their entirety and void, regardless of when received, without further action. No amendment, modification, or supplement to this Agreement shall be binding unless it is made in writing and signed by both parties.

10.2 General Interpretation. The terms of this Agreement have been chosen by the parties hereto to express their mutual intent. This Agreement shall be construed equally against each party without regard to any presumption or rule requiring construction against the party who drafted this Agreement or any portion thereof.

10.3 Invalidity of Provisions. Each provision contained in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Should any provision or portion thereof be held to be invalid or unenforceable, the parties agree that the reviewing authority should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

10.4 Compliance; Governing Law; Venue. Each party shall maintain compliance with all applicable laws, rules, regulations, and orders relating to its obligations pursuant to this Agreement. The validity, performance and interpretation of this Agreement shall be governed by the laws of the State of Texas, without regard to conflict of laws or rules that would direct application of the laws of another jurisdiction. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

10.5 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, this Agreement may be assumed by a party's successor in interest through merger, acquisition, or consolidation without additional notice or consent.

10.6 Waiver. Either party's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

10.7 Notices. Any notice required hereunder shall be in writing and shall be made by certified mail (postage prepaid) to known, authorized recipients at such address as each party may indicate from time to time. In addition, electronic mail (email) to established and authorized recipients is acceptable when acknowledged by the receiving party.



City Council Meeting

Item Number: 6
Meeting Date: June 11, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FIELDTURF USA, INC., THROUGH THE EQUALIS GROUP PURCHASING PROGRAM, FOR DESIGN SERVICES ASSOCIATED WITH THE CONSTRUCTION OF FIELDS 5 AND 6 AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF \$238,892.00; APPROVING \$23,893.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution authorizing a professional services agreement for the Landscape Architectural/Engineering Services for the Plans, Specifications and Estimate for Scharbauer Sports Complex Auxiliary Fields 5 and 6 Construction from FieldTurf USA, Inc. through Equalis contract 2020.05.2 for a cost of \$238,892.00; plus contingencies \$23,893.00, for a total cost of \$262,785.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding in the amount of \$262,785.00 is available in the Parks Bond Fund (126) and will be appropriated to a project.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

The Community Services Department recommends the preparation of plans, specifications, and estimates for two additional sports fields with associated amenities at the Scharbauer Sports Complex through Equalis contract 2020.05.2 to provide pre-construction and engineering services for the design of fields and site improvements at the Scharbauer Sports Complex Auxiliary Fields 5 and 6. We are members of the Equalis Group cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please see the attached memo from Laurie Williams, Interim Community Services Director, for additional information.

Therefore, please consider a resolution authorizing a professional services agreement for the Landscape Architectural/Engineering Services for the Plans, Specifications and Estimate for Scharbauer Sports Complex Auxiliary Fields 5 and 6 Construction from FieldTurf USA, Inc. through Equalis contract 2020.05.2 for a cost of \$238,892.00; plus contingencies \$23,893.00, for a total cost of \$262,785.00.



City Manager's Office



Scharbauer Sports Complex Division
Interoffice Memorandum

Date: May 29, 2024
To: Jose Ortiz, Assistant City Manager
From: Laurie Williams, Interim Community Services Director
Subject: Professional Services Agreement for Landscape Architectural/Engineering Services for the Plans, Specifications and Estimate for Scharbauer Sports Complex Auxiliary Fields 5 and 6 Construction

Through the Equalis Group Purchasing Co-Op, FieldTurf USA has submitted a proposal to provide development of Scharbauer Sports Complex Auxiliary Fields 5 and 6 construction plans, specifications, estimates and project administration services. The design will include two artificial turf football/soccer fields, parking areas, sidewalks, fencing, drainage improvements, irrigation and landscaping.

Staff recommends moving forward with a Professional Service Agreement with FieldTurf USA to develop the plans for Scharbauer Sports Complex Auxiliary Fields 5 and 6 construction. The current cost estimate for the construction is \$6.5 million. FieldTurf USA has submitted a Professional Services Agreement proposal in the amount of \$238,892.00. A 10% contingency is requested to cover reimbursable expenses as well as any additional costs that may arise during the plan development process, resulting in \$262,785 total funding required.

Funding in the amount of \$262,785.00 is available in the Parks Bond Projects Fund (126), and will be appropriated to a project for said purpose.

RESOLUTION NO. _____

RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH FIELDTURF USA, INC., THROUGH THE EQUALIS GROUP PURCHASING PROGRAM, FOR DESIGN SERVICES ASSOCIATED WITH THE CONSTRUCTION OF FIELDS 5 AND 6 AT THE SCHARBAUER SPORTS COMPLEX FOR A TOTAL COST OF \$238,892.00; APPROVING \$23,893.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, the Equalis Group Purchasing Program is a cooperative purchasing program in which the City participates in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Fieldturf USA, Inc., has submitted the most qualified submission, through the Equalis Group Purchasing Program, for landscape architecture and engineering services associated with the proposed construction of fields 5 and 6 at the Scharbauer Sports Complex; and

WHEREAS, the City Council finds that Fieldturf USA, Inc., is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Fieldturf USA, Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Fieldturf USA, Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to approve a professional services agreement with Fieldturf USA, Inc., through the Equalis Group Purchasing Program, as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, qualifications, and the reasonableness of the proposed fees for said services; and

WHEREAS, the City Council finds it to be in the public interest to approve \$23,893.00 for project related expenses;

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 professional services agreement with Fieldturf USA, Inc., for landscape architecture and engineering services associated with the proposed construction of fields 5 and 6 at the Scharbauer Sports Complex, through the Equalis Group Purchasing Program, for a total cost of \$238,892.00. Said agreement 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 \$23,893.00 for project related expenses is hereby approved.

SECTION THREE. That the sum of \$262,785.00 is hereby appropriated from the Parks Bond Fund (126) to a project established by the City of Midland Finance Department for the purpose set forth herein.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Fieldturf USA, Inc., in accordance with the provisions of the above-referenced agreement from funds available in project established by the City of Midland Finance Department upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
24005039

THIS AGREEMENT is made and effective the 26 day of June 2024, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Fieldturf USA, Inc. (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall provide design services associated with the construction of fields 5 and 6 at the Scharbauer Sports Complex (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$238,892.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from June 12, 2024 until June 11, 2025, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers’ Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. WAVIER

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL DAMAGES, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE WORK CONTEMPLATED UNDER THIS CONTRACT.

ARTICLE XIV. GENERAL PROVISIONS

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

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

C. Notice. Any notice or demand made regarding this Agreement shall be made in writing

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

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

If to COMPANY: Fieldturf USA, Inc.
 175 N Industrial Blvd NE.
 Calhoun, GA 30701

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one

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

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

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

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

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

- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;
- COMPANY does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- COMPANY does not have a practice, policy, guidance, or directive that

discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against any firearm entity or firearm trade association.

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

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

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

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

P. Iron or Steel Products Statute. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall

be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Fieldturf USA, 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

COOP PRICING PROPOSAL



Scharbauer Sports Complex – City of Midland, TX

Auxiliary Fields Addition

May 23, 2024

FieldTurf USA, Inc. is pleased to present the following proposal. FieldTurf pricing is based on the Equalis Cooperative Purchasing contract. Equalis provides predetermined preferential pricing through approved vendors. Since the products have already been bid at the national level, individual municipalities do not have to duplicate the bidding process per Equalis Contract #2020.05.2.



Click the following hyperlink for Equalis Due Diligence Documentation: [Equalis #2020.05.2](#)

To: Laurie Williams
Company: City of Midland
300 N Loraine
PO Box 1152
Midland, TX 79702

Date: December 18, 2023
From: FieldTurf USA, Inc.
175 N Industrial Blvd NE
Calhoun, GA 30701

Site Address: 5514 Champion Drive
Midland, TX 79706

Copy to: Travis Rice, PLA
David Ross

FieldTurf USA Inc. is pleased to present the following proposal for pre-construction and engineering services for the design of FieldTurf synthetic playing fields and additional site improvements based on the conceptual rendering provided by the City of Midland.

Field Name	Scharbauer Sports Complex – Aux Fields
Design Services Lump Sum Price	\$238,892.00

COOP PRICING PROPOSAL



Overall Project Understanding/ Proposed Scope of Work:

The City of Midland is looking to add two multi-sport fields and supporting improvements at the Scharbauer Sports Complex. Per an initial project review meeting and conceptual rendering provided by the City, the project scope would include the following:

The addition of two new synthetic turf auxiliary fields, parking, drainage improvements, covered spectator seating to match existing, fencing, sports and site lighting, landscape and irrigation. A prefabricated restroom building will be purchased by the City and placed on a prepared pad with utility stub outs. A portion of existing Champion Drive has been abandoned and that work has been completed by another engineer.

DETAILED SCOPE OF SERVICES

Task 1 Project Start up and Pre-Planning Services

- Coordinate with client to complete and execute agreement between Fieldturf and client.
- One kick-off meeting with client to determine the project intent, scope, budget and timetable.
- Project start-up administrative tasks will include the following:
 - Establish files and administrative procedures
 - Gather and process survey data
 - Provide third party geotechnical services
- Review data pertinent to the project including survey, site maps, Geotechnical reports and pertinent historical data.
- Review and coordinate pertinent storm water regulations including NPDES, SWPPP, Reports, ordinances and policies pertaining to the proposed project design with FieldTurf landscape architect.
- Visit the project site to complete a visual inventory of the existing conditions and adjacent off-site impacts.
- Based on survey and topography data obtained, develop existing conditions plan for Schematic Design phase in Autocad.
- Conduct a virtual meeting with client to review the proposed base plans, scope of work and overall project layout.
- Project administration.

Task 2 Schematic Design

- Develop Schematic Design level plans to confirm scope and initiate coordination between FieldTurf, our consultants, and the City of Midland
- Coordinate key components at a schematic level with sub consultants
- Attend meeting with owner to review the schematic design package and confirm scope.

COOP PRICING PROPOSAL



- Revise Schematic Design Package if necessary and issue documents to owner for review and approval prior to advancing to the design development phase.

Task 3 Design Development

- Revise and Update base plan based upon virtual meeting with client and prepare Design Development Plans to include the following elements:
 - Grading/Drainage Plan
 - Material Plan
 - Furnishings and Other Design Components
- Attend a virtual Meeting/ conference call with FieldTurf Engineer and Local permitting agency if required to review the projects synthetic turf systems water quality and LID design.
- Conduct a virtual meeting with client to review revised project layout, plans and storm water design requirements/ permitting.
- Develop a set of drawings that will identify the preliminary systems design of project improvements for review and approval by client and site staffs will include:
 - Grading Plans
 - Drainage/Utility Plans
 - Material and Layout Plans
 - Preliminary Detail sheets and draft specifications.
- Submittal preparation and coordination.
- In-house redline and review Quality Control (QC).
- In- house preliminary cost estimate preparation and site visit as needed to coordinate with contractor
- Meeting with client to present the Design Development documentation package and preliminary cost estimate for their review and comments to proceed with preparation of final plans and specifications.
- Project administration as required.

Task 4 Construction Documentation/ Bid Package

- 95% Submittal Package
 - Review Design Development submittal comments from client and incorporate them into design package.
 - Modify base plans as required to incorporate client comments.
 - Coordinate with FieldTurf for development of NPDES, SWPPP, ect. report documentation as required my local permitting agency.
 - Develop drawings and details completed to a 95% construction document level.
 - Submittal Preparation and Coordination.
 - Redline and review Quality Control (QC).
- Project Permitting
 - Revise project 95% construction documentation set as required based on meeting with owner and review of 95% bid package cost estimate.
 - Coordinate with client's civil engineer for review and over stamping of plans developed by Fieldturf.

COOP PRICING PROPOSAL



- Coordinate with client's civil engineer for submittal of NPDES, NOI, SWPPP as required. Clients Civil engineer with develop and submit as required.
- Construction/ Bid Submittal Package
 - Attend walk with project team as required and coordinate with Contractor for Final Construction package cost estimation and review.
 - Respond to contractor questions, coordination and processing of RFI's.
 - Assist project team in preparation and submittal of final construction estimate to Client for review and approval.
- Project Administration as required

Please feel free to reach out to any member of our project team with questions about our offer:

Travis Rice

Director of Design and Construction

714.717.7952

Travis.Rice@fieldturf.com

Thank you again for your interest in FieldTurf, we look forward to working with you.

Per:

Darren Gill, Vice-President – Marketing, Innovation, Customer Service

FieldTurf USA, Inc.

Conditions

Notwithstanding any other document or agreement entered into by FieldTurf in connection with the supply and installation only of its product pursuant to the present bid proposal, the following shall apply:

COOP PRICING PROPOSAL



- a) This Design Services proposal and its acceptance is subject to strikes, accidents, delays beyond our control and *force majeure*;
- b) Final payment shall be upon the substantial completion of FieldTurf's obligations;
- c) Accounts overdue beyond 30 days of invoice date will be charged at an interest rate of 1.5% per month (19.56% per annum);
- d) FieldTurf shall be accountable for its negligence but shall not be bound by any penalty clauses.
- e) FieldTurf shall be entitled to recover all costs and expenses, including attorney fees, associated with collection procedures in the event that FieldTurf pursues collection of payment of any past due invoice.
- f) This proposal includes Topographic Survey Services. Any other special studies (environmental, tree surveys, drainage) are to be provide by the owner.
- g) Permitting fees, if required, will be paid by owner.
- h) **Important Note Regarding Lump Sum Agreements:** This paragraph is only applicable to the portion of this agreement captioned as a "Lump Sum." Fees indicated in any lump sum/fixed-fee agreement reflect proposed project meetings and design submittals. Additional meetings, submittals and revisions beyond those indicated above (including client meetings, consultant meetings, site visits, scope and plan revisions) are considered additional services that will be billed in accordance with the hourly rate provisions set forth above. These services and fees shall be considered above and beyond the stated lump sum amount indicated in the contract.
- i) **Important Note Regarding Construction Administration:** Once permits and approvals (i.e. clearing, grading, surveying, staking, demolition, or construction) are granted for development related activity, FieldTurf reserves the right to conduct the necessary construction administration for the site. Plans, reviews, site visits, testing, as-built coordination, details, and plan revisions associated with this work will be conducted without need for authorization.

In the event that the Client elects to contract with a Builder/Installer who is not either a) FieldTurf, or b) a FieldTurf certified builder, prior to permits being applied for, the following actions will be taken:

COOP PRICING PROPOSAL



- 1) FieldTurf will deliver all final design document to the Client for their use;
 - 2) The Engineer of Record will remove their stamp and be fully relieved of any liability with regard to the design;
 - 3) The Client will fully relieve FieldTurf of any liability with regard to the design.
 - 4) If permits have been applied for: FieldTurf and its subconsultants will remove notify the Local Permitting Jurisdictions that it (they) will no longer be a party to the permit application, and it will be the responsibility of the Client to file the necessary change of status paperwork along with their selected Engineer of Record.
- j) **Important Note Regarding Extra Work:** During the course of the construction phase of the project, should work additional to that defined above be required, the client will be provided a written scope of work addressing the anticipated services required. Written approval of that work will be required prior to commencement of the work. That work will then proceed on an hourly basis in accordance with the attached rate sheet or on a negotiated, lump sum fee basis.
- k) **Reimbursable Expenses:** In addition to the above fees for engineering services, FieldTurf will invoice for reimbursable services, such as requested plotting, postage, survey, express delivery charges, travel related expense over and above that specifically stated above, etc. Reimbursables will appear as Additional Services on the monthly invoices and shall be in accordance with the attached fee schedule and based on actual usage.

COOP PRICING PROPOSAL



RATE SCHEDULE

Design Consultant, Principal Design Consultant	\$ 220.00/Hr.
Principal Engineer	200.00/Hr.
Project Engineer	150.00/Hr.
Designer (E.I.T.)	125.00/Hr.
Draftsman/Designer (AutoCAD).....	100.00/Hr.
Clerical	50.00/Hr.
Landscape Architecture Principal	200.00/Hr.
Landscape Architecture Senior	175.00/Hr.
Landscape Architecture Project	150.00/Hr.
Landscape Architecture Apprentice	100.00/Hr.
Travel	85 cents/mile
Office Staff	50.00/Hr.
Postage, Shipping, Telephone, Fax, etc.	cost plus 15%
Printing/Plotting	50 cents/SF
Reproductions and Reprographics	cost plus 15%
Subconsultants	cost plus 15%

Rates shown are effective as of January 1, 2023 and through the remainder of the calendar year. They also apply for the full term of all contracts signed during 2020, unless stated otherwise in specific contract documents.

COOP PRICING PROPOSAL



PROPOSAL ACCEPTANCE SHEET

The outlined Proposal has been reviewed and accepted to all portions hereinbefore listed, and is authorized to form as a binding Contractual Agreement between FieldTurf USA, Inc. ("FieldTurf") and the client identified below ("Client"). Identifying information for the parties is as follows:

Client: City of Midland

Project Name: Scharbauer Sports Complex – Auxiliary Field Additions

Project Location: Midland, TX

FIELDTURF USA, INC.

By: _____

Typed Name and Title

Date: _____

OWNER

By: _____

Typed Name and Title

Date: _____

Please sign and return this executed original letter to our office. This proposal is valid for a period of 30 days from the date of issue.

FieldTurf USA, Inc. holds the Cooperative Purchase contract, any PO for Contract must be made out to FieldTurf USA, Inc. 175 N Industrial Blvd NE. Calhoun, GA 30701

If you have questions regarding the FieldTurf and Beynon SmartBuy Cooperative Purchasing Program, please contact Eric Fisher at: Eric.Fisher@smartbuycooperative.com.



PROFESSIONAL SERVICES AGREEMENT
24005039

THIS AGREEMENT is made and effective the 26 day of June 2024, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Fieldturf USA, Inc. (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall provide design services associated with the construction of fields 5 and 6 at the Scharbauer Sports Complex (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$238,892.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from June 12, 2024 until June 11, 2025, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers’ Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. WAVIER

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL DAMAGES, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE WORK CONTEMPLATED UNDER THIS CONTRACT.

ARTICLE XIV. GENERAL PROVISIONS

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

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

C. Notice. Any notice or demand made regarding this Agreement shall be made in writing

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

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

If to COMPANY: Fieldturf USA, Inc.
 175 N Industrial Blvd NE.
 Calhoun, GA 30701

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one

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

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

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

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

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

- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;
- COMPANY does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- COMPANY does not have a practice, policy, guidance, or directive that

discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against any firearm entity or firearm trade association.

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

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

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

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

P. Iron or Steel Products Statute. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall

be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Fieldturf USA, 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

COOP PRICING PROPOSAL



Scharbauer Sports Complex – City of Midland, TX

Auxiliary Fields Addition

May 23, 2024

FieldTurf USA, Inc. is pleased to present the following proposal. FieldTurf pricing is based on the Equalis Cooperative Purchasing contract. Equalis provides predetermined preferential pricing through approved vendors. Since the products have already been bid at the national level, individual municipalities do not have to duplicate the bidding process per Equalis Contract #2020.05.2.



Click the following hyperlink for Equalis Due Diligence Documentation: [Equalis #2020.05.2](#)

To: Laurie Williams
Company: City of Midland
300 N Loraine
PO Box 1152
Midland, TX 79702

Date: December 18, 2023
From: FieldTurf USA, Inc.
175 N Industrial Blvd NE
Calhoun, GA 30701

Site Address: 5514 Champion Drive
Midland, TX 79706

Copy to: Travis Rice, PLA
David Ross

FieldTurf USA Inc. is pleased to present the following proposal for pre-construction and engineering services for the design of FieldTurf synthetic playing fields and additional site improvements based on the conceptual rendering provided by the City of Midland.

Field Name	Scharbauer Sports Complex – Aux Fields
Design Services Lump Sum Price	\$238,892.00

COOP PRICING PROPOSAL



Overall Project Understanding/ Proposed Scope of Work:

The City of Midland is looking to add two multi-sport fields and supporting improvements at the Scharbauer Sports Complex. Per an initial project review meeting and conceptual rendering provided by the City, the project scope would include the following:

The addition of two new synthetic turf auxiliary fields, parking, drainage improvements, covered spectator seating to match existing, fencing, sports and site lighting, landscape and irrigation. A prefabricated restroom building will be purchased by the City and placed on a prepared pad with utility stub outs. A portion of existing Champion Drive has been abandoned and that work has been completed by another engineer.

DETAILED SCOPE OF SERVICES

Task 1 Project Start up and Pre-Planning Services

- Coordinate with client to complete and execute agreement between Fieldturf and client.
- One kick-off meeting with client to determine the project intent, scope, budget and timetable.
- Project start-up administrative tasks will include the following:
 - Establish files and administrative procedures
 - Gather and process survey data
 - Provide third party geotechnical services
- Review data pertinent to the project including survey, site maps, Geotechnical reports and pertinent historical data.
- Review and coordinate pertinent storm water regulations including NPDES, SWPPP, Reports, ordinances and policies pertaining to the proposed project design with FieldTurf landscape architect.
- Visit the project site to complete a visual inventory of the existing conditions and adjacent off-site impacts.
- Based on survey and topography data obtained, develop existing conditions plan for Schematic Design phase in Autocad.
- Conduct a virtual meeting with client to review the proposed base plans, scope of work and overall project layout.
- Project administration.

Task 2 Schematic Design

- Develop Schematic Design level plans to confirm scope and initiate coordination between FieldTurf, our consultants, and the City of Midland
- Coordinate key components at a schematic level with sub consultants
- Attend meeting with owner to review the schematic design package and confirm scope.

COOP PRICING PROPOSAL



- Revise Schematic Design Package if necessary and issue documents to owner for review and approval prior to advancing to the design development phase.

Task 3 Design Development

- Revise and Update base plan based upon virtual meeting with client and prepare Design Development Plans to include the following elements:
 - Grading/Drainage Plan
 - Material Plan
 - Furnishings and Other Design Components
- Attend a virtual Meeting/ conference call with FieldTurf Engineer and Local permitting agency if required to review the projects synthetic turf systems water quality and LID design.
- Conduct a virtual meeting with client to review revised project layout, plans and storm water design requirements/ permitting.
- Develop a set of drawings that will identify the preliminary systems design of project improvements for review and approval by client and site staffs will include:
 - Grading Plans
 - Drainage/Utility Plans
 - Material and Layout Plans
 - Preliminary Detail sheets and draft specifications.
- Submittal preparation and coordination.
- In-house redline and review Quality Control (QC).
- In- house preliminary cost estimate preparation and site visit as needed to coordinate with contractor
- Meeting with client to present the Design Development documentation package and preliminary cost estimate for their review and comments to proceed with preparation of final plans and specifications.
- Project administration as required.

Task 4 Construction Documentation/ Bid Package

- 95% Submittal Package
 - Review Design Development submittal comments from client and incorporate them into design package.
 - Modify base plans as required to incorporate client comments.
 - Coordinate with FieldTurf for development of NPDES, SWPPP, ect. report documentation as required my local permitting agency.
 - Develop drawings and details completed to a 95% construction document level.
 - Submittal Preparation and Coordination.
 - Redline and review Quality Control (QC).
- Project Permitting
 - Revise project 95% construction documentation set as required based on meeting with owner and review of 95% bid package cost estimate.
 - Coordinate with client's civil engineer for review and over stamping of plans developed by Fieldturf.

COOP PRICING PROPOSAL



- Coordinate with client's civil engineer for submittal of NPDES, NOI, SWPPP as required. Clients Civil engineer with develop and submit as required.
- Construction/ Bid Submittal Package
 - Attend walk with project team as required and coordinate with Contractor for Final Construction package cost estimation and review.
 - Respond to contractor questions, coordination and processing of RFI's.
 - Assist project team in preparation and submittal of final construction estimate to Client for review and approval.
- Project Administration as required

Please feel free to reach out to any member of our project team with questions about our offer:

Travis Rice

Director of Design and Construction

714.717.7952

Travis.Rice@fieldturf.com

Thank you again for your interest in FieldTurf, we look forward to working with you.

Per:

Darren Gill, Vice-President – Marketing, Innovation, Customer Service

FieldTurf USA, Inc.

Conditions

Notwithstanding any other document or agreement entered into by FieldTurf in connection with the supply and installation only of its product pursuant to the present bid proposal, the following shall apply:

COOP PRICING PROPOSAL



- a) This Design Services proposal and its acceptance is subject to strikes, accidents, delays beyond our control and *force majeure*;
- b) Final payment shall be upon the substantial completion of FieldTurf's obligations;
- c) Accounts overdue beyond 30 days of invoice date will be charged at an interest rate of 1.5% per month (19.56% per annum);
- d) FieldTurf shall be accountable for its negligence but shall not be bound by any penalty clauses.
- e) FieldTurf shall be entitled to recover all costs and expenses, including attorney fees, associated with collection procedures in the event that FieldTurf pursues collection of payment of any past due invoice.
- f) This proposal includes Topographic Survey Services. Any other special studies (environmental, tree surveys, drainage) are to be provide by the owner.
- g) Permitting fees, if required, will be paid by owner.
- h) **Important Note Regarding Lump Sum Agreements:** This paragraph is only applicable to the portion of this agreement captioned as a "Lump Sum." Fees indicated in any lump sum/fixed-fee agreement reflect proposed project meetings and design submittals. Additional meetings, submittals and revisions beyond those indicated above (including client meetings, consultant meetings, site visits, scope and plan revisions) are considered additional services that will be billed in accordance with the hourly rate provisions set forth above. These services and fees shall be considered above and beyond the stated lump sum amount indicated in the contract.
- i) **Important Note Regarding Construction Administration:** Once permits and approvals (i.e. clearing, grading, surveying, staking, demolition, or construction) are granted for development related activity, FieldTurf reserves the right to conduct the necessary construction administration for the site. Plans, reviews, site visits, testing, as-built coordination, details, and plan revisions associated with this work will be conducted without need for authorization.

In the event that the Client elects to contract with a Builder/Installer who is not either a) FieldTurf, or b) a FieldTurf certified builder, prior to permits being applied for, the following actions will be taken:

COOP PRICING PROPOSAL



- 1) FieldTurf will deliver all final design document to the Client for their use;
 - 2) The Engineer of Record will remove their stamp and be fully relieved of any liability with regard to the design;
 - 3) The Client will fully relieve FieldTurf of any liability with regard to the design.
 - 4) If permits have been applied for: FieldTurf and its subconsultants will remove notify the Local Permitting Jurisdictions that it (they) will no longer be a party to the permit application, and it will be the responsibility of the Client to file the necessary change of status paperwork along with their selected Engineer of Record.
- j) **Important Note Regarding Extra Work:** During the course of the construction phase of the project, should work additional to that defined above be required, the client will be provided a written scope of work addressing the anticipated services required. Written approval of that work will be required prior to commencement of the work. That work will then proceed on an hourly basis in accordance with the attached rate sheet or on a negotiated, lump sum fee basis.
- k) **Reimbursable Expenses:** In addition to the above fees for engineering services, FieldTurf will invoice for reimbursable services, such as requested plotting, postage, survey, express delivery charges, travel related expense over and above that specifically stated above, etc. Reimbursables will appear as Additional Services on the monthly invoices and shall be in accordance with the attached fee schedule and based on actual usage.

COOP PRICING PROPOSAL



RATE SCHEDULE

Design Consultant, Principal Design Consultant	\$ 220.00/Hr.
Principal Engineer	200.00/Hr.
Project Engineer	150.00/Hr.
Designer (E.I.T.)	125.00/Hr.
Draftsman/Designer (AutoCAD).....	100.00/Hr.
Clerical	50.00/Hr.
Landscape Architecture Principal	200.00/Hr.
Landscape Architecture Senior	175.00/Hr.
Landscape Architecture Project	150.00/Hr.
Landscape Architecture Apprentice	100.00/Hr.
Travel	85 cents/mile
Office Staff	50.00/Hr.
Postage, Shipping, Telephone, Fax, etc.	cost plus 15%
Printing/Plotting	50 cents/SF
Reproductions and Reprographics	cost plus 15%
Subconsultants	cost plus 15%

Rates shown are effective as of January 1, 2023 and through the remainder of the calendar year. They also apply for the full term of all contracts signed during 2020, unless stated otherwise in specific contract documents.

COOP PRICING PROPOSAL



PROPOSAL ACCEPTANCE SHEET

The outlined Proposal has been reviewed and accepted to all portions hereinbefore listed, and is authorized to form as a binding Contractual Agreement between FieldTurf USA, Inc. ("FieldTurf") and the client identified below ("Client"). Identifying information for the parties is as follows:

Client: City of Midland

Project Name: Scharbauer Sports Complex – Auxiliary Field Additions

Project Location: Midland, TX

FIELDTURF USA, INC.

By: _____

Typed Name and Title

Date: _____

OWNER

By: _____

Typed Name and Title

Date: _____

Please sign and return this executed original letter to our office. This proposal is valid for a period of 30 days from the date of issue.

FieldTurf USA, Inc. holds the Cooperative Purchase contract, any PO for Contract must be made out to FieldTurf USA, Inc. 175 N Industrial Blvd NE. Calhoun, GA 30701

If you have questions regarding the FieldTurf and Beynon SmartBuy Cooperative Purchasing Program, please contact Eric Fisher at: Eric.Fisher@smartbuycooperative.com.





City Council Meeting

Item Number: 7
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE PURCHASE OF STRING LIGHTS AND POLES FOR DOWNTOWN MIDLAND FROM WHOLESALE ELECTRIC SUPPLY COMPANY OF HOUSTON, INC. THROUGH THE INTERLOCAL PURCHASING SYSTEM FOR A TOTAL COST OF \$305,255.67 (DISTRICT 2) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Resolution authorizing the purchase of string lights and poles for Downtown Midland from Wholesale Electric Supply Company of Houston, Inc. through TIPS contract 240501 for the cost of \$305,255.67 for the Engineering Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Downtown Revitalization project.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Staff recommends approving a purchase of string lights and poles for Downtown Midland through TIPS contract 240501. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids

for those purchases. Please see the attached memo from Gabriel McClelland, Engineering Director, for more information.

Therefore, please consider a resolution approving a purchase of string lights and poles for Downtown Midland from Wholesale Electric Supply Company of Houston, Inc. through TIPS contract 240501 for the cost of \$305,255.67.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
STRING LIGHTS AND POLES FOR DOWNTOWN
MIDLAND FROM WHOLESALE ELECTRIC SUPPLY
COMPANY OF HOUSTON, INC. THROUGH THE
INTERLOCAL PURCHASING SYSTEM FOR A TOTAL
COST OF \$305,255.67**

WHEREAS, The Interlocal Purchasing System (“TIPS”) is a cooperative purchasing agency with which the City participates in purchases through a cooperative purchasing program in accordance with Section 271.102 of the Texas Local Government Code; and

WHEREAS, Wholesale Electric Supply Company of Houston, Inc. (“Seller”) submitted a total cost to the City of \$305,255.67 for the City’s proposed purchase of string lights and poles (the “Goods”) for downtown Midland through TIPS as shown on the quote attached hereto as Exhibit “A”, which is incorporated herein for all purposes; and

WHEREAS, the City Council finds the price proposed for the Goods to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of the Goods from Seller through TIPS;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the Goods from Seller through TIPS for a total cost of \$305,255.67.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Seller for the Goods from funds available in the Downtown Revitalization Project upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

Gabe McClelland, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Wholesale W Electric

www.wes-hou.com

WHOLESALE ELECTRIC SUPPLY
COMPANY OF HOUSTON, INC.
3909 S COUNTY RD 1290

ODESSA TX 79765
Phone: 432-253-3648
Fax:

Date : 06-05-2024

** QUOTATION **

QUOTE #: 0094-12287786

SALESMAN : WYLIE, CHRIS
Account Mgr : WYLIE, CHRIS

Email: CWYLIE@WES-HOU.COM
Email: CWYLIE@WES-HOU.COM

DATES: Received: 06-04-2024
Required: 06-04-2024
Expedite:

CUSTOMER Name: 2502619 - CITY OF MIDLAND

Contact:

Phone:

Email:

Order #: DOWNTOWN STRING LIGHTS & POLES

Req #: TIPS # 240501

We are pleased to quote the following Bill of Material per your specifications.

ITEM #	DESCRIPTION	QTY	PRICE	U/M	EXT PRICE	CUSTOMER TAG #
1	HYA-STL-AC-GC27-18 120V 27K STRING LIGHT PROD: BUYO LOT OF 6100FT 18" LAMP SPACING 2 WATT 2700K 120 VOLT	1.00	152679.9500	EA	152679.95	Cust: BUYO
2	HYA-STL-CT CABLE TIES QTY 8200 PROD: BUYO	1.00	3604.7200	EA	3604.72	Cust: BUYO
3	HYA-STL-EC END CAPS QTY 75 PROD: BUYO	1.00	117.7500	EA	117.75	Cust: BUYO
4	RAMA RM0102 POLE TOP TENON PROD: BUYO PRICE PER EACH	6.00	292.5000	EA	1755.00	Cust: BUYO
5	RTS-26-10-7-AB-(FINISH) TC-VNG-BCS PROD: BUYO PRICING PER EACH	25.00	5883.9300	EA	147098.25	Cust: BUYO
Items : 5		Tax : 0.00		Price :	305255.67	
Deduct 0.00 NET 30 DAYS-FROM INVOICE DATE				Total :	305255.67 USD	

Freight Paid By :

Prices quoted are for quantities shown.

Variation of these quantities are subject to requote.

Items quoted are subject to prior sale.

Asterisk (*) denotes HELD item.

Prepared By: _____

Return goods subject to 25% restocking charge.

Special ordered merchandise subject to MFR. terms.

Wholesale W Electric

www.wes-hou.com

WHOLESALE ELECTRIC SUPPLY
COMPANY OF HOUSTON, INC.
3909 S COUNTY RD 1290

ODESSA TX 79765
Phone: 432-253-3648
Fax:

Date : 06-05-2024

** QUOTATION **

QUOTE #: 0094-12287786

SALESMAN : WYLIE, CHRIS
Account Mgr : WYLIE, CHRIS

Email: CWYLIE@WES-HOU.COM
Email: CWYLIE@WES-HOU.COM

DATES: Received: 06-04-2024
Required: 06-04-2024
Expedite:

CUSTOMER Name: 2502619 - CITY OF MIDLAND

Contact:

Phone:

Email:

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Req #: TIPS # 240501

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1	HYA-STL-AC-GC27-18 120V 27K STRING LIGH PROD: BUYO LOT OF 6100FT 18" LAMP SPACING 2 WATT 2700K 120 VOLT	1.00	152679.9500	EA	152679.95	Cust: BUYO
2	HYA-STL-CT CABLE TIES QTY 8200 PROD: BUYO	1.00	3604.7200	EA	3604.72	Cust: BUYO
3	HYA-STL-EC END CAPS QTY 75 PROD: BUYO	1.00	117.7500	EA	117.75	Cust: BUYO
4	RAMA RM0102 POLE TOP TENON PROD: BUYO PRICE PER EACH	6.00	292.5000	EA	1755.00	Cust: BUYO
5	RTS-26-10-7-AB-(FINISH) TC-VNG-BCS PROD: BUYO PRICING PER EACH	25.00	5883.9300	EA	147098.25	Cust: BUYO
Items : 5		Tax : 0.00		Price :	305255.67	
Deduct 0.00 NET 30 DAYS-FROM INVOICE DATE				Total :	305255.67 USD	

Freight Paid By :

Prices quoted are for quantities shown.

Variation of these quantities are subject to requote.

Items quoted are subject to prior sale.

Asterisk (*) denotes HELD item.

Prepared By: _____

Return goods subject to 25% restocking charge.

Special ordered merchandise subject to MFR. terms.



City Council Meeting

Item Number: 8
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING A ONE-YEAR RENEWAL OF A SOLE-SOURCE CONTRACT WITH AZTECA SYSTEMS, LLC, FOR LICENSING AND SOFTWARE MAINTENANCE SUPPORT SERVICES OF CITYWORKS SOFTWARE FOR THE INFORMATION TECHNOLOGY SYSTEMS DEPARTMENT AT A TOTAL COST OF \$135,981.30 (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution authorizing an agreement for the sole source purchase of licensing and software maintenance support for Cityworks software for the Information Technology Systems Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the ITSD Tech Fund.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Resolution 2007-155 authorized the purchase of the Cityworks software for the Transportation Division and Utilities Department. The licensing and software maintenance support for the Cityworks software is only available through Azteca Systems, LLC. According to Texas Local

Government Code 252.022 (a)(7)(A), competitive bidding requirements do not apply to items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies. Staff recommends entering into the agreement and purchasing the licensing and software maintenance for Cityworks software from Azteca Systems, LLC. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for additional information.

Therefore, please consider a resolution authorizing an agreement for the sole source purchase of licensing and software maintenance support for Cityworks software to Azteca Systems, LLC of Sandy, Utah for a total cost of \$135,981.30.



City Manager's Office



City Council Agenda

MEETING DATE: 06/04/2024

TO: Erika Martinez, Purchasing Manager

FROM: Alana Crawford, Assistant Director of Enterprise Applications

CC: Jennifer Frescaz, Chief Information Officer
Gorgees Eskander, Deputy Chief Information Officer

SUBJECT: Consider a resolution to approve a Trimble/Cityworks Online Enterprise License Agreement from Trimble for \$135,981.30 for an annual renewal.

Purpose:

Consider a resolution to approve an annual renewal of Trimble/Cityworks Online Enterprise License Agreement for \$135,981.30 from Trimble.

Discussion:

The Engineering and Utilities departments currently utilize Trimble/Cityworks for asset and work order management. With the recent inclusions of cloud hosting, additional Trimble/Cityworks modules, increased user count, mobile capabilities, and API integrations, this product provides better efficiency and cost savings for the city.

This renewal will provide Trimble/Cityworks cloud hosting, software updates, continued maintenance for customer support and mobile device access licenses.

The Trimble/Cityworks annual subscription and maintenance has increased by 5% which totals \$135,981.30. This cost increase is impacted by the following factors:

- The inclusion of Cityworks online
- The addition of the Pavement Express Application
- Originally hosted by NewEdge Services, Cityworks is now hosted by Trimble/Cityworks

The annual renewal fee of \$135,981.30 is budgeted in the Tech Fund 770770-53405.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING A ONE-YEAR
RENEWAL OF A SOLE-SOURCE CONTRACT WITH
AZTECA SYSTEMS, LLC, FOR LICENSING AND
SOFTWARE MAINTENANCE SUPPORT SERVICES OF
CITYWORKS SOFTWARE FOR THE INFORMATION
TECHNOLOGY SYSTEMS DEPARTMENT AT A TOTAL
COST OF \$135,981.30**

WHEREAS, Resolution 2021-059 authorized the execution of a three-year contract with Azteca Systems, LLC, for licensing and software maintenance support services of Cityworks Software; and

WHEREAS, the Engineering and Utilities Department utilize Cityworks Software for asset and work order management; and

WHEREAS, Azteca Systems, LLC, is the sole source provider of Cityworks Software services; and

WHEREAS, Azteca Systems, LLC, has agreed to provide the City of Midland with a one-year renewal of licensing and software maintenance support services of Cityworks Software for a total cost of \$135,981.30; and

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

WHEREAS, the City Council finds it to be in the public interest to authorize a one-year renewal of the sole-source contract with Azteca Systems, LLC, for licensing and software maintenance support services of Cityworks Software;

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, such documents necessary for a one-year renewal of the sole-source contract with Azteca Systems, LLC, for licensing and software maintenance services of Citywork Software for the Information Technology Systems Department for a total cost of \$135,981.30. Said renewal

documents being attached hereto as Exhibit A and incorporated herein for all purposes.

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

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Ateca Systems, LLC, in accordance with the terms of the above-referenced renewal, from funding available funds upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

June 13, 2024

Attn: Alana K. Crawford
Assistant Director of Enterprise Applications
Information Technology Systems Department
601 N. Loraine
Midland, TX 79701

Re: Sole Source Letter

Dear Alana:

Thank you for your interest in Cityworks (the "Offering").

This letter confirms that the Offering is a product, designed, created, and owned exclusively by Azteca Systems, LLC, a Trimble Company ("Trimble"). Within the United States of America, Trimble is the sole source provider of the Offering and related maintenance and support services.

Please feel free to contact the undersigned at George_Mastakas@trimble.com if you have any questions.

Sincerely,

DocuSigned by:

5DA74A419CA046C...

George Mastakas

Vice President

Azteca Systems, LLC, a Trimble company

Contact Information

Contact Name:	Jennifer Frescaz	Prepared By Name:	Jenn Miya
Customer:	Midland (TX), City of	Prepared By Phone:	(801) 872-9528
Contact Address:	1602 E. Orchard Ln Building 3 Midland, TX 79701	Prepared By Email:	jennifer_miya@trimble.com

Quote Lines

Product Name	Quantity	Net Unit Price
AMS ELA Cityworks Online Standard	1.00	USD 112,975.30
Cityworks Authorized Users	100.00	USD 0.00
Respond - AMS	1.00	USD 0.00
Mobile Native Apps (iOS/Android) - AMS	1.00	USD 0.00
Storeroom	1.00	USD 0.00
Equipment Checkout	1.00	USD 0.00
Contracts	1.00	USD 0.00
Cityworks for Excel	1.00	USD 0.00
Cityworks Analytics - AMS	1.00	USD 0.00
eURL - AMS	1.00	USD 0.00
Workload - AMS	1.00	USD 0.00
Web Hooks - AMS	1.00	USD 0.00
CCTV Interface for PACP	1.00	USD 0.00
Pavement Management	1.00	USD 0.00
Performance Budgeting	1.00	USD 0.00
Service Request API	1.00	USD 0.00
Work Order API - Basic	1.00	USD 0.00
Inspection API	1.00	USD 3,625.00
Data Storage Plus	1.00	USD 0.00
Pavement Express	1.00	USD 19,381.00
TOTAL:		USD 135,981.30

Notes

Year 1 Dollar Value	USD 135,981.30	Year 1 Date Range	8/6/2024 - 8/5/2025
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Maintenance Start Date: 8/6/2024 Maintenance End Date: 8/5/2025

Quote Notes:

Price has increased to reflect adjustment from the previous year. This change will take effect on your next annual renewal.

Terms and Conditions

Payment Terms

Payment due within 30 days

IF YOUR ORGANIZATION REQUIRES A PURCHASE ORDER, PLEASE CONTACT YOUR FINANCE DEPARTMENT TO BEGIN THE APPROVAL PROCESS TO AVOID PAYMENT DELAYS.

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery for the Customers listed above.

Unless otherwise referenced, this quotation is for the Cityworks software products referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software or any other third-party software utilized in conjunction with Cityworks will be the responsibility of the Customer.

For "on-prem" installations, the procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the Customer. Currently, Cityworks supports Oracle and SQL Server. The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the Customer.

This quotation and the pricing information herein is confidential and proprietary and may not be copied or released other than for the express purpose of the current system Software and Product selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, LLC or unless otherwise specifically permitted by law. If a "public access" or similar request is made, Customer, shall notify Azteca Systems, prior to any disclosure.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense, and is subject to the terms and conditions of the signed "Cityworks Software License and Maintenance Agreement" ("Agreement") and any and all addendums or amendments thereto. A fully executed copy of the Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

The terms and conditions of the executed Cityworks Software License Agreement apply to this Quote unless otherwise specifically stated herein. Any additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and dates are void and of no effect.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any applicable state, sales, local, or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for any applicable taxes, including, sales, state, local or use taxes as necessary. Azteca Systems reserves the right to collect any applicable sales, use or other taxes assessed by or as required by law. Azteca Systems reserves the right to add any applicable tax to the invoice, unless proof with the order is shown that your organization or entity is tax exempt or if it pays any applicable tax directly.

International Customers

PACKET

8.9

June 25, 2024

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above.

Accepted by:

Title

_____/_____/_____
Date

Azteca Systems, LLC - Cityworks | 11075 South State Street Suite 24, Sandy, UT 84070 | Corporate Main 801-523-2751 | Corporate Fax 801-523-3734

CITYWORKS® SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement (“Agreement”) is made by and between Azteca Systems, LLC (“Azteca Systems” or “Azteca”) a Delaware limited liability company, with a place of business set forth on Addendum #1 below, and the **City of Midland, Texas**, (hereinafter referred to as “Licensee” or “Customer”), using certain of Azteca Systems Licensed Products. This Software License and Maintenance Agreement is effective upon the date of signature by Licensee below (the “Effective Date”).

Azteca Systems Products are licensed under the terms and conditions of this Agreement. This Agreement, when executed by the Licensee and Azteca Systems, as licensor of the Software, or the Online Services, and Documentation licensed under this Agreement, will supersede any previous agreements.

This Agreement includes (i) this Software License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support, and (iv) Addendum #3 – Third-Party Contractor Acknowledgment.

This Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party’s original signature is not delivered.

ARTICLE 1—DEFINITIONS

1.1 **Definitions.** The terms used are defined as follows:

- a. "Agreement" means this Software License and Maintenance Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda, and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account username and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee’s employees; (ii) Licensee’s consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software’s public web portal (if applicable). Other than limited use of the Products through the software’s web portal, the public is not considered an authorized user.
- d. "Beta" means any alpha, beta, or other prerelease version of a Product.
- e. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- f. "Cloud Services" means both Azteca Systems Managed Cloud Services and Online Services.
- g. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- h. "Concurrent Use License" means that Licensee may install and use the Software on computer(s) on a network, but the number of simultaneous users (logins) may not exceed the number of licenses required.
- i. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee’s internal use to provide testing License rights prior to deployment.
- j. "Documentation" means all user reference documentation that is supplied to the Licensee by Azteca Systems pursuant to this Agreement for aiding or enabling the use of the Software and is deemed to include any Azteca Systems-provided revisions thereof.
- k. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee’s internal operations but does not include access of the Licensed Products by or use of the Licensed Products in the provisions of services to Licensee’s clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a

- service offering, service bureau application, application service provider, outsourcing, or other means of providing service to any third party shall not be considered Internal Use.
- l. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified in Addendum #1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software and Documentation licensed under the terms of this Agreement.
 - m. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
 - n. "Malicious Code" means software viruses; worm time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.
 - o. "Named User(s)" is Licensee's employee, agent, consultant, or contractor to whom Licensee has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product or subscription to Online Services for Licensee's exclusive benefit.
 - p. "Online Services" means the commercially available, internet-based asset management system that Azteca Systems provides (commonly known as Cityworks Online), including applications and associated APIs, for storing, managing, publishing, and using maps, data, and other information. Online services exclude Data and Content.
 - q. "Online Services Subscription" means a limited-term subscription conveying the right for one or more named users to access and use Online Services.
 - r. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
 - s. "Preview" means any alpha, beta, or prerelease Product.
 - t. "Product(s)" means Software and Documentation licensed under the terms of this Agreement.
 - u. "Sample(s)" means sample code, sample applications, sample add-ons, or sample extensions of Products.
 - v. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
 - w. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, documentation, updates, upgrades, and service packs. Without limitation, the Software is deemed to include any alpha, beta, prerelease or restricted version(s), or final commercial release(s), provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, sample code, or merged copies permitted hereunder or subsequently supplied under this Agreement. Unless otherwise indicated by the context herein, the term Software is also deemed to include its associated Documentation.
 - x. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.
 - y. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

All Azteca Systems Offerings are the copyrighted works of Azteca Systems. Azteca Systems or its licensors own the Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights, including trade secrets. This Agreement does not transfer ownership rights of any description in the software, materials, products, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. All rights not specifically granted in this Agreement are reserved to Azteca Systems and its licensor(s). Azteca Systems does not acquire any rights in Customer Content under this Agreement other than as needed to provide Azteca Offerings and Services to Customer.

ARTICLE 3—GRANT OF LICENSE

- 3.1 **Grant of License.** Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i)

for which the applicable license fees have been paid; (ii) for Licensee's own internal use; (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) licenses. Licensee may allow Third-Party Contractors to access and use the licensed Software, provided Licensee and Third-Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third-Party Contractor Acknowledgment (if applicable) collectively, are incorporated by reference into this Agreement.

- a. *Software.* Use and license for specific Software products are set forth in Addendum #1– Product Licensing, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum #2 – Standard Maintenance and Support, which terms are incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third-Party Contractor software usage (if applicable) are set forth in Addendum #3 – Third-Party Contractor Acknowledgment, which is incorporated by reference.

3.2 **Delivery.** Unless otherwise agreed, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Products by electronic download and a license key to activate the Licensed Products.

ARTICLE 4—SOFTWARE AND ONLINE SERVICES

4.1 Software Terms of Use

- a. For Products delivered to Licensee, Licensee may:
 1. Install, access, and store Products on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
 4. Move the Software in the licensed configuration to a replacement server.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca Systems and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, LLC. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third-Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca Systems. Licensee shall be solely responsible for compliance by Third-Party Consultants and Contractors with this Agreement and shall ensure that the Third-Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third-Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

4.2 Online Services Terms of Use

- a. **Use of Online Services** is also subject to the Cloud Services Terms found in Addendum #2.
- b. **Modification of Online Services.** Azteca Systems may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Azteca Systems may, at its discretion, attempt to repair, correct, or provide a

workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Azteca Systems will issue a prorated refund.

4.3 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

4.4 Limited-Use Programs.

a. Trial, Evaluation, and Beta Programs. Products acquired under a trial, evaluation, or beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.

b. Educational Programs. Licensee agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Licensee shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

c. Other Azteca Systems Emergency or Limited-Use Programs. If Licensee acquires Products under any limited-use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page, letter, or enrollment form or as described on Azteca's website in addition to the nonconflicting terms of this Agreement.

4.5 Uses Not Permitted. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Licensed Software or Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Distribute Authorization Codes to third parties;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Licensed Products;
- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Unbundle or independently use the individual or component parts of Software or Online Services;
- l. Incorporate any portion of the Software into a product or service that competes with the Software;

- m. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- n. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—AZTECA SYSTEMS MANAGED CLOUD SERVICES

5.1 **Definitions.** The following are supplemental definitions provided in Article 1.

- a. “Azteca Managed Cloud Services” means the hardware, Software, Data, network platform that Azteca Systems or its third-party supplier provides as part of Azteca Managed Cloud Services.
- b. “Hosting” means the business of housing and making accessible Licensee Content via the internet.

5.2 **Provision of Azteca Managed Cloud Services.**

- a. **General Terms.** Use of Azteca Systems Managed Cloud Services is subject to the Cloud Services terms found in Addendum #2 of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Azteca Systems changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Azteca Systems will invoice Customer annually for the Azteca Systems Managed Cloud Services to be provided the upcoming year. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Azteca Systems or removal of Customer Content from the Azteca Systems Managed Cloud Services environment.
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Azteca Systems if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Azteca Systems Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Azteca Systems Offering to be (i) disclosed or distributed in source code form, (ii) made available free of charge to third parties, or (iii) modifiable without restriction by third parties.
- g. **Monitoring.** Licensee will provide information and other materials related to its Licensee Content as reasonably requested by Azteca Systems or its Hosting partner to verify Azteca's or Licensee's compliance with this Agreement. Azteca Systems or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Licensee Content solely for the purpose of verifying compliance with this Agreement.

ARTICLE 6—TERM AND TERMINATION

6.1. The initial term of this Agreement will begin on the Effective Date, or upon such latter dates set forth in Addendum #1, and in each case provided a valid purchase authorization is issued. This Agreement may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum #1.

6.2. Either party may terminate this Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination shall be deemed to have immediate effect for a material breach that is impossible to cure.

6.3. **Termination by Licensee.** In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement, Licensee may terminate subsequent Term Maintenance Periods by

giving Azteca Systems thirty (30) days' written notice prior to the end of the current Term Maintenance Period. The effective date of such termination will be the start of the subsequent Term.

6.4. Termination by Azteca Systems. Azteca Systems may terminate this Software License and Maintenance Agreement and/or any license granted hereunder if:

- a. Licensee violates its obligations under this Software License and Maintenance Agreement and fails to cure the breach within thirty (30) days after Azteca Systems' written notification, provided however, that no cure period prior to termination will be required as noted in section 6.2.
- b. Licensee ceases to do business in the ordinary course, or becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors. Such termination shall be effective upon notice to such party or as soon thereafter as is permitted by applicable law.

6.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the Software License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

6.6. If this Agreement is terminated per section 6.3, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance, and support services rendered or products and software received and accepted prior to the effective date of termination.

6.7. If this Agreement is terminated per section 6.3 or 6.4, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then, for no additional charge to Licensee and at Licensee's option, either grant a license to the Licensee for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software, or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

6.8. If Licensee has an Online Services Subscription, Managed Cloud Services, or Online Services Product, then upon termination per section 6.3 or 6.4, Azteca Systems will provide Licensee the ability for 30 days to download, backup, or otherwise archive all Licensee Data.

6.9. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach or termination of any kind occur.

ARTICLE 7—LIMITED WARRANTIES AND DISCLAIMERS

7.1 Limited Warranties. Except as otherwise provided in this Article 7, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

7.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and beta Products are delivered "as is" and without warranty of any kind.

7.3 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the internet or to regulation of the internet that might restrict or prohibit the operation of Cloud Services.

- b. **Third-Party Websites; Third-Party Content.** Azteca Systems is not responsible for any third-party website or third-party content that appears in or is referenced by Azteca Systems Products or Azteca Systems websites, including www.cityworks.com and www.mycityworks.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

7.4 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Azteca Systems disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property rights. Azteca Systems is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Licensee Content caused by Licensee's modification of any Azteca Systems Product or Service other than as specified in the Documentation. Azteca Systems does not warrant that Products and Services hereunder or Licensee's operation of the same, will be uninterrupted, error free, fault-tolerant, or fail-safe or that all nonconformities can or will be corrected. Products are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property/environmental damage. Licensee should not follow any suggestions or instructions that appear to be hazardous, unsafe, or illegal. Any such use shall be at Licensee's own risk and cost.

7.5 Exclusive Remedy. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Section shall be limited to replace any defective media; (i) repair, correct, or provide a workaround for the applicable Products or Services and subject to the Azteca Systems Maintenance Services and Support Addendum; or (ii) at Azteca Systems election, terminate Licensee's right to use and refund the fees paid for Azteca Systems Products or Services that do not meet Azteca Systems limited warranties, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

ARTICLE 8—LIMITATION OF LIABILITY

8.1 Disclaimer of Liability. Neither Licensee, Azteca Systems, nor any Azteca Systems distributor or third party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees paid for the current Term support period, or current Subscription fees, or Services fees actually paid to Azteca Systems for the Azteca Systems Products or Services giving rise to the cause of action.

8.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Licensee's infringement, misuse, or misappropriation of Azteca Systems or Azteca Systems licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

8.3 Applicability of Disclaimers and Limitations. Azteca Systems (or its authorized distributor if any) has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

8.4 The foregoing warranties, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Licensee's jurisdiction. Licensee may have additional rights under law that may not be waived or disclaimed. Azteca Systems does not seek to limit Licensee's warranty or remedies to any extent not permitted by law.

ARTICLE 9—INDEMNIFICATIONS

9.1 Definitions. The following definitions supplement the definitions provide in Article 1:

- a. "Claim" means any claim, action, or demand by a third party.
- b. "Indemnitees" means Customer and its directors, officers, and employees.

- c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to any Azteca Systems Products or Services infringes a patent, copyright, trademark, or trade secret.
- d. "Loss(es)" means expenditure, damage award, settlement amount, cost, or expense, including awarded attorney's fees.

9.2 **Infringement Indemnity.**

- a. Azteca Systems will defend, hold all indemnitees harmless from and against any Loss arising out of an Infringement Claim.
- b. If Azteca Systems determines that an Infringement Claim is valid, Azteca Systems may, at its expense, either (i) obtain rights for Customer to continue using the Azteca Systems Products or Services or (ii) modify the Azteca Systems Products or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Azteca Systems may terminate Licensee's right to use the Azteca Systems Products or Services and will refund any unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Azteca Systems has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Azteca Systems Products or Services with a product, process, or system or element not supplied by Azteca Systems or specified by Azteca Systems in its Documentation, (ii) alteration of Azteca Systems Products or Services by anyone other than Azteca Systems or its subcontractors, (iii) compliance with Licensee's specifications, or (iv) use of Products or Services after Azteca Systems either provides a modified version to avoid infringement or terminates Licensee's right to use the Products or Services.

9.3 **General Indemnity.** Azteca Systems will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Azteca Systems or its directors, officers, employees, or agents performing Services while on Customer's site.

9.4 **Conditions for Indemnification.** As conditions for indemnification, Indemnitee will (i) promptly notify Azteca Systems in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Azteca Systems sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Azteca Systems request and expense.

9.5 **This section sets forth the entire obligation of Azteca Systems, its authorized distributor (if any), and its third-party licensors (if any) regarding any Claim for which Azteca Systems must indemnify Licensee.**

ARTICLE 10—GENERAL PROVISIONS

10.1 **Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country, (ii) any person on the US Treasury Department's list of Specially Designated Nationals, (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List, or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

10.2 **Taxes and Fees, Shipping Charges.** License and Subscription fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

10.3 **No Implied Waivers.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

10.4 **Severability.** The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

10.5 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This Agreement shall be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this Agreement.

10.6 Survival of Terms. The provisions of Articles 2, 6, 7, 8, 9 and 10 of this Agreement, and the provisions of section 4.1 of Addendum #2, shall survive the expiration or termination of this Software License and Maintenance Agreement.

10.7 US Government Licensee. The Products are commercial items, developed at private expense, provided to Licensee under this Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

10.8 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- **Government Entities.** If Licensee is a government entity, the applicable laws of the Licensee's jurisdiction govern this Agreement.
- **Nongovernment Entities.** US federal law and the law of the State of Utah exclusively govern this Agreement, excluding their respective choice of law principles.

10.9 Dispute Resolution. The parties will use the following dispute resolution process:

- **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).
- **Other Government Entities.** Azteca Systems will comply with mandatory dispute resolutions under applicable law.
- **Negotiation and Mediation.** The parties will attempt negotiation and consultation in good faith and a spirit of mutual cooperation. If not resolved through negotiation, the parties will next attempt mediation in Midland Texas, by a mutually acceptable mediator chosen by the parties, which cost is shared equally. If not resolve either through negotiation or mediation, then it shall be finally adjudicated by a court of competent jurisdiction in Midland, County Texas, or any Federal District court in the event of matters of intellectual property.

10.10 Maintenance. Maintenance for qualifying Software consists of updates (provided on a when-and-if available basis) and other benefits, such as access to technical support, which are provided during the Term. Maintenance is specified as set forth in Addendum #2.

10.11 Audit. Upon Azteca System's written request, Licensee shall certify in a signed writing that its use of the Licensed Product is in full compliance with the terms of this Agreement (including any restrictions herein). Azteca Systems, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Licensee's records and use of the Licensed Products to confirm compliance with this Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does unreasonably interfere with ordinary business activities. Licensee shall be responsible for any audit costs only in the event that such audit reveals that Licensee's use is not in accordance with the permitted uses under this Agreement, and for

unpaid license fees.

10.12 Feedback. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Software or Products, and any related intellectual property, are owned by Azteca Systems.

10.13 Patents. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

10.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber-attacks, laws, regulations, government orders, or any other force majeure event.

10.15 Independent Contractor. Azteca Systems is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Azteca Systems and the Licensee. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

10.16 Entire Agreement. This Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective by their respective authorized representatives.

AZTECA SYSTEMS, LLC

By: 

Name: Brian L. Haslam

Title: President - CEO

Date: 06/24/2021

CITY OF MIDLAND, TX – (LICENSEE)

By: 

Name: Jennifer Frescaz

Title: Chief Information Officer

Date: 6/24/2021

ADDENDUM #1

PRODUCT LICENSING

1. Licensed Software:

Server AMS Standard Cityworks Online Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products: Office Respond Mobile Native Apps (for iOS/Android) --Includes the following Add-ons: Storeroom Equipment Checkout Contracts Cityworks for Excel Cityworks Analytics for AMS eURL (Enterprise URL) Workload Web Hooks CCTV Interface for PACP Pavement Management Performance Budgeting Service Request API Work Order API - Basic Data Storage Plus Local Government Templates (LGT) Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners
--

Additional Software Products & Licenses & Annual Renewals: Additional Software Products & Licenses may be added to this Agreement as well as annual renewals of this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

2. Notices & Licensee Information: Until or unless otherwise modified, all notices relevant to this agreement shall be sent to the following address:

Azteca Systems, LLC 11075 South State, Suite 24 Sandy, Utah 84070	City of Midland 1602 E Orchard Lane Building 5 Midland, TX 79701
	Attn: Gabe McClelland
	E-mail: gmcclelland@midlandtexas.gov
	Phone: 432.685.7299

3. **Effective Date of Software (Date Software made available)***MM/DD/YYYY***06/01/2021**4. **Schedule of Payments and/or Fees under Agreement**

Annual Period	Date From/To (mm/dd/yyyy)	Amount
Period 1	06/01/2021 – 08/05/2021	\$ 27,033.00
Period 2	08/06/2021 – 08/05/2022	\$101,000.00
Period 3	08/06/2022 – 08/05/2023	\$101,000.00

** Fee for Period 1 reflects the services (\$23,700.00) for the licensing conversion change to Cityworks Online and the cost of additional products (3,333.00) pro-rated for the period of 6/1/2021 – 08/05/2021. Current Period 1 fee of \$81,000.00 for the period of 08/06/2020 to 08/05/2021 was paid previously.*

5. **Additional Items (If Any):**

- a. Cityworks Online (CWOL) - is a Cityworks Online hosted services subscription for the right to access and use the Online Services for the products identified hereinabove. CWOL is a highly scalable hosted services product offering. It is hosted on Azteca Systems' servers and completely scaled, managed, updated, backed up, and maintained by Azteca Systems.
- b. Because Azteca Systems controls the update schedule, users are not responsible for upgrading, managing, or patching the systems themselves.
- c. Annual fee herein is based on 100,001 - 150,000 population range.
- d. ELA pricing herein for CWOL assumes no hosting logins are added over and above the current 100 Server AMS hosting Logins. Additional hosting logins can be added for an additional fee.

ADDENDUM #2

STANDARD MAINTENANCE AND SUPPORT

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca Systems, LLC (“Azteca Systems” or “Azteca”). Maintenance and support are provided subject to the terms and conditions of the signed Software License and Maintenance Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license and maintenance fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support services consist of the following benefits: maintenance items (provided on a when-and-if available basis) which may include subsequent version releases of the licensed software, service packs, upgrades and updates, and technical support.

1.1. Azteca Systems will ensure upward compatibility for the licensed software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for licensed software applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- a. **Software Updates.** Software Updates includes upgrades and service packs which are a collection of files that enhance or correct the licensed software, and which will be available for Licensee to download during the Maintenance Term/Period. Updates and upgrades may also include new versions;
- b. Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
- c. Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee’s systems in order to perform thorough remote diagnostics.

1.3 The following items, among others, however, are specifically excluded as support services under this Addendum:

- a. Support for applying or installing upgrades and service packs;
- b. Assistance with questions related to third-party software, computer hardware, networking, and other similar items that are not provided by Azteca;
- c. Assistance with computer operating system questions not directly pertinent to the licensed software;
- d. Licensee Data debugging and/or correcting;
- e. Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the licensed software, including but not limited to neglect, abuse, unauthorized modifications, and/or unauthorized updates;
- f. Consulting regarding customizations created to function with the licensed software unless the customization is identified and listed as licensed software in Addendum #1;
- g. Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
- h. Questions such as configuration, implementation, and walk-throughs.

1.4 Support Periods are renewable unless terminated as provided in Section 3 below.

1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum #1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

1.8. **Additional Support Items.**

- a. On a when-and-if available basis, updates to the licensed software (Addendum #1) means subsequent releases of the program which Azteca generally makes available to its customers who are under an active Software License and Maintenance Agreement for which fees have been paid for the relevant support period.
- b. Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed in Addendum #1 changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license or maintenance fees have been paid.
- c. Updates may not always include any release, option, or future program that Azteca licenses separately. Updates are provided on a when-and-if available basis as determined by Azteca Systems. Azteca Systems is under no obligation to develop any future programs or functionality. Any updates made available will be made available to you for download. Customer is responsible for copying, downloading, and installing the updates.

2. PROCEDURES FOR ACCESSING SUPPORT

2.1. All problem categories from routine, non-critical and critical, that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within four (4) hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is the Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within four (4) hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems, Licensee will submit support requests during normal business hours as outlined in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.

3. CHARGES/FEEES

3.1. License, Maintenance, and Support Services herein are included in the payment of annual fees as set forth in Addendum #1 and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1 and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum #1 subsequent to year one (1) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. "CPI" shall mean for all Urban Consumers, the U.S. City Average, for all items, 1982-84=100 (the "CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor. Azteca Systems will notify Licensee of the new pricing no later than sixty (60) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

4. MANAGED CLOUD AND ONLINE SERVICES

4.1. **Prohibited Uses.** Licensee shall not provide Customer Content or otherwise access or use Cloud Services in a manner that:

- a. Creates or transmits spam, spoofings, phishing emails, or offensive or defamatory material; or stalks or makes threats of physical harm;

- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breaches any security or authentication measures used by Cloud Services without written approval from Azteca Systems product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

4.2. **Service Interruption.** System failures or other events beyond Azteca's reasonable control may interrupt Customer's access to Cloud Services. Azteca Systems may not be able to provide advance notice of such interruptions.

4.3. **Licensee Content.**

- a. Licensee grants Azteca Systems and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Licensee Content as needed to provide Cloud Services to Licensee. Azteca Systems will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Azteca Systems under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Azteca Systems may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Azteca Systems may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Azteca Systems will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Azteca Systems will either:
 - 1. Make Customer Content available to Customer for download for a period of thirty (30) days unless Customer requests a shorter window of availability or Azteca Systems is legally prohibited from doing so; or
 - 2. Download all Customer Content in Azteca Systems' possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Azteca Systems will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

4.4. **Removal of Customer Content.** Azteca Systems may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Azteca Systems will notify Customer before removing Customer Content. Azteca Systems will respond to any Digital Millennium Copyright Act takedown notices in accordance with Azteca Systems copyright policy, available at www.cityworks.com/legal.

4.5. **Service Suspension.** Azteca Systems may suspend access to Cloud or Online Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach, (ii) if Azteca Systems reasonably believes that Customer's use of Cloud Services will subject Azteca Systems to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services, (iii) for scheduled maintenance, (iv) to enjoin a threat or attack on Cloud Services, or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Azteca Systems will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Azteca Systems is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

4.6. **Notice to Azteca Systems.** Licensee will promptly notify Azteca Systems if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

5. MISCELLANEOUS

5.1. **Data Confidentiality Statement.** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing the Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements, and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

5.2. **No Implied Waivers.** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

5.3. Azteca Systems will use commercially reasonable efforts to ensure that Azteca Systems Products and Offerings will not transmit any Malicious Code to Licensee. Azteca Systems is not responsible for Malicious Code that Licensee introduces to Azteca Systems Products or Offerings or that is introduced through Third-Party Content. Malicious Code means software viruses; worms, time bombs, Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

ADDENDUM #3

THIRD-PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Licensee engages any third party or contractor (Third Party) and desires to grant access to use the Licensed Software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by Third Party is solely for Licensee’s benefit;
2. Third Party (or, if applicable, its employee) shall be considered the Authorized User for purposes of the applicable license type, and all use shall be in accordance with the terms and conditions of the Cityworks Software License and Maintenance Agreement with Licensee;
3. Before accessing the Licensed Products, Third Party agrees that (i) the software shall be used solely in accordance with the terms of this Agreement, and (ii) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be responsible for all use by Third Party with respect to the use of the Licensed Products;
5. Upon expiration or termination of this Agreement, the rights of usage of Third Party shall immediately terminated;
6. Use of the Products by Third Party will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by Third Party; and
7. Licensee will ensure that Third-Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee.

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third Party, by their signature below, acknowledges that it has a copy of the License Agreement and agrees to the terms herein. Licensee shall provide a signed copy of this Addendum to Azteca Systems at contracts@cityworks.com.

Third Party (Print): _____

Licensee: City of Midland, Texas

By: _____
Third Party/Contractor Authorized Signature

Title: _____

Date: _____

Third Party Information

Address	
City, State, Zip	
Contact Name	
Phone Number	
Email	

Midland_TX - Cityworks license agreement_Signed

Final Audit Report

2021-06-24

Created:	2021-06-24
By:	Dan Duffin (daniel_duffin@trimble.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAwwJr2e-utfatKk4u1u3tJMK7a5qsigHn

"Midland_TX - Cityworks license agreement_Signed" History

 Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)

2021-06-24 - 7:31:04 PM GMT- IP address: 107.0.81.82

 Document created by Dan Duffin (daniel_duffin@trimble.com)

2021-06-24 - 8:13:09 PM GMT- IP address: 107.0.81.82

 Document emailed to Brian L Haslam (bhaslam@cityworks.com) for signature

2021-06-24 - 8:14:46 PM GMT

 Email viewed by Brian L Haslam (bhaslam@cityworks.com)

2021-06-24 - 8:50:52 PM GMT- IP address: 174.52.106.235

 Document e-signed by Brian L Haslam (bhaslam@cityworks.com)

Signature Date: 2021-06-24 - 8:51:14 PM GMT - Time Source: server- IP address: 174.52.106.235

 Agreement completed.

2021-06-24 - 8:51:14 PM GMT



5/1/24

Re: Notice of Rate Increase

Dear Valued Customer:

Thank you for your continued use and confidence of Trimble's Asset Lifecycle Management suite of products (AgileAssets, Cityworks, and/or e-Builder). We are committed to providing the highest quality software and best in class support.

At this upcoming renewal period, the price of your annual Cityworks subscription renewal and/or annual maintenance will increase by 5%. This will make sure we can continue to provide the quality products, support and services you expect.

We deeply appreciate your support and having you as a customer. If you have any questions, concerns or comments, please reach out to your CSM (Customer Success Manager) as we want to do all we can to help you succeed. Again, please feel free to reach out. In addition, your CSM will also be able to provide you assistance should you need it.

Sincerely,

Carlos Abaunza

Director of Sales Operations
Trimble Inc.

PACKET

June 25, 2024



City Council Meeting

Item Number: 9
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Justine Ruff, Director
Subject: RESOLUTION RATIFYING AND APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND AND SILVERWING ENTERPRISES, LLC, FOR PROFESSIONAL SERVICES IN SUPPORT OF THE OPERATION OF THE SPACEPORT LOCATED AT MIDLAND INTERNATIONAL AIR AND SPACE PORT; AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO SAID PROFESSIONAL SERVICES AGREEMENT (DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

Resolution ratifying a contract between the City of Midland, Texas and SilverWing Enterprises and authorizing Amendment 1 to said PROFESSIONAL SERVICES AGREEMENT dated October 1, 2023.

Recommended City Council Action:

Approve

Fiscal Impact:

Original Contract amount	\$ 99,000.00
Additional requested funds	\$ 72,000.00
Contingency	<u>\$ 29,000.00</u>
Total	\$200,000.00

The additional dollars will be funded by the Airport Operating Budget.

Strategic Priority:

(Transparent & Consistent Communication)

Discussion:

The Department of Airports entered a service contract with SilverWing Enterprises, a New Mexico engineering, project management and business development services company in October 2023. SilverWing has provided services to Midland International Air & Space Port since the original Spaceport License issuance in 2014. The contract agreement that went into effect on October 1, 2023, had the following Tasks:

Task 1 – Provide technical services toward Midland’s Part 420 Spaceport License renewal effort. This will involve the review of the existing conditions at the Spaceport against the safety and environmental assessment aspects of our original license application, responding to FAA requests for information, responding to questionnaires, and support to the annual FAA conference. This tasking estimate is \$50,000.

Task 2 – Provide technical services toward a general level of support to the City of Midland on an as-needed basis to support cost estimating, various FAA agency offices issue resolution, launch operator outreach, launch operator operations document review, etc. The baseline support assumption is for 20 hours per month. The deliverables for this task will vary by task, but will typically include some written submission of activities - a minimum of 20 hours per month - \$4,000/month

Task 3 – Provide technical services and safety review for project initiatives that exceed the general level of effort support described in Task 1 at a set hourly rate - \$200/hour.

Item	Support Role Description
1	New customer acquisition support initiatives and outreach, as requested.
2	Support the integration of launch site operations within a primary commercial service airport environment - Federal Aviation Administration (FAA) requirements state that launch site operator licensing does not confer any proprietary, property, or exclusive rights, and does not relieve an airport of its existing obligations to comply with its grant assurances and other federal obligations. FAA-Airports Division (ARP) is responsible for administering Federal Aviation Regulation (FAR) Title 14 CFR Part 139 requirements for airports meeting certain criteria, and this includes ensuring safe operations. The City of Midland and FAA will need to continually evaluate the compatibility of specific launch site operations and proposed commercial space facilities with current and future aeronautical operations at the Midland International Air & Space Port. These launch site operations will need to remain consistent in meeting all requirements of FAR 14 CFR Part 139.
3	Support Local Zoning Law enactment - FAR Title 14 CFR Part 420 requires the Launch Site Operator (LSO) to ensure the safety of people on the ground during over flight of a launch vehicle. Midland’s adoption of the Airport Overlay Zone #4 provides land compatibility protection to current and proposed LSO departure and return corridors. It will be imperative that these corridors continue to meet the requirements of FAR Title 14 CFR Part 420. Support the development and Ec analysis, if required, (CFR Part 420) of any requested land development changes with respect to population increases against the FAA approved flight tracks.

4	Launch site design standard support - FAA-Airports Division (ARP) is responsible for establishing and maintaining standards for a broad range of airport facility planning, engineering design, construction, operations and maintenance of airport facilities. Although many launch vehicles have characteristics similar to traditional aircraft (including horizontal takeoff), their potential impact to airport design standards (e.g., pavement, signage, marking, lighting, etc.) is not yet fully understood. As the industry evolves and more data becomes available, FAA-ARP will continue to evaluate whether these vehicles can be accommodated within existing design categories. The spaceport will need to actively participate in this evaluation process to ensure future requirements don't exclude Midland as a viable launch site location.
5	Support conferences and other public relations and networking support initiatives such as the annual FAA AST Commercial Space Conference.
6	Launch Site Operator licensing ongoing requirements - FAR Title 14 CFR Part 420 prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the basis for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed.
7	The identification and coordination of potential impacts - The LSO must monitor how the proposed launch site operations will be coordinated with FAA –Office of Commercial Space Transportation (AST), FAA-Air Traffic Organization (ATO), FAA-ARP, airport launch facilities, reentry sites, or other launch sites, including airports where launch site activities are proposed to be integrated with other types of civil aeronautical activity as in the case of Midland International Air & Space Port. Such coordination must reasonably ensure the safety, efficiency, utility and access to the airport and surrounding airports for aeronautical activities.

The amendment to the contract is necessary due to additional expenses incurred with our Part 420 Spaceport License renewal. The FAA has updated the regulations for renewal and that increased the level of effort necessary to satisfy the FAA requirements. SilverWing has undertaken an initiative to develop and build upon our launch site operator's license with a launch site orbital reentry license. This effort has required coordination with Sierra Space in consideration of the Dream Chaser vehicle orbital reentry into the Midland International Air & Space Port. SilverWing is building off of the successful study conducted several years ago and will formally kick off the new licensing effort in FY2025 after the current license renewal. This scoping level of effort will continue on a low level for the remainder of FY2024.

The additional dollars for the amendment will be funded by the Airport Operating Budget.

Frederick Out

City Manager's Office

RESOLUTION NO. _____

RESOLUTION RATIFYING AND APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND AND SILVERWING ENTERPRISES, LLC, FOR PROFESSIONAL SERVICES IN SUPPORT OF THE OPERATION OF THE SPACEPORT LOCATED AT MIDLAND INTERNATIONAL AIR AND SPACE PORT; AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO SAID PROFESSIONAL SERVICES AGREEMENT

WHEREAS, the City Council finds it to be in the public interest to ratify and approve that certain Professional Services Agreement dated October 1, 2023, between the City of Midland and SilverWing Enterprises, LLC, for professional services in support of the operation of the Spaceport located at Midland International Air and Space Port; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an amendment to the above-referenced Professional Services Agreement to provide for increased costs and expenses associated with the City's Part 420 Spaceport License renewal;

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

SECTION ONE. That the Professional Services Agreement dated October 1, 2023, between the City of Midland and SilverWing Enterprises, LLC, is hereby ratified and approved. Said Professional Services Agreement being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an amendment to the above-referenced Professional Services Agreement. Said amendment, which is attached hereto as Exhibit B and incorporated herein for all purposes, shall provide for increased costs and expenses associated with the City's Part 420 Spaceport License renewal.

SECTION THREE. That the City Comptroller is hereby authorized and directed to
PACKET 9.5 June 25, 2024

pay SilverWing Enterprises, LLC, in accordance with the provisions of the above-referenced Professional Services Agreement, as amended, from funds available in the Airport Operating Budget upon receipt of proper invoices or statements approved by the City Manager or his designee.

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

RESOLUTION NO. _____

RESOLUTION RATIFYING AND APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND AND SILVERWING ENTERPRISES, LLC, FOR PROFESSIONAL SERVICES IN SUPPORT OF THE OPERATION OF THE SPACEPORT LOCATED AT MIDLAND INTERNATIONAL AIR AND SPACE PORT; AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO SAID PROFESSIONAL SERVICES AGREEMENT

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PACKET 9.8 June 25, 2024

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 1st day of October, 2023, by and between the CITY OF MIDLAND, TEXAS, a home rule municipal corporation (*City*) and SILVERWING ENTERPRISES, LLC (*Company*).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide professional services in support of the operation of the spaceport located at Midland International Air and Space Port.

ARTICLE II. SERVICES TO BE PERFORMED

1. Company shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed **\$99,000.00** for the professional services described in **Exhibit A**. City agrees to pay Company in accordance with the fees set forth in **Exhibit A**, which is attached hereto and incorporated herein for all legal purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all fees and costs. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. The City in any event shall pay every portion of the invoice that is not in dispute within the 30 day period for payment.

Exhibit A

**ARTICLE IV.
TERM**

The term of this Agreement shall be from October 1, 2023, until September 30, 2024, unless the Agreement is terminated earlier as provided in Article V below.

**ARTICLE V.
TERMINATION**

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party sixty (60) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice. In the event of termination of the Agreement under this Article, Company shall be paid for all services performed up to the termination date.

**ARTICLE VI.
CONTRACT PERSONAL**

This Agreement provides for personal or professional services, and Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that all services shall be either self performed or subcontracted by Company.

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

All reports, information and other data (*Instruments of Service*), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all Instruments of Service for its files. City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

**ARTICLE VIII.
INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Company shall perform all work and

services described herein as an independent contractor and not as an officer, agent, servant or employee of 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 Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. Company shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. 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.

ARTICLE IX. INSURANCE

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

Comprehensive 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
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<u>Workers Compensation:</u>	Statutory limits
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<u>Employers Liability:</u>	\$500,000.00 per accident or occurrence
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The Workers Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Agreement.

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

All insurance required pursuant to this Agreement, except for Workers Compensation Insurance, shall name the City as an additional insured. All insurance required pursuant to this Agreement, including Worker s Compensation Insurance, shall provide for a waiver of subrogation as to the City.

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

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

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. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Company shall contractually require all contractors, subcontractors, and sub subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the 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 (except workers compensation).

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS OR

COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE 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 AGREEMENT. THE COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

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

ARTICLE XI GOVERNMENTAL IMMUNITY

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

ARTICLE XII NO THIRD PARTY BENEFICIARIES

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

**ARTICLE XIII
RELEASE**

NOTWITHSTANDING ANY OTHER PROVISIONS, 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.

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

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

If to Company:	SilverWing Enterprises, LLC 805 Acapulco Road Rio Rancho, New Mexico 87144
----------------	--



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

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

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

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

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

H. Compliance. Company agrees that it shall comply with Texas Government Code § 2252.908, et seq., as amended. Company agrees that it shall comply with Texas Local Government Code § 176.006, et seq., as amended.

I. No Boycott. To the extent that Tex. Gov't Code § 2270.002 applies to this Agreement, Company hereby verifies that it does not and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code § 2270.002 does not apply to this Agreement, Company's verification is not required and Company shall be deemed to have not made such verification.

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

K. Public Information. To the extent that this Agreement is a contract described by Tex. Gov t Code § 552.371, Company agrees as follows in accordance with Tex. Gov t Code § 552.372(b): The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and Company agrees that the contract can be terminated if Company knowingly or intentionally fails to comply with a requirement of that subchapter.

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the 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 the 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 the City from any liability whatsoever. The 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 Agreement are reasonable.

**ARTICLE XVI.
ASSIGNMENT**

Company shall not, either directly or indirectly, assign all or any part of this



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

[Signature Pages Follow]

A handwritten signature in black ink, appearing to be 'SM' or similar, located in the bottom right corner of the page.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

A handwritten signature in blue ink, appearing to read "Tommy Gonzalez for DCM for".

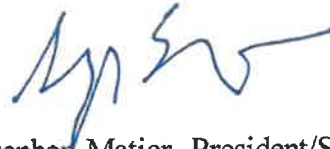
Tommy Gonzalez, City Manager

ATTEST:

A handwritten signature in blue ink, appearing to read "Marcia Bentley German".

Marcia Bentley German City Secretary

SILVERWING ENTERPRISES, LLC



Stephen Matier, President/Senior Engineer

STATE OF

§
§
§

COUNTY OF

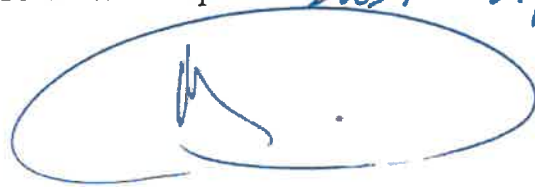
BEFORE ME, the undersigned authority, on this day personally appeared Stephen Matier, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of SILVERWING ENTERPRISES, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 23rd day of August, A.D., 2023.

Notary Public, State of Province of Nova Scotia

Printed Name Maurice P. Chiasson, KC

My Commission Expires: Does Not Expire





SilverWing Enterprises

engineering, project management, and business development services

Letter Proposal 2023-02

15 August 2023

Justine Ruff

Director of Airports

Midland International Air & Space Port and Midland Executive Airpark

P.O. Box 60305

Midland, Texas 79711

[\(432\) 560-2200 ext. 3010](tel:(432)560-2200)

jruff@midlandtexas.gov

Subject: Spaceport License Maintenance and Support Proposal – FY2024

Dear Justine,

Thank you for the opportunity to prepare this Letter Proposal to outline a continuing support role to you and the City of Midland for your airport and spaceport operations. The Period of Performance for this support proposal is for Midland's fiscal year beginning 01 October 2023.

The proposed support takes into consideration:

- The renewal of license order LSO 14-015 which is required in 2024,
- Continued review of land development proposals against the approved launch corridors as outlined in Midland's launch site operators license and the airport zoning, AOZ4,
- The continuing spaceport development growth strategy including the refinement of a point-to-point spaceflight proposal to Midland and associated reentry license under CFR Part 450,
- The potential development of prospective client engine hot fire test beds and,
- Support for the commercial space conference hosted annually by the FAA in Washington DC.

As such, we recommend that the proposed ceiling for this year's effort be \$99,000. SilverWing Enterprises LLC looks forward to the opportunity to support you.

Included below is a listing of the support activities that will need to be addressed as we continue to maintain and potentially expand the spaceport license activities to include a re-entry license under Part 450. Many of them involve working with the various divisions of the FAA as we work through the details of how we will operate especially with the prospect of a point to point reentry into Midland. Getting the license for the spaceport was based on a risk assessment and the development of numerous plans for the facility and continuing the effort to review proposed growth around Midland remains important to protecting the approved launch trajectories. Further to this, there are other significant aspects to a viable commercial spaceport operation that have been undertaken by the City of Midlands to build on the synergy around the license and into satellite manufacturing, engine testing, or suborbital launches. I believe my unique skills in licensing coupled with my rocket propulsion facility operations background can give you the

PO Box 90700, Albuquerque, New Mexico 87199-0700

stephen.macier@gmail.com 505 553-0822

PACKET

Exhibit A

June 25, 2024

adviser you need to navigate through the numerous stakeholders with their separate interests to safely manage the growth strategy. I firmly believe you need a team that represents your interests to prevent any impacts to your ongoing successful operations.

The aim of this proposal is to focus on the license renewal and maintenance and to give you an on-call retainer support for the numerous minor items that will continue to come up on a frequent basis as well as a resource to draw upon for larger project initiatives. As has been demonstrated, SilverWing is prepared to continue to deliver on these tasks. I have broken down this Letter Proposal into three elements. One is to provide a dedicated effort to the FAA Part 420 license maintenance and the new Part 450 licensing. The second is for the ongoing low level of on-call retainer support that is available to field any topics of interest that come up. The third is to provide an hourly rate structure that will be utilized for the initiatives that will come up and that will exceed the license renewal and on-call support level.

Tasks 1 and 2 below define the basis for the cost proposal and the table provides the menu of support tasks envisioned.

- Task 1 – Provide technical services toward Midland’s Part 420 spaceport license renewal effort. This will involve the review of the existing conditions at the spaceport against the Safety and environmental assessment aspects of our original license application, responding to FAA requests for information, responding to questionnaires, and support to the annual FAA conference. This tasking is estimated to be approximately \$50,000*.
- Task 2 – Provide technical services toward a general level of effort support to the City of Midland on as needed basis to support cost estimating, various FAA agency offices issue resolution, launch operator outreach, launch operator operations document review, etc. The baseline support assumption is for 20 hours per month. The deliverables for this task will vary by task but will typically include some written submission of activities supported but will be at a minimum 20 hours per month - \$4000/month*
- Task 3 – Provide technical services and safety review for project initiatives that exceed the general level of effort support described in Task 1 at a set hourly rate - \$200/hr*

* Does not include approved travel costs requested by the client

Item	Support Role Description
1	New customer acquisition support initiatives and outreach, as requested.
2	Support the integration of launch site operations within a primary commercial service airport environment - Federal Aviation Administration (FAA) requirements state that launch site operator licensing does not confer any proprietary, property, or exclusive rights, and does not relieve an airport of its existing obligations to comply with its grant assurances and other federal obligations. FAA-Airports Division (ARP) is responsible for administering

	Federal Aviation Regulation (FAR) Title 14 CFR Part 139 requirements for airports meeting certain criteria, and this includes ensuring safe operations. The City of Midland and FAA will need to continually evaluate the compatibility of specific launch site operations and proposed commercial space facilities with current and future aeronautical operations at the Midland International Air & Space Port. These launch site operations will need to remain consistent in meeting all requirements of FAR 14 CFR Part 139.
3	Support Local Zoning Law enactment - FAR Title 14 CFR Part 420 requires the Launch Site Operator (LSO) to ensure the safety of people on the ground during over flight of a launch vehicle. Midland's adoption of the Airport Overlay Zone #4 provides land compatibility protection to current and proposed LSO departure and return corridors. It will be imperative that these corridors continue to meet the requirements of FAR Title 14 CFR Part 420. Support the development and Ec analysis, if required, (CFR Part 420) of any requested land development changes with respect to population increases against the FAA approved flight tracks.
4	Launch site design standard support - FAA-Airports Division (ARP) is responsible for establishing and maintaining standards for a broad range of airport facility planning, engineering design, construction, operations and maintenance of airport facilities. Although many launch vehicles have characteristics similar to traditional aircraft (including horizontal takeoff), their potential impact to airport design standards (e.g., pavement, signage, marking, lighting, etc.) is not yet fully understood. As the industry evolves and more data becomes available, FAA-ARP will continue to evaluate whether these vehicles can be accommodated within existing design categories. The spaceport will need to actively participate in this evaluation process to ensure future requirements don't exclude Midland as a viable launch site location.
5	Support conferences and other public relations and networking support initiatives such as the annual FAA AST Commercial Space Conference.
6	Launch Site Operator licensing ongoing requirements - FAR Title 14 CFR Part 420 prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the basis for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed.
7	The identification and coordination of potential impacts - The LSO must monitor how the proposed launch site operations will be coordinated with FAA -Office of Commercial Space Transportation (AST), FAA-Air Traffic Organization (ATO), FAA-ARP, airport launch facilities, reentry sites, or other launch sites, including airports where launch site activities are proposed to be integrated with other types of civil aeronautical activity as in the case of Midland International Air & Space Port. Such coordination must reasonably

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SilverWing Enterprises

engineering, project management, and business development services

Letter Proposal 2023-02

	ensure the safety, efficiency, utility and access to the airport and surrounding airports for aeronautical activities.
--	--

Thank you in advance for your consideration to giving SWE this opportunity, I'm looking forward to working with you. If you have any questions or need any additional information, please let me know.

Sincerely,



Stephen E. Matier

President/Senior Engineer

SilverWing Enterprises LLC

PO Box 90700, Albuquerque, New Mexico 87199-0700

505 553-0822

Engineering, Project Management and Business Development Services

PO Box 90700, Albuquerque, New Mexico 87199-0700

stephen.matier@gmail.com 505 553-0822

PACKET

9.25

June 25, 2024

**AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIDLAND, TEXAS
AND SILVERWING ENTERPRISES, LLC**

THIS AMENDMENT is made and effective June 25, 2024, by and between the CITY OF MIDLAND, TEXAS (“City”), a home-rule municipal corporation, and SILVERWING ENTERPRISES, LLC (“Company”).

WHEREAS, City and Company entered into that certain Professional Services Agreement (the “Agreement”), effective October 1, 2023, whereby Company agreed to provide City with certain professional services in support of the operation of the Midland International Air & Space Port; and

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

WHEREAS, City and Company 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. Article III of the Agreement is hereby deleted in its entirety and replaced with the following:

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company an amount not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00) for the professional services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. Payment shall be made to Company upon Company’s submission of monthly invoices. The monthly invoices shall set forth all fees and costs. The City Manager or his designee must approve all additional expenses in advance. Within thirty (30) days of City’s receipt of a monthly invoice, City shall pay the full amount indicated on such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of its objection(s) and the grounds therefor within thirty (30) days from the date City received the invoice, and the parties shall immediately make every effort to settle the disputed portion of the invoice. City shall pay every undisputed portion of the invoice within the 30-day period for payment referenced above.

2. The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by City and Company, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

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

CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Secretary

SILVERWING ENTERPRISES, LLC

Stephen Matier, President/Senior Engineer

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Stephen Matier, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration expressed therein on behalf of SILVERWING ENTERPRISES, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, 2024.

Notary Public, State of _____

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 1st day of October, 2023, by and between the CITY OF MIDLAND, TEXAS, a home rule municipal corporation (*City*) and SILVERWING ENTERPRISES, LLC (*Company*).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide professional services in support of the operation of the spaceport located at Midland International Air and Space Port.

ARTICLE II. SERVICES TO BE PERFORMED

1. Company shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed **\$99,000.00** for the professional services described in **Exhibit A**. City agrees to pay Company in accordance with the fees set forth in **Exhibit A**, which is attached hereto and incorporated herein for all legal purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all fees and costs. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. The City in any event shall pay every portion of the invoice that is not in dispute within the 30 day period for payment.

Exhibit A

**ARTICLE IV.
TERM**

The term of this Agreement shall be from October 1, 2023, until September 30, 2024, unless the Agreement is terminated earlier as provided in Article V below.

**ARTICLE V.
TERMINATION**

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party sixty (60) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice. In the event of termination of the Agreement under this Article, Company shall be paid for all services performed up to the termination date.

**ARTICLE VI.
CONTRACT PERSONAL**

This Agreement provides for personal or professional services, and Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that all services shall be either self performed or subcontracted by Company.

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

All reports, information and other data (*Instruments of Service*), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all Instruments of Service for its files. City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

**ARTICLE VIII.
INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Company shall perform all work and

services described herein as an independent contractor and not as an officer, agent, servant or employee of 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 Agreement is intended or shall be construed as creating a Community of Pecuniary Interest or An Equal Right of Control which would give rise to vicarious liability. Company shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. 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.

ARTICLE IX. INSURANCE

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

Comprehensive 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
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<u>Workers Compensation:</u>	Statutory limits
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<u>Employers Liability:</u>	\$500,000.00 per accident or occurrence
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The Workers Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Agreement.

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

All insurance required pursuant to this Agreement, except for Workers Compensation Insurance, shall name the City as an additional insured. All insurance required pursuant to this Agreement, including Worker s Compensation Insurance, shall provide for a waiver of subrogation as to the City.

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

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

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. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Company shall contractually require all contractors, subcontractors, and sub subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the 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 (except workers compensation).

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS OR

COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE 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 AGREEMENT. THE COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

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

ARTICLE XI GOVERNMENTAL IMMUNITY

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

ARTICLE XII NO THIRD PARTY BENEFICIARIES

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

**ARTICLE XIII
RELEASE**

NOTWITHSTANDING ANY OTHER PROVISIONS, 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.

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

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

If to Company:	SilverWing Enterprises, LLC 805 Acapulco Road Rio Rancho, New Mexico 87144
----------------	--



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

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

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

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

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

H. Compliance. Company agrees that it shall comply with Texas Government Code § 2252.908, et seq., as amended. Company agrees that it shall comply with Texas Local Government Code § 176.006, et seq., as amended.

I. No Boycott. To the extent that Tex. Gov't Code § 2270.002 applies to this Agreement, Company hereby verifies that it does not and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code § 2270.002 does not apply to this Agreement, Company's verification is not required and Company shall be deemed to have not made such verification.

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

K. Public Information. To the extent that this Agreement is a contract described by Tex. Gov t Code § 552.371, Company agrees as follows in accordance with Tex. Gov t Code § 552.372(b): The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and Company agrees that the contract can be terminated if Company knowingly or intentionally fails to comply with a requirement of that subchapter.

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

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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 Agreement are reasonable.

**ARTICLE XVI.
ASSIGNMENT**

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

[Signature Pages Follow]

A handwritten signature in black ink, appearing to be 'SM' or similar, located in the bottom right corner of the page.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

A handwritten signature in blue ink, appearing to read "Tommy Gonzalez for DCM for".

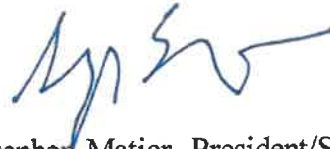
Tommy Gonzalez, City Manager

ATTEST:

A handwritten signature in blue ink, appearing to read "Marcia Bentley German".

Marcia Bentley German City Secretary

SILVERWING ENTERPRISES, LLC



Stephen Matier, President/Senior Engineer

STATE OF

§
§
§

COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared Stephen Matier, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of SILVERWING ENTERPRISES, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 23rd day of August, A.D., 2023.

Notary Public, State of Province of Nova Scotia

Printed Name Maurice P. Chiasson, KC

My Commission Expires: Does Not Expire





SilverWing Enterprises

engineering, project management, and business development services

Letter Proposal 2023-02

15 August 2023

Justine Ruff
Director of Airports
Midland International Air & Space Port and Midland Executive Airpark
P.O. Box 60305
Midland, Texas 79711
 [\(432\) 560-2200 ext. 3010](tel:(432)560-2200)
jruff@midlandtexas.gov

Subject: Spaceport License Maintenance and Support Proposal – FY2024

Dear Justine,

Thank you for the opportunity to prepare this Letter Proposal to outline a continuing support role to you and the City of Midland for your airport and spaceport operations. The Period of Performance for this support proposal is for Midland's fiscal year beginning 01 October 2023.

The proposed support takes into consideration:

- The renewal of license order LSO 14-015 which is required in 2024,
- Continued review of land development proposals against the approved launch corridors as outlined in Midland's launch site operators license and the airport zoning, AOZ4,
- The continuing spaceport development growth strategy including the refinement of a point-to-point spaceflight proposal to Midland and associated reentry license under CFR Part 450,
- The potential development of prospective client engine hot fire test beds and,
- Support for the commercial space conference hosted annually by the FAA in Washington DC.

As such, we recommend that the proposed ceiling for this year's effort be \$99,000. SilverWing Enterprises LLC looks forward to the opportunity to support you.

Included below is a listing of the support activities that will need to be addressed as we continue to maintain and potentially expand the spaceport license activities to include a re-entry license under Part 450. Many of them involve working with the various divisions of the FAA as we work through the details of how we will operate especially with the prospect of a point to point reentry into Midland. Getting the license for the spaceport was based on a risk assessment and the development of numerous plans for the facility and continuing the effort to review proposed growth around Midland remains important to protecting the approved launch trajectories. Further to this, there are other significant aspects to a viable commercial spaceport operation that have been undertaken by the City of Midlands to build on the synergy around the license and into satellite manufacturing, engine testing, or suborbital launches. I believe my unique skills in licensing coupled with my rocket propulsion facility operations background can give you the

PO Box 90700, Albuquerque, New Mexico 87199-0700

stephen.maticer@gmail.com 505 553-0822

PACKET

Exhibit A

June 25, 2024

adviser you need to navigate through the numerous stakeholders with their separate interests to safely manage the growth strategy. I firmly believe you need a team that represents your interests to prevent any impacts to your ongoing successful operations.

The aim of this proposal is to focus on the license renewal and maintenance and to give you an on-call retainer support for the numerous minor items that will continue to come up on a frequent basis as well as a resource to draw upon for larger project initiatives. As has been demonstrated, SilverWing is prepared to continue to deliver on these tasks. I have broken down this Letter Proposal into three elements. One is to provide a dedicated effort to the FAA Part 420 license maintenance and the new Part 450 licensing. The second is for the ongoing low level of on-call retainer support that is available to field any topics of interest that come up. The third is to provide an hourly rate structure that will be utilized for the initiatives that will come up and that will exceed the license renewal and on-call support level.

Tasks 1 and 2 below define the basis for the cost proposal and the table provides the menu of support tasks envisioned.

- Task 1 – Provide technical services toward Midland’s Part 420 spaceport license renewal effort. This will involve the review of the existing conditions at the spaceport against the Safety and environmental assessment aspects of our original license application, responding to FAA requests for information, responding to questionnaires, and support to the annual FAA conference. This tasking is estimated to be approximately \$50,000*.
- Task 2 – Provide technical services toward a general level of effort support to the City of Midland on as needed basis to support cost estimating, various FAA agency offices issue resolution, launch operator outreach, launch operator operations document review, etc. The baseline support assumption is for 20 hours per month. The deliverables for this task will vary by task but will typically include some written submission of activities supported but will be at a minimum 20 hours per month - \$4000/month*
- Task 3 – Provide technical services and safety review for project initiatives that exceed the general level of effort support described in Task 1 at a set hourly rate - \$200/hr*

* Does not include approved travel costs requested by the client

Item	Support Role Description
1	New customer acquisition support initiatives and outreach, as requested.
2	Support the integration of launch site operations within a primary commercial service airport environment - Federal Aviation Administration (FAA) requirements state that launch site operator licensing does not confer any proprietary, property, or exclusive rights, and does not relieve an airport of its existing obligations to comply with its grant assurances and other federal obligations. FAA-Airports Division (ARP) is responsible for administering

	Federal Aviation Regulation (FAR) Title 14 CFR Part 139 requirements for airports meeting certain criteria, and this includes ensuring safe operations. The City of Midland and FAA will need to continually evaluate the compatibility of specific launch site operations and proposed commercial space facilities with current and future aeronautical operations at the Midland International Air & Space Port. These launch site operations will need to remain consistent in meeting all requirements of FAR 14 CFR Part 139.
3	Support Local Zoning Law enactment - FAR Title 14 CFR Part 420 requires the Launch Site Operator (LSO) to ensure the safety of people on the ground during over flight of a launch vehicle. Midland's adoption of the Airport Overlay Zone #4 provides land compatibility protection to current and proposed LSO departure and return corridors. It will be imperative that these corridors continue to meet the requirements of FAR Title 14 CFR Part 420. Support the development and Ec analysis, if required, (CFR Part 420) of any requested land development changes with respect to population increases against the FAA approved flight tracks.
4	Launch site design standard support - FAA-Airports Division (ARP) is responsible for establishing and maintaining standards for a broad range of airport facility planning, engineering design, construction, operations and maintenance of airport facilities. Although many launch vehicles have characteristics similar to traditional aircraft (including horizontal takeoff), their potential impact to airport design standards (e.g., pavement, signage, marking, lighting, etc.) is not yet fully understood. As the industry evolves and more data becomes available, FAA-ARP will continue to evaluate whether these vehicles can be accommodated within existing design categories. The spaceport will need to actively participate in this evaluation process to ensure future requirements don't exclude Midland as a viable launch site location.
5	Support conferences and other public relations and networking support initiatives such as the annual FAA AST Commercial Space Conference.
6	Launch Site Operator licensing ongoing requirements - FAR Title 14 CFR Part 420 prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the basis for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed.
7	The identification and coordination of potential impacts - The LSO must monitor how the proposed launch site operations will be coordinated with FAA -Office of Commercial Space Transportation (AST), FAA-Air Traffic Organization (ATO), FAA-ARP, airport launch facilities, reentry sites, or other launch sites, including airports where launch site activities are proposed to be integrated with other types of civil aeronautical activity as in the case of Midland International Air & Space Port. Such coordination must reasonably

SWE

SilverWing Enterprises

engineering, project management, and business development services

Letter Proposal 2023-02

	ensure the safety, efficiency, utility and access to the airport and surrounding airports for aeronautical activities.
--	--

Thank you in advance for your consideration to giving SWE this opportunity, I'm looking forward to working with you. If you have any questions or need any additional information, please let me know.

Sincerely,



Stephen E. Matier

President/Senior Engineer

SilverWing Enterprises LLC

PO Box 90700, Albuquerque, New Mexico 87199-0700

505 553-0822

Engineering, Project Management and Business Development Services

PO Box 90700, Albuquerque, New Mexico 87199-0700

stephen.matier@gmail.com 505 553-0822

PACKET

9.42

June 25, 2024



City Council Meeting

Item Number: 10
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Justine Ruff, Director
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MAVERICK CIVIL & SURVEY, LLC, DBA MAVERICK ENGINEERING TO PROVIDE CONCEPTUAL AND DESIGN SERVICES FOR THE BEAUTIFICATION OF TWO ENTRYWAYS TO THE MIDLAND INTERNATIONAL AIR & SPACE PORT FOR A TOTAL COST NOT TO EXCEED \$109,000.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

Resolution authorizing a Professional Services Agreement to develop conceptual and design services regarding the two entries leading into Midland International Air & Space Port for a total cost not to exceed \$109,000.00, and appropriating funds.

Recommended City Council Action:

Approve

Fiscal Impact:

N/A

Strategic Priority:

(Transparent & Consistent Communication)

Breakout of Costs:

Develop Conceptual and Design Service (100% Airport Fund)	<u>\$ 109,000.00</u>
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Total Project Appropriation Not to Exceed \$ 109,000.00

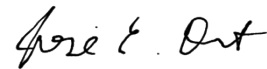
Appropriation Language:

That the sum of \$109,000.00 will be appropriated from the Airport Operating Fund Unappropriated Fund Balance and transferred to a project for stated purpose.

Discussion:

In order to make the entrances leading into Midland International Air & Space Port along LaForce Blvd. and Sloan Field aesthetically pleasing, it has become necessary to address these areas. This project with Maverick Engineering will provide conceptual and design services regarding beautifying these two entrances. Maverick Engineering will provide civil, landscape architecture, design construction plans per City of Midland Standards and Specifications; coordinate with MAF, City and TxDOT personnel; break out each beautification area; full topography survey; boundary/right-of-way determination where needed; platting where/when necessary; prepare an opinion of probable costs, landscape concepts, sign concepts and designs, detailed design drawings and specifications for signage beautification; provide grading and drainage civil drawing with paving, storm water pollution prevention plans, site plans and water plans.

Maverick Engineering was selected as an on-call Architectural/Engineering firm to support projects at Midland International Air & Space Port and Midland Airpark.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MAVERICK CIVIL & SURVEY, LLC, DBA MAVERICK ENGINEERING TO PROVIDE CONCEPTUAL AND DESIGN SERVICES FOR THE BEAUTIFICATION OF TWO ENTRYWAYS TO THE MIDLAND INTERNATIONAL AIR & SPACE PORT FOR A TOTAL COST NOT TO EXCEED \$109,000.00; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, the City Council approved Resolution No. 2023-139 selecting five (5) engineering firms to provide professional services for the Department of Airports; and

WHEREAS, the Department of Airports has selected Maverick Civil & Survey, LLC, DBA Maverick Engineering to provide conceptual and design services for the beautification of two entryways to the Midland International Air & Space Port; and

WHEREAS, Maverick Engineering has agreed to perform said professional services for a total cost not to exceed \$109,000.00; and

WHEREAS, the City Council finds that Maverick Engineering is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Maverick Engineering are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Maverick Engineering provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute professional services agreement with Maverick Engineering as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Maverick Civil & Survey, LLC, DBA Maverick Engineering to provide conceptual and design services for the beautification of two entryways to the Midland International Air & Space Port. A copy of said agreement shall be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the amount of \$109,000.00 is hereby appropriated from the Airport Operating Fund Unappropriated Fund Balance and transferred to a project established by the City of Midland Finance Department for purposes consistent with this Resolution.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Maverick Civil & Survey, LLC, DBA Maverick Engineering pursuant to the terms of the above-referenced professional services agreement from funds available in the project established by the City of Midland Finance Department upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the _____ day of June, 2024, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Maverick Civil & Survey, LLC DBA Maverick Engineering (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*”.

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform Airport Entrance Beautification for the Midland International Air & Space Port (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agreed to pay COMPANY an amount not to exceed \$109,000 for the performance of the Services. CITY agreed to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY received advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

Within thirty (30) days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the Parties shall immediately make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, CITY shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

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

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$ 500,000.00 per occurrence

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

Workers' Compensation: Statutory Limits

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD THE ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

- A. Waiver. No waiver by CITY of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.
- B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations

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

If to COMPANY: Maverick Civil & Survey , LLC
DBA Maverick Engineering
1909 W. Wall St., Suite K
Midland, Texas 79701

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

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

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

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

- H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said statutes and regulations are make terms and conditions of this Agreement, to which the parties have agreed to be bound.
- I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the City Manager, or any other reasonable official of CITY, written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim. COMPANY's failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any contrary provision contained herein, COMPANY's failure to comply with the requirements herein shall perpetually bar COMPANY's claim for damages

under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless of whether CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

- J. Prompt Pay Act. The Parties agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive the CITY's governmental immunity.
- K. Compliance. COMPANY shall comply with Texas Government Code § 2252.908, *et seq.*, as amended, and Texas Local Government Code § 176.006, *et seq.*, as amended.
- L. Anti-Boycott Statutes. To the extent that Tex. Gov't Code §§ 2271.002 and 2274.002 apply to this Agreement, COMPANY hereby verifies that:
- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;
 - COMPANY does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
 - COMPANY does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against any firearm entity or firearm trade association.

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

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

possession of COMPANY, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

- N. Public Information. To the extent that this Agreement is a contract described by Tex. Gov't Code § 552.371, COMPANY agrees as follows in accordance with Tex. Gov't Code § 552.372(b): The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- O. Conflict of Terms. If a conflict of terms or language exists between: (i) any of the provisions of this Agreement; and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the Parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.
- P. Iron or Steel Products Statute. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.
- Q. Interpretation. By executing this Agreement, the Parties acknowledge and agree that this Agreement shall not be interpreted or construed against any Party solely because such Party or its legal counsel drafted this Agreement. The Parties have read, understood, and approve of the language and terms set forth herein.

[Signature Page(s) Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

MAVERICK, LLC

By: _____
Name: Andrew L. Mellen Jr. P.E.
Title: Managing Partner

STATE OF TEXAS §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this _____ day of _____, 2024 personally appeared Andrew L. Mellen Jr., an officer of Maverick LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2024.

Notary Public, State of Texas

June 12, 2024

Justine Ruff
Director of Airports
City of Midland
300th Loraine,
Midland, TX 79701

**RE: Proposal for Professional Services
City of Midland MAF Entry Beautification**

Mrs. Ruff,

Maverick is pleased to have the opportunity to provide this Proposal for Conceptual and Design services regarding two entries into the Midland Air and Space Port along LaForce Blvd and CR40 (Sloan Field Road) for a more cohesive beautification package with will tie in City of Midland, Centennial Park, and Midland International Air and Space Port.

Scope of Services

Design elements will include:

- Site Planning Conceptual and Design enhancements relating to Landscape Architecture Scopes
- Sign Concepts and Design
- Survey and or Design Topography
- Re-platting or Easement Work for Lot 5 Block 1 Of (MIAIP)
- Possible Grading and Drainage Designs
- Water Plan if necessary
- Project Management
 - Exhibits
 - General Governing Agency Meetings/Coordination
 - Cost Estimates
 - Assistance with Dry Utilities
 - Assistance with Bidding
 - Assistance with Project Construction

Deliverables

Maverick will provide ongoing support and troubleshooting along with the efforts needed to produce conflict remedy construction documents.

- Civil, Landscape Architecture, Design Construction Plans
 - Per City of Midland Standards and Specifications
 - Coordination with MAF, City, Possible TXDOT
 - Broken out into each individual beautification area
 - Full Topography Survey
 - Boundary/Right-of Way Determination where needed.
 - Platting where/when necessary
 - Prepare Opinion of Probable Costs
 - Landscape Concepts
 - Architecturally Rendered Perspectives
 - Sign Concepts and Design
 - Detailed Design Drawings and Specifications for Signage Beautification
 - Grading and Drainage Civil Drawings with Paving
 - Storm Water Pollution Prevention Plans
 - Site Plans
 - Water Plans

Owners Services

- Provide intended direction as it pertains to individual direction of City of Midland Beautification
- Review and approve Concepts and Construction documents produced by Maverick Engineering

Schedule

The Scope of Services and associated fee is based on an annual agreement. It is anticipated that the Scope and Fee of the annual Agreement Shall be reassessed with consensus between Owner and Engineer prior to execution of any subsequent agreement. Each Task effort will vary throughout the agreement time frame. Timelines of identified projects within each task will be set and updated per progress meetings as needed. Maverick shall work with City of Midland to comply with Appropriate Conceptual Schedules.

Compensation

Time and Materials Not to Exceed Basis of **\$109,000.** Work Orders are Provided On a Deliverables Basis. When a Work Order specifies that the Work is to be provided on a Deliverables Basis and Maverick Engineering is to be compensated on a Time and Materials Not to Exceed Basis, Maverick Engineering shall be compensated at the Hourly Rates for Services as specified below, plus Reimbursable Expenses as specified below.



We appreciate the opportunity to provide Professional Services to you and look forward to the successful completion of your Project. If you have any questions, please do not hesitate to contact me at 432-262-0999, or by email at amellen@maverick-eng.com.

Sincerely,

A handwritten signature in blue ink, reading "Andrew Mellen".

Andrew Mellen
Managing Partner
Maverick Engineering
1909 W. Wall St., Suite K
Midland, TX 79701
amellen@maverick-eng.com
432-262-0999



Labor Rates

Classification	Hourly Rate	Classification	Hourly Rate
Administrative Assistant	\$50	Survey Project Manager	\$150
Administrative	\$65	Surveyor I (Rodman)	\$60
Drafter	\$90	Surveyor II (Instrument Man)	\$80
Designer	\$100	Surveyor III (Party Chief)	\$110
Survey/CAD Tech	\$90	Surveyor IV (Supervisor/Field Engineer)	\$120
GIS Specialist	\$100	Surveyor V (RPLS)	\$160
Engineer	\$140	2-Person Survey Crew	\$225
Engineering Project Manager	\$160	3-Person Survey Crew	\$250
Principal	\$200	4-Person Survey Crew	\$275

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one and one-half times the Hourly Rates specified above.

Expenses

Expense Item	Daily Rate
ATV	\$60
Daily Vehicle Usage Fee	\$100
Computers/Information Systems	\$40
GPS Equipment (RTK/Static)	\$275
EDM/Total Station	\$325

Reimbursement for expenses, as listed below, but not limited to, incurred in connection with the services, will be at cost plus fifteen percent (15%) for items such as:

1. Maps, deed records, photographs, postage, telephone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job specific fees, insurance, permits, and licenses applicable to the work services.
5. Mileage at prevailing IRS Standard rates.

Taxes

Excise and gross receipts taxes, if any, will be added as an expense.

Effective Dates

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2023 through end of this project task of MAF Landscape Beautification.



City Council Meeting

Item Number: 11
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Sara Harris,
Subject: MOTION APPROVING A MASTER RESEARCH AND DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE MITRE CORPORATION; SAID AGREEMENT TO PROVIDE FOR RESEARCH AND DEVELOPMENT, SYSTEMS ENGINEERING, AND RELATED ADVISORY SERVICES NECESSARY FOR THE FURTHERANCE OF COMMERCIAL SPACE AND HIGH-SPEED FLIGHT OPERATIONS IN THE PERMIAN BASIN (DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on June 3, 2024 a resolution authorizing the execution of a master research and development agreement with The MITRE Corporation; said agreement to provide for research and development, systems engineering, and related advisory services necessary for the furtherance of commercial space and high-speed flight operations in the Permian Basin.

Recommended City Council Action:

Approve

Fiscal Impact:

\$0.00

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

This agreement defines the relationship between MDC and MITRE to provide research and development support for airspace corridor development in Midland. This agreement does not provide for specific task orders or funding; those will be approved individually by the MDC board and City Council.



City Manager's Office



City Council Meeting

Item Number: 12
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Sarah Harris,
Subject: MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SPACE FORCE ASSOCIATION, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES; AND REPEALING MOTION NO. 038-2024 (DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at their regular meeting on June 3, 2024 a resolution authorizing the execution of a promotional agreement with Space Force Association, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

\$250,000.00

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

This agreement updates the one previously approved to change the entity from Space Force Association of Texas to Space Force Association (national entity). Other terms remain the

same. The promotional agreement provides for \$250,000 in funding from the MDC to Space Force Association to establish Texas headquarters in Midland and all corresponding activity. The funding will be disbursed in four equal payments. The term of the agreement is for five years.

City Manager's Office



City Council Meeting

Item Number: 13
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: MOTION APPROVING, WITH STAFF'S RECOMMENDED CONDITIONS, A PROPOSED PRELIMINARY PLAT OF GRASSLANDS ESTATES, SECTION 26, BEING A REPLAT OF LOT 1, BLOCK 21, GRASSLANDS ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WADLEY AVENUE AND CALLAWAY DRIVE) (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Dunaway Associates, on behalf of Boot Lake Ranch Property Owner, LLC, is requesting to replat Lot 1, Block 21, Grasslands Estates, Section 16, City and County of Midland, Texas, for future development. The development will consist of ten (10) lots. Nine (9) of the lots will be reserved for commercial development, while the final lot will be developed into the Midland Zoo.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no fiscal impact to the City.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Current Zoning:

LR, Local Retail District and AE, Agricultural Estate District

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

Building Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Engineering: (Approved with Conditions)

IMPACT FEES: Provide the following impact fee language on the plat face: Initial Impact Fees will be assessed during the final platting process. Implementation and collection of impact fees will take place during the permitting process. Additional impact fees or increases in fees may not be assessed against the tract unless the number of service units to be developed on the tract increases. [Per Midland City Code Sect. 11-14-6]

ROW: Refer to transportation's comments. [For Applicant's Information Only.]

PAVING: Wadley improvements are currently being constructed as part of a City project. No public paving improvements required. [For Applicant's Information Only.]

WATER: Internal Water improvements have not been submitted/accepted. Construct internal public water improvements to city standards. 12" water exists in Wadley Street N of tract, okay as is. No public water improvements required. 8" water exists in Callaway Street E of tract, okay as is. No public water improvements required. 8" water exists in alley W of tract, okay as is. No public water improvements required.[For Applicant's Information Only.] 16" water exists in Homestead Blvd S of tract, okay as is. No public water improvements required. [For Applicant's Information Only.]

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. [For Applicant's Information Only.]

PRO RATA: None.

SEWER: 10" sewer exists in Callaway Street E of tract, okay as is. No public wastewater improvements required. 15" sewer exists in alley S and W of tract, okay as is. No public wastewater improvements required. [For Applicant's Information Only.]

DRAINAGE: Preliminary Drainage report is required during preliminary stage of the platting

process. [Reference Midland City Code 11-2-3(D)8]

EASEMENTS: Show existing and proposed. [For Applicant's Information Only.]

SIDEWALKS: Required with building permit. [For Applicant's Information Only.]

Transportation: (Approved with Conditions)

STREET NAME AND TRAFFIC CONTROL SIGN FEE – Fee due at Final Plat submittal = 7 new intersections created at \$500/intersection = \$3500. [Reference City Code Section 11-2-5(C)3(t).] Street Aguila Dr run east-west and also north-south, it will create confusion, change one of the street name. No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

No objections to plat. [For the Applicant's information only.]

Fire: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

GIS: (Approved)

Lots can be 2-10. Should lot 3 be a common area? Please label surrounding subdivisions. Call N71-7-16e 441.02 (along northern side of plat) appears to encroach into ROW by 8'. Lot lines should be solid. Calls needed for lot lines. Please provide recording information for easements (including the easement to be abandoned). Are the proposed ponds meant to be detention basins as well? if so, we may need a detention basin easement where they fall within the plat boundaries. Is Private St (Oso Ct) a driveway or an actual street? If it is a street, then its centerline will need calls. Street names are under review.

Oil and Gas: (Approved)

No Oil & Gas Issues. The Plugged and Abandoned well- Scharbauer 36 #1 is identified and located under street. No building permits are allowed over the top of a P&A well.

Midland County Health: (Approved)

The lot is close to a public water line and a public sewer line no need for a septic system.

CRMWD: (Approved)

No comments.

Surveyor: (Approved)

No comments.

Planning: (Approved)

Please update the month in the Owners Certificate [Informational]

Match the certificate of approval in the Plats and Subdivisions regulations [Informational]

Scale needs to be drawn to 1"=200' [Informational]

Ownership documentation needs to be furnished as MCAD lists a different owner [Informational]

Dunaway logo and information needs to be in the righthand corner with the title block [Informational]

Please list ROW for private street Oso Circle [Informational]

Will the easement on the west be vacated prior to final or after final? [Informational]

Add section numbers to surrounding subdivision names [Informational]

Lot lines need to be solid and not dashed [Informational]

Will you be adding any sewer or water line? These need to be shown if so [Informational]

Staff recommends approval of the Preliminary Plat of Grasslands Estates, Section 26, subject to condition A.

Conditions:

- A. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas.**

Attachments:

Proposed Preliminary Plat
Application
Maps
Aerial Photo
The Preserve Vision Book

Pre t. Out

City Manager's Office



Preliminary Plat Application

Project Number: _____

Case Number: _____

Proposed Subdivision Plat Name: Grassland Estates - SECTION 26

Legal Description (attached sealed Metes and Bounds): _____
LOT 1, BLOCK 21, GRASSLAND ESTATES, SEC 26, CITY AND COUNTY OF MIDLAND,
TEXAS

Property OwnerPrinted Name: Boot Lake Ranch Property Owner, LLC

Phone (432) 260-5081

Email adam@dahliacompanies.comAddress 2500 N. Big Spring StreetCity MidlandState TXZip 79705**Developer (if different than Owner)**

Printed Name: _____

Phone _____

Email _____

Address _____

City _____

State _____

Zip _____

Representative (if acting as Agent, see affidavit on page 2)Firm: Dunaway AssociatesPrinted Name: Tim Hair

Phone (432) 699-4889

Email thair@dunaway.comAddress 4000 Big Spring St, Suite 101City MidlandState TXZip 79705Current Zoning: LR and AEReason for Platting: Proposed Zoning Change

BEING A REPLAT OF 132.075 ACRES

Plat InformationTotal Acreage: 132.075Type: ☐ Single-Family Residential☐ Multi-Family Residential☒ Commercial☐ Extraterritorial Jurisdiction (ETJ)Number of Lots: 7

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

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

Provisions

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

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

Property Owner (signature):

Date:

Property Owner (printed):

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

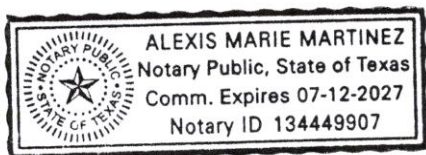
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Christopher Bygones who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by Ian Denholm 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 16th day of May, 20 24, to certify which witness my hand and seal of office.



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 # 1735

Received By:

Date:

RECEIVED
MAY 06 2024

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

Preliminary Plat Application

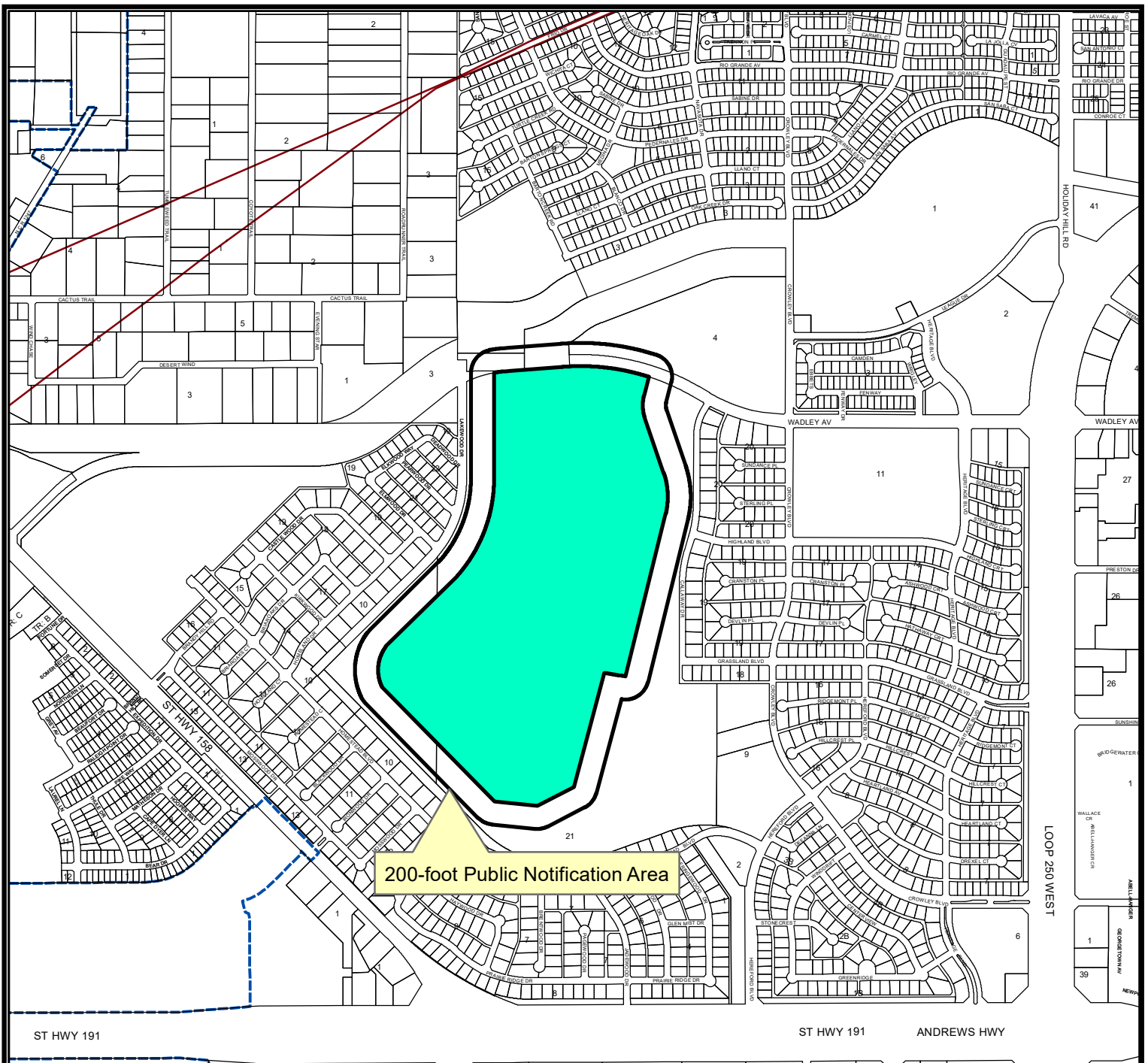
2

Revised 07/01/19

PACKET

13.8

June 25, 2024



Location Map

SUB-24-0723

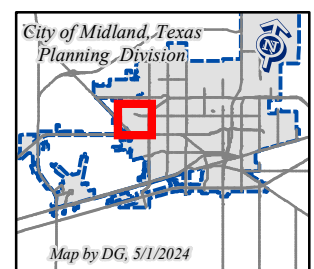
Scale: 1" = 1250'

Proposed Plat of Grasslands Estates, Section 26 being a replat of Lot 1, Block 21, Grasslands Estates, Section 16, City and County of Midland, Texas.

Generally located southwest of the intersection of West Wadley Avenue and Callaway Drive. 13.9 (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

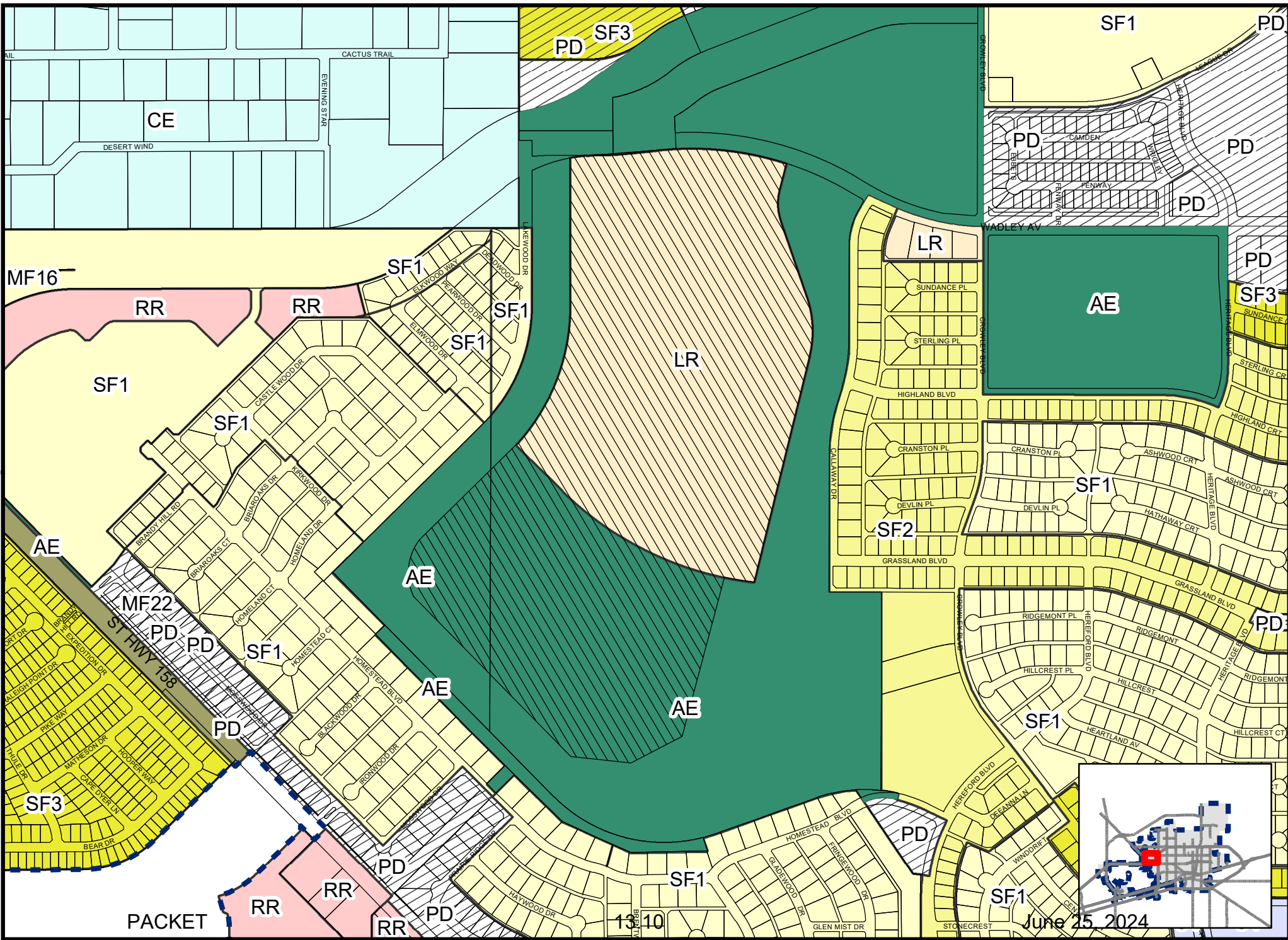


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THIS DATA IS NOT A SUBSTITUTION FOR A PERMITS REVIEW. NOR IS IT DESIGNED TO BE USED AS A DESIGN TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

June 25, 2024







Vision Book

The Preserve

Midland, TX

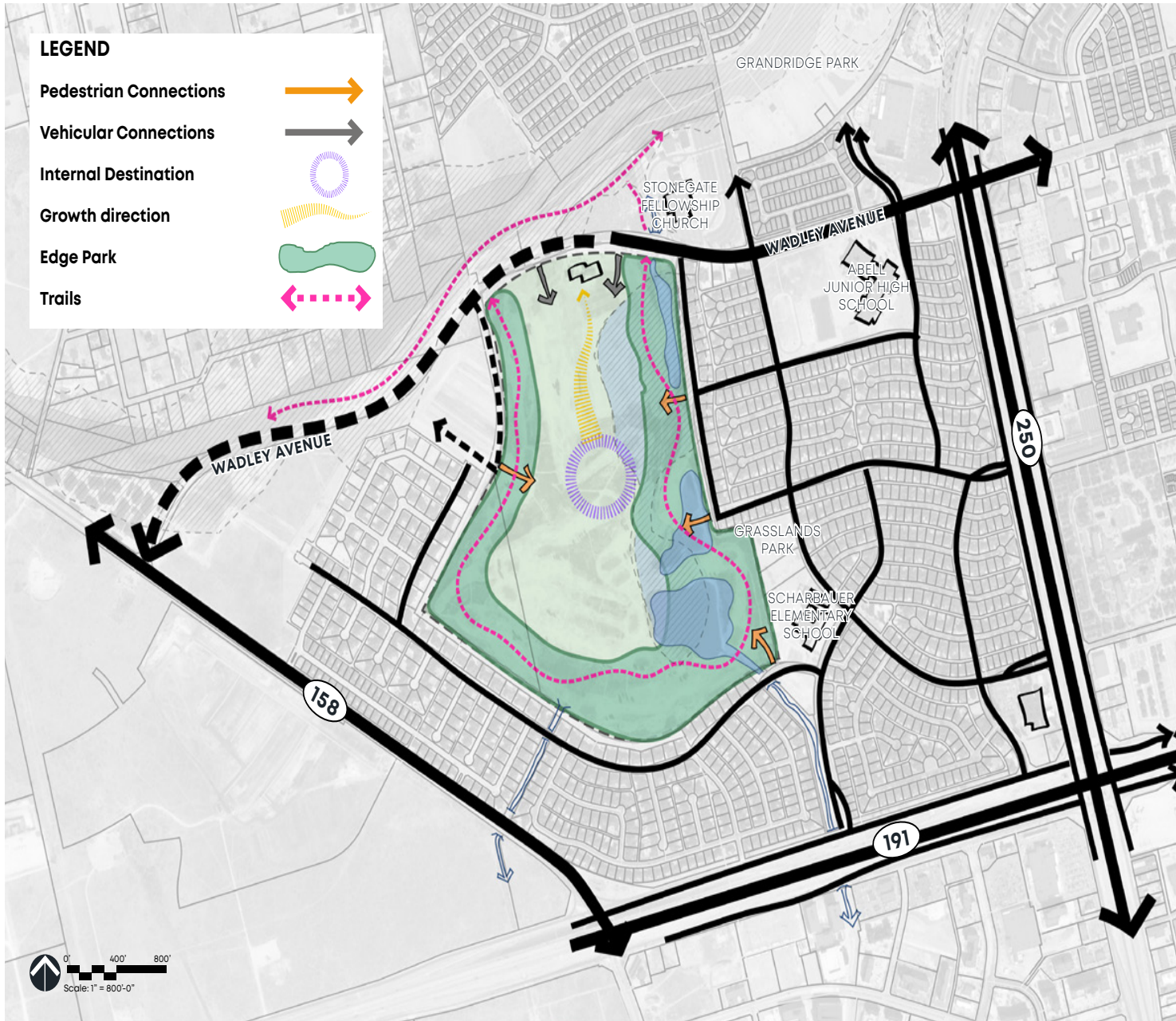
September 2023



June 25, 2024



Site Context & Opportunities	03
Conceptual Framework	04
Vision Plan	05
Initial Development	06
Design Character	
Central Green	07
The Boardwalk	08
Destination Food & Beverage	09
Flexible Office & Retail	10
Parks and Trails	11
Native Landscaping	12
Conceptual Views	13



1. ESTABLISHING AN IDENTIFIABLE DESTINATION.

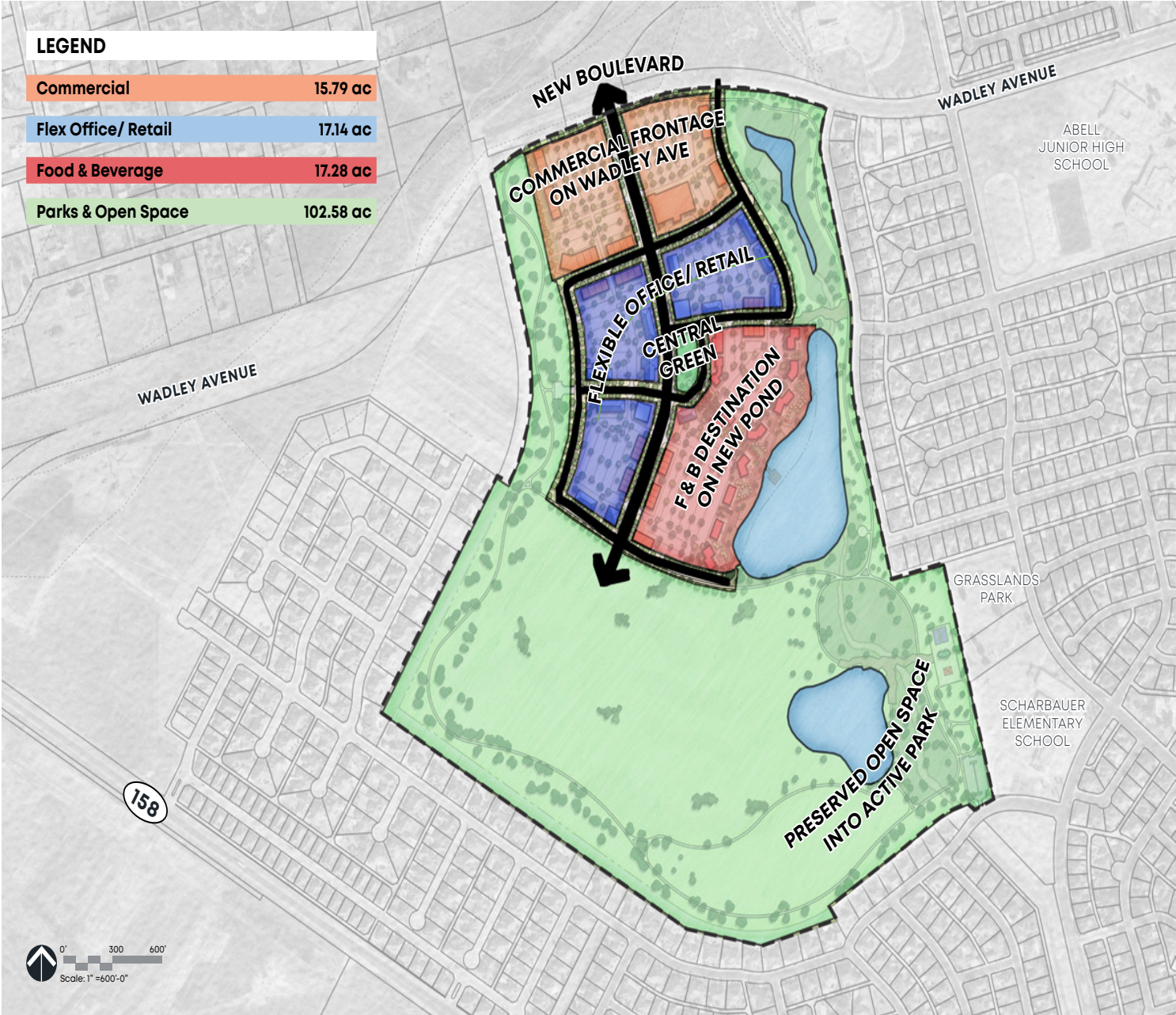
- Crafting a sense of place with a unique identity, built around natural elements & activity.

2. STRATEGIC GROWTH OVER TIME.

- Establishing a core destination, then focusing on a market flexible foundation for future growth.

3. PRESERVING OPEN SPACE INTO USEABLE RECREATION.

- Preserving native features and character with enhanced landscaping, and reimagining some natural areas into active park spaces.





Development Summary

Site Data:

Site Acreage (Gross):	233 Acres
Park & Open Space:	102.58 Acres

Development Data:

A. Commercial Area:	8.29 Acres
Commercial SF:	49,100 SF
B. Commercial Area:	7.50 Acres
Commercial SF:	57,600 SF
C. Office/ Retail Area:	6.29 Acres
Office/ Retail SF:	53,200 SF
D. Office/ Retail Area:	5.67 Acres
Office/ Retail SF:	66,000 SF
E. Office/ Retail Area:	5.18 Acres
Office/ Retail SF:	48,100 SF
F. Food & Beverage:	17.28 Acres
Food & Beverage SF:	110,000 SF



Development Summary

Site Data:
Site Acreage (Gross): 233 Acres
Park & Open Space: 102.58 Acres

Development Data:

C. Office/ Retail Area: 2.93 Acres
Office/ Retail SF: 25,000 SF

F. Food & Beverage: 10.45 Acres
Food & Beverage SF: 35,000 SF



CENTRAL GREEN

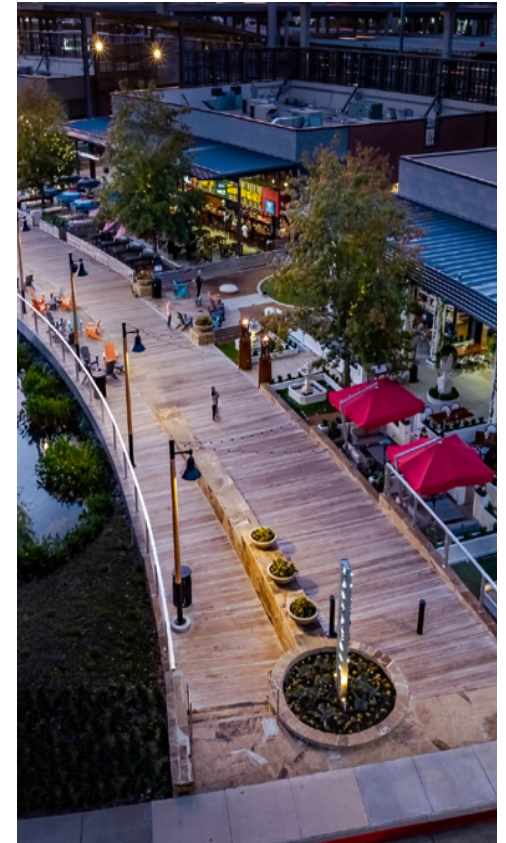


PACKET

13.18

June 25, 2024

THE BOARDWALK



PACKET

13.19

June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies

DESTINATION FOOD & BEVERAGE



PACKET

13.20

June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies



FLEXIBLE OFFICE & RETAIL



PACKET

13.21

June 25, 2024

PARKS & TRAILS



PACKET

The Preserve | Midland, TX | 06.23008.00 | September 2023

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13.22

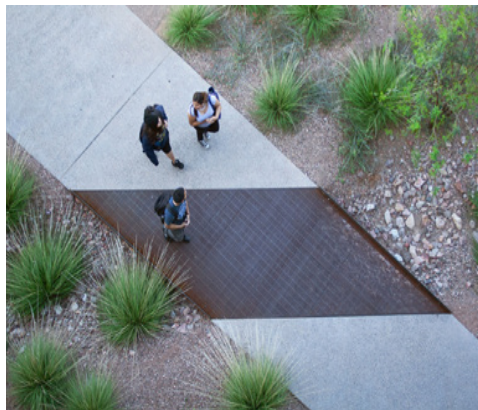
June 25, 2024

Dahlia Companies

11



NATIVE LANDSCAPING





PACKET

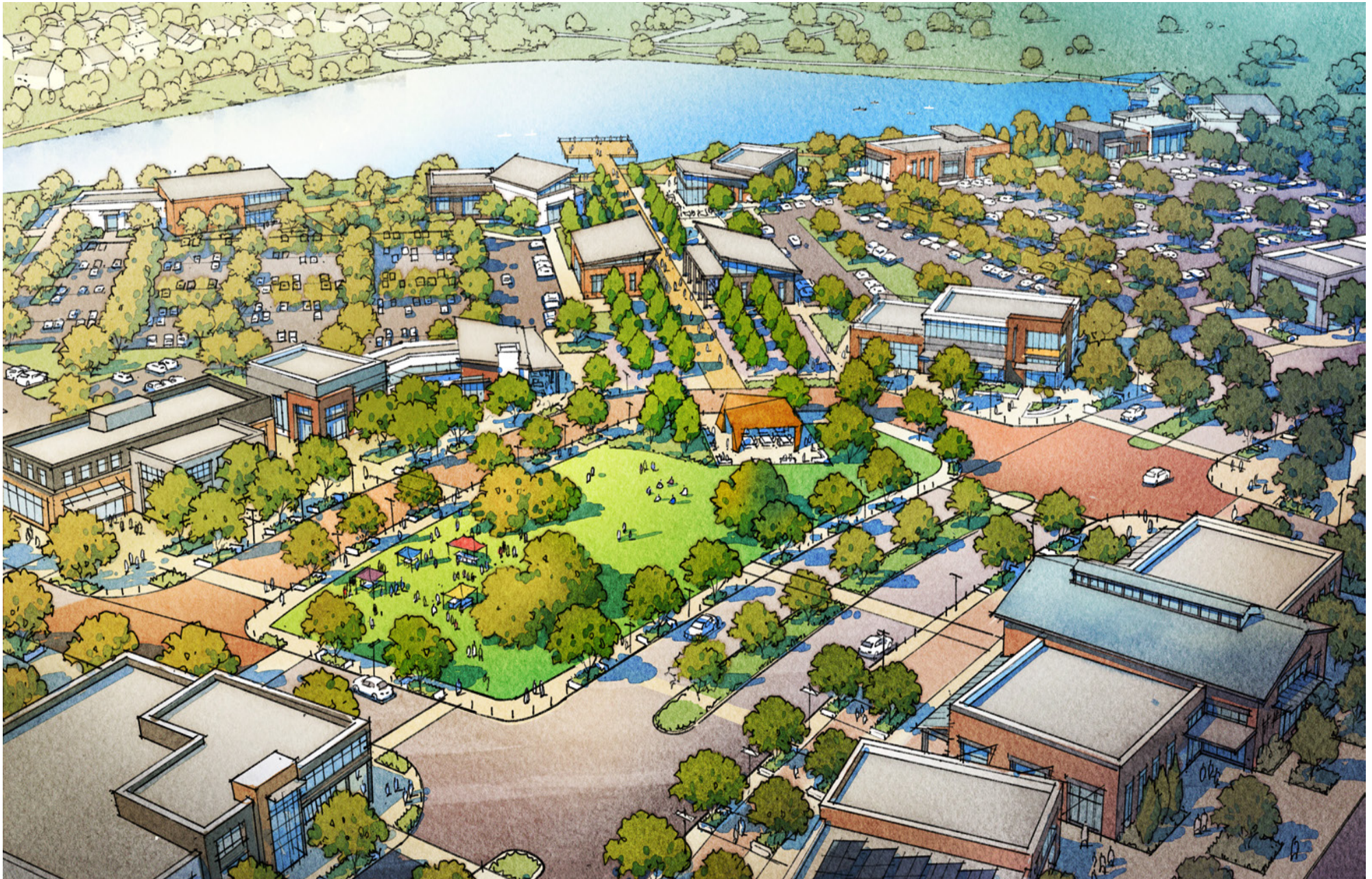
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June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies

13



PACKET

13.25

June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies

14



PACKET

13.26

June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies

15



PACKET

13.27

June 25, 2024

The Preserve | Midland, TX | 06.23008.00 | September 2023

Dahlia Companies

16



City Council Meeting

Item Number: 14
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Whitney Craig, Manager, Health and Senior Services
Subject: MOTION ACCEPTING GRANT FUNDS IN THE AMOUNT OF \$105,462.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; SAID GRANT FUNDS TO BE USED TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS NECESSITIES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND (DISTRICT: ALL) (FIRE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Motion authorizing the acceptance of grant funds in the amount of \$105,462.00 from the Texas Department of State Health Services to assist the City of Midland Health Services Division with the funding and delivery of public health emergency preparedness necessities; authorizing the City Manager or his designee to execute all necessary acceptance documents; and authorizing and directing the City Treasurer to deposit said grant funds into the general fund.

Recommended City Council Action:

Approve

Fiscal Impact:

\$105,462.00 in reimbursement funds from the Texas Department of State Health Services.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

City of Midland Health Services Division is seeking approval for the acceptance of this grant. These funds are instrumental in allowing the City to provide public health services to the community. The Public Health Emergency Preparedness grant is accepted annually.



City Manager's Office

**SIGNATURE DOCUMENT FOR
DEPARTMENT OF STATE HEALTH SERVICES GRANT AGREEMENT,
CONTRACT NO. HHS001439500040
UNDER THE
CENTER FOR HEALTH EMERGENCY PREPAREDNESS AND RESPONSE GRANT PROGRAM**

The parties to this agreement (“Grant Agreement” or “Contract”) are the Department of State Health Services (“System Agency” or “DSHS”), a pass-through entity, and City of Midland (“Grantee”), having its principal office at 3303 W. Illinois Ave. Sp. 22 Midland, Texas 79703 (each a “Party” and collectively the “Parties”).

I. PURPOSE

The purpose of this Grant Agreement is to perform activities in support of the Public Health Emergency Preparedness (“PHEP”) Cooperative Agreement between the Centers for Disease Control and Prevention (“CDC”) and DSHS to advance public health emergency preparedness.

II. LEGAL AUTHORITY

This Grant Agreement is entered into pursuant to the authority granted by and in compliance with Texas Health and Safety Code Chapters 12 and 1001, as applicable.

III. DURATION

This Grant Agreement is effective on **July 1, 2024**, and expires on **June 30, 2025**, unless sooner terminated or renewed or extended. System Agency, at its sole discretion, may extend this Grant Agreement for up to four (4) additional years for a maximum term of five (5) years.

Notwithstanding the limitation in the preceding paragraph and with at least thirty (30) calendar days’ advance written notice to Grantee, at the end of the initial term or any renewal period, System Agency, at its sole discretion, may extend this Grant Agreement as necessary to ensure continuity of service, for purposes of transition, or as otherwise determined by System Agency to serve the best interest of the State for up to three (3) months, in one-month (1-month) intervals, at the then-current contract rate or rates (if applicable) as modified during the term of the Grant Agreement.

IV. STATEMENT OF WORK

The Statement of Work to which Grantee is bound is incorporated into and made a part of this Grant Agreement for all purposes and included as **ATTACHMENT A, PROJECT FY2025 STATEMENT OF WORK**.

V. BUDGET

The total amount of this Grant Agreement will not exceed **ONE HUNDRED SIXTEEN THOUSAND EIGHT DOLLARS (\$116,008.00)**. This includes the DSHS share of One Hundred Five Thousand Four Hundred Sixty-Two Dollars (\$105,462.00) and Grantee’s required match amount of Ten Thousand Five Hundred Forty-Six Dollars (\$10,546.00).

The total not-to-exceed amount includes the following:

Total Federal Funds: \$105,462.00
Total State Funds: \$0.00

Funds will be allocated for each Project Fiscal Year (“Project FY”), which means the period beginning July 1 and ending June 30 each year, under this Grant Agreement. All expenditures under the Grant Agreement must be within the identified Project FY, and in accordance with **ATTACHMENT B, PROJECT FY2025 BUDGET**.

VI. NOTICE TO PROCEED

Funding for this Grant Agreement is available for Project FY2025, which is the period of July 1, 2024, through June 30, 2025, and is dependent on the award of the applicable federal grant. No work may begin, and no charges may be incurred until DSHS issues a written Notice to Proceed (“NTP”) to Grantee. The NTP may include an amended or ratified budget, which will be incorporated into this Grant Agreement by a subsequent amendment, as necessary. Notwithstanding the preceding, at DSHS’s discretion, Grantee may be eligible to receive reimbursement for eligible expenses incurred during the period of performance as defined by 2 CFR § 200.309.

VII. REPORTING REQUIREMENTS

Grantee shall submit the reports for Project FY2025 as identified in the table below, and as outlined in **ATTACHMENT A, PROJECT FY2025 STATEMENT OF WORK**, by the due dates and submission methods specified therein. DSHS may add contractual requirements and revise reporting due dates throughout the term of this Grant Agreement to comply with modifications made to the federal grant award.

REPORT	FREQUENCY	PROJECT FY 2025 DUE DATE(S)	DSHS EMAIL OR SYSTEM TO SUBMIT REPORT
Financial Status Report - Biannual (See SECTION I(W)(8) of ATTACHMENT A, PROJECT FY 2025 STATEMENT OF WORK)	The last business day of the month following the end of the second Project FY quarter AND thirty (30) calendar days after the	January 31, 2025 July 30, 2025	invoices@dshs.texas.gov ; fsrgrants@dshs.texas.gov ; copy to the System Agency representative identified in SECTION VIII, CONTRACT REPRESENTATIVES , of this Grant Agreement

	fourth Project FY quarter.		
Invoices/Requests for Reimbursement – Monthly (See SECTION IV(A) of ATTACHMENT A, PROJECT FY 2025 STATEMENT OF WORK)	The last business day of the month following the month in which expenses were incurred AND thirty (30) calendar days following the expiration date of the Grant Agreement.	August 30, 2024 September 30, 2024 October 31, 2024 November 29, 2024 December 31, 2024 January 31, 2025 February 28, 2025 March 31, 2025 April 30, 2025 May 30, 2025 June 30, 2025 July 31, 2025	invoices@dshs.texas.gov ; CMSinvoices@dshs.texas.gov ;
Initial Work Plan - Annual (See SECTION I(W)(1) of ATTACHMENT A, PROJECT FY 2025 STATEMENT OF WORK)	Once per Project FY	July 15, 2024	Qualtrics System
Property Inventory Report (Form GC-11) – Annual (See SECTION I(W)(9) of ATTACHMENT A, PROJECT FY 2025 STATEMENT OF WORK)	Once per Project FY	October 15, 2024	FSOequip@dshs.texas.gov ; copy to the System Agency representative identified in SECTION VIII, CONTRACT REPRESENTATIVES , of this Grant Agreement
Programmatic Mid-Year Performance Report - Annual (See SECTION I(W)(5) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK)	Once per Project FY	January 31, 2025	Qualtrics System
Integrated Preparedness Plan (“IPP”) - Annual (See SECTION I(W)(2) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK)	Once per Project FY	May 1, 2025	Qualtrics System
After-Action Review/Improvement Plan (“AAR/IP”) - Annual (See SECTION I(W)(3) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK) - Annual	Once per Project FY	June 30, 2025	Qualtrics System
Operational Readiness Review (“ORR”) - Annual	Once per Project FY	June 30, 2025	Qualtrics System

(See SECTION I(W)(4) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK)			
Evidence of attendance at two (2) regional healthcare coalition meetings - Annual (See SECTION I(W)(7) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK)	Once per Project FY	June 30, 2025	Qualtrics System
Programmatic End-of-Year Performance Report - Annual (See SECTION I(W)(6) of ATTACHMENT A, PROJECT 2025 STATEMENT OF WORK)	Once per Project FY	July 30, 2025	Qualtrics System

VIII. CONTRACT REPRESENTATIVES

The following will act as the representative (“Contract Representative”) authorized to administer activities under this Grant Agreement on behalf of their respective Party.

System Agency

Beverly Taylor
Department of State Health Services
1100 W. 49th Street, MC 1990
Austin, Texas 78756
beverly.taylor@dshs.texas.gov

Grantee

Whitney Craig
City of Midland
3303 W. Illinois Ave. Sp. 22
Midland, Texas 79703
wcraig@midlandtexas.gov

IX. NOTICE REQUIREMENTS

- A. All notices given by Grantee shall be in writing, include the Contract number, comply with all terms and conditions of the Grant Agreement, and be delivered to the System Agency’s Contract Representative identified above.
- B. Grantee shall send legal notices to System Agency at the address below and provide a copy to the System Agency’s Contract Representative:

Health and Human Services Commission
Attn: Office of Chief Counsel
4601 W. Guadalupe St., Mail Code 1100
Austin, Texas 78751

with a copy to:

Department of State Health Services
Attention: General Counsel
1100 W. 49th Street, Mail Code 1919
Austin, Texas 78756

- C. Notices given by System Agency to Grantee may be emailed, mailed, or sent by common carrier. Email notices shall be deemed delivered when sent by System Agency. Notices sent by mail shall be deemed delivered when deposited by the System Agency in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the System Agency with a common carrier, overnight, signature required.
- D. Notices given by Grantee to System Agency shall be deemed delivered when received by System Agency.
- E. Either Party may change its Contract Representative or legal notice contact by providing written notice to the other Party.

X. FEDERAL AWARD INFORMATION

GRANTEE'S UNIQUE ENTITY IDENTIFIER IS: CPZ1T3B85A64

Federal funding under this Grant Agreement is a subaward under the following federal award.

Federal Award Identification Number (FAIN): TBD,

- A. Assistance Listings Title, Number, and Dollar Amount: Centers for Disease Control and Prevention, Public Health Emergency Preparedness (PHEP) Cooperative Agreement, 93.069, [TBD, Insert in Boilerplate once Received]
- B. Federal Award Date: [TBD, Insert in Boilerplate once Received]
- C. Federal Award Period: July 1, 2024 – June 30, 2025
- D. Name of Federal Awarding Agency: Centers for Disease Control and Prevention
- E. Federal Award Project Description: Public Health Emergency Preparedness (PHEP) Cooperative Agreement
- F. Awarding Official Contact Information:
 - [Name – TBD]
 - [Title, i.e., Grants Management Officer – TBD]
 - [Title 2, i.e., CDC Office of Grants Services, Branch 4 – TBD]
 - [Address – TBD]
 - [City, State ZIP – TBD]
 - Telephone: [TBD]
 - Email: [TBD]
- G. Total Amount of Federal Funds Awarded to System Agency: [TBD, Insert in Boilerplate once Received]
- H. Amount of Funds Awarded to Grantee: \$105,462.00
- I. Identification of Whether the Award is for Research and Development: No

XI. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Grant Agreement for all purposes.

- ATTACHMENT A – PROJECT FY2025 STATEMENT OF WORK**
- ATTACHMENT B – PROJECT FY2025 BUDGET**
- ATTACHMENT C – HHS CONTRACT AFFIRMATIONS, VERSION 2.3, EFFECTIVE AUGUST 2023**
- ATTACHMENT D – HHS UNIFORM TERMS AND CONDITIONS – GRANT, VERSION 3.3, EFFECTIVE NOVEMBER 2023**
- ATTACHMENT E – HHS DATA USE AGREEMENT – TACCHO VERSION (LOCAL CITY AND COUNTY ENTITIES), OCTOBER 23, 2019**
- ATTACHMENT E-1 – TEXAS HHS SYSTEM - DATA USE AGREEMENT – ATTACHMENT 2, SECURITY AND PRIVACY INQUIRY (SPI)**
- ATTACHMENT F – FEDERAL ASSURANCES – NON-CONSTRUCTION PROGRAMS**
- ATTACHMENT G – CERTIFICATION REGARDING LOBBYING**
- ATTACHMENT H – FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) CERTIFICATION FORM**

Unless expressly stated otherwise in this Grant Agreement, in the event of conflict, ambiguity, or inconsistency between or among any documents, all DSHS documents take precedence over Grantee's documents and **ATTACHMENT E, HHS DATA USE AGREEMENT – TACCHO VERSION (LOCAL CITY AND COUNTY ENTITIES), OCTOBER 23, 2019**, takes precedence over all other Contract documents.

XII. SIGNATURE AUTHORITY

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement. Any services or work performed by Grantee before this Grant Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR
DEPARTMENT OF STATE HEALTH SERVICES GRANT AGREEMENT,
CONTRACT NO. HHS001439500040

DEPARTMENT OF STATE HEALTH
SERVICES

CITY OF MIDLAND

DocuSigned by:

ATCAB964E021413...
Signature

DocuSigned by:

83EBFB35036D49F...
Signature

Printed Name: Barbara Klein

Printed Name: Whitney S. Craig, Dr. PH, MPH

Title: Senior Compliance and Accountability Official

Title: Health Services Manager

Date of Signature: April 22, 2024

Date of Signature: April 19, 2024



City Council Meeting

Item Number: 15

Meeting Date: June 11, 2024, June 25, 2024

To: City Council / City Manager

From: Diana Geerts, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 15,266-SQUARE FOOT PORTION OF LOTS 26 AND 27, BLOCK 2, 349 RANCH ESTATES, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND WASHITA COURT), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Five Figure Five LLC, is requesting a Specific Use Designation (SUD) with Term for Alcoholic Beverages Sales for On-Premises Consumption in a restaurant, Half Acre is located at 1101 Washita Court.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

(Quality of Life and Place)

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The parcel to the north is zoned RR, Regional Retail District, and the location of a Dollar General. The parcels to the east and south are zoned RR, Regional Retail District and are currently vacant. The property to the west is zoned PD, Planned District for Housing Development and is currently vacant.

Analysis:

The property is zoned RR, Regional Retail District and is the location of an existing restaurant, The Half Acre. The RR zoning allows for Alcoholic Beverages Sales for On-Premises Consumption in a Restaurant with the approval of an SUD. The total area of the restaurant, Half Acre, is 15,266-square feet and the proposed alcohol serviceable area is 10,159-square feet.

The proposed hours of operation:

Monday through Sunday from 11 a.m. to 12 a.m. (midnight)

The proposed hours of alcohol service:

Monday through Sunday from 11 a.m. to 12 a.m. (midnight)

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to “Encourage the development of places where Midland residents can gather and socialize to build connections.” Half Acre is a destination where Midland residents will gather and socialize.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objection.

Oil & Gas: (Approved)

No comments.

Transportation: (Approved)

No objection.

Building Code: (Approved)

The SUD for Half Acre is acceptable. The property must adhere to the maximum occupant load of 670 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to Condition A through F.

Conditions:

- A. That the serviceable area of the establishment shall be limited to approximately 10,159 square feet as shown in Exhibit "A".**
- B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**
- C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:**

Monday through Sunday from 11 a.m. to 12 a.m. (midnight)

- D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.
- E. That the establishment shall meet all requirements of the Fire Department and Code Administration.
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

Letters of Objection:

As of June 5, 2024, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps
Ordinance (No. 7771)

For E. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 15,266-SQUARE FOOT PORTION OF LOTS 26 AND 27, BLOCK 2, 349 RANCH ESTATES, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH STATE HIGHWAY 349 AND WASHITA COURT), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 15,266-square foot portion of Lots 26 and 27, Block 2, 349 Ranch Estates, Section 2, City and County of Midland, Texas (the “Property”), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the “Establishment”) for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

PACKET 15.5 June 25, 2024

restrictions:

- A. That the serviceable area of the Establishment shall be limited to approximately 10,159 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 11:00 a.m. to 12:00 a.m. (midnight).
- D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.
- F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the

descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

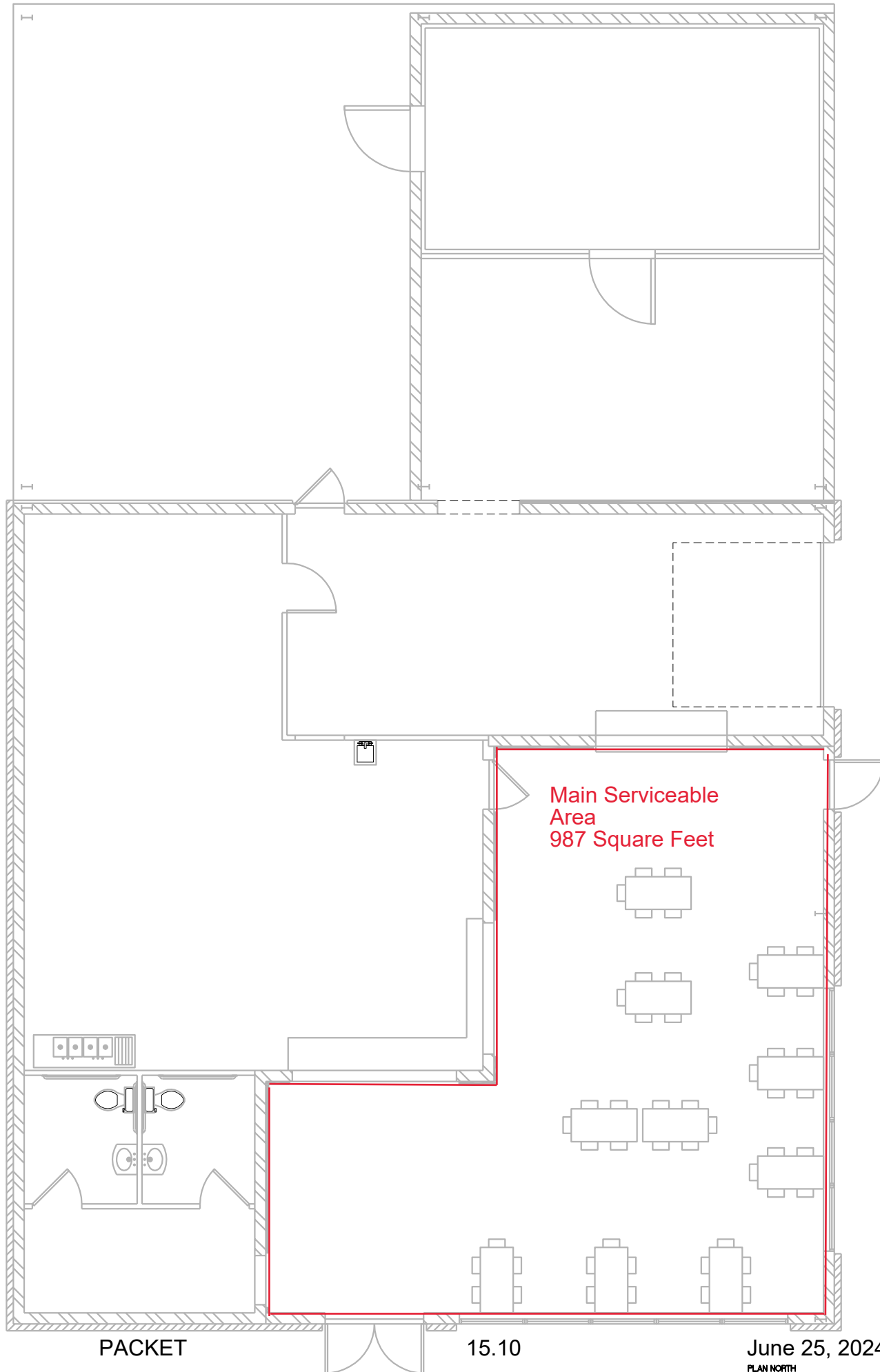
APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT A



PACKET

15.10

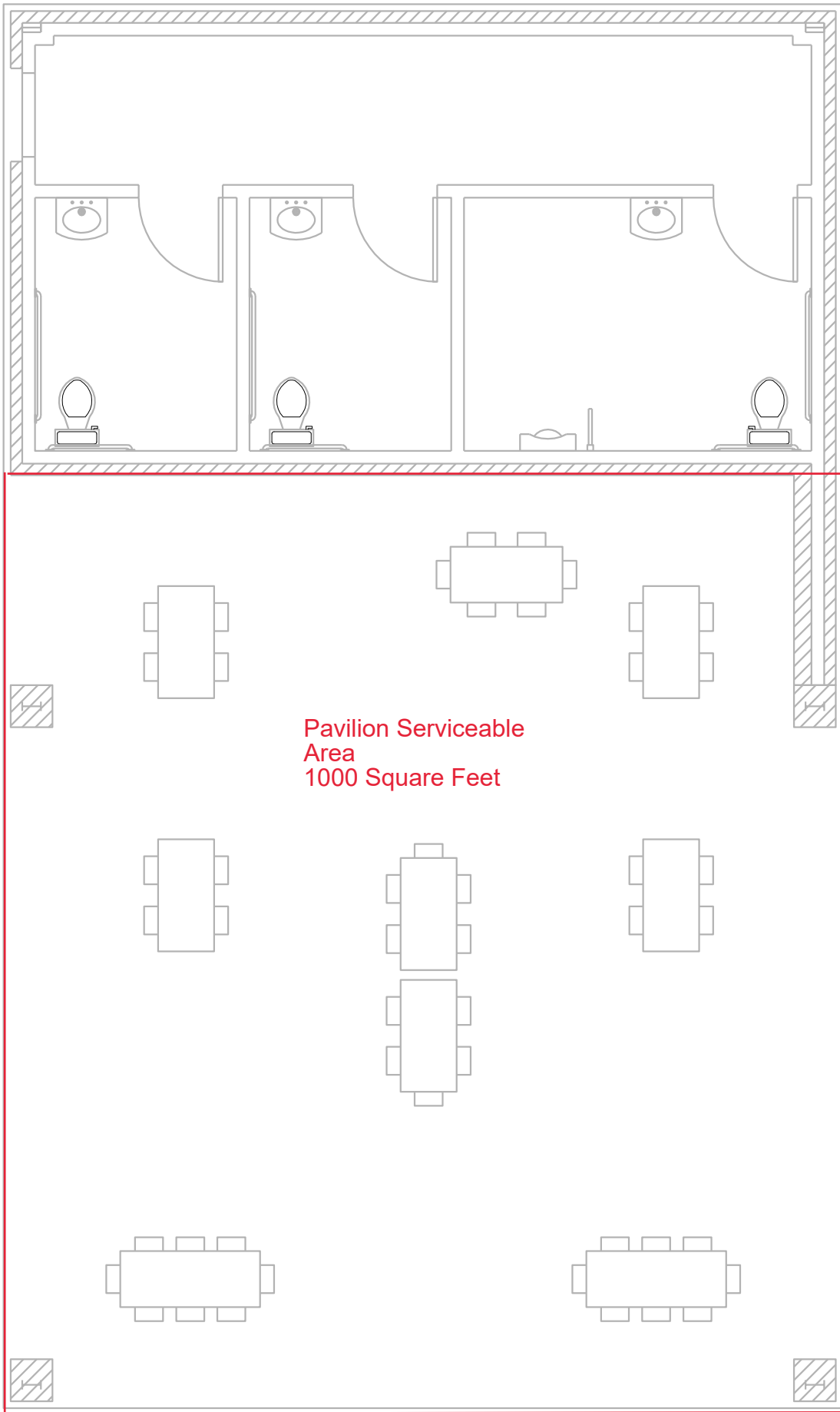
June 25, 2024

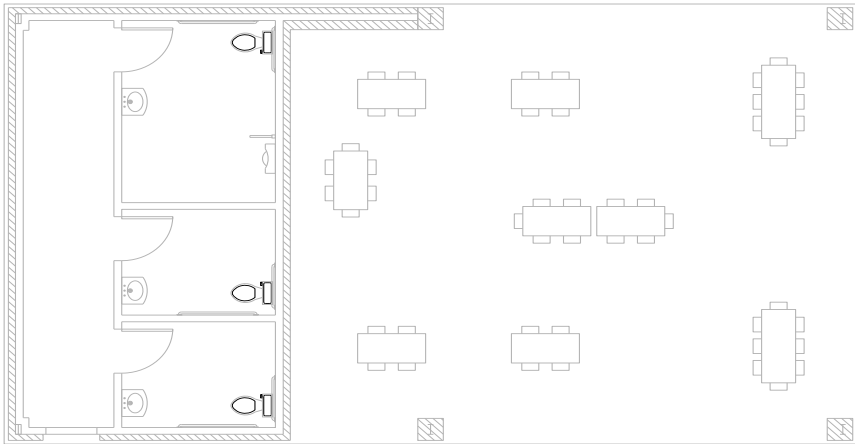
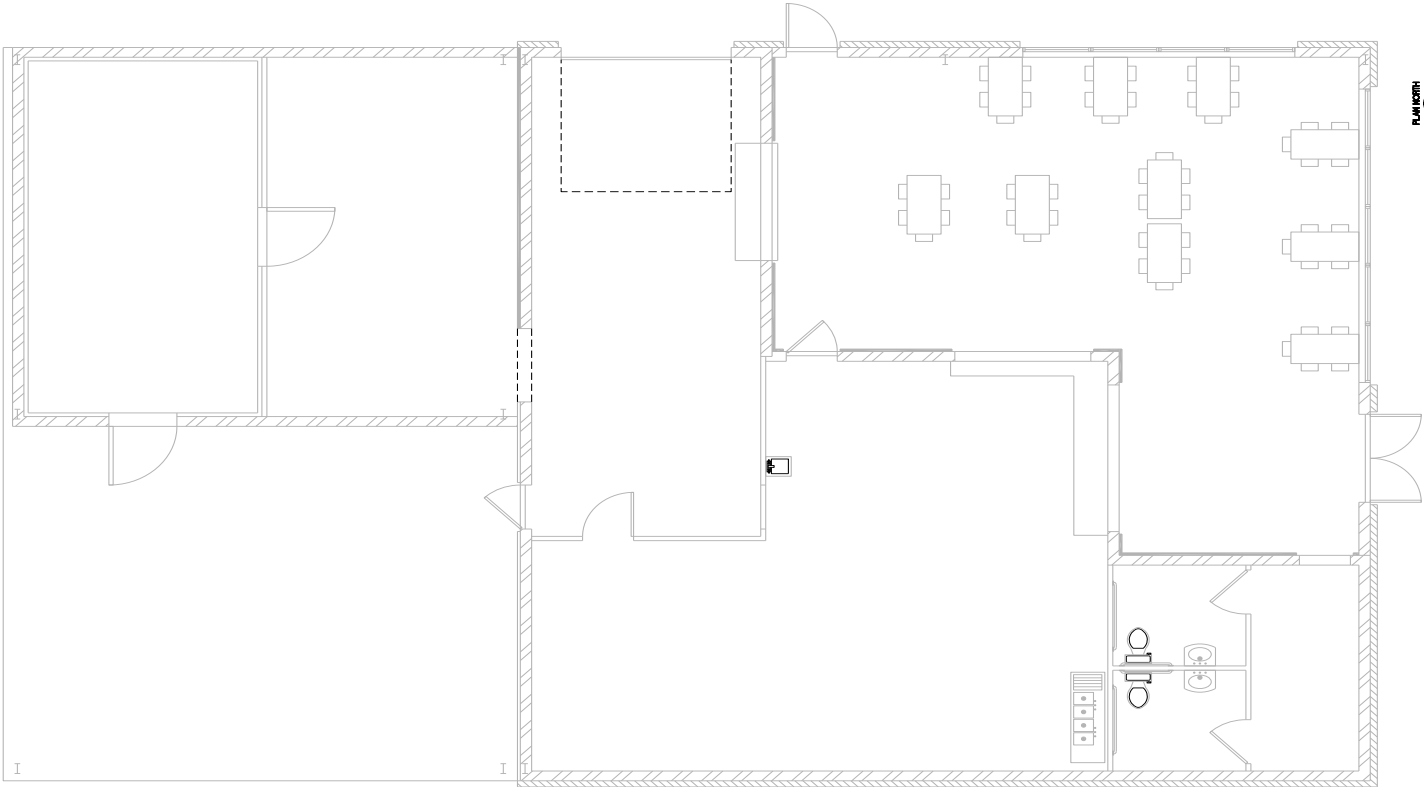
PLAN NORTH



1 MAIN SEATING PLAN

SCALE: 1/4" = 1'-0"







**Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption**

Project Number: _____

Case Number: SUD-24-0181

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: _____		Phone () Email _____	
Address <u>1101 Washita</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79705</u>

Property Owner Printed Name: <u>5 Figure Five LLC</u>		Phone () Email _____	
Address <u>PO Box 52188</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79710</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () Email _____	
Address _____	City _____	State _____	Zip _____

Street Address: <u>1101 Washita, Midland, TX 79705</u>	
Business Name: <u>Half Acre</u>	
Legal Description Lot: <u>27</u> Block: <u>2</u> Subdivision: <u>349 Ranch Estates</u>	
Current Zoning: <u>RR</u>	
Reason for Request: <u>Allow for on premise alcohol sales</u>	

Type of Business (restaurant, bar, lounge, nightclub, etc.): <u>Restaurant</u>			
Proposed/Current Days and Hours of Operation: <u>Monday - Sunday 11am - 12am</u>			
Proposed Days and Hours of Alcohol Service: <u>Monday - Sunday 11am - 12am</u>			
Total Square Footage of Business: <u>15,266</u>			
Square Footage of Alcohol Serviceable Area: <u>10,159</u>			
Restroom Fixtures:	<u>Men</u>	Toilets/Urinals: <u>2</u> / <u>3</u>	Bathroom Sinks: <u>2</u>
	<u>Women</u>	Toilets: <u>3</u>	Bathroom Sinks: <u>3</u>

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
 - Seating
 - Exits
 - Restrooms
 - Kitchen (if applicable)
 - Total Square Footage
 - Serviceable Square Footage
- Dimensioned Site Plan showing:
 - Parking
 - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):

John C. Scharbauer

Date: 4/9/2024

Applicant (printed): John C. Scharbauer

Property Owner (signature):

Date: 4/9/2024

Property Owner (printed): John C. Scharbauer

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ 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

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

PACKET

15.15

June 25, 2024

FOR OFFICE USE ONLY

☐ Property Owner Authorization

☐ Dimensioned Floor Plan

☐ Application Fee

☐ Site Plan

Check # _____

☐ Plans in Digital Format (PDF/JPEG)

Received By: _____

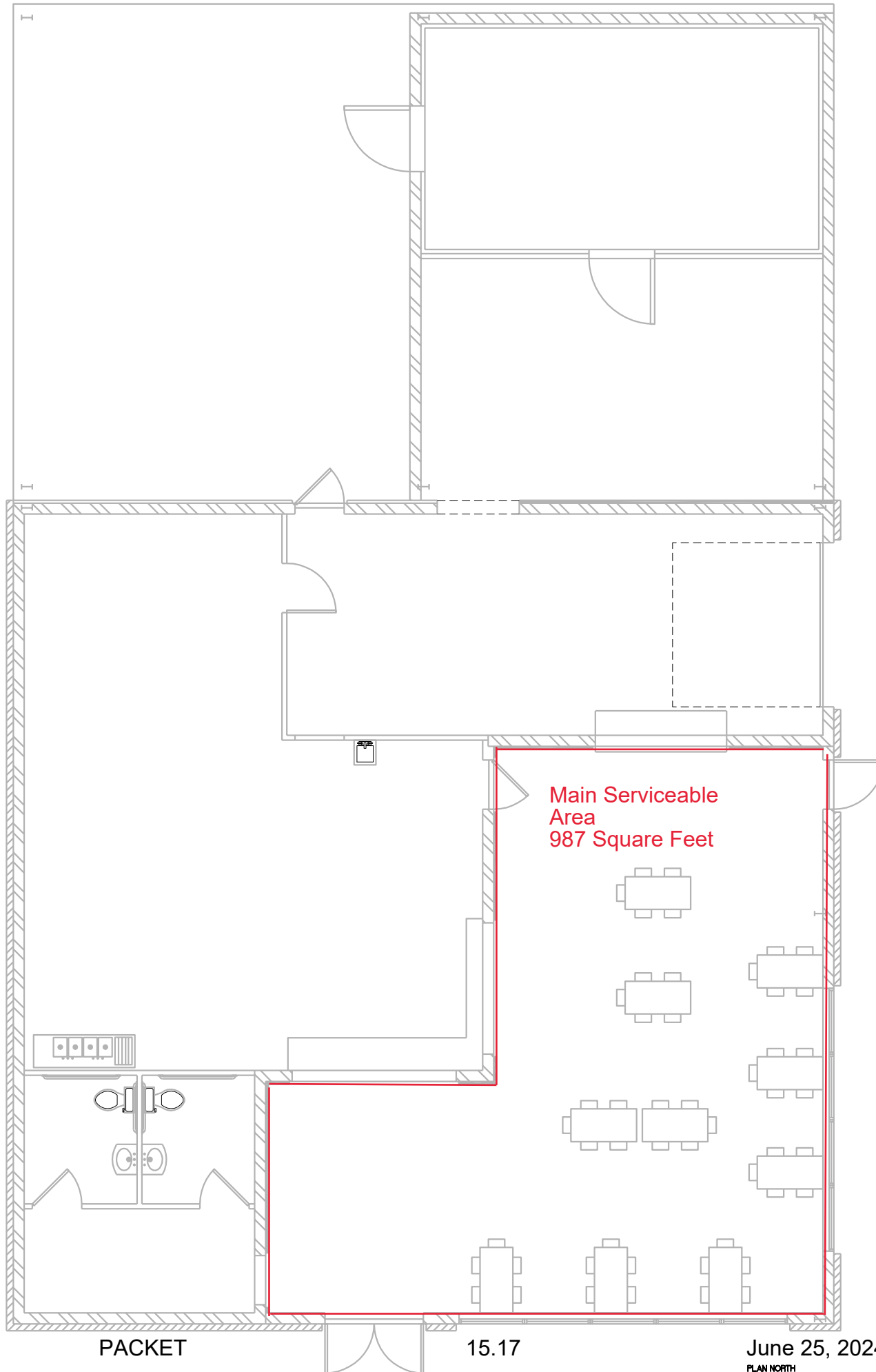
Date: _____

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

PACKET

15.16

June 25, 2024



PACKET

15.17

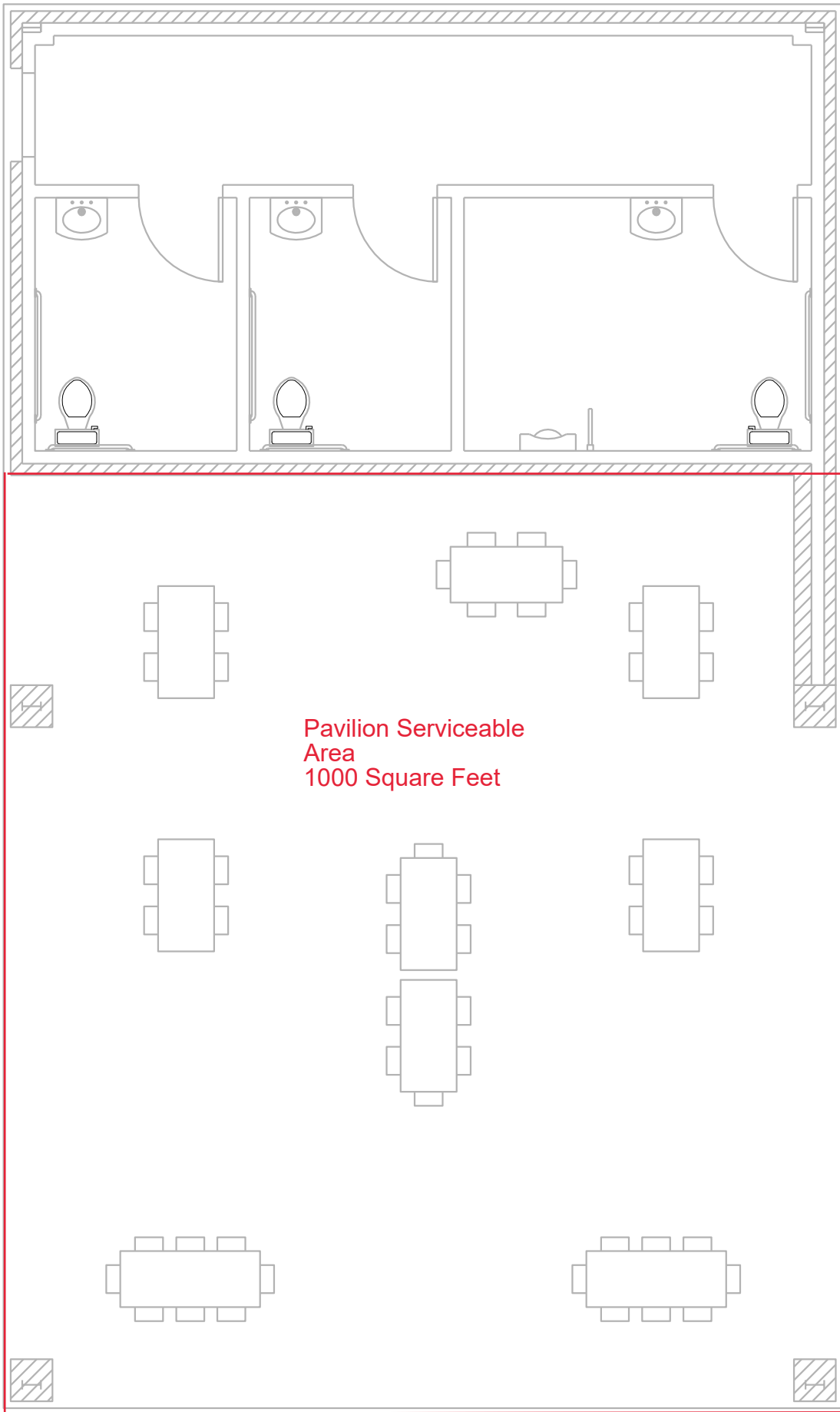
June 25, 2024

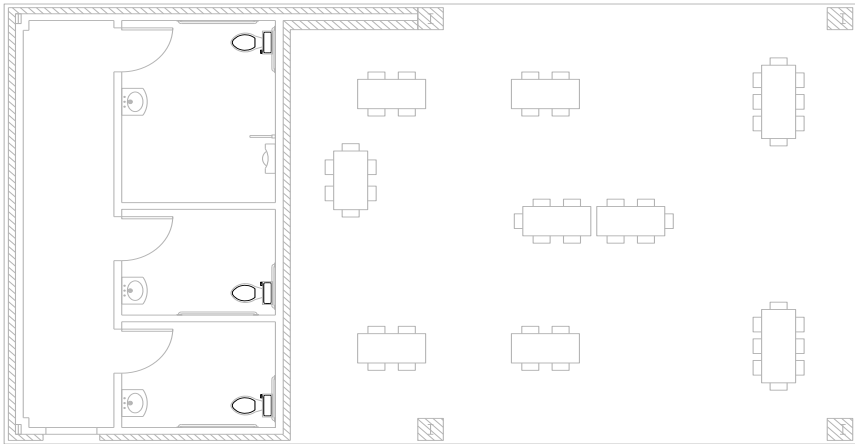
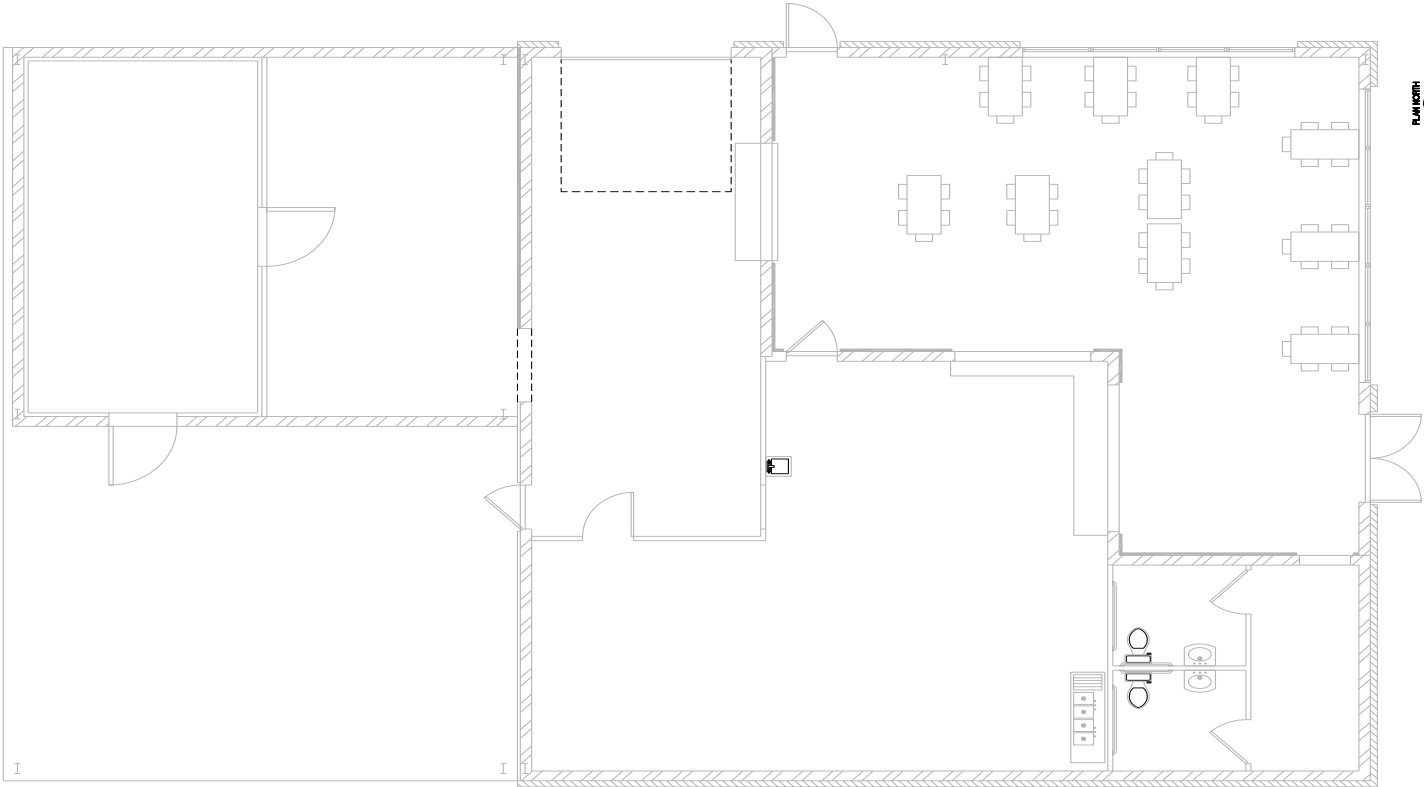
PLAN NORTH



1 MAIN SEATING PLAN

SCALE: 1/4" = 1'-0"





DRAWING INDEX

SEE DRAWING INDEX
 SEE DRAWING INDEX
 SEE DRAWING INDEX

LEGAL DESCRIPTION

THE LANDS DESCRIBED HEREIN ARE MORE OR LESS
 THE SAME AS THE LANDS DESCRIBED IN THE
 DEED OF TRUST DATED 10/10/2011, RECORDED
 IN PUBLIC RECORDS OF TARRANT COUNTY, TEXAS
 AT PAGE 100, BOOK 100, PAGE 100, AND
 THE LANDS DESCRIBED IN THE DEED OF TRUST
 DATED 10/10/2011, RECORDED IN PUBLIC RECORDS
 OF TARRANT COUNTY, TEXAS AT PAGE 100, BOOK
 100, PAGE 100.

Midland Meat Co. - The Hall Area
 Sealing Plans
 1101 Washita
 Midland, TX 79705

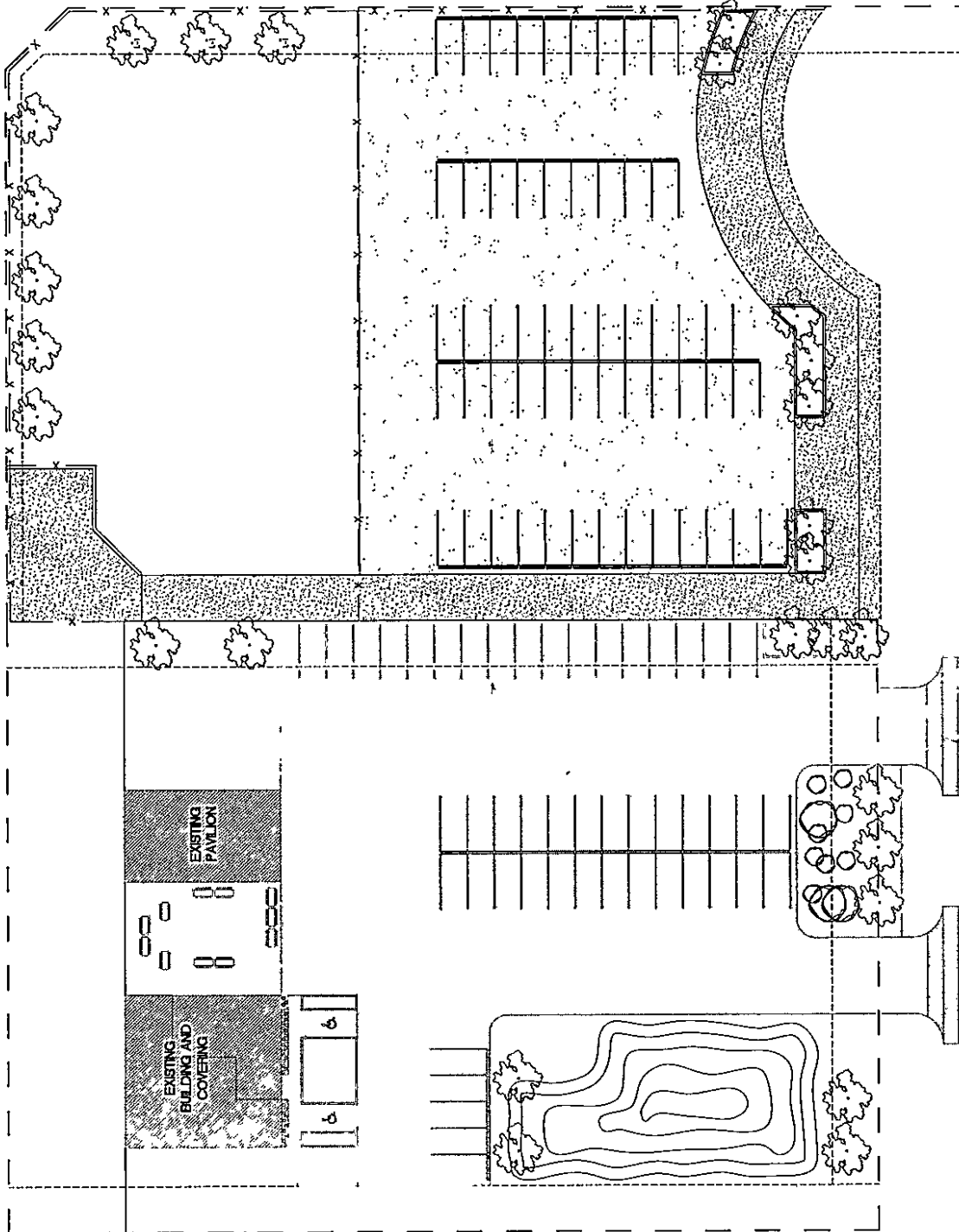
Brazile

1001 W. 10th St., Suite 100
 Midland, TX 79701
 (806) 433-2437
 brazile@brazile.com

SEE DRAWING INDEX

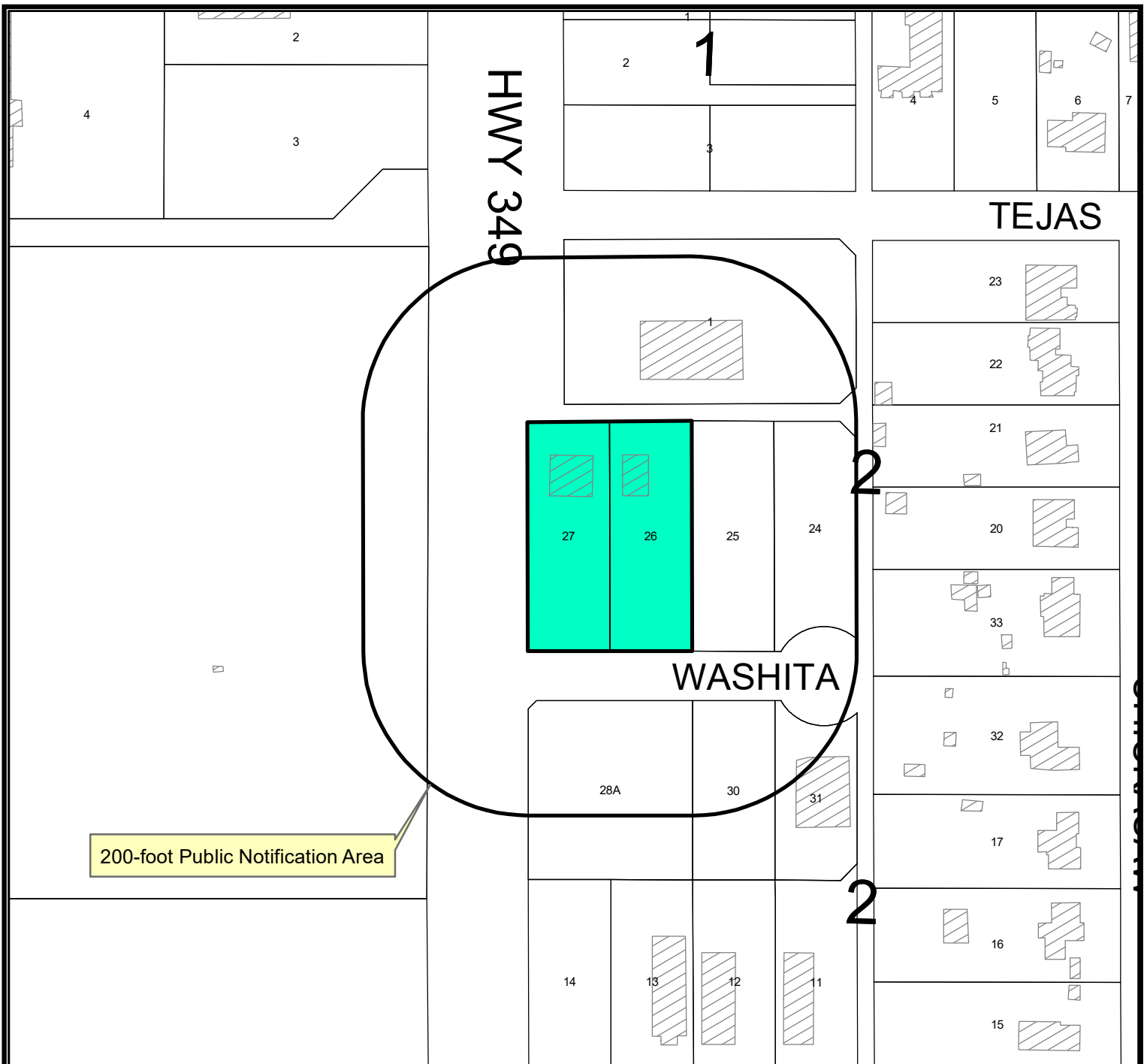
A0.0

ALLEY
 (20.00')



WASHITA COURT
 (60.00' ROW)

1 SITE SEATING PLAN
 ROAD 10'-10'



Location Map

SUD-24-0181

Scale: 1" = 600'

Consider a request by Five Figure Five LLC for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages for on premises consumption in a restaurant on a 15,266 square foot portion of Lot 26 & 27, Block 2, 349 Ranch Estates, Section 2, City and County of Midland, Texas.

Generally located northeast of the intersection of North State Highway 349 and Washita Court. (District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

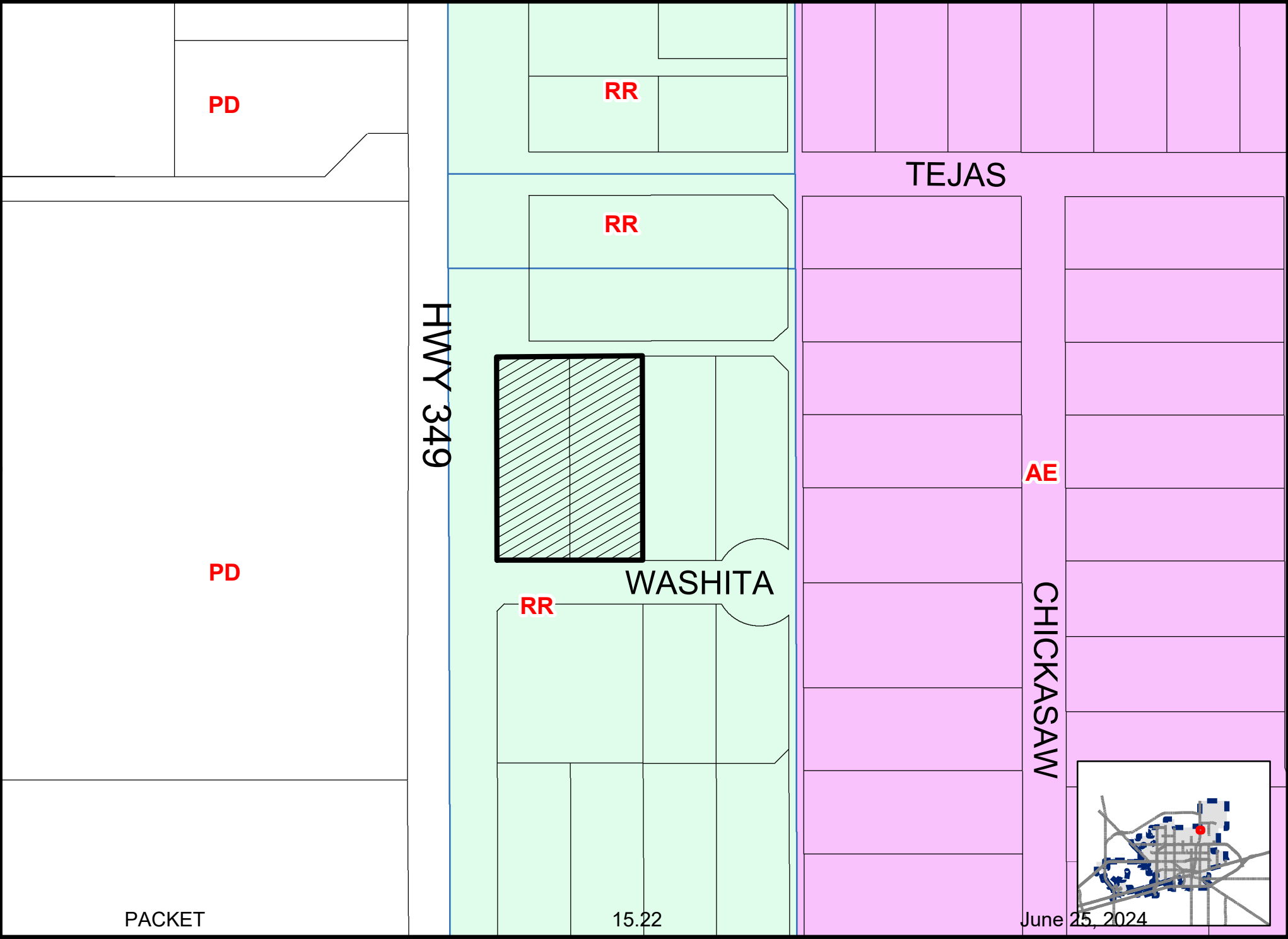


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. NOR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

June 25, 2024





City Council Meeting

Item Number: 16
Meeting Date: June 11, 2024, June 25, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1 AND THE EAST FIVE FEET OF LOT 2, BLOCK 5, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH L STREET AND SHELL AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Stephen Sample, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, to allow for a reduced side yard setback to accommodate the addition of a pergola.

Recommended City Council Action:

No Action

Fiscal Impact:

No City funds are required to process this request.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The property is zoned SF-1, Single-Family Dwelling District. *Section 5.04 – Residential Zoning Regulations Dimensional Regulations Chart* lists the side yard setback for a corner lot-exterior as ten (10) feet. There is an existing fireplace and grill area and therefore the applicant is proposing a setback of zero feet as the existing structures are built on the property line. They are requesting this Special Exception to build a pergola over the existing structures for shade.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Fire: (Approved)

No comments.

Building: (Denied)

It appears that the existing fireplace and fence is outside of the property lines. The proposed pergola is either going to be attached or built right up next to the fireplace and fence, which in turn would also be outside of the property lines. Would need a survey to verify this.

Engineering: (Approved)

No objections. [For the Applicant's information only.]

Oil and Gas: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objection.

Planning (Denied):

The proposed structure will be built on the property line and fails to meet the minimum setbacks for the district. Additionally, there is no hardship that would warrant this request.

Staff is recommending denial of this special exception, however, should it be approved, staff recommends that it be subject to conditions A through B.

Condition:

A. That the minimum side yard setback shall be zero feet (0').

B. That the locations of all structures on the Property shall significantly conform to the site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes.

Letters of Objection:

Staff has not received any letters of objection as of June 5, 2024.

Attachments:

Site Plan (Exhibit A)
Application
Maps

For E. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION
FOR LOT 1 AND THE EAST FIVE FEET OF LOT 2,
BLOCK 5, WARWICK ADDITION, CITY AND COUNTY
OF MIDLAND, TEXAS (GENERALLY LOCATED AT
THE NORTHWEST CORNER OF THE INTERSECTION
OF NORTH L STREET AND SHELL AVENUE), BY
PERMITTING A REDUCED SIDE YARD SETBACK ON

WHEREAS, the City Council modified the authority of the Board of Adjustment
THE EAST SIDE OF THE PROPERTY, CONTAINING A
in

CUMULATIVE CLAUSE; CONTAINING A SAVINGS

Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

AND SEVERABILITY CLAUSE, PROVIDING FOR A

MAXIMUM PENALTY OR FINE OF TWO THOUSAND
WHEREAS, the Council finds that satisfactory consideration has been requested that
the special DOLLARS (\$2,000.00); ORDERING RECORDATION BY

THE CITY SECRETARY IN THE DEED RECORDS OF
use to be authorized by the granting of the special exception will not be detrimental
exceptions to the Midland Zoning Ordinance, and
to the MIDLAND COUNTY, TEXAS; AND ORDERING

WHEREAS, the Council finds that it is clearly and specifically authorized by
PUBLICATION
health, safety, comfort and welfare of the occupants of the land area near the tract
on which

terms of Section 11-1-7 to grant such a special exception, and said exception will
be in use to be allowed by special exception will be located; and

WHEREAS, after a full and fair public hearing at which all parties in interest
harmoniously with the general purposes and intent of the zoning provisions of the
Midland City
offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the
public, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-
CITY OF MIDLAND, TEXAS.
7, for

PACKET

16.4

June 25, 2024

the purposes herein stated, subject to special conditions;

SECTION ONE. That a special exception is hereby granted for the property

described as Lot 1 and the east five feet of Lot 2, Block 5, Warwick Addition, City and

SECTION TWO. Said special exception is subject to the following special conditions: County of Midland, Texas (the "Property"). Said special exception shall allow a reduced

A. That the minimum side yard setback on the east side of the Property shall be minimum side yard setback on the east side of the Property.

B. zero feet (0'); provided, however, that no portion of any structure shall be

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby certifies that it would have passed this ordinance and each

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 certifies that it would have passed this ordinance and each

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SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this

ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the above and foregoing ordinance was duly proposed, read in full and adopted on the descriptive caption of this ordinance in the manner and for the length of time prescribed first reading, the ____ day of _____, A.D., 2024; and passed to second reading by the law as an alternative method of publication.

Council members voting "AYE":
on motion of Council member _____, seconded by Council member _____
Council members voting "NAY":

_____ by the following vote:
The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council

Council members voting "AYE":
member _____, on the ____ day of _____, A.D., 2024, at a regular

Council members voting "NAY":
meeting of the City Council:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

Elizabeth Triggs, Planning and Development
Officer

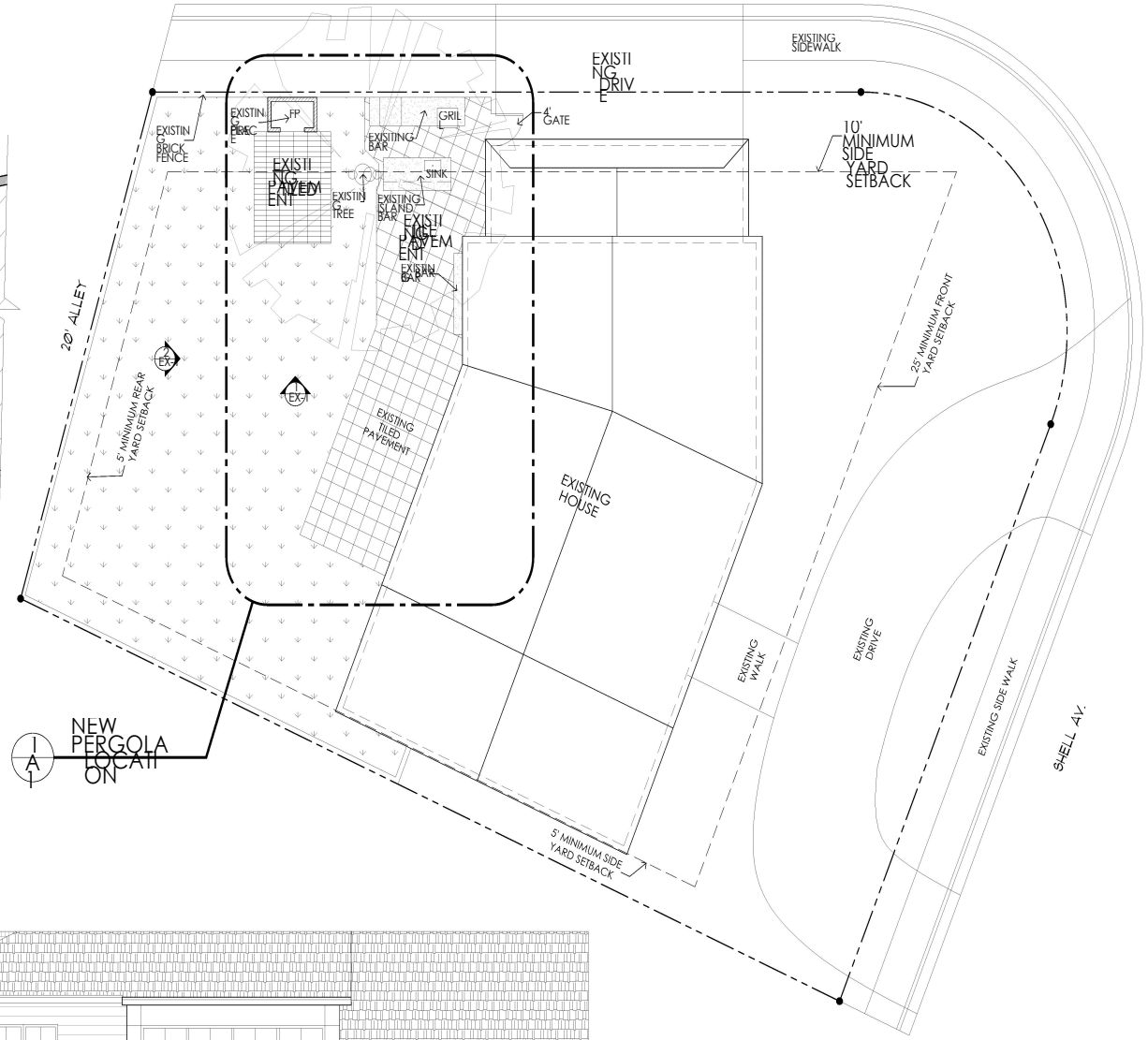
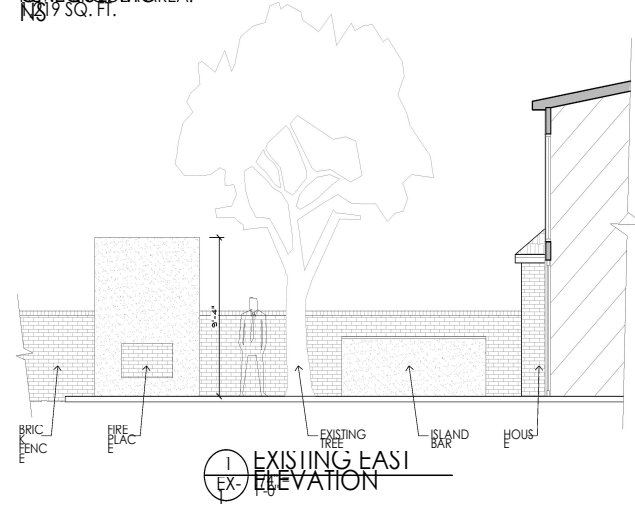
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LIST OF DRAWINGS

- EX-1 EXISTING SITE PLAN & BACK YARD ELEVATIONS.
- A1 NEW PERGOLA FLOOR PLAN & ELEVATIONS.
- A2 NEW PERGOLA PERSPECTIVES.
- A3 NEW PERGOLA ELECTRICAL PLAN & ROOFING SYSTEM.

AREA
CALCULATION AREA:
NS 9 SQ. FT.



EXISTING
SITE PLAN
1/16" = 1'-0"

June 25, 2024

EXHIBIT
T "A"

NORTH "L" STREET

ULTRERAS REMODELING

BUILDER:

2000 SHELL AV. NEW PERGOLA

DATE
ISSUED
5/3/2024

SHEET
NUMBER
EX
1
SHEET NO
2416

DESIGNED BY: JESUS ALVAREZ
DRAWN BY: JESUS ALVAREZ



432.556.4074
432.552.5323
alvarez.luciano@gmail.com
432.599.0794

MIDLAND, TEXAS

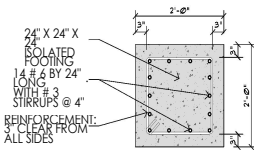
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NOTES

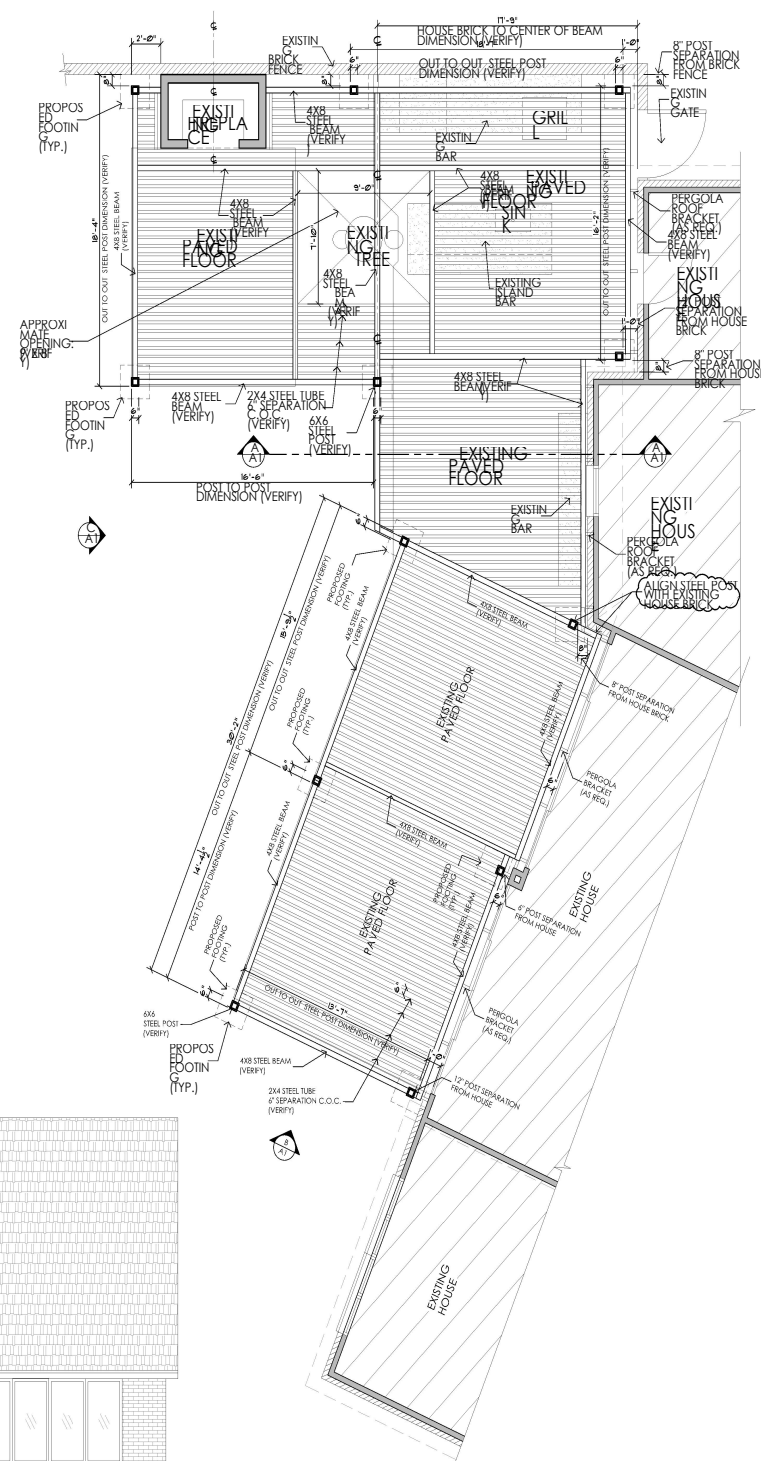
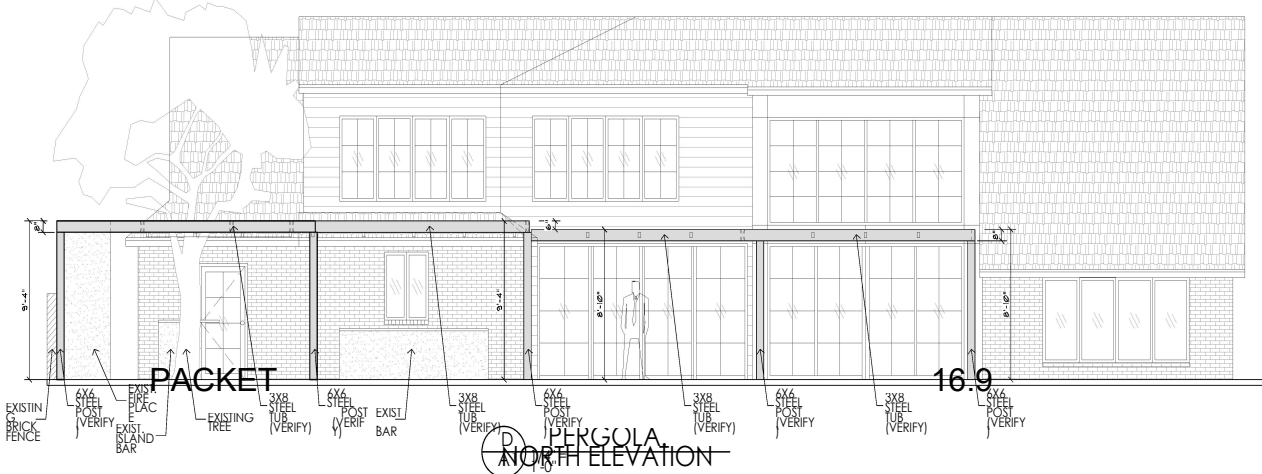
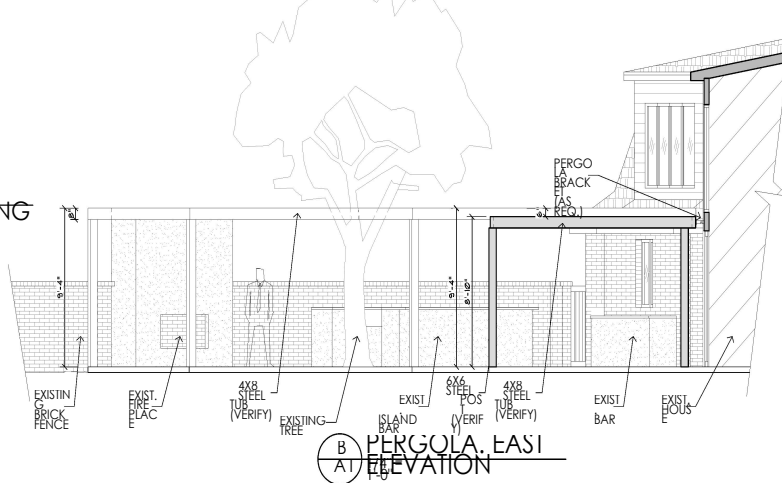
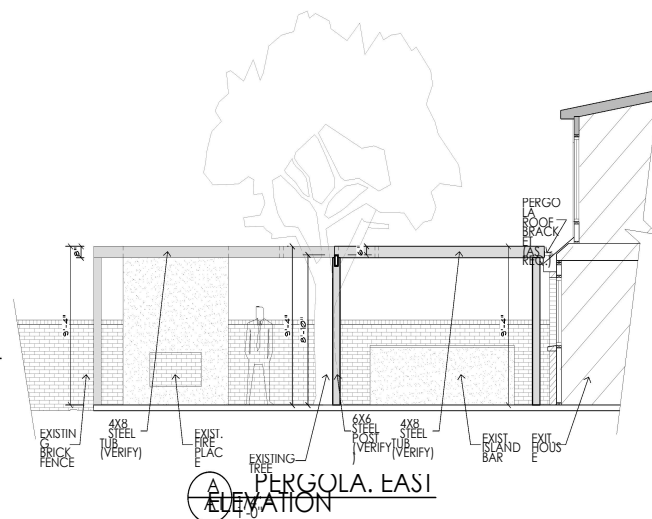
(A1) PLANS REQUIRES A COMPETENT AND EXPERIENCED
 CONTRACTOR TO CONDUCT THE PROJECT
 (A2) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A3) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A4) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A5) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A6) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A7) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS
 (A8) CONTRACTOR TO BE CONVINCED BY ONE OF THESE PLANS

STRUCTURAL
NOTES:

(31) CONTRACTOR SHALL REQUIRE A COMPETENT AND EXPERIENCED
 (32) CIVIL ENGINEER OR STRUCTURAL ENGINEER TO INSPECT
 AND VERIFY THE PROPOSED FOUNDATION ON THESE PLANS
 (33) ENGINEER YOUR AREA WHO IS FAMILIAR WITH SOIL
 CONDITIONS OF YOUR AREA AND ANY SPECIAL REQUIREMENTS
 VERY ALL STRUCTURAL DETAILS. THE APPLICABLE
 (34) MINIMUM DEPTHS TO BE MAINTAINED FOR FOOTING DEPTHS AND
 LOCAL CODES AND REQUIREMENTS. CONSULT WITH LOCAL ENGINEER WHEN
 (35) FOOTING DEPTHS ARE UNUSUAL OR UNUSUAL SPECIFIC TO THIS PROJECT, AND
 HAVE THEM ENGINEERED BY THE
 DESIGN PROFESSIONAL FOR PROJECT SPECIFIC SIZE, DEPTH,
 (36) COMPRESSION STRENGTH, AND ANY SPECIAL REQUIREMENTS.
 (37) MINIMUM 36
 BAR DIAMETERS.



~~2
A1~~ PROPOSED
~~3/4" x 1/2"~~ ISOLATED FOOTING



A
1
2 OF 4
SHEETS
JOB NO
2416

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AS REMODELING
S: (432) 556-4074
O: (432) 352-5323
José Juan Alvarez
alvarez.udw@gmail.com



--	--

2000 SHELL AV. NEW PERGOLA

DATE
ISSUED
5/3/202
4

SHEET
NUMBER

A
1
2 OF 4
SHEETS
JOB NO
2416



PACKET

PERSPECTIVE

NOTES: THESE PERSPECTIVES ARE ILLUSTRATIVE ONLY TO PROVIDE A GENERAL IDEA FOR THE PERGOLA WORK. THE PERSPECTIVES DO NOT REPRESENT THE MATERIALS, COLORS, TEXTURES OR VEGETATION OF THE ENTIRE DESIGN AND WORK.



NEW PERGOLA
PERSPECTIVES

16.10

June 25, 2024

BUILDER: ULTRERAS REMODELING

JESUS: (432) 556-4074

LAND: (432) 325-3323

DESIGNED BY: JESUS ALVAREZ

alvarez.luc@amail.com

432.599.0794

DRAWN BY:

JESUS ALVAREZ

alvarez.luc@amail.com

432.599.0794

2000 SHELL AV. NEW PERGOLA

DATE
ISSUED
5/3/2024

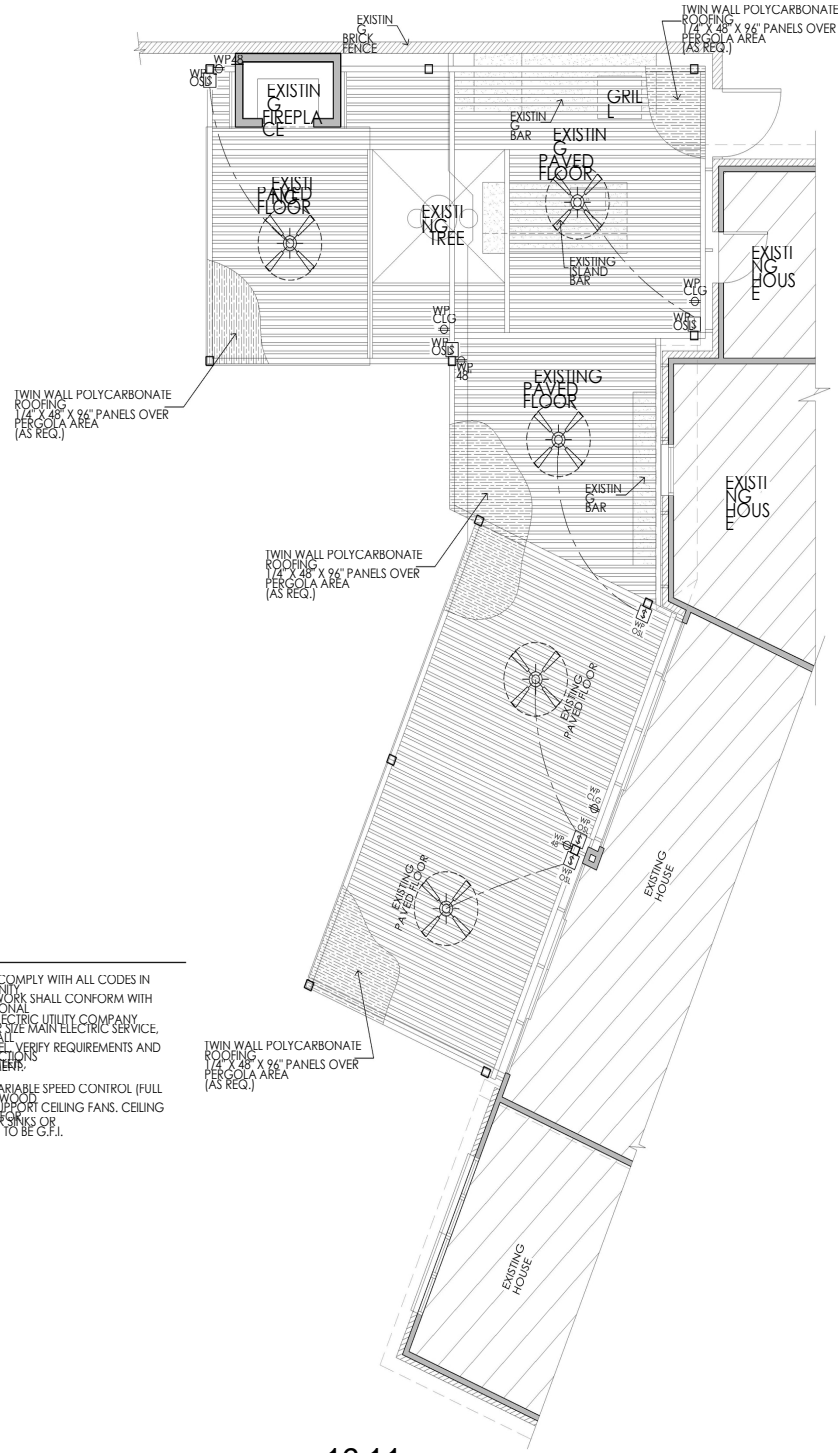
SHEET
NUMBER
A
2
SUB NO.
2416

ELECTRICAL
SYMBOLS

- WATERPROOF OUTDOOR LIGHT SWITCH.
- WP WATERPROOF DUPLEX OUTLET.
- WP GFI WATERPROOF DUPLEX OUTLET.
- CEILING FAN W/ LIGHT FIXTURE.

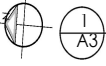
ELECTRICAL
NOTES

- (E1) ALL ELECTRICAL WORK SHALL COMPLY WITH ALL CODES IN EFFECT IN THE LOCAL COMMUNITY WHERE NO CODES PASS, THE WORK SHALL CONFORM WITH THE REGULATIONS OF THE NATIONAL ELECTRICAL CODE AND THE ELECTRIC UTILITY COMPANY.
- (E2) ELECTRICAL SERVICE SHALL BE PROVIDED BY THE MAIN ELECTRICAL SERVICE, BRANCH CIRCUITS FROM PANELS AND ALL BRANCHES SHALL BE PROVIDED BY THE MAIN ELECTRICAL SERVICE.
- (E3) PROVIDE ALL NECESSARY ELECTRICAL EQUIPMENT, MATERIALS AND LABOR FOR THE PROJECT.
- (E4) ALL CEILING FANS TO HAVE VARIABLE SPEED CONTROL (FULL BLOCKING IS REQUIRED TO SUPPORT CEILING FANS, CEILING FANS TO BE INSTALLED IN KITCHEN, BATHS, BEDROOMS AND AT EXTERIOR TO BE G.F.I. TYPE.
- (E5) PROVIDE ALL NECESSARY ELECTRICAL EQUIPMENT, MATERIALS AND LABOR FOR THE PROJECT.
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- (E8) PROVIDE ALL NECESSARY ELECTRICAL EQUIPMENT, MATERIALS AND LABOR FOR THE PROJECT.



PACKET

16.11



NEW
PERGOLA PLAN &
ROOFING SYSTEM

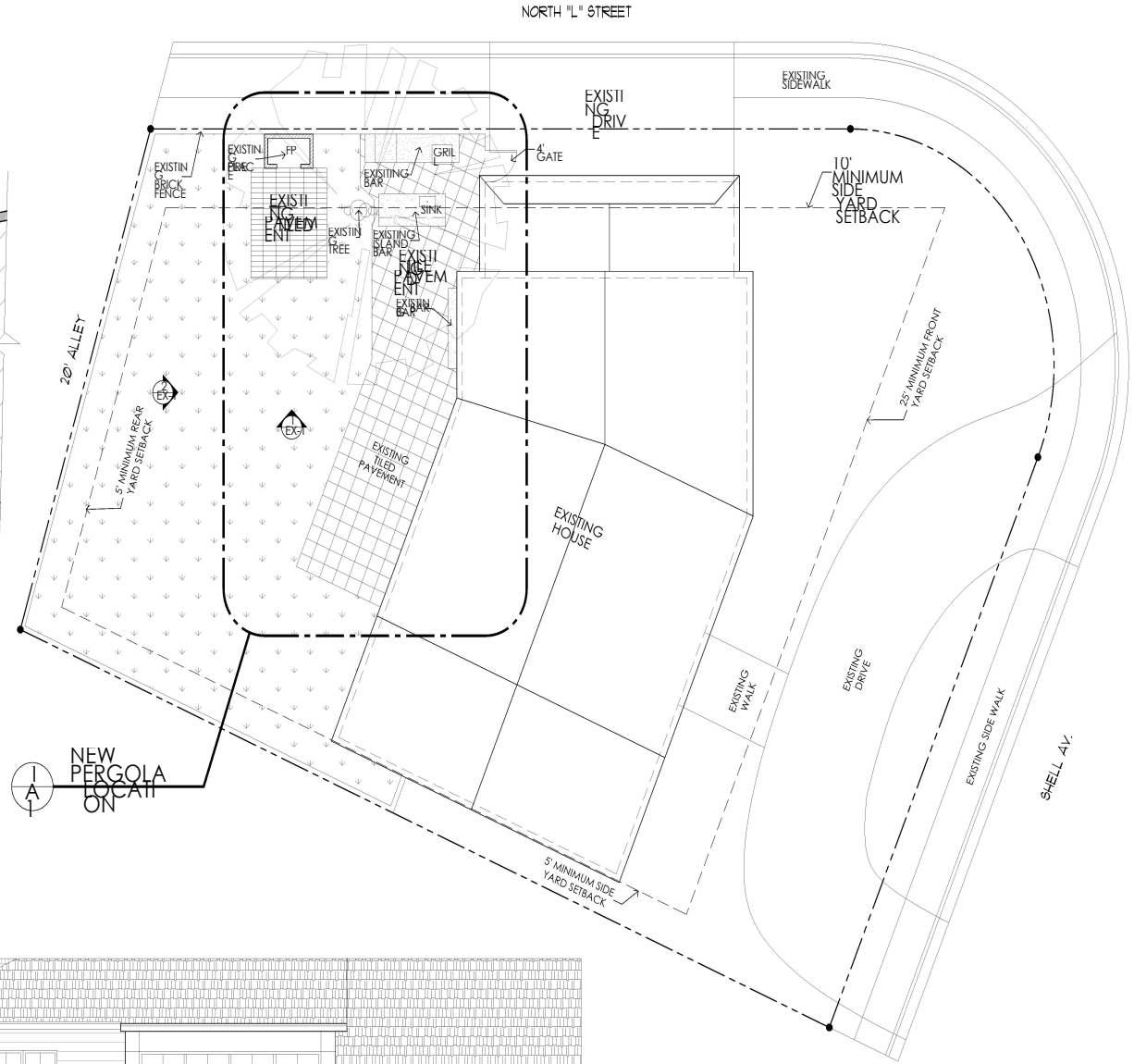
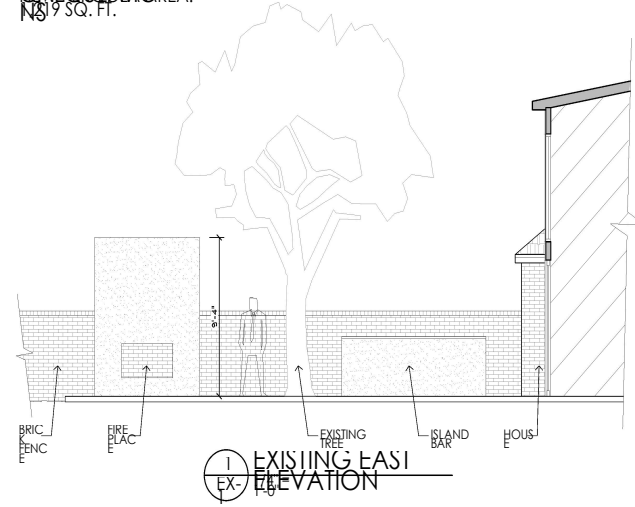
June 25, 2024

ULTRERAS REMODELING	
JESUS: (432) 556-4074 LAND: (432) 332-5323	
DRAWN BY: Jesse Juan Alvarez alvarez.lucw@gmail.com 432.599.0794	
2000 SHELL AV. NEW PERGOLA	
DATE ISSUED 5/3/2024	
SHEET NUMBER A3	
FOR NO. 2416	

LIST OF DRAWINGS

- EX-1 EXISTING SITE PLAN & BACK YARD ELEVATIONS.
- A1 NEW PERGOLA FLOOR PLAN & ELEVATIONS.
- A2 NEW PERGOLA PERSPECTIVES.
- A3 NEW PERGOLA ELECTRICAL PLAN & ROOFING SYSTEM.

AREA
CALCULATION AREA:
NS 9 SQ. FT.



EXISTING
SITE PLAN
1/16" = 1'-0"

June 25, 2024

ULTRERAS REMODELING

BUILDER:

2000 SHELL AV. NEW PERGOLA

DATE
ISSUED
5/3/2024

DATE
ISSUED
5/3/2024

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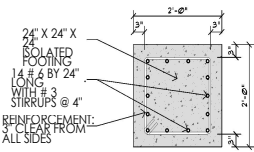
FLOOR PLAN

NOTES

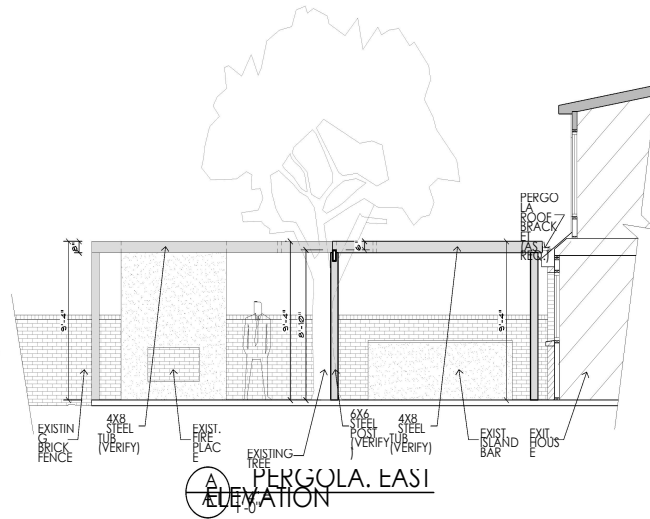
- (1) CONTRACTOR AND SUB-CONTRACTOR SHALL VERIFY ALL INFORMATION SHOWN ON THESE PLANS AND FIELD CONDITIONS PRIOR TO CONSTRUCTION. ANY DISCREPANCIES SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY.
- (2) THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- (3) THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES DURING CONSTRUCTION.
- (4) THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
- (5) THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL CITY, STATE, AND FEDERAL REGULATIONS.
- (6) THE CONTRACTOR SHALL BE RESPONSIBLE FOR CHECKING THE EXISTING GRADES AND ELEVATIONS PRIOR TO CONSTRUCTION.
- (7) THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING ALL NECESSARY MATERIALS AND LABOR.
- (8) THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING THE SITE IN A SAFE AND SOUND CONDITION AT ALL TIMES.

STRUCTURAL

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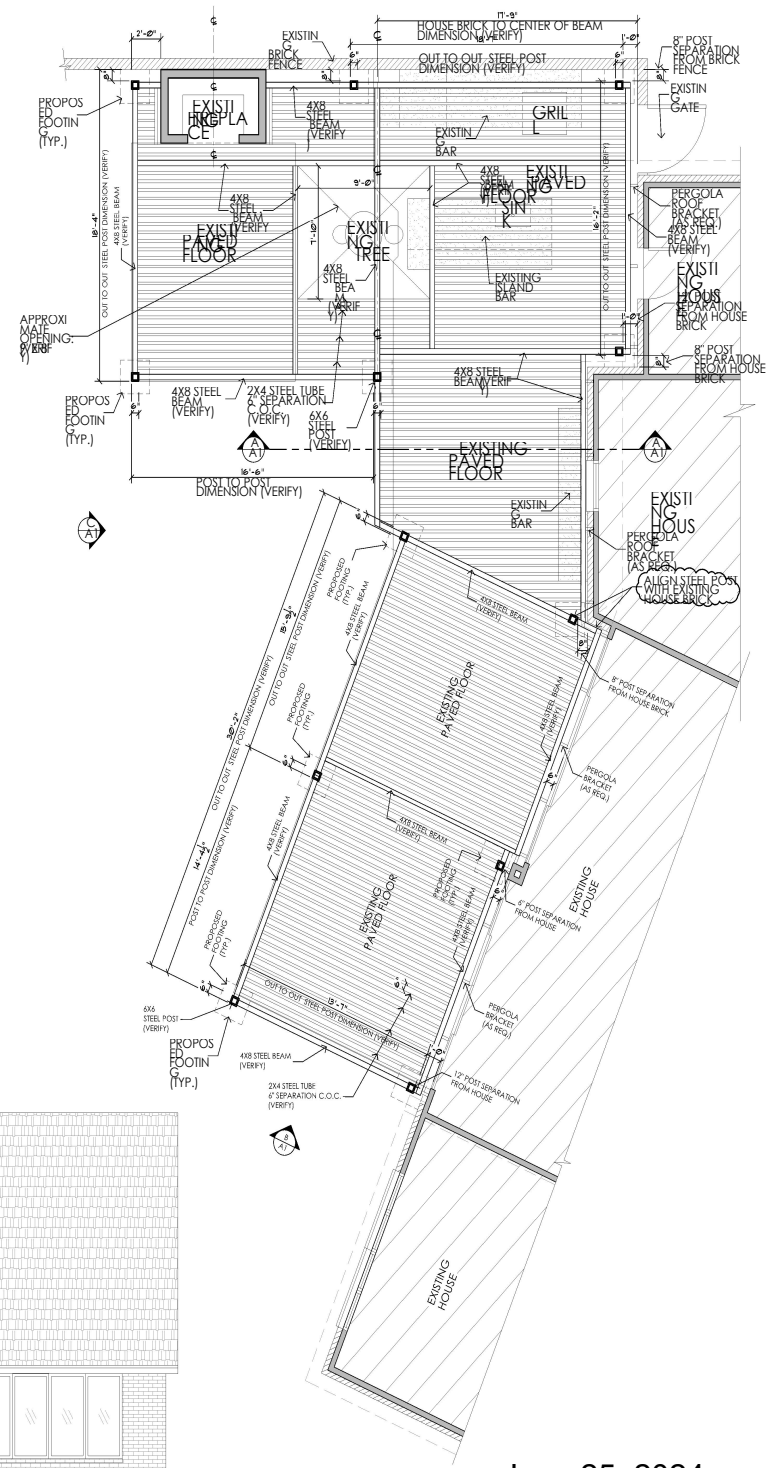


(2) PROPOSED ISOLATED FOOTING



(A) PERGOLA EAST ELEVATION

(B) PERGOLA EAST ELEVATION



NEW PERGOLA PLAN
 AREA: 1,219 SQ. FT.
 DATE: June 25, 2024

ULTRERAS REMODELING

BUILDER:

MIDLAND, TEXAS

2000 SHELL AV. NEW PERGOLA

DATE ISSUED
 5/3/2024

SHEET NUMBER
 1
 2 OF 4
 JOB NO.
 2416

LEONARDO ALVAREZ
 (409) 556-4074
 alvarez.leonardo@gmail.com

DRAWN BY:

MIDLAND, TEXAS

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PACKET

PERSPECTIVE
NOTES
THE PERSPECTIVES ARE ILLUSTRATIVE ONLY TO PROVIDE A GENERAL IDEA FOR THE PERGOLA WORK.
THE PERSPECTIVES DO NOT REPRESENT THE MATERIALS, COLORS, TEXTURES OR VEGETATION OF THE ENTIRE DESIGN AND WORK.



NEW PERGOLA
PERSPECTIVES

16.14

June 25, 2024

BUILDER: ULTRERAS REMODELING

JESUS: (432) 556-4074
LALO: (432) 325-3323

Drawn by:
Jesse Juan Alvarez
alvarez.luc@jmail.com
(432) 599-0794



2000 SHELL AV. NEW PERGOLA

DATE
ISSUED
5/3/2024

SHEET
NUMBER

A
2
3
4
2416

MIDLAND, TEXAS

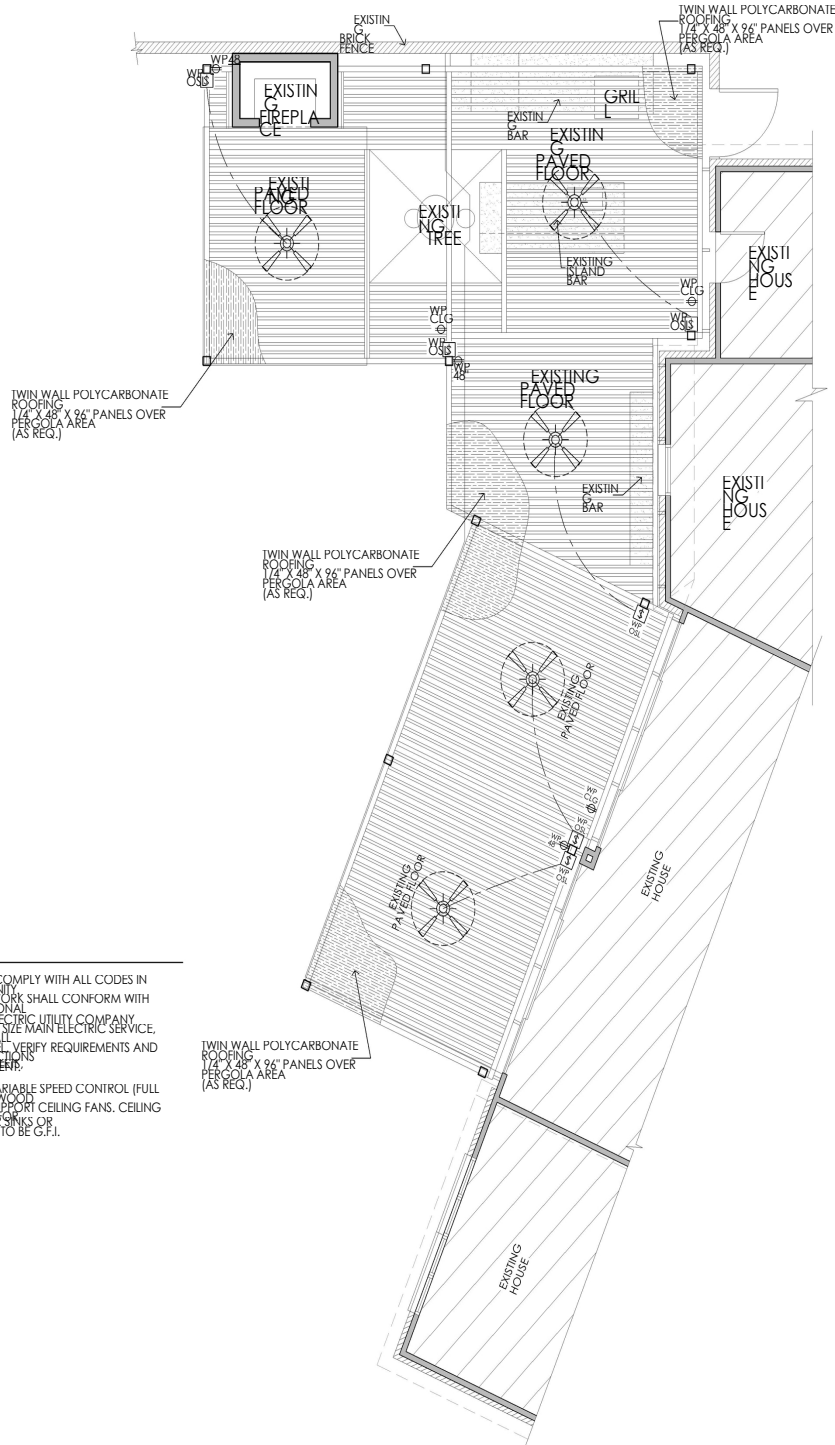
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ELECTRICAL
SYMBOLS

- WATERPROOF OUTDOOR LIGHT SWITCH.
- WP WATERPROOF DUPLEX OUTLET.
- WP GFI WATERPROOF DUPLEX OUTLET.
- CEILING FAN W/ LIGHT FIXTURE.

ELECTRICAL
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- (E8) PROVIDE ALL NECESSARY ELECTRICAL EQUIPMENT, MATERIALS AND LABOR FOR THE WORK.



PACKET

16.15

NEW
PERGOLA PLAN &
ROOFING SYSTEM

June 25, 2024

ULTRERAS REMODELING		2000 SHELL AV. NEW PERGOLA		DATE ISSUED 5/3/2024		SHEET NUMBER A3	
BUILDER: JESUS: (432) 556-4074 LAND: (432) 352-5323		DRAWN BY: Jete Juan Alvarez alvarez.lujw@gmail.com 432.599.0794		MIDLAND, TEXAS		FOR NO 2416	



Special Exception Application

Project Number: _____

Case Number: _____

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

Printed Name: Stephen Sample

Phone (713) 898-3581

Email shsample@hotmail.com

Address 2000 Shell Ave.

City Midland

State TX

Zip 79705

Property Owner

Printed Name: Stephen Sample

Phone (713) 898-3581

Email shsample@hotmail.com

Address 2000 Shell Ave

City Midland

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: None
Printed Name: Jesus A. Carnero

Phone (432) 556-7074

Email Alpawoodinc@outlook.com

Address 1000 W. Kentucky

City Midland

State TX

Zip 79701

Street Address: 2000 Shell Ave, Midland TX 79705

Legal Description 005, 65

Lot: 0.261 Block: lots 182 Subdivision: Warwick

Current Zoning: SF1

This property qualifies as an exception to the City Code because:

- ☒ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Build new pergola for shade

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland' (\$500.00)
- Dimensioned Site Plan showing:
 - Parking
 - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures

Applicant (signature):

Date: 5/7/24

Applicant (printed):

Stephen Sample

Jesus A. Carnero L.

Property Owner (signature):

Date: 5/7/24

Property Owner (printed):

Stephen Sample

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

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

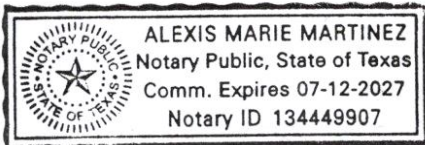
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Jesus Carnero who, being by me duly sworn, upon oath says: That (s)he is authorized by Stephen Sample, 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 8th day of May, 20 24, to certify which witness my hand and seal of office.

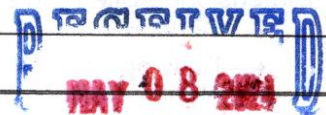


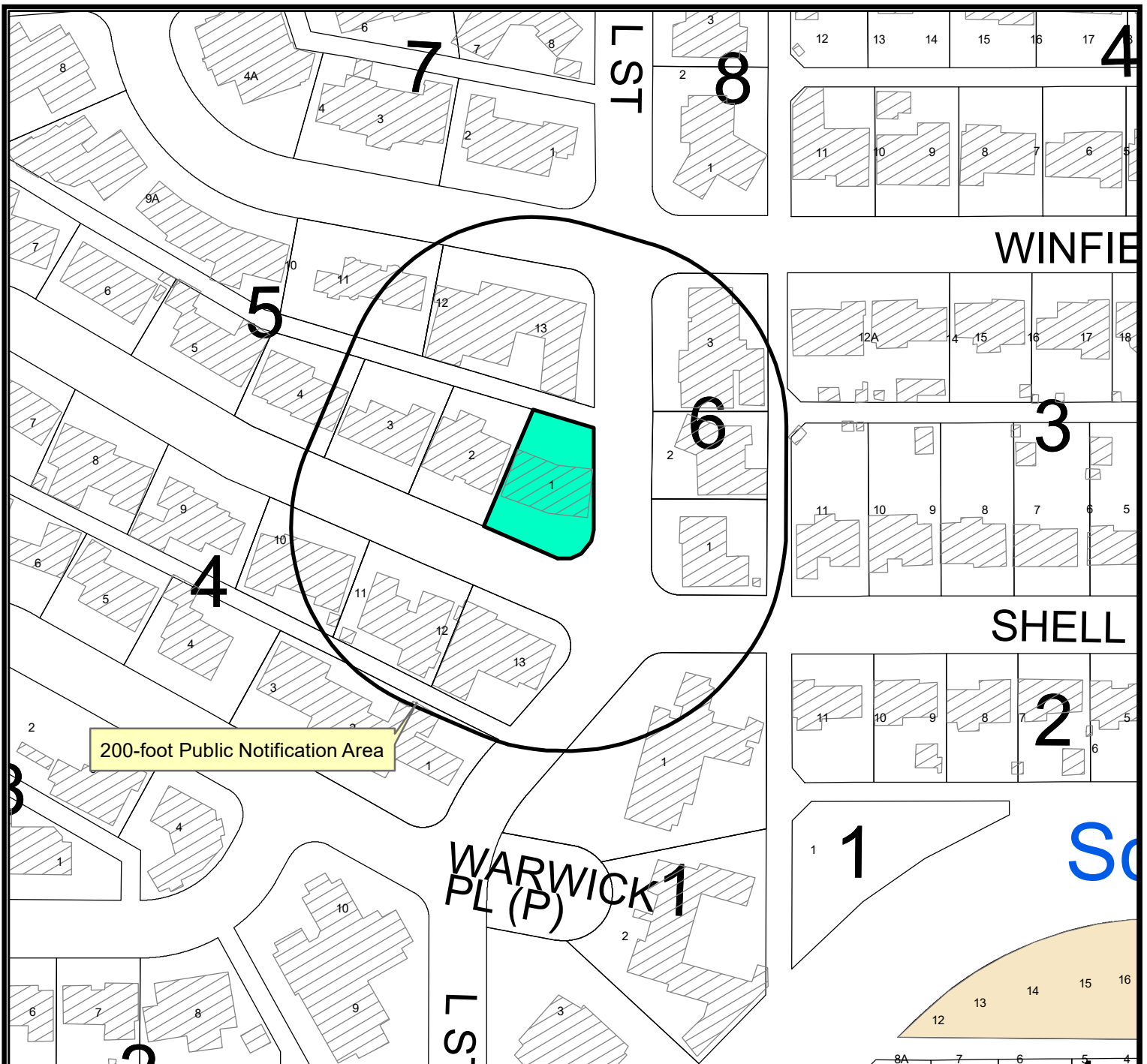
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY☐ Property Owner Authorization☐ Dimensioned Site Plan☐ Application Fee☐ Plans in Digital Format (PDF/JPEG)Check # invoice

Received By:

Date:





200-foot Public Notification Area

WARWICK
PL (P)

Location Map

E-24-0123

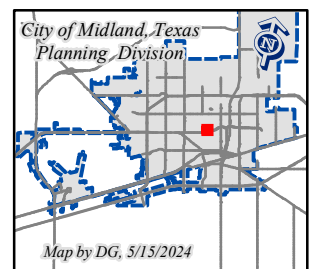
Scale: 1" = 600'

Consider a request by Stephen Sample for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, to allow a reduced minimum side yard setback for, Lot 1, and the east 5 feet of Lot 2, Block 5, Warwick Addition, City and County of Midland, Texas.

Generally located at the northwest corner of the intersection of North L Street and Shell Avenue. (District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

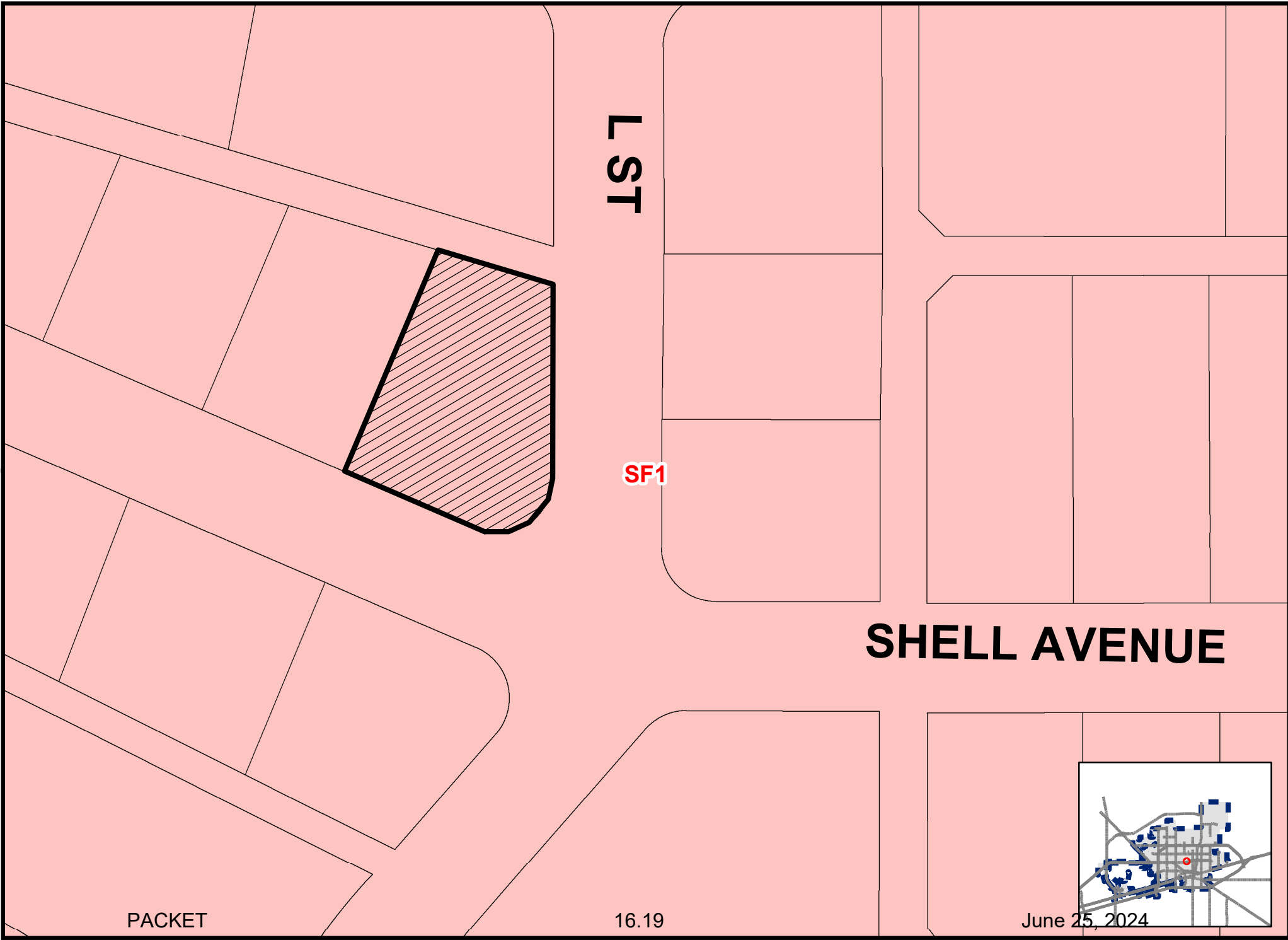


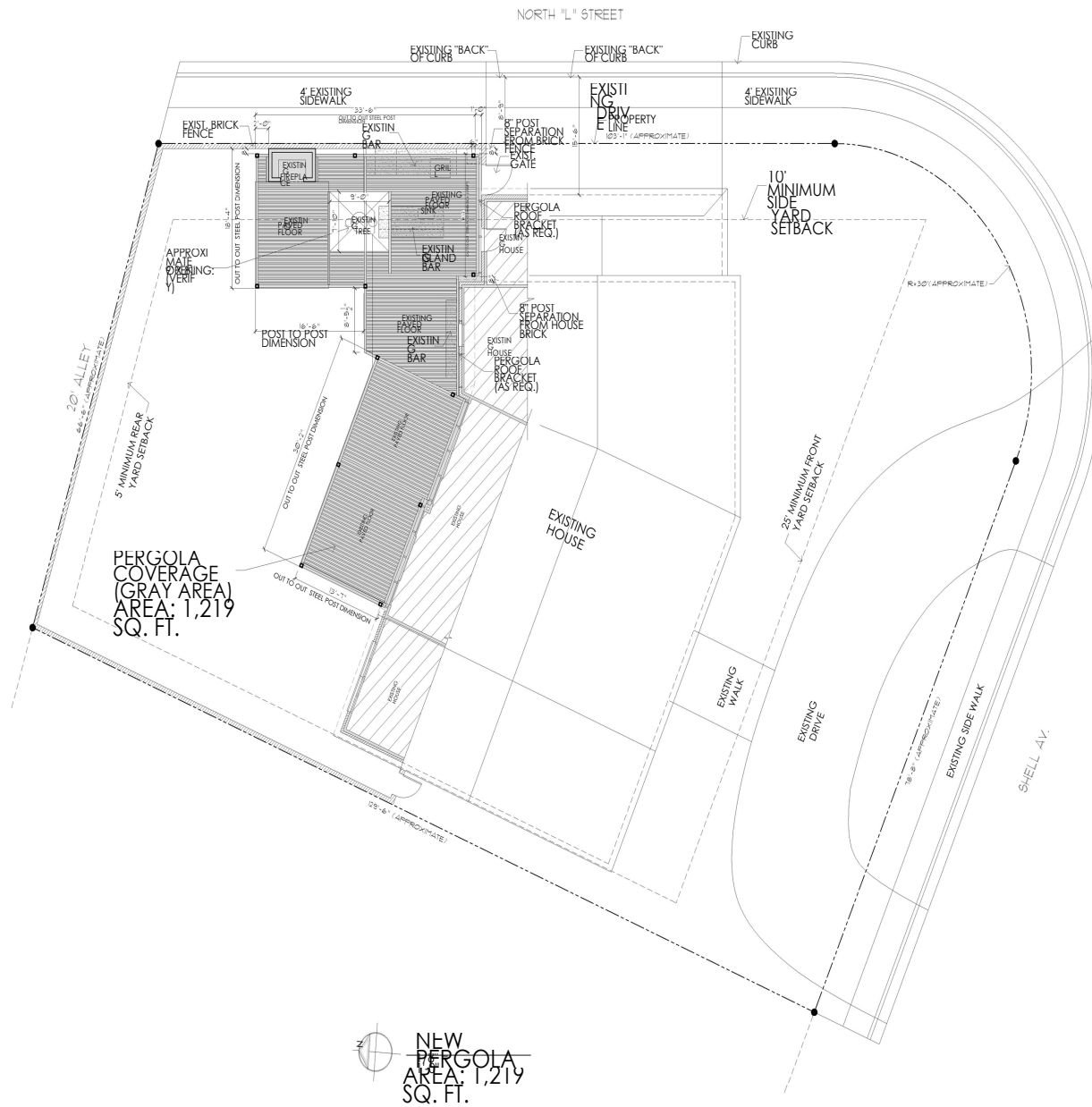
©THE CITY OF MIDLAND - 2021

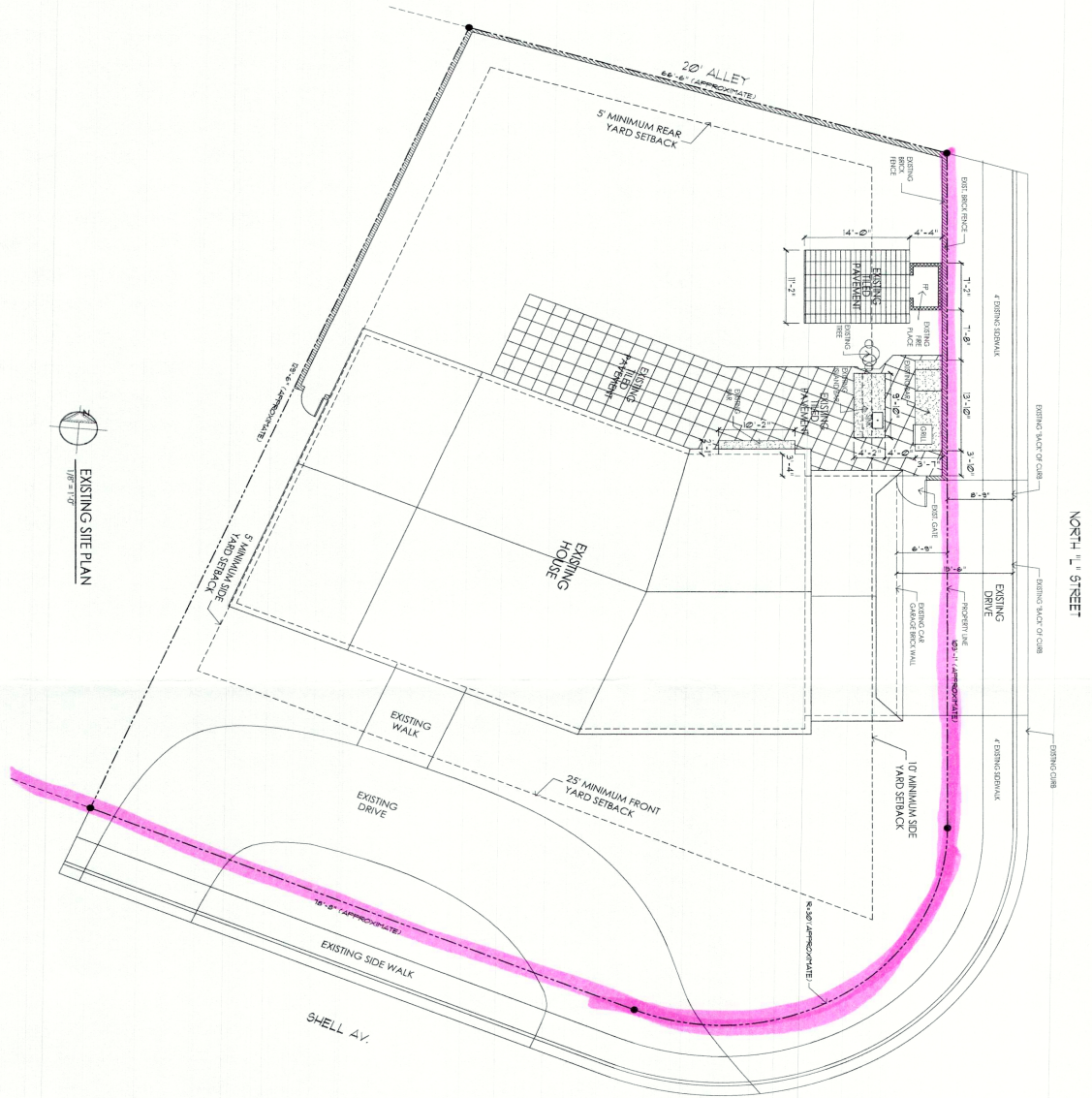
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING PLAN. IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

June 25, 2024







EX-1 1 OF 2 SHEETS JOB NO. 2416	SHEET NUMBER	DATE SUBMITTED 6/4/2024 2000 SHELL AV. NEW PERGOLA MIDLAND, TEXAS	BUILDER: ULTRERAS REMODELING JESUS: (432) 556-4074 LALO: (432) 352-5323 DRAWN BY:  Jesse Juan Alvarez alvarez.udw@gmail.com 432.599.0794	© 2024 JESSE JUAN ALVAREZ. ALL RIGHTS RESERVED. NO OTHER PROPERTY RIGHTS TO THESE PLANS UNDER THE ARCHITECTURAL WORKS COPYRIGHT ACT OF 1990. ALL GENERAL, DIMENSIONED, PRELIMINARY PLANS, FLOOR PLANS, ELEVATIONS, CALCULATIONS, SPECIFICATIONS, NOTES, SCHEDULES, MATERIALS, AND ELECTRICAL, MECHANICAL, PLUMBING, AND STRUCTURAL NOTES, LOGS, AND ANY OTHER INFORMATION OR DOCUMENTS PREPARED BY JESSE JUAN ALVAREZ ARE PROPERTY OF JESSE JUAN ALVAREZ. ANY REPRODUCTION OR USE OF THESE PLANS OR ANY PART THEREOF WITHOUT THE WRITTEN CONSENT OF JESSE JUAN ALVAREZ IS PROHIBITED.
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City Council Meeting

Item Number: 17
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF KENT STREET AND WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Schumann Engineering, on behalf of First Baptist Church of Midland, is requesting a zone change for a property located at 2206 West Louisiana Avenue to make the zoning match the rest of the property.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Strategic Priority:

Quality of Life and Place

Discussion:**Surrounding Zoning and Land Use:**

The properties to south, east, & west are zoned O-1, Office District and are the locations of a parking lot and residences. The property to the north is zone SF-2 and is the location of a church.

Analysis:

The applicant is requesting to change the zoning from O-1, Office District, to SF-2, Single-Family Dwelling District. The applicant is preparing to replat the properties that the church is located on into one lot. They are requesting this zone change to make the properties all one zoning. The Future Land Use Map Chapter 3 of the *Tall City Tomorrow Comprehensive Plan* designates this area as Urban-Residential Medium (UR-M) which calls for residential zonings such SF-2.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments.

Building Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

The Planning and Zoning Commission recommended approval of this request on June 3, 2024.

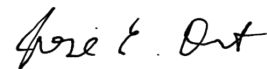
Staff recommends approval of this request for a zone change.

Letters of Objection:

As of June 10, 2024, Staff has not received any letters of objection.

Attachments:

Application
Location Map
Zoning Map
Aerial
Photo



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-1, OFFICE DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF KENT STREET AND WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 9, Block 1, Westover Place Addition, City and County of Midland, Texas (the “Property”) to SF-2, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from O-1, Office District to SF-2, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: _____		Phone () Email _____	
Address _____	City _____	State _____	Zip _____

Property Owner Printed Name: FIRST BAPTIST CHURCH OF MIDLAND		Phone (432) 260-0809 Email _____	
Address 2104 W LOUISIANA AVE	City MIDLAND	State TEXAS	Zip 79701-5972

Representative (if different from Applicant or Property Owner) Firm: <u>SCHUMANN SURVEYING, INC.</u> Printed Name: <u>Ed Akman</u>		Phone (432) 254-0327 Email <u>EALEMAN@SCHUMANNONLINE.NET</u>	
Address 800 N. MARIENFELD STREET SUITE 100	City MIDLAND	State TX	Zip 79701

Street Address: 2104 W LOUISIANA AVE & 702 KENT STREET
Legal Description Lot: 9 & 11 Block: BLOCK 1 Subdivision: WESTOVER PLACE ADDITION

Current Zoning: O1 & SF2 SF2	Proposed Zone: SF SF2 SF2 (List by tracts if more than one district is requested)
--	--

Reason for Zone Change Request: FIRST BAPTIST OWNS ALL LOTS, THEY PLAN ON REPLATTING PROPERTY AS 1 LOT
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

Present Use of Property: CHURCH BUILDINGS

Proposed Use of Property: CHURCH BUILDINGS

How would this zone change affect the public health, safety and welfare? IN NO SUCH WAY SHALL THIS ZONE
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

Describe how conditions affecting the property have changed since present zoning designation:
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

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)

OWNER
 Applicant (signature): [Signature] Date: 5.8.24

Applicant (printed): BOE BOMER

Property Owner (signature): _____ Date: _____

Property Owner (printed): _____

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

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

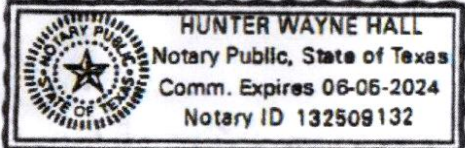
STATE OF TEXAS
 COUNTY OF MIDLAND

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

[Signature]
 Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of May, 20 24, to certify which witness my hand and seal of office.

[Signature]
 NOTARY PUBLIC, MIDLAND COUNTY, TEXAS



FOR OFFICE USE ONLY

☒ Property Owner Authorization ☒ Dimensioned Site Plan

☒ Application Fee ☒ Plans in Digital Format (PDF/JPEG)

Check # Paying online

Received By: [Signature] Date: MAY 08 2024

KANSAS AV

KENT ST

MOGFORD ST

LOUISIANA AV

GARFIELD ST

CAN AV

Location Map

Z-24-0380

Scale: 1" = 122'

A request by Schumann Engineering for a zone change from, O-1, Office District, to SF-2, Single-Family Dwelling District, Lot 9, Block 1, Westover Place Addition, City and County of Midland, Texas.

Generally located northeast of the intersection of Kent Street and West Louisiana Avenue.
(District 5)

LEGEND

- CITY LIMITS
- PARCEL
- ▨ PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND DOES NOT WARRANT OR IS IT DESIGNED TO BE USED IN ANY 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.

2

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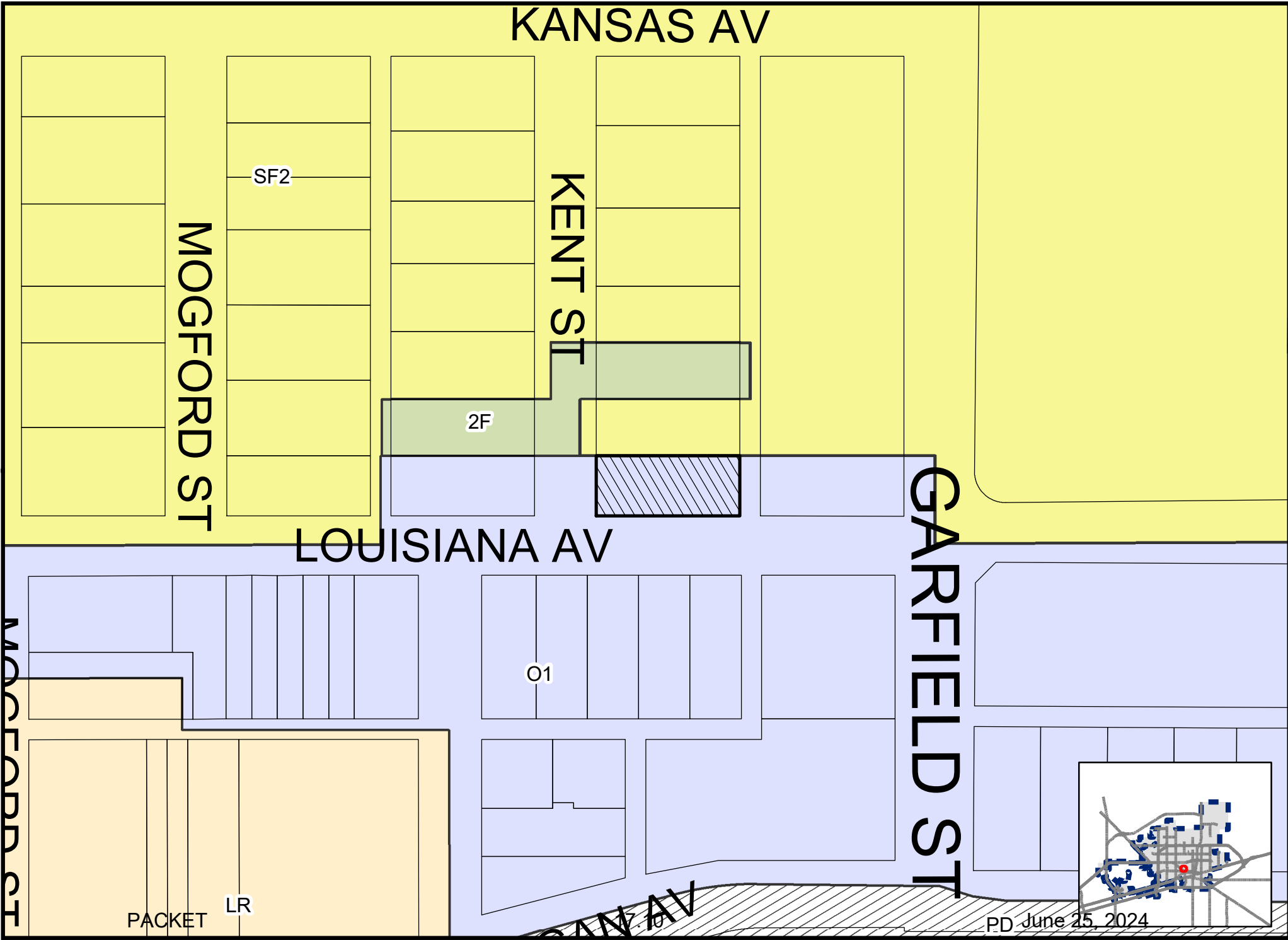
14

15

200-foot Public Notification Area

PACKET

17.9





KANSAS AV

KENT ST

MOGFORD ST

LOUISIANA AV

GARFIELD ST

14

PACKET

15

17 11

June 25, 2024





City Council Meeting

Item Number: 18
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Landon Ochoa, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF KENT STREET, APPROXIMATELY 140 FEET NORTH OF WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Schumann Engineering, on behalf of First Baptist Church of Midland, is requesting a zone change for a property located at 702 Kent Street to make the zoning match the rest of the property.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Strategic Priority:

Quality of Life and Place

Discussion:**Surrounding Zoning and Land Use:**

The properties to the north, south, east, & west are zoned SF-2, Single-Family Dwelling District and are the locations of residences, a church, and a parking lot.

Analysis:

The applicant is requesting to change the zoning from 2F, Two-Family Dwelling (Duplex) District, to SF-2, Single-Family Dwelling District. The applicant is preparing to replat the properties that the church is located on into one lot. They are requesting this zone change to make the properties all one zoning. The Future Land Use Map Chapter 3 of the *Tall City Tomorrow Comprehensive Plan* designates this area as Urban-Residential Medium (UR-M) which calls for residential zonings such SF-2.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments.

Building Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

The Planning and Zoning Commission recommended approval of this request on June 3, 2024.

Staff recommends approval of this request for a zone change.

Letters of Objection:

As of June 10, 2024, Staff has not received any letters of objection.

Attachments:

Application
Location Map
Zoning Map
Aerial
Photo

For E. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 1, WESTOVER PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT TO SF-2, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF KENT STREET, APPROXIMATELY 140 FEET NORTH OF WEST LOUISIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 11, Block 1, Westover Place Addition, City and County of Midland, Texas (the “Property”) to SF-2, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from 2F, Two-Family Dwelling (Duplex) District to SF-2, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: _____		Phone () Email _____	
Address _____	City _____	State _____	Zip _____

Property Owner Printed Name: FIRST BAPTIST CHURCH OF MIDLAND		Phone (432) 260-0809 Email _____	
Address 2104 W LOUISIANA AVE	City MIDLAND	State TEXAS	Zip 79701-5972

Representative (if different from Applicant or Property Owner) Firm: <u>SCHUMANN SURVEYING, INC.</u> Printed Name: <u>Ed Akman</u>		Phone (432) 254-0327 Email <u>EALEMAN@SCHUMANNONLINE.NET</u>	
Address 800 N. MARIENFELD STREET SUITE 100	City MIDLAND	State TX	Zip 79701

Street Address: 2104 W LOUISIANA AVE & 702 KENT STREET
Legal Description Lot: 9 & 11 Block: BLOCK 1 Subdivision: WESTOVER PLACE ADDITION

Current Zoning: O1 & SF2 SF2	Proposed Zone: SF SF2 SF2 (List by tracts if more than one district is requested)
--	--

Reason for Zone Change Request: FIRST BAPTIST OWNS ALL LOTS, THEY PLAN ON REPLATTING PROPERTY AS 1 LOT
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

Present Use of Property: CHURCH BUILDINGS

Proposed Use of Property: CHURCH BUILDINGS

How would this zone change affect the public health, safety and welfare? IN NO SUCH WAY SHALL THIS ZONE
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

Describe how conditions affecting the property have changed since present zoning designation:
CHANGE AFFECT PUBLIC HEALTH, SAFTEY OR WELFARE

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)	
OWNER Applicant (signature): <u>[Signature]</u>	Date: <u>5-8-24</u>
Applicant (printed): <u>BOE BOMER</u>	
Property Owner (signature): _____	Date: _____
Property Owner (printed) : _____	
The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received. All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.	

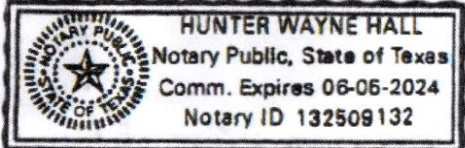
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

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

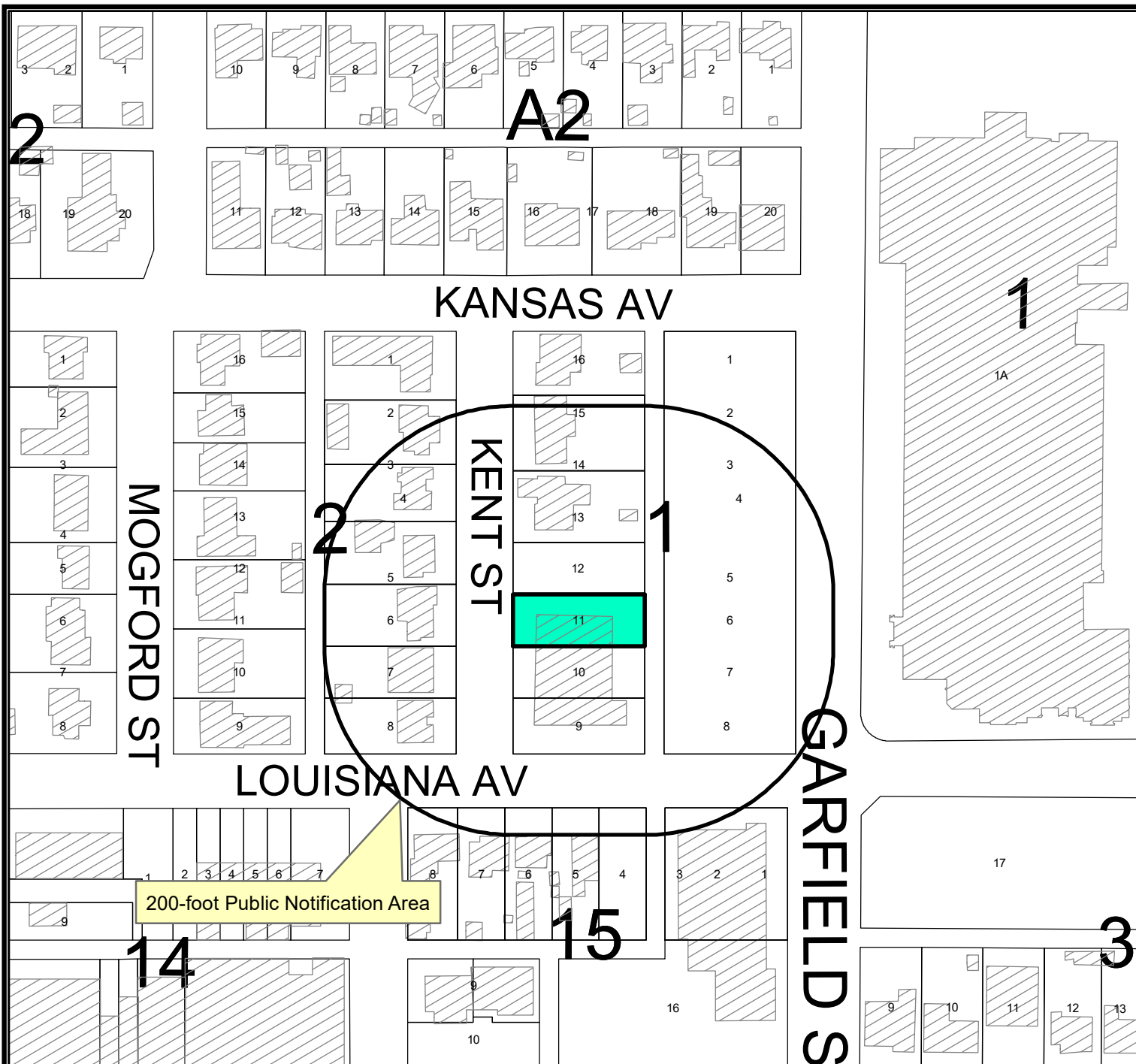
[Signature]
 Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of May, 20 24, to certify which witness my hand and seal of office.



[Signature]
 NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization ☒ Application Fee Check # <u>Paying online</u>	☒ Dimensioned Site Plan ☒ Plans in Digital Format (PDF/JPEG)
Received By: <u>[Signature]</u>	Date: <u>MAY 08 2024</u>



Location Map

Z-24-0380

Scale: 1" = 153'

A request by Schumann Engineering for a zone change from, 2F, Two-Family Dwelling (Duplex) District, to SF-2, Single-Family Dwelling District for Lot 11, Block 1, Westover Place Addition, City and County of Midland, Texas.

Generally located on the east side of Kent Street, approximately 140 feet north of West Louisiana Avenue. (District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

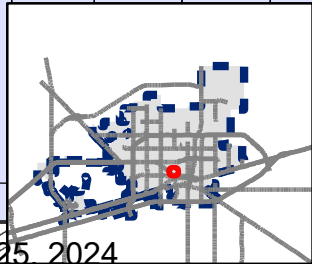
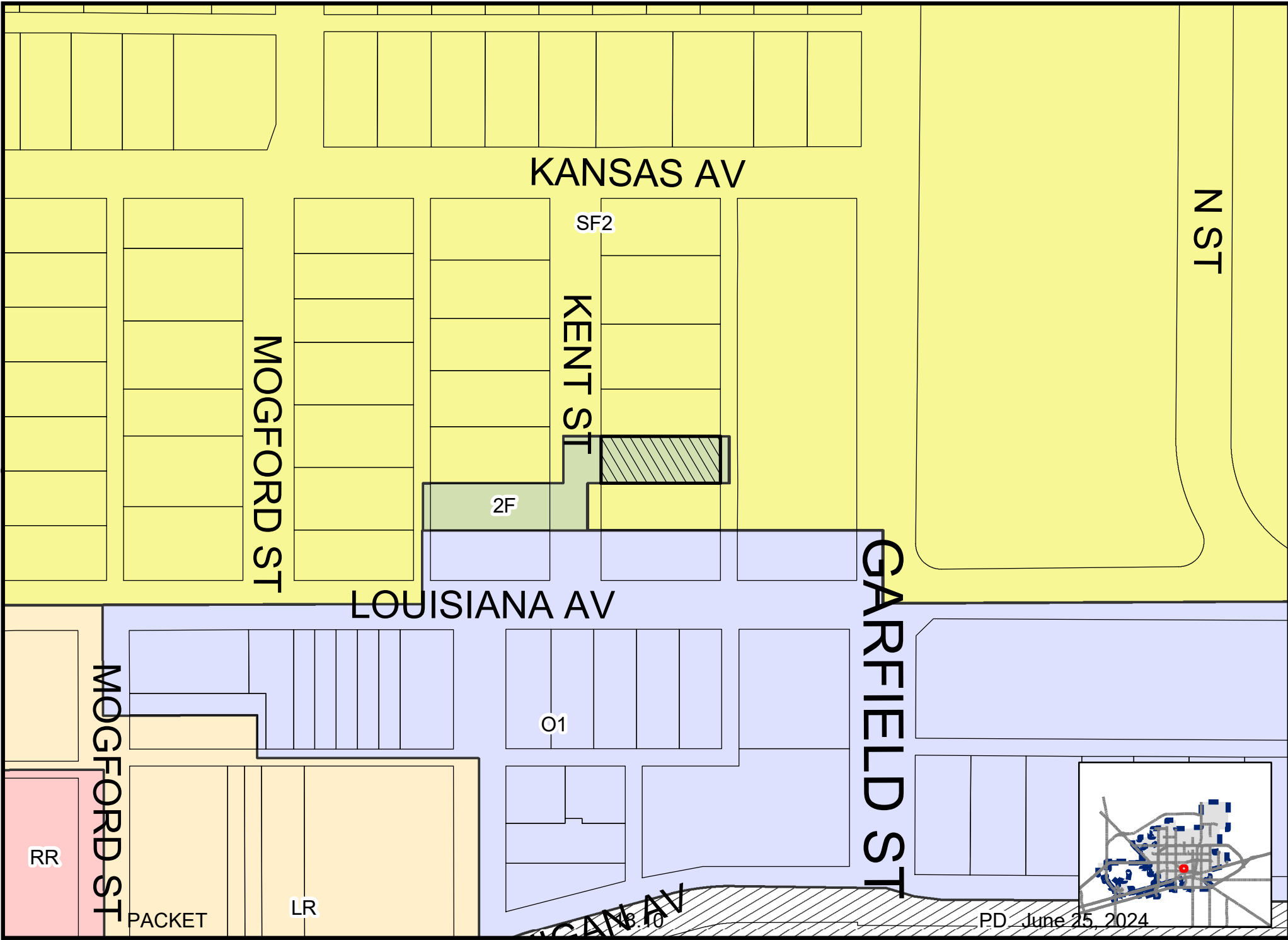


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING DRAWING. IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

June 25, 2024





KANSAS AV

KENT ST

MOGFORD ST

LOUISIANA AV

GARFIELD ST

2

1

1

14

15

PACKET

18.11

June 25, 2024





City Council Meeting

Item Number: 19
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1A, BLOCK 4, PLUNK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF GARDEN CITY HIGHWAY, APPROXIMATELY 568 FEET WEST OF ALLEN STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Andrea Diaz, is requesting a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services to operate a used car dealership at 1300 Garden City Highway.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Strategic Priority:

(Quality of Life and Place)

Surrounding Zoning and Land Use:

The surrounding properties to the north, east, south, and west are all zoned C, Commercial District and are the location of commercial buildings.

Analysis:

The applicant is requesting Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services located at 1300 Garden City Highway. The applicant is proposing to use an office inside of the Lobo's Services building as her office for the proposed car dealership. The site plan (Exhibit A) provided shows an overview of the property that will be used for car sales. The property has two (2) existing buildings, the SUD would govern a 10 x 10 office space located within the north most building. The building has designated (18) parking spaces for the dealership, including ten (10) for customers and eight (8) for car sales. This is adequate parking for the proposed use and the current use.

The proposed hours of operation are the following:

Wednesday through Saturday, 10:00 a.m. to 2:00 p.m.

Per section 4.03 Use Chart of the zoning ordinance, a car dealership is allowed in the C, Commercial District with a Specific Use Designation without Term.

The Automobile or Other Motorized Vehicle Sales and Services will need to comply with the standards as listed in Section 4.04.A.6 of the Zoning Ordinances.

6. Automobile or Other Motorized Vehicle Sales and Service Standards

- a. Allowed by Specific Use Designation, according to the permitted Use Chart.
- b. All exterior light sources shall be of a down-light type, indirect, diffused, or shielded type luminaries and so installed as to reduce glare effect and consequent interference with use of adjacent properties and boundary streets.
- c. No intermittent or flashing lights shall be permitted.
- d. Luminaries shall be mounted at a height not to exceed 30 feet as measured vertically from the horizontal surface of the nearest parking pavement.
- e. All building façades shall be constructed with the same masonry materials that meet the masonry regulations for the zoning district in which the property is located.
- f. No exterior auditory devices shall be permitted.

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan calls for Special Study Area uses in this area, encompassing a mix of commercial, office, and service uses. Therefore, the development of a car dealership fits the recommendations of the Tall City Tomorrow Comprehensive Plan.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objection

Engineering: (Approved)

No objection.

Transportation: (Approved)

Apply for a commercial driveway permit. Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Building Code: (Approved)

No objections to SUD request.

Planning:

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation without Term for an Automobile or other Motorized Vehicle Sales and Services, subject to Condition A through D.

Conditions:

- A. That the Automobile and other Motorized Vehicle Sales and Service shall significantly conform to the Site Plan (Exhibit A) which is attached hereto and incorporated herein for all purposes.**
- B. That the development of the automobile or other motorized vehicle sales and services shall comply with the standards listed in Section 4.04. A.6 of the Zoning Ordinance.**
- C. That the days and hours of operation of the Automobile or other Motorized Vehicle Sales and Service shall be limited to:**

Wednesday through Saturday, from 10:00 a.m. to 2:00 p.m.

D. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the Automobile Sales and Services to ensure that the conditions of this permit are satisfied.

Letters of Objection:

As of June 19, 2024, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Frederic D. Out

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1A, BLOCK 4, PLUNK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF GARDEN CITY HIGHWAY, APPROXIMATELY 568 FEET WEST OF ALLEN STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for Lot 1A, Block 4, Plunk Addition, Section 10, City and County of Midland, Texas (the “Property”), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for automobile or other motorized vehicle sales and service (the “Specific Use”), together with the uses permitted in the present C, Commercial District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

- A. That the use and development of the Property for the Specific Use shall significantly conform to the site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes.
- B. That the use and development of the Property for the Specific Use shall conform to standards set forth in Section 11-1-4.04.A.6 of the City Code.
- C. That the days and hours of operation of the Specific Use shall be limited to Wednesday through Saturday 10:00 a.m. to 2:00 p.m.
- D. That the operator of the Specific Use shall obtain a Certificate of Occupancy prior to using the Property for the Specific Use to ensure that the conditions of this Specific Use Designation With Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading

on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

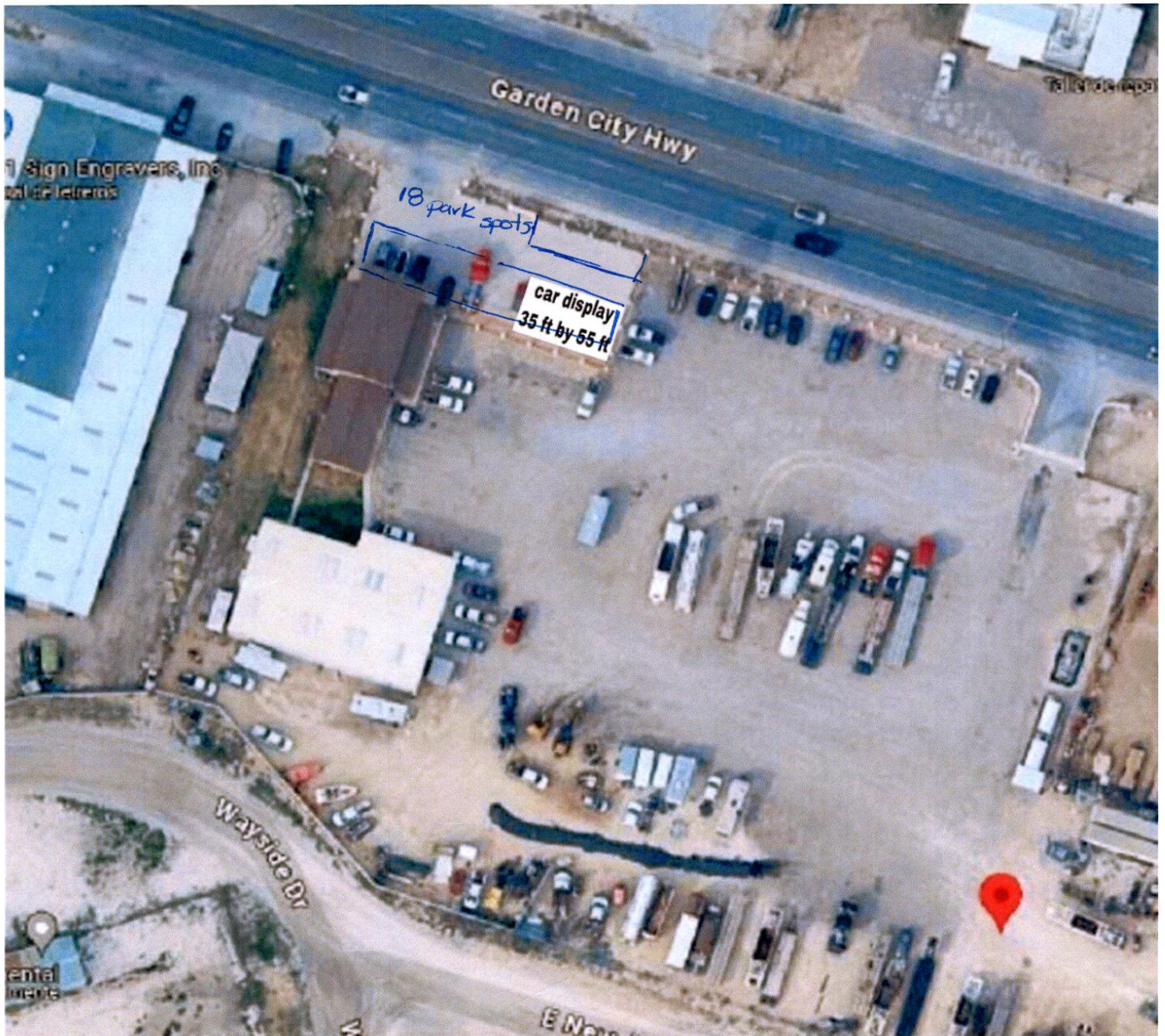
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"







**Specific Use Designation
Application (Non-Alcohol)**

Case Number: _____

Ord. Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Andrea Diaz</u>		Phone (432) <u>269 3186</u> Email <u>andyguiten53@gmail.com</u>	
Address <u>7320 cross b rd</u>	City <u>Odessa</u>	State <u>TX</u>	Zip <u>79765</u>

Property Owner Printed Name: <u>Angel Sanchez</u>		Phone (432) <u>664-8486</u> Email <u>angel.sanchez@lobasservices.us</u>	
Address <u>1300 Garden city Hwy</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79701</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email _____	
Address _____	City _____	State _____	Zip _____

Type of Permit:	For Office Use Only ☐ with Term ☐ without Term
Is there any Code Enforcement action pending on property? ☐ Yes ☒ No	

Street Address: <u>1300 Garden city Hwy, Midland, Tx, 79701</u>	
Legal Description Lot: <u>2</u> Block: <u>3</u> Subdivision: <u>Surface Est B Runson Add</u>	

Current Zoning:	
Maximum Floor Area: <u>1600 Feet²</u>	Maximum Occupancy:
Proposed hours and days of use or operation: <u>Wednesday - Saturday</u> <u>10:00 am - 2:00 pm</u>	
Reason for request: <u>TX DMV Dealer license, retail used car business</u>	
Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: <u>The place meets safety standards and has adequate space. It does not imply any risk to the population.</u>	

Submittal and Fees Items to be submitted with this application form: • Application Fee – Payable to the 'City of Midland' • Dimensioned Site Plan showing • Parking (if applicable) • Building Footprint • Digital Copies of Site Plan (PDF/JPEG)	
---	--

Signatures

Applicant (signature): Andrea D. Date: _____

Applicant (printed): Andrea Diaz

Property Owner (signature): Angel Sanchez Date: _____

Property Owner (printed): ANGEL SANCHEZ

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

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

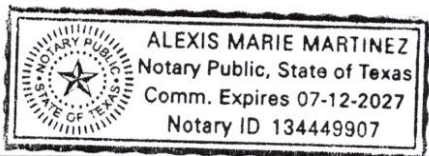
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrea Diaz who, being by me duly sworn, upon oath says: That (s)he is authorized by Angel Sanchez, 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.

Andrea D.
Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of May, 20 24, to certify which witness my hand and seal of office.



NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☐ Application Fee

☒ Site Plan in Digital Format (PDF/JPEG)

Check # Online Payment

Received By: Alexis

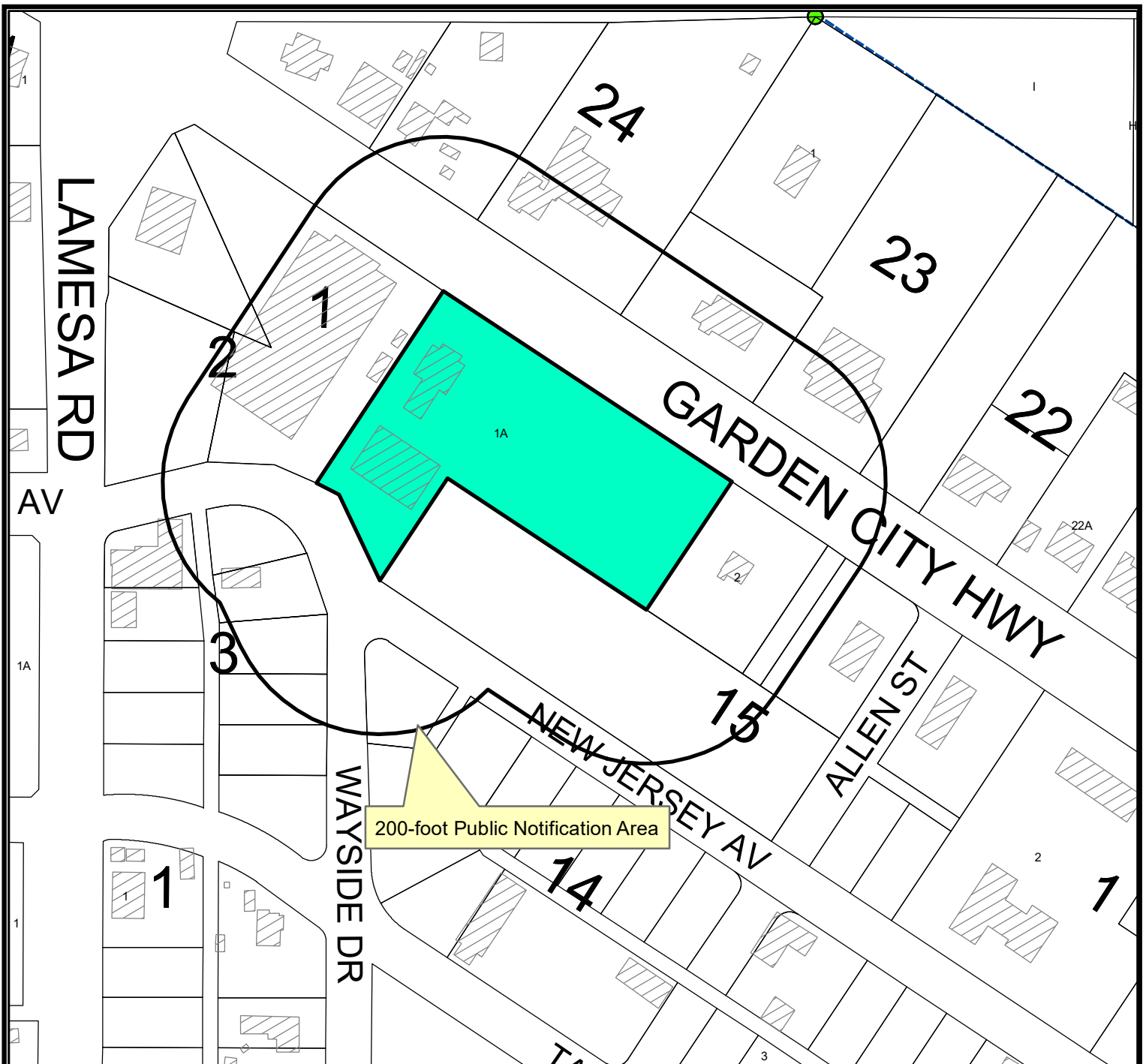
Date: MAY 08 2024

**PACKET

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

19 12

June 25, 2024



Location Map

SUDwo-24-0042

Scale: 1" = 600'

Consider a request by Andrea Diaz for a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Service on Lot 1A, Block 4, Plunk 10th, City and County of Midland, Texas.

Generally located on the south side of Garden City Highway approximately 568-feet west of Allen Street.
(District 2) **PACKET**

19.13

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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June 25, 2024

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

LAMESA RD

SEY AV

GARDEN CITY HWY

C

LI

NEW JERSEY AV

ALLEN ST

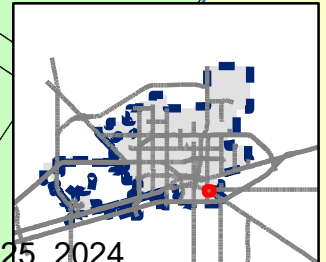
WAYSIDE

PD

PACKET

19.14

June 25, 2024





City Council Meeting

Item Number: 20
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Diana Geerts, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.92-ACRE TRACT OF LAND OUT OF BLOCK 1, WEST 191 INDUSTRIAL PARK, SECTION 12, AND AN 8.70-ACRE TRACT OF LAND OUT OF BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH FM 1788 AND WEST COUNTY ROAD 77); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Newton Engineering, on behalf of Moore Casey Properties, LLC, is requesting a zone change to conform to the development of LI, Light Industrial use.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Strategic Priority:

(Quality of Life and Place)

Surrounding Zoning and Land Use:

The properties to the south and east are zoned RR, Regional Retail District and are commercial buildings or currently undeveloped. The properties to the north and west are in the ETJ, Extra Territorial Jurisdiction and are the locations of single-family buildings and vacant land.

Analysis:

The applicant is requesting a zone change from RR to LI for light industrial use. The property has not yet been developed but has plans to develop into light industrial use instead of regional retail. The owner wants to construct an office with a yard and garage.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments or objections.

Building Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Oil and Gas: (Approved with Conditions)

Oil & Gas well concern-It appears a Plugged and Abandoned (P&A) well Nobles 3115R API 329-36328 needs to be identified. Include language in plat notes- No structure shall be built over Plugged and Abandoned well. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

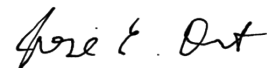
Staff recommends approval of this request for a zone change.

Letters of Objection:

As of June 19, 2024, Staff has not received any letters of objection.

Attachments:

Survey & Metes & Bounds (Exhibit A)
Application
Location Map
Zoning Map
Location Map
Aerial
Photo



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 6.92-ACRE TRACT OF LAND OUT OF BLOCK 1, WEST 191 INDUSTRIAL PARK, SECTION 12, AND AN 8.70-ACRE TRACT OF LAND OUT OF BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH FM 1788 AND WEST COUNTY ROAD 77); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 6.92-acre tract of land out of Block 1, West 191 Industrial Park, Section 12, and an 8.70-acre tract of land out of Block 2, West 191 Industrial Park, Section 13, City and County of Midland, Texas, said tracts being more specifically described by metes and bounds in Exhibits “A” and “B”, which are attached hereto and incorporated herein (collectively, the “Property”), to LI, Light Industrial District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to LI, Light Industrial District.

SECTION TWO. That the definitions given in the zoning regulations contained in

the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



NEWTON ENGINEERING, PC

4501A Santa Rosa Dr.
Midland, Texas 79707
(432) 770-0499

F-13856
F-10194809

2481 E. 2nd St.
Odessa, Texas 79761
(432) 935-0707

EXHIBIT "A"
LEGAL DESCRIPTION
FOR ZONING OF A 6.92 ACRE TRACT
LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RWY. CO. SURVEY, MIDLAND COUNTY, TEXAS

BOUNDARY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" Iron rod found in the east right-of-way line of FM 1788 and the southwest corner of Lot 11A, Block 1, West 191 Industrial Park, Section 12 as recorded in Document Number 2023-27972, Official Public Records of Midland County, Texas, being the southwest corner of this tract;

THENCE N 14°08'24" W along the east right-of-way line of said FM 1788 and the west line of said Lot 11A, a distance of 306.89 feet to the City of Midland City Limits, being the northwest corner of this tract;

THENCE N 75°14'50" E along said City of Midland City Limits, a distance of 566.01 feet to a point in the east line of Lot 11C, said Block 1, being the most northerly northeast corner of this tract;

THENCE S 14°08'45" E along the east line of said Lot 11C, a distance of 49.57 feet to a ½" Iron rod found at the northwest corner of Lot 11D, said Block 1, being an ell corner of this tract;

THENCE N 75°15'38" E, a distance of 294.48 feet to a ½" Iron rod found at the northwest corner of Common Area "A" Drainage Basin, Block 1, West 191 Industrial Park, Section 6, as recorded in Cabinet M, Page 101, Midland County Plat Records and the most northerly northeast corner of Lot 11F, Block 1, said West 191 Industrial Park, Section 12, being an ell corner of this tract;

THENCE S 14°44'22" E along the most northerly west line of said Common Area "A" Drainage Basin and the east line of said Lot 11F, a distance of 59.99 feet to a ½" Iron rod found at an ell corner of said Common Area "A" Drainage Basin and said Lot 11F and this tract;

THENCE N 75°15'38" E along the most northerly south line of said Common Area "A" Drainage Basin, a distance of 262.54 feet to a ½" Iron rod found at an ell corner of said Common Area "A" Drainage Basin and the northeast corner of Lot 11G, Block 1, said West 191 Industrial Park, Section 12, being the most easterly northeast corner of this tract;

THENCE S 14°42'39" E along the west line of said Common Area "A" Drainage Basin and the east line of said Lot 11G, a distance of 196.55 feet to a ½" Iron rod found in the north line of a 60 foot wide Common Area "A" Access Road, said West 191 Industrial Park, Section 6, and being the southwest corner of said Common Area "A" Drainage Basin and the southeast corner of said Lot 11G and this tract;

THENCE S 75°12'55" W along the north line of said 60 foot wide Common Area "A" Access Road, a distance of 1125.63 feet to the Point of Beginning, containing 6.92 surface acres of land.

Bearings and Distances are relative to the Texas State Plane Coordinate System, 1983 NAD, Central Zone. Combined Grid Factor of 0.999890068 and a Theta Angle of -00°59'09".

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



PACKET

Dow E. Kelly, R.P.L.S. 5707

June 25, 2024



NEWTON ENGINEERING, PC

4501A Santa Rosa Dr.
Midland, Texas 79707
(432) 770-0499

F-13856
F-10194809

2481 E. 2nd St.
Odessa, Texas 79761
(432) 935-0707

EXHIBIT "B" LEGAL DESCRIPTION

FOR ZONING OF A 8.70 ACRE TRACT
BEING WEST 191 INDUSTRIAL PARK, SECTION 13,

AS RECORDED IN DOCUMENT NUMBER 2023-27968, OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS
LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RWY. CO. SURVEY, MIDLAND COUNTY, TEXAS

BOUNDARY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" Iron rod found in the east right-of-way line of FM 1788 and being the southwest corner of said Lot 7A, Block 2, said West 191 Industrial Park, Section 13 and this tract;

THENCE N 14°08'24" W along the east right-of-way line of said FM 1788 and the west line of said Lot 7A, a distance of 291.83 feet to a ½" Iron rod found in the south line of a 60 foot wide Common Area "A" Access Road, West 191 Industrial Park, Section 6, as recorded in Cabinet M, Page 101, Midland County Plat Records, and being the northwest corner of said Lot 7A and this tract;

THENCE N 75°12'55" E along the south line of said 60 foot wide Common Area "A" Access Road, a distance of 1297.31 feet to a ½" Iron rod found at the northwest corner of Lot 8, Block 2, said West 191 Industrial Park, Section 6 and being the northeast corner of Lot 7I, Block 2, said West 191 Industrial Park, Section 13 and this tract;

THENCE S 14°49'08" E along the west line of said Lot 8 and the east line of said Lot 7I, a distance of 82.41 feet pass the southwest corner of said Lot 8, continuing on for a total distance of 291.80 feet to a ½" Iron rod found at the northeast corner of a 9.09 acre tract as described in Document Number 2014-26379, Official Public Records of Midland County and being the southeast corner of said Lot 7I and this tract;

THENCE S 75°12'53" W along the north line of said 9.09 acre tract, a distance of 1300.77 feet to the Point of Beginning, containing 8.70 surface acres of land.

Bearings and Distances are relative to the Texas State Plane Coordinate System, 1983 NAD, Central Zone. Combined Grid Factor of 0.999890068 and a Theta Angle of -00°59'09".

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



Dow E Kelly, R.P.L.S. 5707



NEWTON ENGINEERING, PC

4501A Santa Rosa Dr.
Midland, Texas 79707
(432) 770-0499

F-13856
F-10194809

2481 E. 2nd St.
Odessa, Texas 79761
(432) 935-0707

EXHIBIT "A"
LEGAL DESCRIPTION
FOR ZONING OF A 6.92 ACRE TRACT
LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RWY. CO. SURVEY, MIDLAND COUNTY, TEXAS

BOUNDARY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" Iron rod found in the east right-of-way line of FM 1788 and the southwest corner of Lot 11A, Block 1, West 191 Industrial Park, Section 12 as recorded in Document Number 2023-27972, Official Public Records of Midland County, Texas, being the southwest corner of this tract;

THENCE N 14°08'24" W along the east right-of-way line of said FM 1788 and the west line of said Lot 11A, a distance of 306.89 feet to the City of Midland City Limits, being the northwest corner of this tract;

THENCE N 75°14'50" E along said City of Midland City Limits, a distance of 566.01 feet to a point in the east line of Lot 11C, said Block 1, being the most northerly northeast corner of this tract;

THENCE S 14°08'45" E along the east line of said Lot 11C, a distance of 49.57 feet to a ½" Iron rod found at the northwest corner of Lot 11D, said Block 1, being an ell corner of this tract;

THENCE N 75°15'38" E, a distance of 294.48 feet to a ½" Iron rod found at the northwest corner of Common Area "A" Drainage Basin, Block 1, West 191 Industrial Park, Section 6, as recorded in Cabinet M, Page 101, Midland County Plat Records and the most northerly northeast corner of Lot 11F, Block 1, said West 191 Industrial Park, Section 12, being an ell corner of this tract;

THENCE S 14°44'22" E along the most northerly west line of said Common Area "A" Drainage Basin and the east line of said Lot 11F, a distance of 59.99 feet to a ½" Iron rod found at an ell corner of said Common Area "A" Drainage Basin and said Lot 11F and this tract;

THENCE N 75°15'38" E along the most northerly south line of said Common Area "A" Drainage Basin, a distance of 262.54 feet to a ½" Iron rod found at an ell corner of said Common Area "A" Drainage Basin and the northeast corner of Lot 11G, Block 1, said West 191 Industrial Park, Section 12, being the most easterly northeast corner of this tract;

THENCE S 14°42'39" E along the west line of said Common Area "A" Drainage Basin and the east line of said Lot 11G, a distance of 196.55 feet to a ½" Iron rod found in the north line of a 60 foot wide Common Area "A" Access Road, said West 191 Industrial Park, Section 6, and being the southwest corner of said Common Area "A" Drainage Basin and the southeast corner of said Lot 11G and this tract;

THENCE S 75°12'55" W along the north line of said 60 foot wide Common Area "A" Access Road, a distance of 1125.63 feet to the Point of Beginning, containing 6.92 surface acres of land.

Bearings and Distances are relative to the Texas State Plane Coordinate System, 1983 NAD, Central Zone. Combined Grid Factor of 0.999890068 and a Theta Angle of -00°59'09".

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



PACKET

Dow E. Kelly, R.P.L.S. 5707

June 25, 2024



NEWTON ENGINEERING, PC

4501A Santa Rosa Dr.
Midland, Texas 79707
(432) 770-0499

F-13856
F-10194809

2481 E. 2nd St.
Odessa, Texas 79761
(432) 935-0707

EXHIBIT "B" LEGAL DESCRIPTION

FOR ZONING OF A 8.70 ACRE TRACT

BEING WEST 191 INDUSTRIAL PARK, SECTION 13,

AS RECORDED IN DOCUMENT NUMBER 2023-27968, OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS
LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RWY. CO. SURVEY, MIDLAND COUNTY, TEXAS

BOUNDARY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" Iron rod found in the east right-of-way line of FM 1788 and being the southwest corner of said Lot 7A, Block 2, said West 191 Industrial Park, Section 13 and this tract;

THENCE N 14°08'24" W along the east right-of-way line of said FM 1788 and the west line of said Lot 7A, a distance of 291.83 feet to a ½" Iron rod found in the south line of a 60 foot wide Common Area "A" Access Road, West 191 Industrial Park, Section 6, as recorded in Cabinet M, Page 101, Midland County Plat Records, and being the northwest corner of said Lot 7A and this tract;

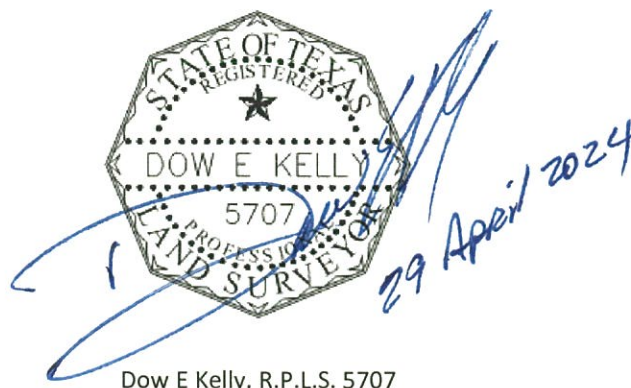
THENCE N 75°12'55" E along the south line of said 60 foot wide Common Area "A" Access Road, a distance of 1297.31 feet to a ½" Iron rod found at the northwest corner of Lot 8, Block 2, said West 191 Industrial Park, Section 6 and being the northeast corner of Lot 7I, Block 2, said West 191 Industrial Park, Section 13 and this tract;

THENCE S 14°49'08" E along the west line of said Lot 8 and the east line of said Lot 7I, a distance of 82.41 feet pass the southwest corner of said Lot 8, continuing on for a total distance of 291.80 feet to a ½" Iron rod found at the northeast corner of a 9.09 acre tract as described in Document Number 2014-26379, Official Public Records of Midland County and being the southeast corner of said Lot 7I and this tract;

THENCE S 75°12'53" W along the north line of said 9.09 acre tract, a distance of 1300.77 feet to the Point of Beginning, containing 8.70 surface acres of land.

Bearings and Distances are relative to the Texas State Plane Coordinate System, 1983 NAD, Central Zone. Combined Grid Factor of 0.999890068 and a Theta Angle of -00°59'09".

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



Dow E Kelly, R.P.L.S. 5707



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: _____

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

Printed Name: Moore Casey Properties, LLC

Phone (432) 352-3186

Email
casey_1jones@yahoo.com

Address PO Box 51896

City Midland

State TX

Zip 79710

Property Owner SAME AS APPLICANT

Printed Name:

Phone ()

Email

Address

City

State

Zip

Representative (if different from Applicant or Property Owner)

Firm: Newton Engineering, PC

Printed Name: John M. Newton

Phone (432) 770-0499

Email
john@newtoncivil.com

Address 4501 A Santa Rosa Dr.

City Midland

State TX

Zip 79707

Street Address: 1812, 1810, 1808, 1806, 1804, 1802, 1800, 1716, 1714, 1712, 1710, 1708, 1706,
1704, 1702, 1700 N FM 1788, Midland, Tx 79707

Legal Description

Lot: Block:

Lot 11A-11G, Block 1 West 191 Industrial Section 12,
and 7A-7I, Block 2, West 191 Industrial Section 13

Current Zoning: Regional Retail-RR

Proposed Zone: Light Industrial-LI

(List by tracts if more than one district is requested)

Reason for Zone Change Request: To conform to the development

Present Use of Property: Undeveloped

Proposed Use of Property: Office with yard and garage

How would this zone change affect the public health, safety and welfare? _____

This project would provide much needed office space for the community

Describe how conditions affecting the property have changed since present zoning

designation: The property has been developed to what the staff determined to be
light industrial instead of Regional Retail.

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): Casey Jones

Date: 5-2-24

Applicant (printed): Casey Jones

Property Owner (signature): Casey Jones

Date: 5-2-24

Property Owner (printed): Casey Jones

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

STATE OF TEXAS
COUNTY OF MIDLAND

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

Casey Jones
Authorized Agent (signature)

Subscribed and sworn to before me, this 2 day of May, 2024, to certify which witness my hand and seal of office.



Sarah Bays
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ Dimensioned Site Plan

☒ Application Fee

☒ Plans in Digital Format (PDF/JPEG)

Check # 1733

Received By: DA

Date:

RECEIVED
MAY 07 2024

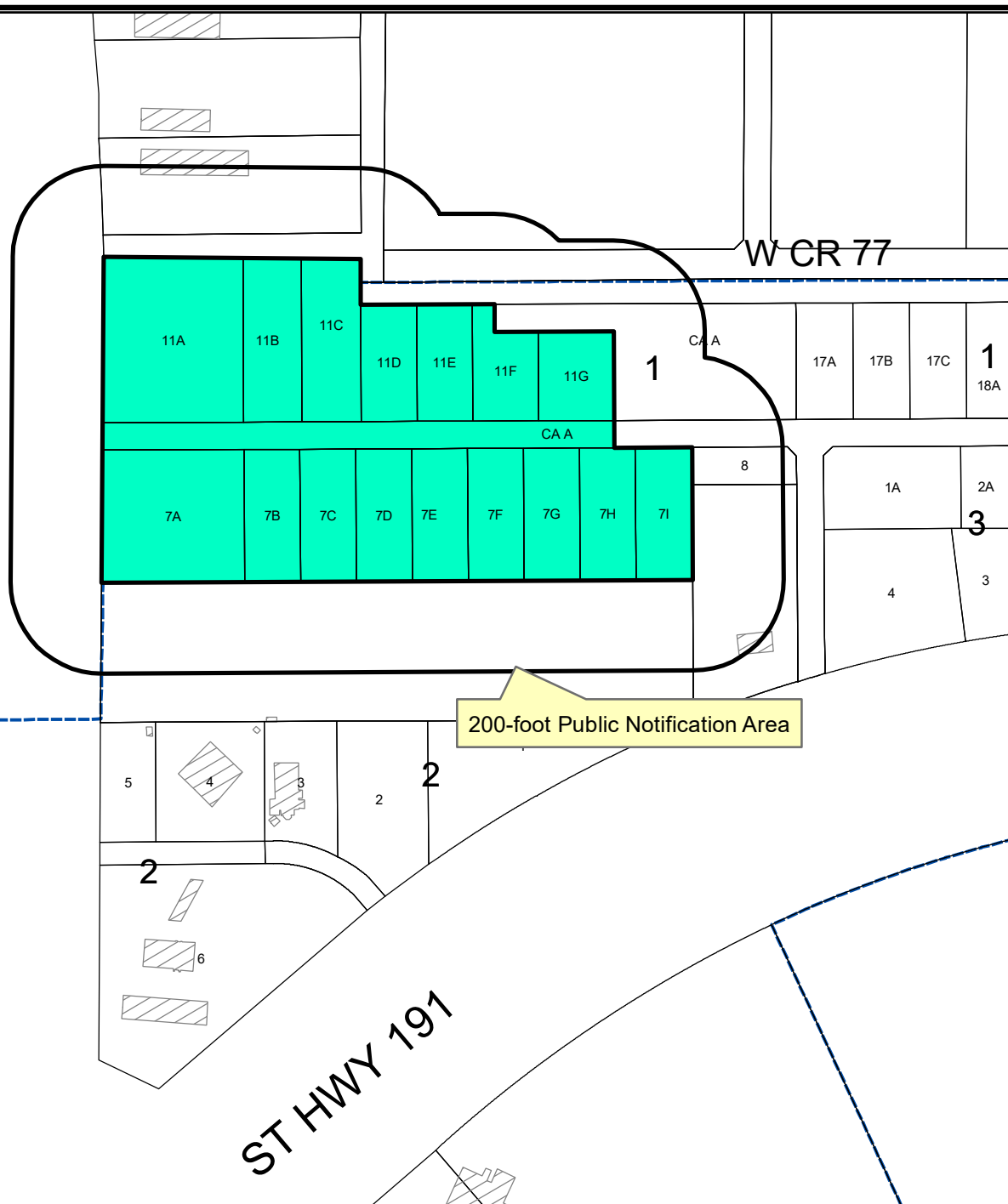
BY:

PACKET

20.12

June 25, 2024

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



Location Map

Z-24-0379

Scale: 1" = 600'

A request by Moore Casey Properties for a zone change from, RR, Regional Retail District, to LI, Light Industrial District for a 6.92-acre tract of land, out of Block 1, Lots 11A-11G, West 191 Industrial Park, Section 12, and a 8.70-acre tract of land, out of Block 2, Lots 7A-7I, West 191 Industrial Park, Section 13., City and County of Midland, Texas.

Generally located on the southeast corner of the intersection of N FM 1788 and W County Road 77. (District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. NOR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

PACKET

20.13

June 25, 2024

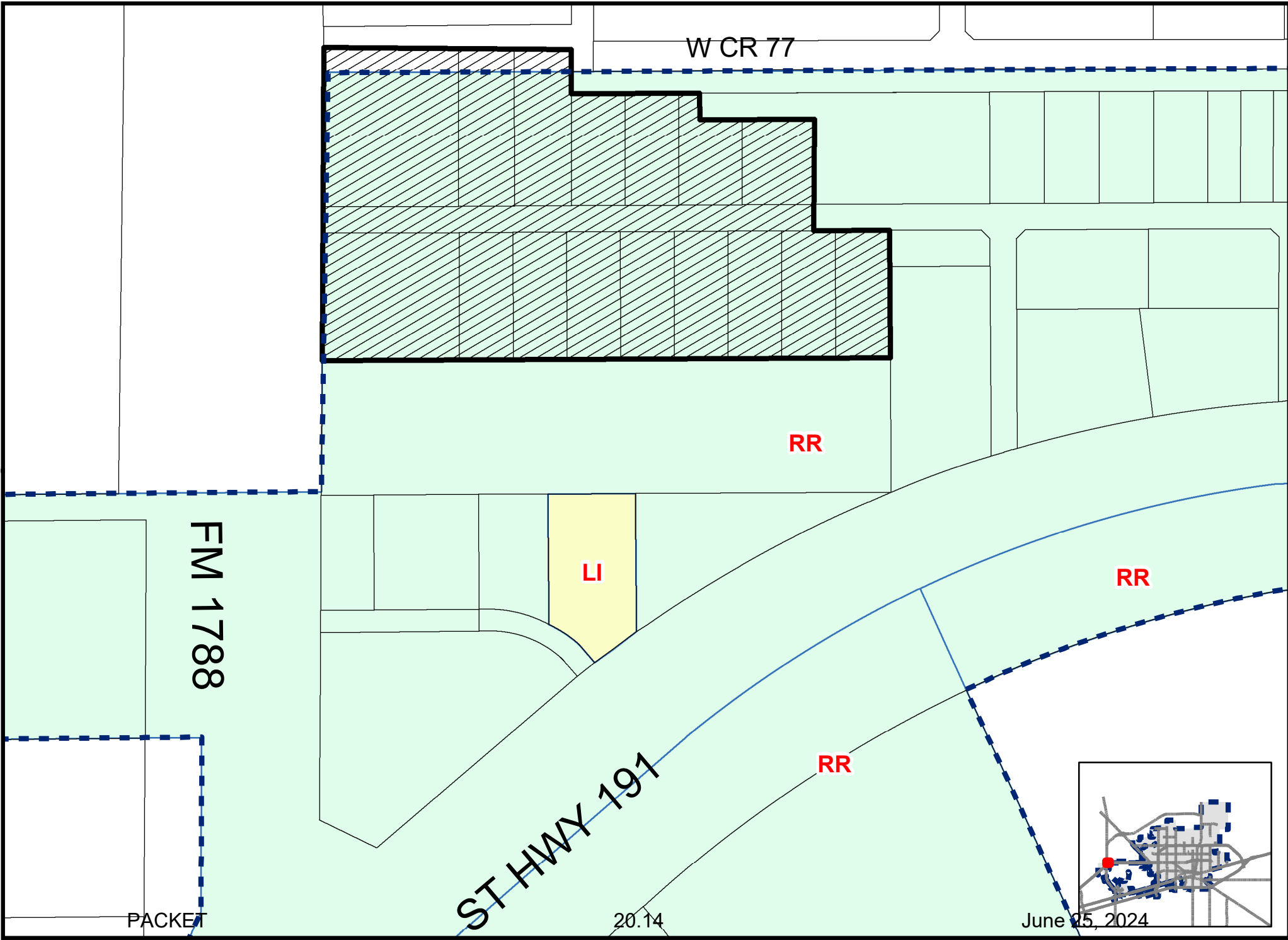
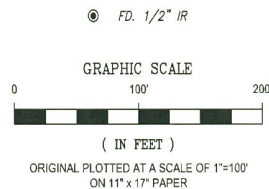
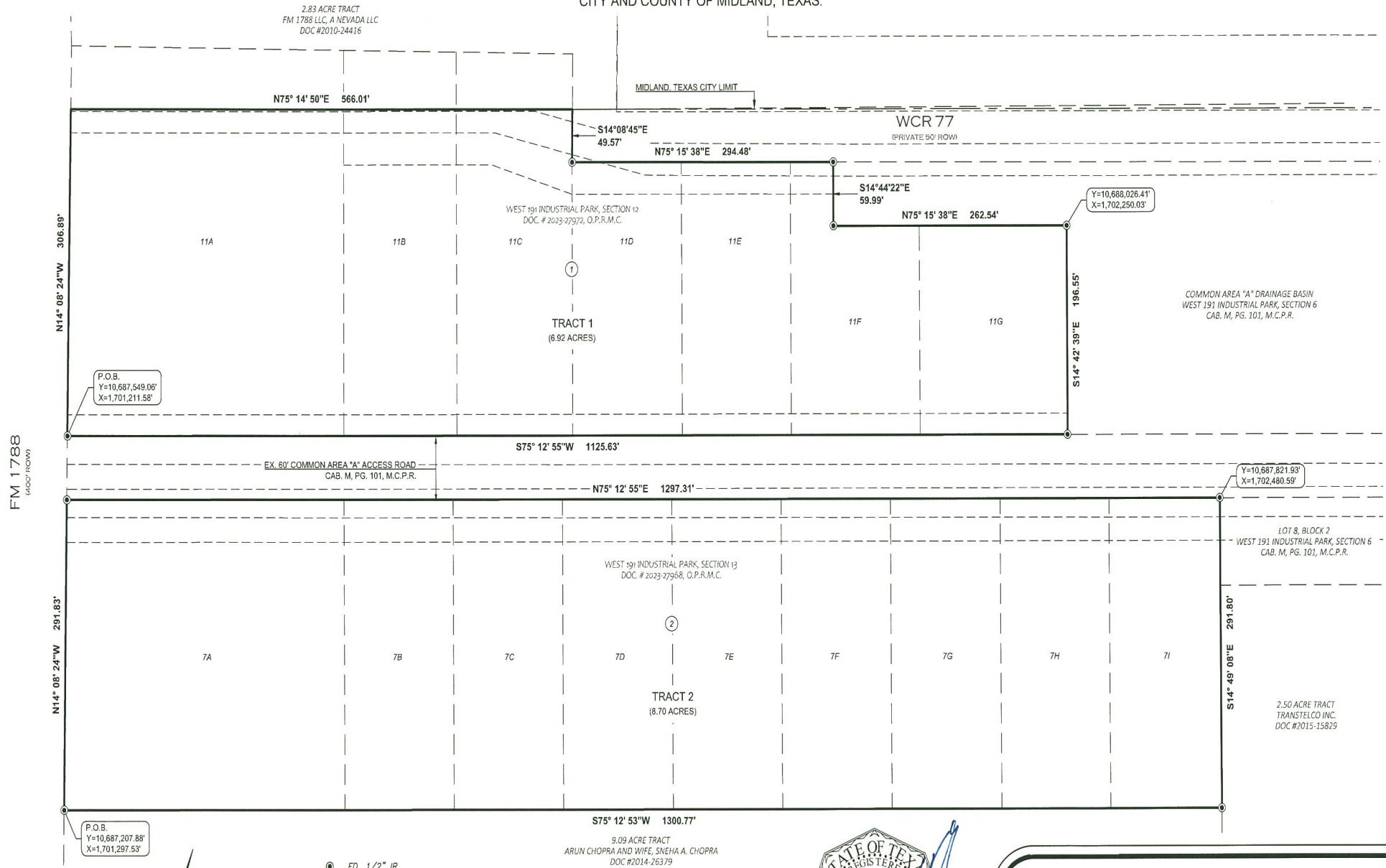


EXHIBIT "C"
ZONING EXHIBIT OF
A 6.92 ACRE TRACT AND A 8.70 ACRE TRACT
LOCATED IN SECTION 31, BLOCK 40, T-1-S, T&P RR. CO. SURVEY,
CITY AND COUNTY OF MIDLAND, TEXAS.



HEAVY PLOTTED LINES INDICATE LIMITS OF SURVEY.

BEARINGS AND DISTANCES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, COMBINED GRID FACTOR OR 0.999890068 AND A THETA ANGLE OF 0.000000000.

EXHIBIT "A" AND "B" ACCOMPANY THIS EXHIBIT.



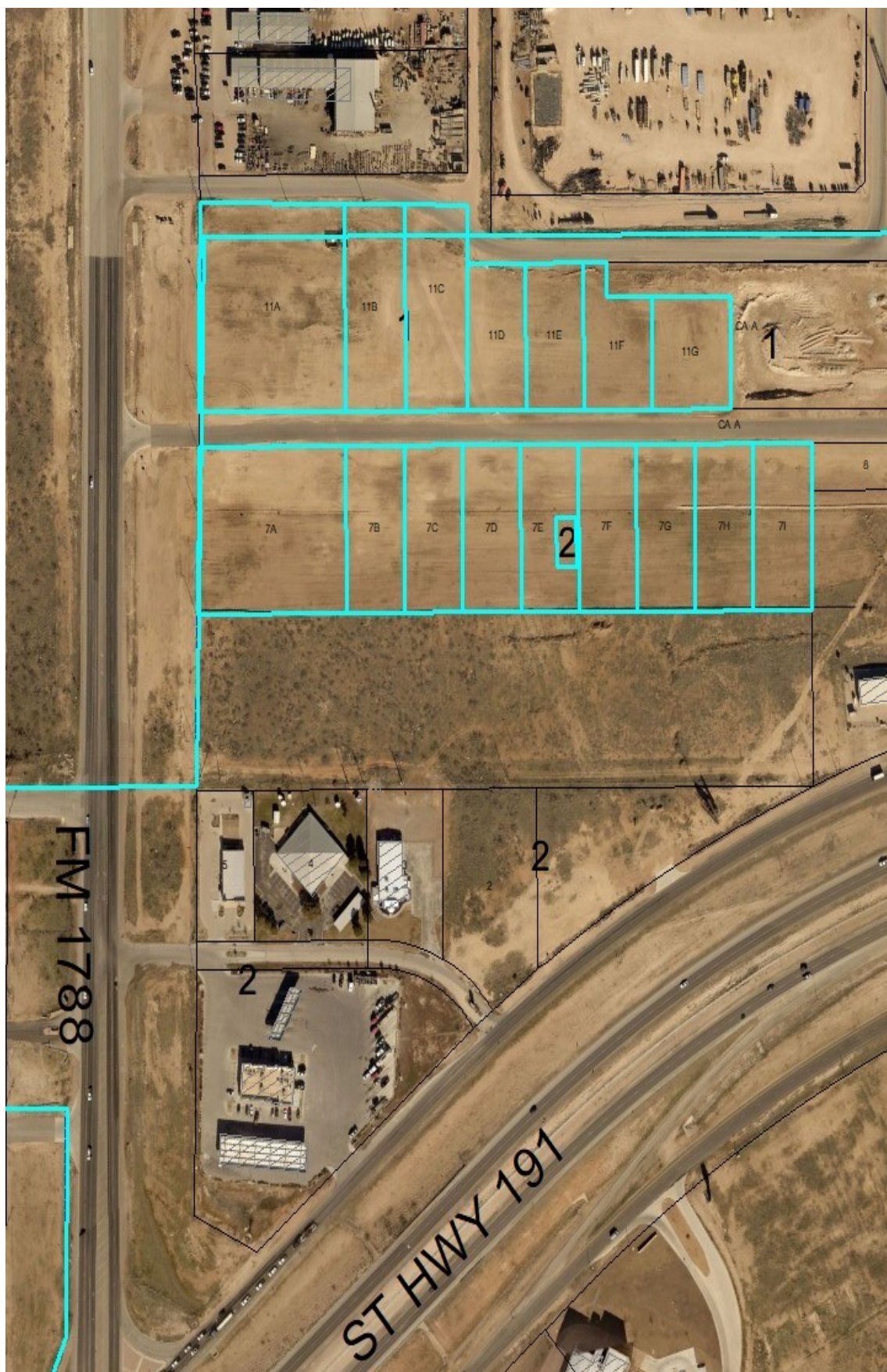
NEWTON ENGINEERING, PC

June 25, 2024
Midland, Texas 79707
(432) 770-0499

2481 E. 2nd St.
Odessa, Texas 79761
(432) 935-0707

Prepared For: MOORE CASEY PROPERTIES, LLC

Job No: 23-ME06191





City Council Meeting

Item Number: 21
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Andrew Meyers, Planner
Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A FARMERS MARKET ON A 4.87-ACRE TRACT OF LAND OUT OF LOT 4, BLOCK 1, PORRAS ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 800 FEET EAST OF NORTH A STREET) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 3) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

Consider a resolution by Chad and Jessica Anderson for approval of a Temporary Land Use Permit for a Farmers Market, Anderson Farm Market, at 3300 #7 North A Street.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

The applicant is requesting a Temporary Land Use Permit for a Farmers Market at One Petroleum Center. The event will consist of seven (7) eight foot (8') tables, four (4) tents, and a truck/trailer. The event is held in eight (8) parking spaces at One Petroleum Center and is year

round. Two (2) bathrooms, one (1) mens and one (1) womens, will be provided with hand sinks. There will be no peace officers necessary.

The event will take place on:

From 10:00 a.m. to 6:00 p.m. June 25th through June 30th, 2024
From 10:00 a.m. to 6:00 p.m. July 2nd through July 7th, 2024
From 10:00 a.m. to 6:00 p.m. July 9th through July 14th, 2024
From 10:00 a.m. to 6:00 p.m. July 16th through July 21st, 2024
From 10:00 a.m. to 6:00 p.m. July 23rd through July 28th, 2024
From 10:00 a.m. to 6:00 p.m. July 30th through August 4th, 2024
From 10:00 a.m. to 6:00 p.m. August 6th through August 11th, 2024
From 10:00 a.m. to 6:00 p.m. August 13th through August 18th, 2024
From 10:00 a.m. to 6:00 p.m. August 20th through August 25th, 2024
From 10:00 a.m. to 6:00 p.m. August 27th through September 1st, 2024
From 10:00 a.m. to 6:00 p.m. September 3rd through September 8th, 2024
From 10:00 a.m. to 6:00 p.m. September 10th through September 15th, 2024
From 10:00 a.m. to 6:00 p.m. September 17th through September 22nd, 2024
From 10:00 a.m. to 6:00 p.m. September 24th through September 29th, 2024
From 10:00 a.m. to 6:00 p.m. October 3rd through October 6th, 2024
From 10:00 a.m. to 6:00 p.m. October 8th through October 13th, 2024
From 10:00 a.m. to 6:00 p.m. October 15th through October 20th, 2024
From 10:00 a.m. to 6:00 p.m. October 22nd through October 27th, 2024
From 10:00 a.m. to 6:00 p.m. October 29th through November 3rd, 2024
From 10:00 a.m. to 6:00 p.m. November 5th through November 10th, 2024
From 10:00 a.m. to 6:00 p.m. November 12th through November 17th, 2024
From 10:00 a.m. to 6:00 p.m. November 19th through November 24th, 2024
From 10:00 a.m. to 6:00 p.m. November 26th through December 1st, 2024

This request has been circulated to all pertinent City departments for review. Below are the departments's comments:

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

Transportation: (Approved)

No objection. [For Applicant's Information Only.]

Fire: (Approved)

No comments or objections

Building Code: (Approved)

No objections. All tents and canopies must be tied down and anchored according to manufacturer's instruction and in a manner that keeps the public and public property safe in the event of adverse weather such as high winds.

Planning: (Approved)

This temporary land use permit for Anderson Farm Market follows Goal #2 of Chapter 7 of the Tall City Tomorrow Comprehensive Plan, which is to “create a cultural core in Midland that is a living, working, and entertainment destination,” as it provides an event that the residents of Midland can attend and buy high quality food directly from farmers. The TLU Permit also follows Strategic Goals 3.1 Enhance Community Engagement by enriching residents’ lives with farm fresh food and 1.7 Expand opportunities and Programming for the General and Small Business by helping the family-owned business sell to the citizens in their community.

Staff recommends approval of this temporary land use permit, subject to conditions A through H.

A. That the day and hours of the event shall be limited to:

From 10:00 a.m. to 6:00 p.m. June 25th through June 30th, 2024
From 10:00 a.m. to 6:00 p.m. July 2nd through July 7th, 2024
From 10:00 a.m. to 6:00 p.m. July 9th through July 14th, 2024
From 10:00 a.m. to 6:00 p.m. July 16th through July 21st, 2024
From 10:00 a.m. to 6:00 p.m. July 23rd through July 28th, 2024
From 10:00 a.m. to 6:00 p.m. July 30th through August 4th, 2024
From 10:00 a.m. to 6:00 p.m. August 6th through August 11th, 2024
From 10:00 a.m. to 6:00 p.m. August 13th through August 18th, 2024
From 10:00 a.m. to 6:00 p.m. August 20th through August 25th, 2024
From 10:00 a.m. to 6:00 p.m. August 27th through September 1st, 2024
From 10:00 a.m. to 6:00 p.m. September 3rd through September 8th, 2024
From 10:00 a.m. to 6:00 p.m. September 10th through September 15th, 2024
From 10:00 a.m. to 6:00 p.m. September 17th through September 22nd, 2024
From 10:00 a.m. to 6:00 p.m. September 24th through September 29th, 2024
From 10:00 a.m. to 6:00 p.m. October 3rd through October 6th, 2024
From 10:00 a.m. to 6:00 p.m. October 8th through October 13th, 2024
From 10:00 a.m. to 6:00 p.m. October 15th through October 20th, 2024
From 10:00 a.m. to 6:00 p.m. October 22nd through October 27th, 2024
From 10:00 a.m. to 6:00 p.m. October 29th through November 3rd, 2024
From 10:00 a.m. to 6:00 p.m. November 5th through November 10th, 2024
From 10:00 a.m. to 6:00 p.m. November 12th through November 17th, 2024
From 10:00 a.m. to 6:00 p.m. November 19th through November 24th, 2024
From 10:00 a.m. to 6:00 p.m. November 26th through December 1st, 2024

B. That the operation of the Event shall conform to the site plan, which is attached hereto as “Exhibit A” and incorporated herein for all purposes.

- C. That the applicant shall provide a minimum of two (2) restrooms that shall be made available for use during all operating hours of the Event.
- D. That all tents, canopies, and booths must be erected according to manufacturer's installation instructions including tie downs that will resist our local estimated wind load.
- E. That the event shall comply with all requirements of the Fire Code; the applicant shall call for an inspection by the Fire Marshal prior to commencing the event.
- F. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the event.
- G. That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the Event.
- H. That Chad, and Jessica, Anderson shall be responsible for ensuring that the conditions of this permit are observed.

Letters of Objection:

As of June 25, 2024, Staff has not received any letters of objection.

Attachments:

Application
Metes and Bounds (Exhibit A)
Site Plan (Exhibit B)
Maps
Aerial Photo

Fre E. Out

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR A FARMERS MARKET ON A 4.87-ACRE
TRACT OF LAND OUT OF LOT 4, BLOCK 1, PORRAS
ADDITION, SECTION 3, CITY AND COUNTY OF
MIDLAND, TEXAS (GENERALLY LOCATED ON THE
NORTH SIDE OF WEST WADLEY AVENUE,
APPROXIMATELY 800 FEET EAST OF NORTH A
STREET) SUBJECT TO CERTAIN SPECIAL
CONDITIONS AND RESTRICTIONS**

WHEREAS, pursuant to Section 11-1-4.05 of the City Code of Midland, Texas, Chad Anderson and Jessica Anderson (collectively, the “Applicant”) applied for authorization to temporarily use a 4.87-acre tract of land out of Lot 4, Block 1, Porras Addition, Section 3, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein (the “Property”) for a farmers market (the “Event”); and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That the Applicant is hereby authorized by the City Council to temporarily use the Property for the Event subject to the following conditions and restrictions:

- A. That the days and hours of operation of the Event shall be limited to the following:

June 25th through June 30th, 2024, from 10:00 a.m. to 6:00 p.m.;
July 2nd through July 7th, 2024, from 10:00 a.m. to 6:00 p.m.;
July 9th through July 14th, 2024, from 10:00 a.m. to 6:00 p.m.;
July 16th through July 21st, 2024, from 10:00 a.m. to 6:00 p.m.;
July 23rd through July 28th, 2024, from 10:00 a.m. to 6:00 p.m.;
July 30th through August 4th, 2024, from 10:00 a.m. to 6:00 p.m.;
August 6th through August 11th, 2024, from 10:00 a.m. to 6:00 p.m.;
August 13th through August 18th, 2024, from 10:00 a.m. to 6:00 p.m.;
August 20th through August 25th, 2024, from 10:00 a.m. to 6:00 p.m.;
August 27th through September 1st, 2024, from 10:00 a.m. to 6:00 p.m.;
September 3rd through September 8th 2024, from 10:00 a.m. to 6:00 p.m.;
September 10th through September 15th, 2024, from 10:00 a.m. to 6:00 p.m.;

September 17th through September 22nd, 2024, from 10:00 a.m. to 6:00 p.m.;
September 24th through September 29th, 2024, from 10:00 a.m. to 6:00 p.m.;
October 3rd through October 6th, 2024, from 10:00 a.m. to 6:00 p.m.;
October 8th through October 13th, 2024, from 10:00 a.m. to 6:00 p.m.;
October 15th through October 20th, 2024, from 10:00 a.m. to 6:00 p.m.;
October 22nd through October 27th, 2024, from 10:00 a.m. to 6:00 p.m.;
October 29th through November 3rd, 2024, from 10:00 a.m. to 6:00 p.m.;
November 5th through November 10th, 2024, from 10:00 a.m. to 6:00 p.m.;
November 12th through November 17th, 2024, from 10:00 a.m. to 6:00 p.m.;
November 19th through November 24th, 2024, from 10:00 a.m. to 6:00 p.m.;
and
November 26th through December 1st, 2024, from 10:00 a.m. to 6:00 p.m.

- B. That the operation of the Event shall conform to the site plan, which is attached hereto as Exhibit “B” and incorporated herein for all purposes.
- C. That the Applicant shall provide a minimum of two (2) restrooms that shall be made available for use during all operating hours of the Event.
- D. That each tent, canopy, and booth shall be erected according to its manufacturer’s instructions, including the use of tie-downs or anchors that will resist the local estimated wind load.
- E. That the Event shall be operated in compliance with all requirements of the Fire Code. The Applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the Event.
- F. That the Applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to operation of the Event.
- G. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding operation of the Event.
- H. That the Applicant shall be responsible for ensuring that the conditions herein are observed and satisfied.

SECTION TWO. That the City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting “AYE”:

Council members voting “NAY”:

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

BEING a 4.87 acre (212,294.92 square feet) tract of land in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland, Texas, and being more particularly described as follows:

BEGINNING at a point in the northern boundary of Wadley Avenue for the southwest corner of Lot 4, Block 1, PORRAS ADDITION, SECTION 3, an Addition to the City of Midland, Texas, recorded in Cabinet D, Page 42, Midland County Plat Records, Midland County, Texas, for the southwest corner of this tract, from which the southwest corner of said Section 14 bears S 15 degrees 05 minutes E. 60.00 feet and S. 74 degrees 53 minutes W. 499.70 feet;

THENCE N. 15 degrees 05 minutes W. 410.08 feet along the western boundary of said Lot 4, Block 1, to a point for the most westerly northwest corner of this tract;

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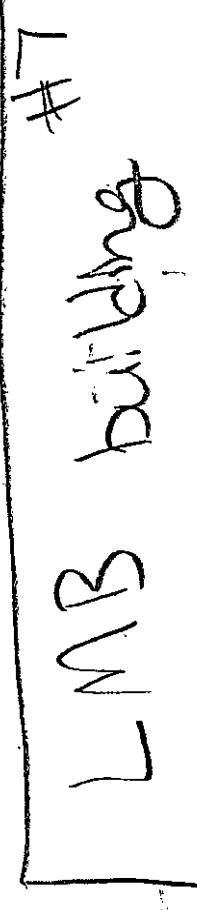
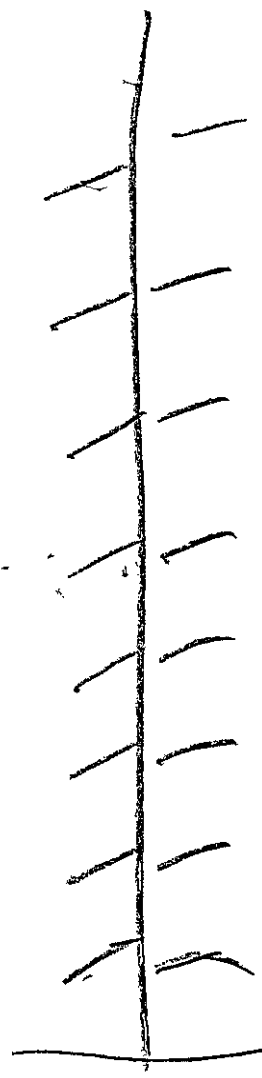
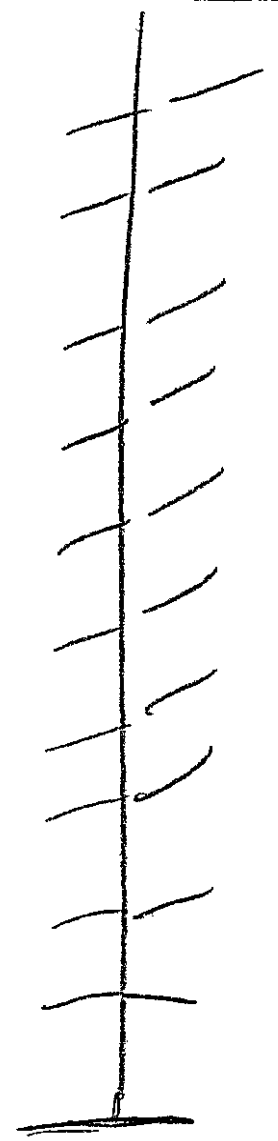
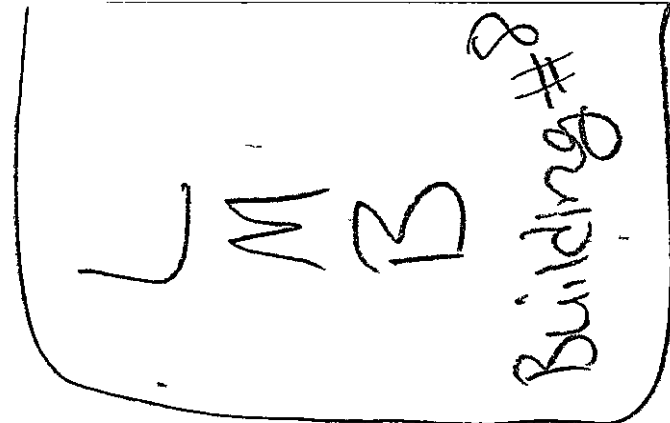
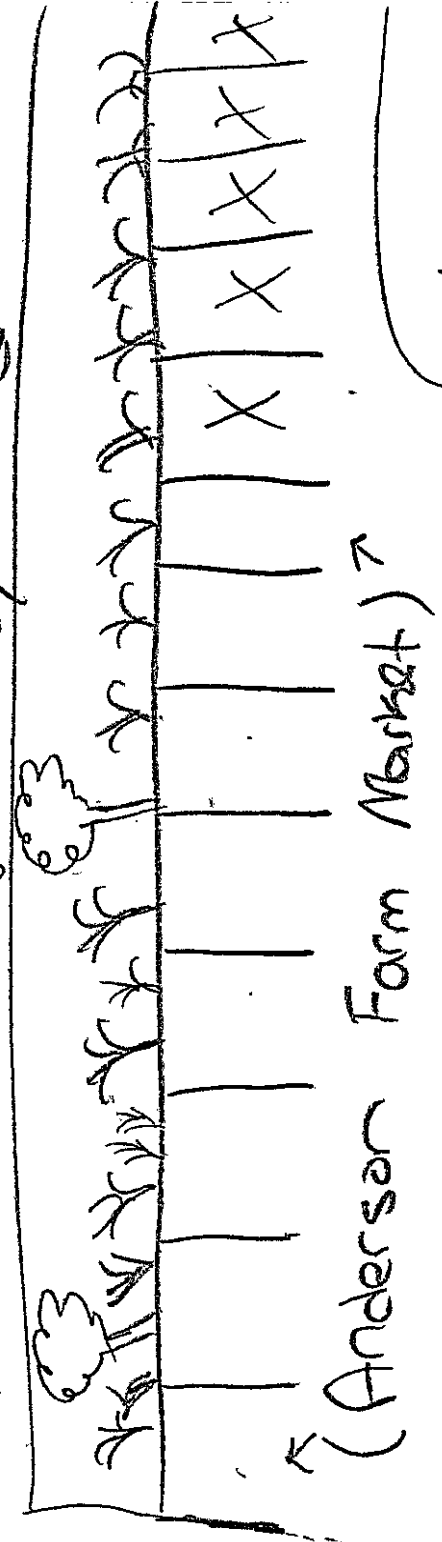
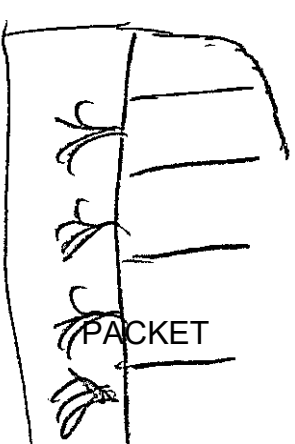
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NOW KNOWN AS LOT FOUR (4), BLOCK ONE (1) OF PORRAS ADDITION, SECTION THREE, an Addition to the City of Midland, Midland County, Texas, according to the map or plat thereof recorded in Plat Cabinet D, Page 42, Plat Records of Midland County, Texas.

-- Wodley - AVE. -- Wodley - AVE. --



Wooters

21.9

June 25, 2024 EXHIBIT "B"

* Anderson Farm Market
- Area Set-up Daily

The whole area used 80ft. long & 20ft wide

- We use a 11ft trailer

- 7 8ft. tables

- 4 10x10 tents

* all of this fits into the 8 front parking spaces that face Wadley Ave.

* We Set up and take down each day we are open.



Temporary Land Use Application

Project Number: _____

Case Number: TLU-24-0176

Event Name: Anderson Farm Market

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

Printed Name: Chad & Jessica Anderson

Phone (431) 307-7748

Email jessica.anderson7748@gmail.com

Address 4208 S. County Rd. 1201

City Midland

State TX

Zip 79706

Property Owner

Printed Name: LMB Real Estate Group

Phone (432) 203-5819

Email _____

Address 3300 N. A St.

City Midland

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone () _____

Email _____

Address _____

City _____

State _____

Zip _____

Street Address:

W. Wadley Ave.

Legal Description

Lot: _____

Block: _____

Subdivision: _____

Current Zoning:

Type of Temporary Use Requested: Anderson Farm Market

Description of Event: We are a small family business bringing farm raised fruits and veggies to west Texas. We grow what we

can here in Midland, and work with some amazing farmers throughout the year.

Duration of Temporary Use: _____

If event lasts for more than (1) day and is located within any residential district or is located within 1,000 feet of any residential district, then a public hearing is required.

Proposed Days and Hours:

Attached

Will alcoholic beverages be sold? ☐ Yes ☒ No

If yes, you must comply with all Texas Alcoholic Beverage Commission (TABC) regulations for the event.

Are you requesting the temporary closure of any streets? ☐ Yes ☒ No

If yes, you must:

- Complete the "Special Event and Street Closure Application", available from the Planning Division (4th Floor, City Hall), as well as submit a "Traffic Control Plan" to the Transportation Division (5th Floor, City Hall).
- Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

Number of Peace Offices Provided: <u>0</u>			
<i>Contact the Midland Police Department to schedule off-duty police officers.</i>			
Type of Music (<i>carnival, live, etc.</i>): <u>0</u>			
Showmobile (<i>portable stage</i>) Requested: ☐ Yes ☒ No		Days & Hours:	
Number of Restroom Fixtures Provided:	<i>Men</i>	Toilets/Urinals: <u>1</u>	Bathroom Sinks: <u>1</u>
	<i>Women</i>	Toilets: <u>1</u>	Bathroom Sinks: <u>1</u>
	<i>Unisex</i>	Toilets:	Bathroom Sinks:

Submittal and Fees	
Items to be submitted with this application form:	
- Application Fee – Payable to the 'City of Midland' - Damage Deposit - Clean-Up Deposit 1 FOLDED Copy of Site Plan* - Digital Copies of Site Plan (PDF/JPEG)	
<i>*Should show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.</i>	

Signatures	
Applicant (signature): <u>Jessica Anderson</u>	Date: <u>05-01-2024</u>
Applicant (printed): <u>Jessica Anderson</u>	
Property Owner (signature):	Date:
Property Owner (printed): <u>Brandon McClain</u>	
* Representative (signature): <u>[Signature]</u>	Date: <u>5/1/24</u>
Representative (printed): _____	
<i>The Temporary Land Use Permit 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.

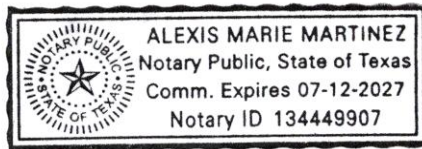
STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Chad Anderson who, being by me duly sworn, upon oath says: That (s)he is authorized by Brandon McLain, 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.

Chad Anderson

Authorized Agent (signature)

Subscribed and sworn to before me, this 1st day of May, 20 24, to certify which witness my hand and seal of office.



[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☒ Property Owner Authorization
- ☒ Dimensioned Site Plan
- ☒ Plans in Digital Format (PDF/JPEG)
- ☒ Application Fee
- Check # Cash
- ☐ Administrative Approval

- ☒ Liability Insurance (Street Closure)
- ☐ Traffic Control Plan (~~Street Closure~~)
- ☒ Clean-Up Deposit
- Check # Cash
- ☒ Damage Deposit
- Check # Cash

Received By: [Signature]

Date:

RECEIVED
MAY 01 2024

RY:

EXHIBIT "A"

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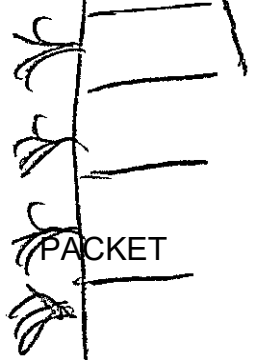
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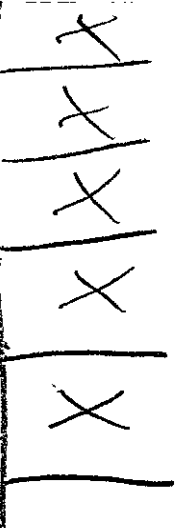
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-- Wodley - AVE. - - Wodley - AVE. - -

PACKET

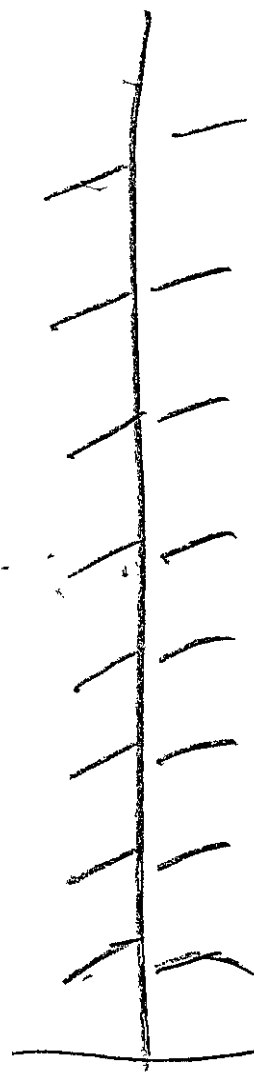
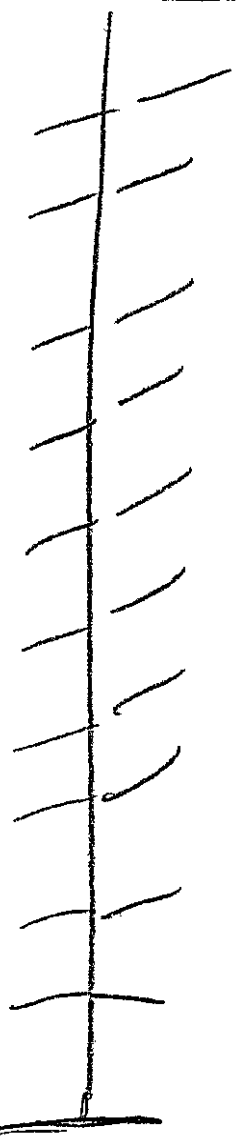


(Anderson Farm Market) ↑



L M B

Building #8



21.15

Wooters

June 25, 2024

#7

LMB building

* Anderson Farm Market

- Area Set-up Daily

The whole area used 80ft. long & 20ft wide

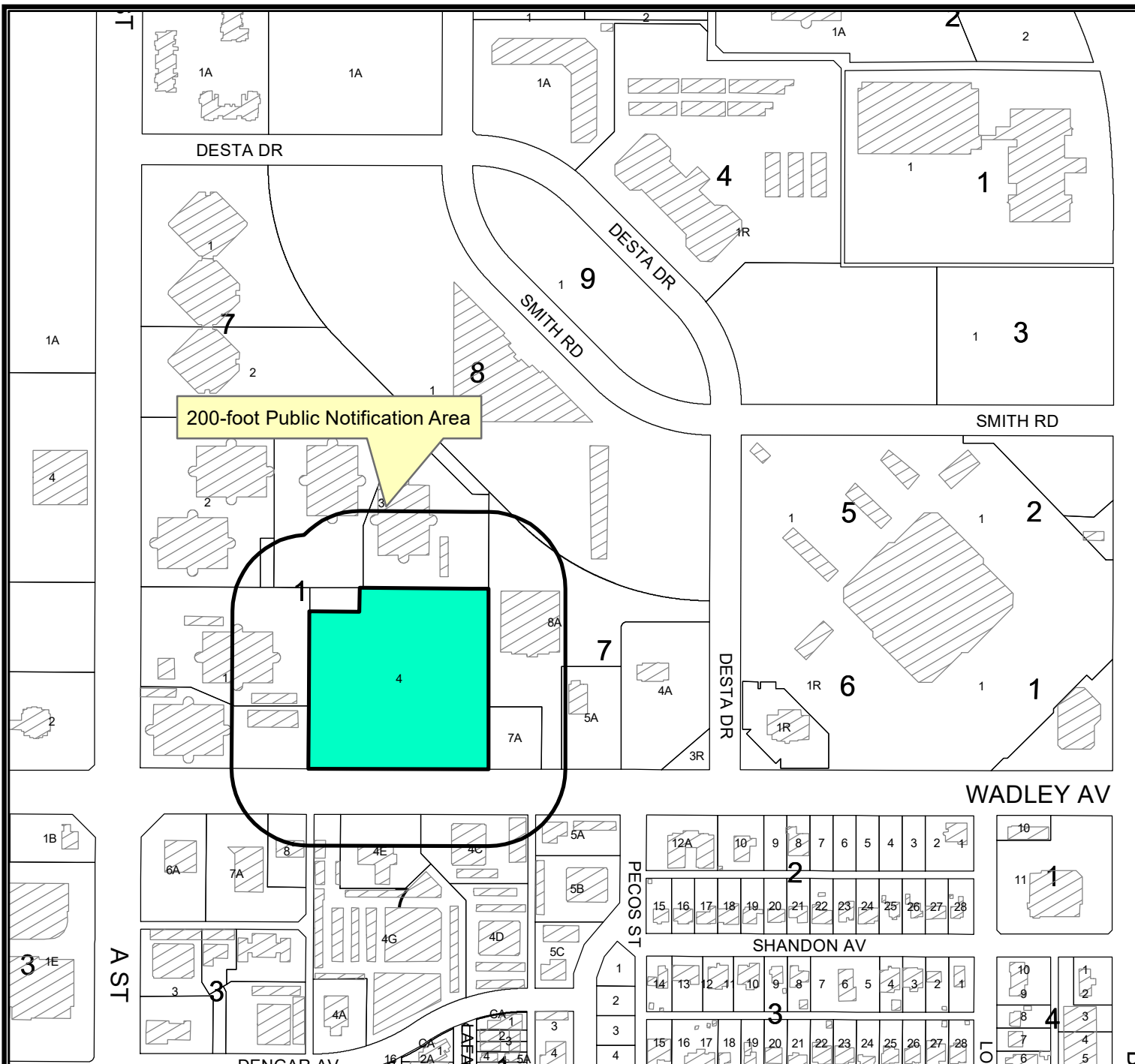
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* all of this fits into the 8 front parking spaces that face Wadley Ave.

* We Set up and take down each day we are open.



Location Map

TLU-24-0176

Scale: 1" = 375'

Consider a request for a Temporary Land Use Permit for Seasonal Fruit or Vegetable Sales on Lot 4 less the northwest corner, Block 1, Porras Addition, Section 3, City and County of Midland, Texas.

Generally located on the north side of West Wadley Avenue, approximately 800 feet east of North A Street.
(Council District 3)

PACKET

21.17

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

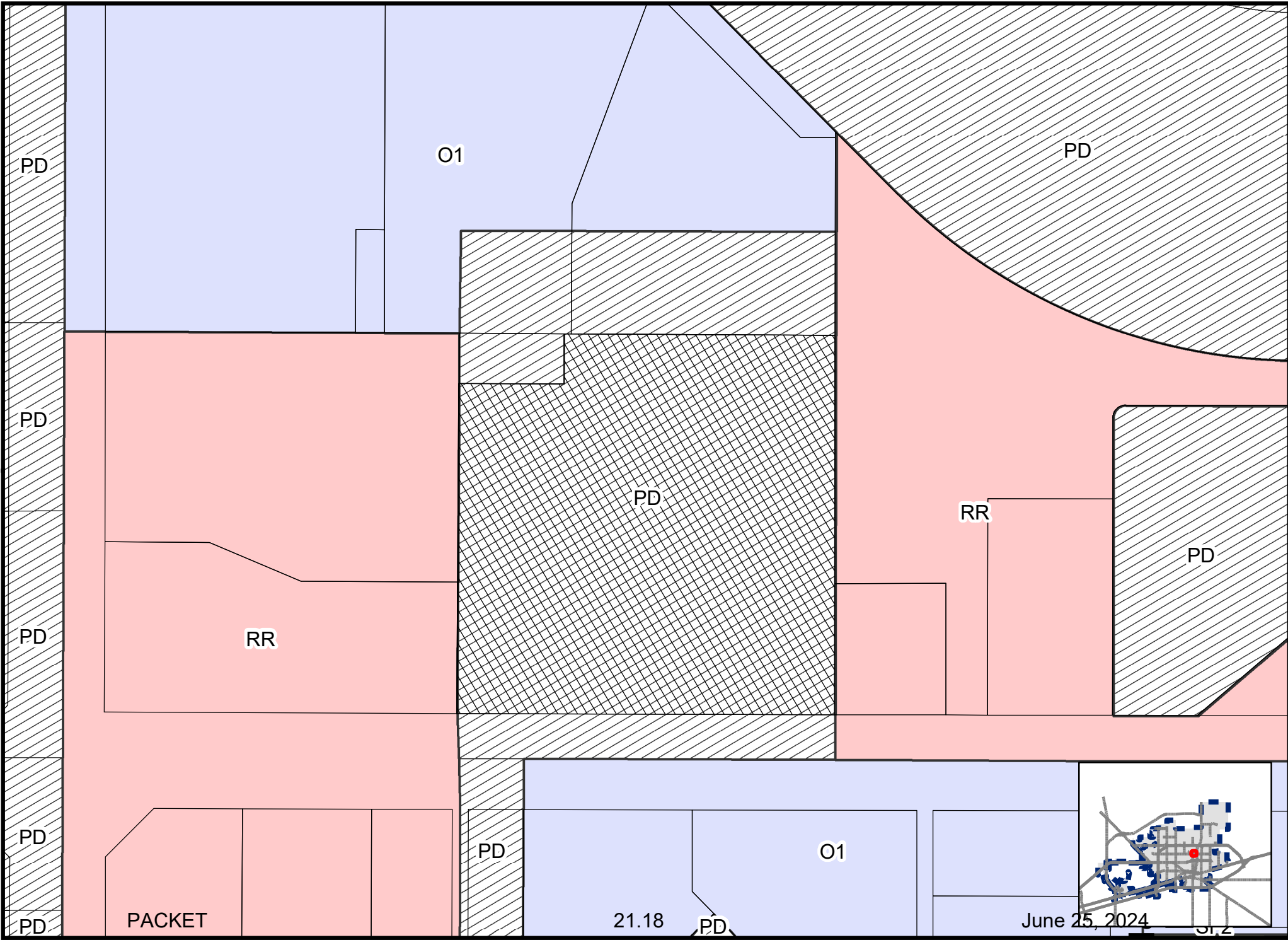


©THE CITY OF MIDLAND - 2021

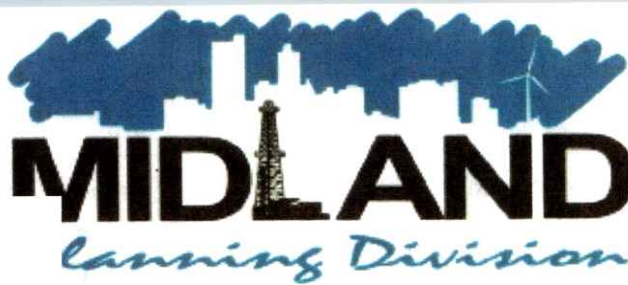
June 25, 2024

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY. THE CITY OF MIDLAND IS NOT RESPONSIBLE FOR ANY DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.







P4 REALTY LLC
6816 ISLAND CIR
TX MIDLAND 79707

RECEIVED
JUN 17 2024

BY:

PUBLIC NOTICE

The **City Council** of the City of Midland, Texas will hold a public hearing at **10:00 a.m.** on **Tuesday, June 25, 2024**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 on a request by **Chad and Jessica Anderson** for approval of a **Temporary Land Use Permit** on the following described property:

LEGAL DESCRIPTION: A 4.87-acre tract of land out of Lot 4, Block 1, Porras Addition, Section 3, City and County of Midland, Texas.

LOCATION: Generally located on the north side of West Wadley Avenue, approximately 800 feet east of North A Street. (Council District 3)

CURRENT ZONING: PD, Planned Development District for an Office Development (Ordinance 5760)

TYPE OF TEMPORARY USE: Farmers Market

DATE(S) and TIMES:

- From 10:00 a.m. to 6:00 p.m. June 25th through June 30th, 2024
- From 10:00 a.m. to 6:00 p.m. July 2nd through July 7th, 2024
- From 10:00 a.m. to 6:00 p.m. July 9th through July 14th, 2024
- From 10:00 a.m. to 6:00 p.m. July 16th through July 21st, 2024
- From 10:00 a.m. to 6:00 p.m. July 23rd through July 28th, 2024
- From 10:00 a.m. to 6:00 p.m. July 30th through August 4th, 2024
- From 10:00 a.m. to 6:00 p.m. August 6th through August 11th, 2024
- From 10:00 a.m. to 6:00 p.m. August 13th through August 18th, 2024
- From 10:00 a.m. to 6:00 p.m. August 20th through August 25th, 2024
- From 10:00 a.m. to 6:00 p.m. August 27th through September 1st, 2024
- From 10:00 a.m. to 6:00 p.m. September 3rd through September 8th, 2024
- From 10:00 a.m. to 6:00 p.m. September 10th through September 15th, 2024
- From 10:00 a.m. to 6:00 p.m. September 17th through September 22nd, 2024
- From 10:00 a.m. to 6:00 p.m. September 24th through September 29th, 2024
- From 10:00 a.m. to 6:00 p.m. October 3rd through October 6th, 2024
- From 10:00 a.m. to 6:00 p.m. October 8th through October 13th, 2024
- From 10:00 a.m. to 6:00 p.m. October 15th through October 20th, 2024
- From 10:00 a.m. to 6:00 p.m. October 22nd through October 27th, 2024
- From 10:00 a.m. to 6:00 p.m. October 29th through November 3rd, 2024
- From 10:00 a.m. to 6:00 p.m. November 5th through November 10th, 2024
- From 10:00 a.m. to 6:00 p.m. November 12th through November 17th, 2024
- From 10:00 a.m. to 6:00 p.m. November 19th through November 24th, 2024
- From 10:00 a.m. to 6:00 p.m. November 26th through December 1st, 2024

Written comments may be submitted to the **City Manager** of the City of Midland, Texas, regarding whether the proposed use shall be authorized on or by **Monday, June 17, 2024**, to be mailed or delivered to the Planning Division, 300 N. Loraine Street, Midland, TX 79701.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response must be submitted by mail or delivered in writing to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request X Comments: Lower Value of my Building
Will use my Parking Lot 21-20 June 25, 2024
PACKET as a Office Building not Retail

Property Owner's Signature Printed Name

Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division at 432-685-7400.
Si usted desea más información en Español sobre este asunto, llame al : 432-685-7400.

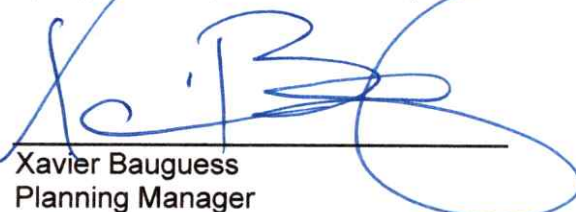
Notices Mailed: 15

Date Mailed: June 14, 2024

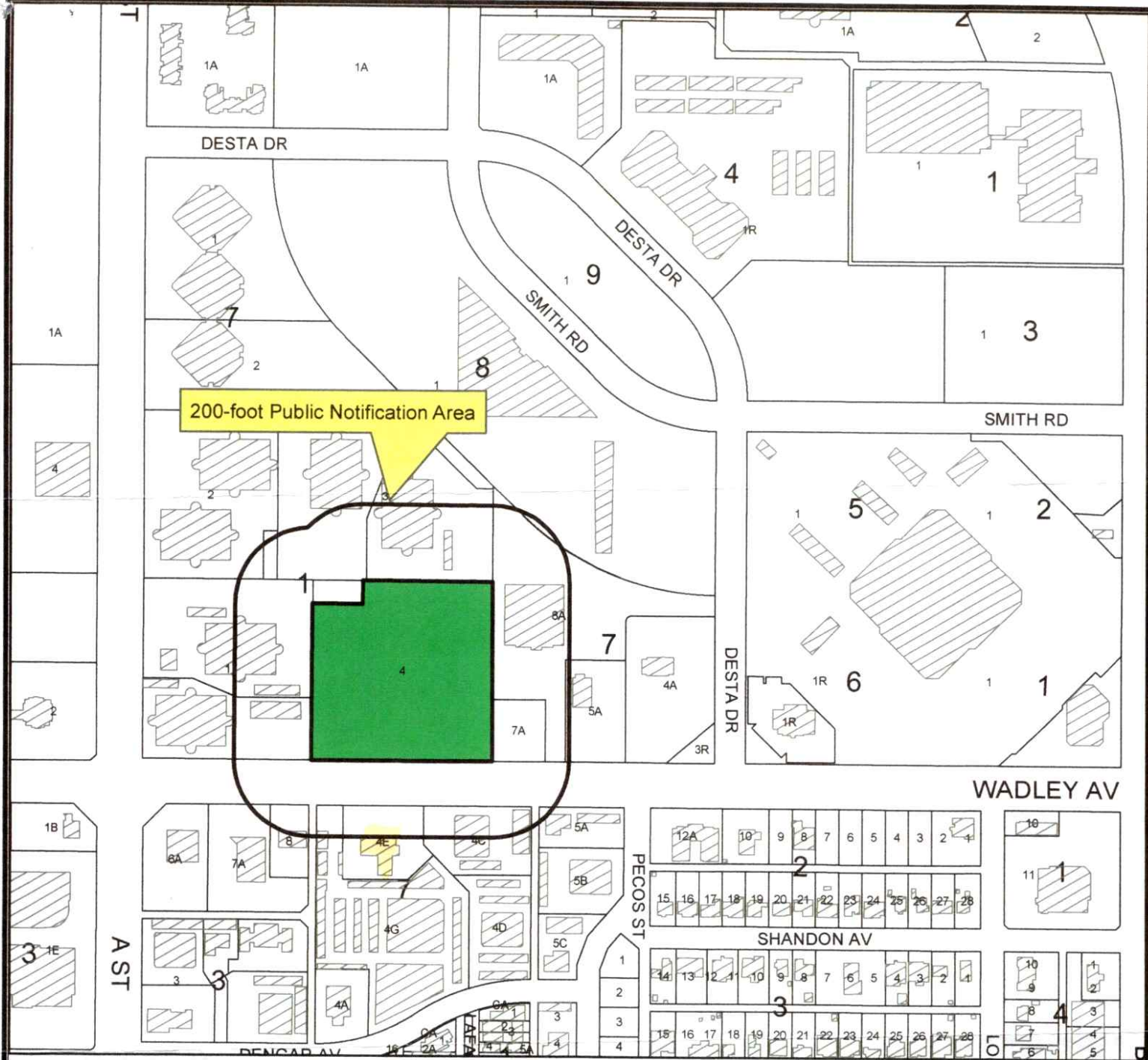
Case Number: TLU-24-0176

Case Name: Anderson Farm Market

AM : Planner's Initials


Xavier Bauguess
Planning Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing-impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.



Location Map

TLU-24-0176

Scale: 1" = 375'

Consider a request for a Temporary Land Use Permit for Seasonal Fruit or Vegetable Sales on Lot 4 less the northwest corner, Block 1, Porras Addition, Section 3, City and County of Midland, Texas.

Generally located on the north side of West Wadley Avenue, approximately 800 feet east of North A Street.
(Council District 3)

PACKET

21.22

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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June 25, 2024



City Council Meeting

Item Number: 22
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Alexis M. Martinez, Associate Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 4 AND 17, BLOCK 61, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH LEE STREET AND ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 165 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (COUNCIL DISTRICT 2)(DEVELOPMENT SERVICES)(QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Jorge Chavez, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District to build new single-family dwelling at 806 South Tyler and 807 South Lee Street.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:**Current Zoning:**

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The properties to the north, east, south and west are zoned MF-22, Multiple-Family Dwelling District and is an existing single-family residential neighborhood.

Analysis:

The subject property is zoned MF-22, Multiple-Family Dwelling District. Jorge Chavez is seeking this zone change to construct a single-family home, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3; which designated this area as U-M, Urban-Medium. This designation calls for any single-family zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire:

No comments or objections.

Oil and Gas:

No Oil and Gas issues.

Engineering:

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code:

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Transportation:

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning:

Therefore, staff recommends approval of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of June 25, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Site Plan (Exhibit A)
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 4 AND 17, BLOCK 61, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH LEE STREET AND ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 165 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 4 and 17, Block 61, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas (the “Property”) to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: 2-24-0377

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: _____		Phone () Email _____	
Address _____	City _____	State _____	Zip _____

Property Owner Printed Name: <u>Jorge Chavez</u>		Phone <u>(432) 254-0327</u> Email _____	
Address <u>807 J. Lee</u>	City <u>Midland</u>	State <u>Tx</u>	Zip <u>79701</u>

Representative (if different from Applicant or Property Owner) Firm: <u>Schumann Surveying</u> Printed Name: <u>Ed Aleman</u>		Phone <u>(432) 254-0327</u> Email <u>ealeman@schumannonline.net.</u>	
Address <u>800 N. Marienfeld</u>	City <u>Midland</u>	State <u>Tx</u>	Zip <u>79701</u>

Street Address: 807 J. Lee & 806 J. Tyler

Legal Description
Lot: 17/4 Block: 61/61 Subdivision: Park Avenue Heights, Section 2 / Park Avenue Heights, Section 2

Current Zoning: <u>MF 22</u>	Proposed Zone: <u>SF3</u> (List by tracts if more than one district is requested)
-------------------------------------	---

Reason for Zone Change Request: Home Const.

Present Use of Property: Vacant.

Proposed Use of Property: Residential

How would this zone change affect the public health, safety and welfare? NA

Describe how conditions affecting the property have changed since present zoning designation: NA

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

PACKET

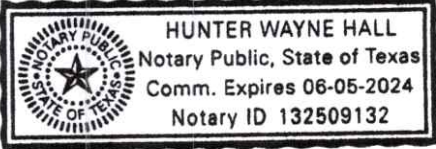
22.7

June 25, 2024

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): <u>George Chavez</u>	Date: <u>4-24-24</u>
Property Owner (printed): <u>George Chavez</u>	
The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received. All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.	

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by George, 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.

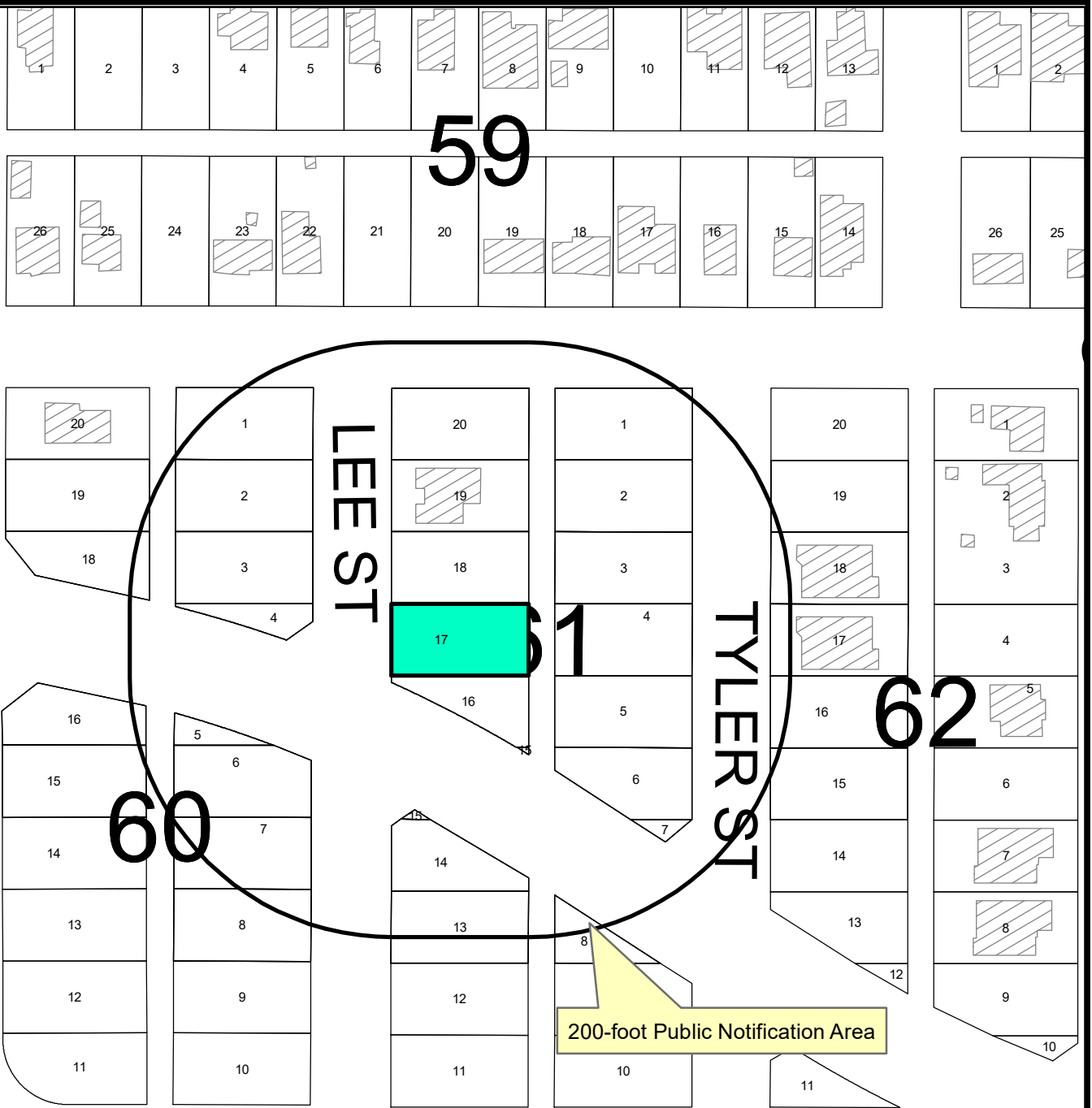


Edward J Aleman
Authorized Agent (signature)

Subscribed and sworn to before me, this 24th day of April, 2024, to certify which witness my hand and seal of office.

HL
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☒ Property Owner Authorization ☒ Application Fee Check # <u>imaged</u>	☒ Dimensioned Site Plan ☒ Plans in Digital Format (PDF/JPEG)
Received By: <u>[Signature]</u>	Date: <u>APR 24 2024</u>



Location Map

SUB-24-0377

Scale: 1" = 1,431

Consider a request by Jorge Chavez for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 4 and Lot 17, Block 61, Park Avenue Heights, Section 2, City and County of Midland, Texas.

Generally located on the east side of South Lee Street and west side of South Tyler Street approximately 135 feet south of East California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

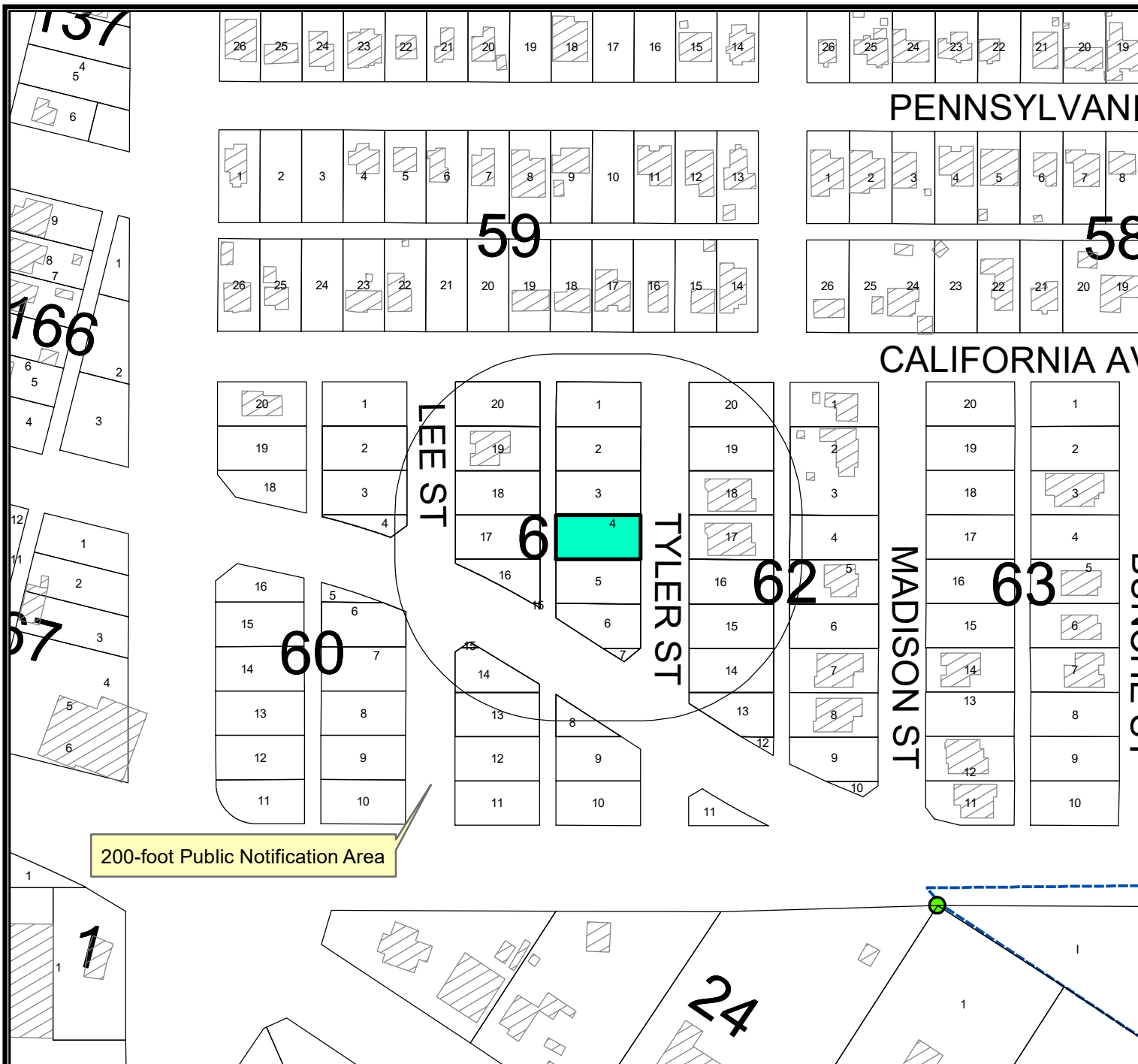


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June 25, 2024



Location Map

Z-24-0377

Scale: 1" = 2147

Consider a request by Jorge Chavez for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 4 and Lot 17, Block 61, Park Avenue Heights, Section 2, City and County of Midland, Texas.

Generally located on the east side of South Lee Street and west side of South Tyler Street, approximately 165 feet south of East California Avenue. (Council District 22.10)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

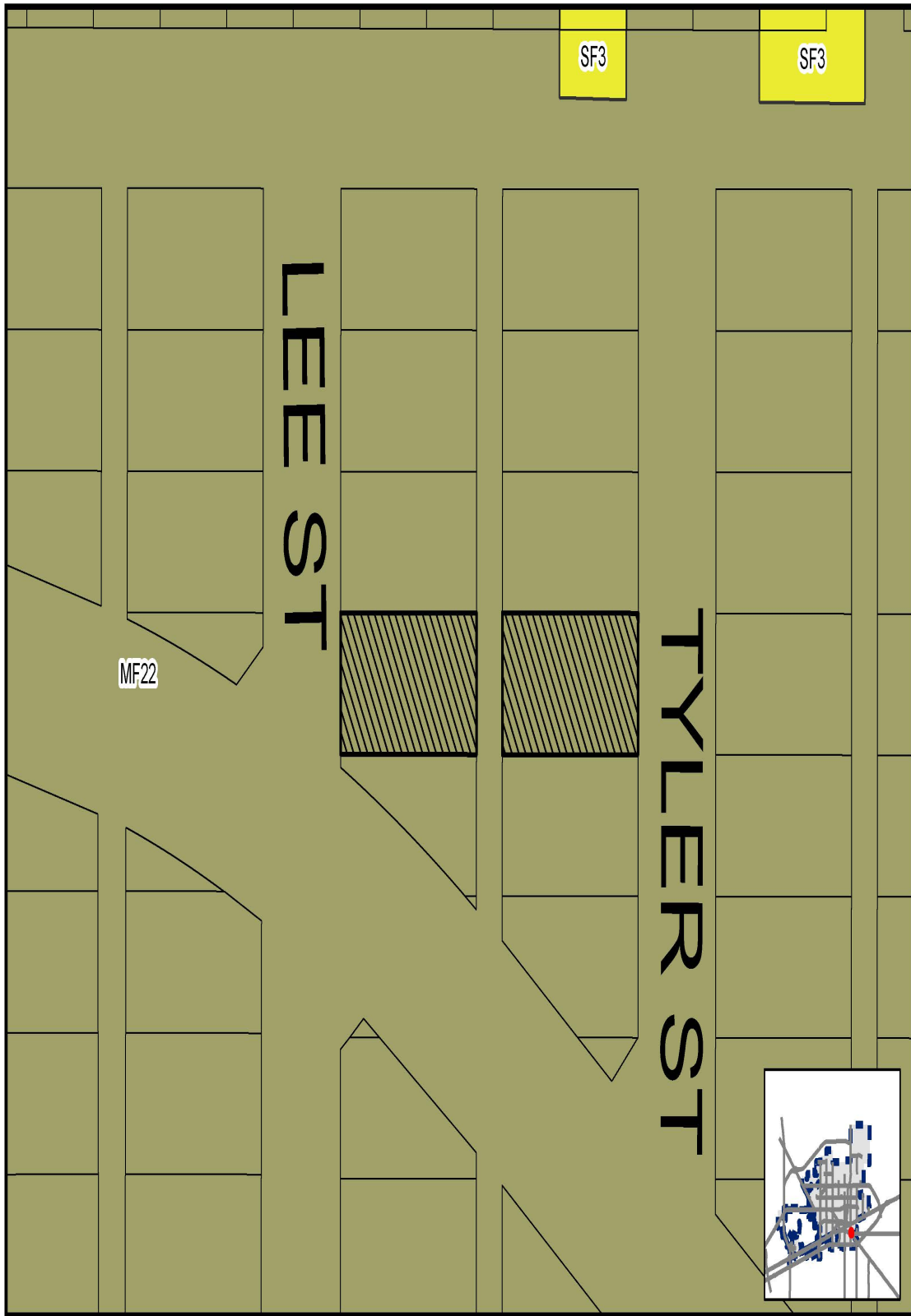


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June 25, 2024



Map AMM, 5/6/2024

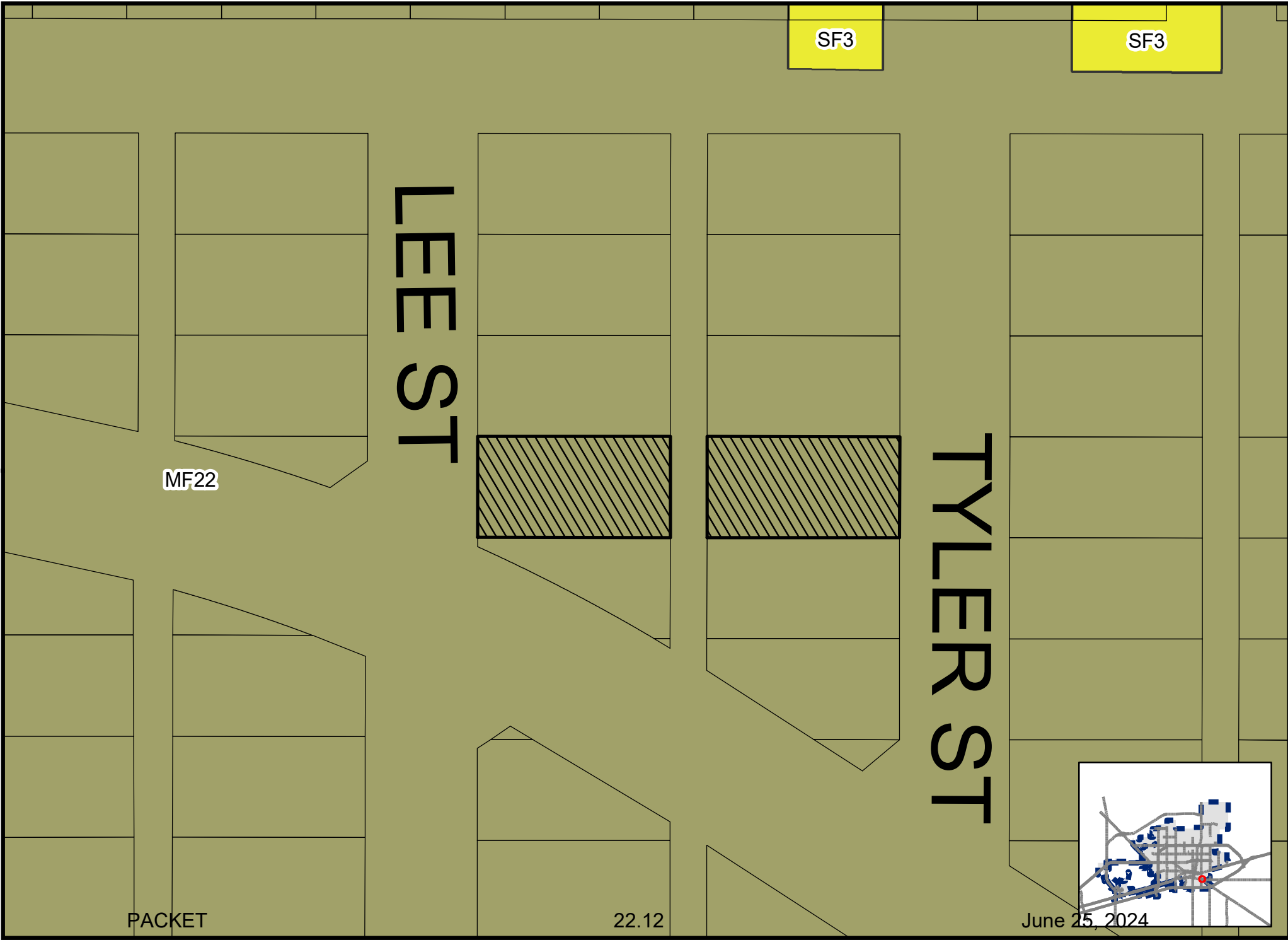
Z-24-0377

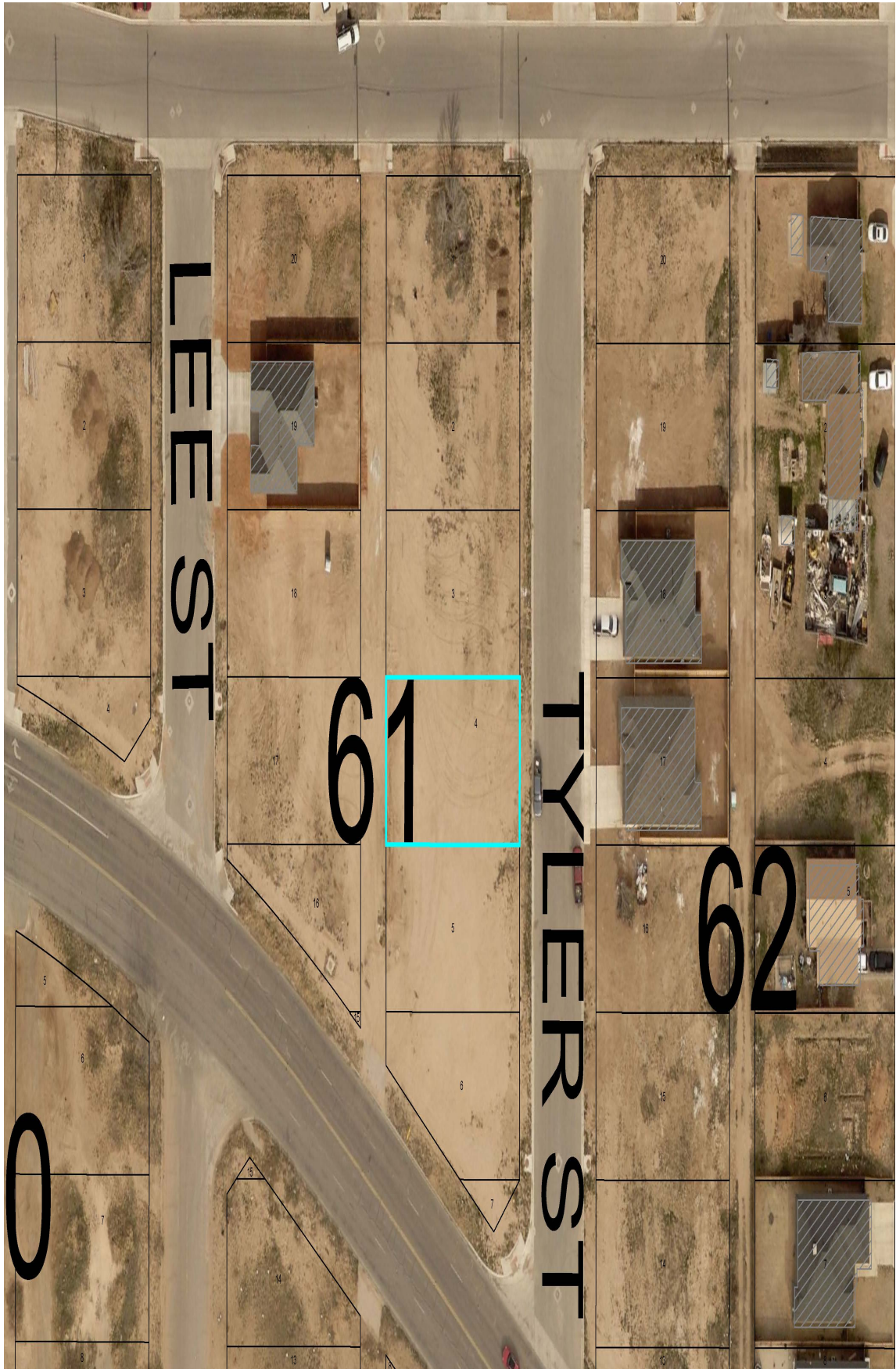
Scale: 1" = 791

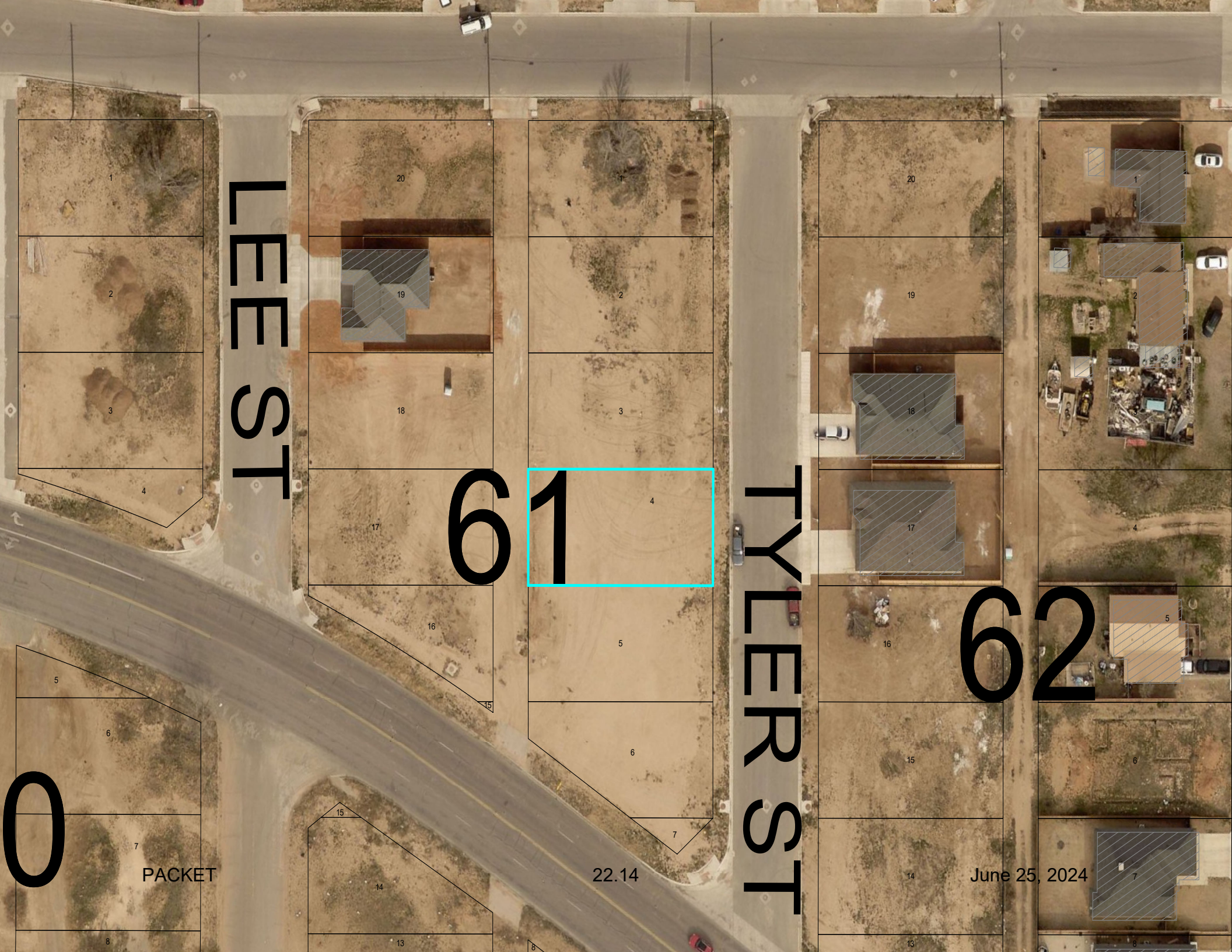
ZONING MAP



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LEE ST

61

TYLER ST

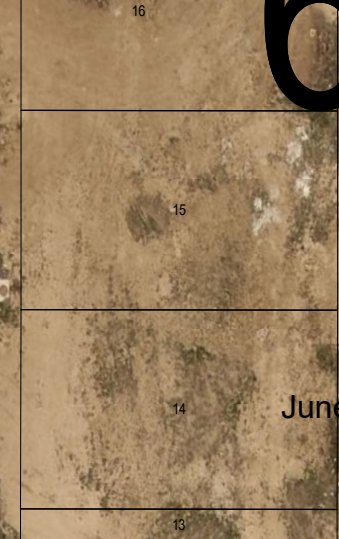
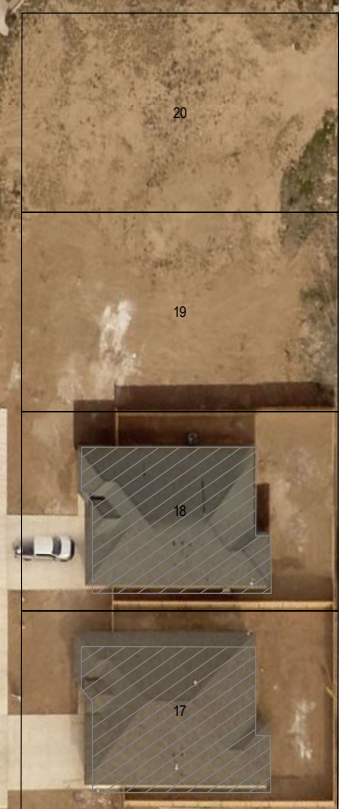
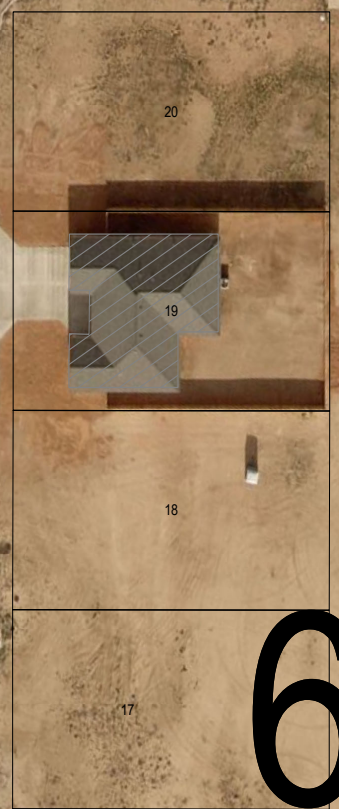
62

0

PACKET

22.14

June 25, 2024



807 S. LEE ST.
(60 FOOT RIGHT-OF-WAY)

LOT 20

LOT 19

LOT 18

LOT 17, BLOCK 61,
PARK AVENUE HEIGHTS
SECTION 2.

LOT 16

20 FOOT ALLEY

LOT 1

LOT 2

LOT 3

LOT 4, BLOCK 61,
PARK AVENUE HEIGHTS
SECTION 2.

LOT 5

LOT 6

806 S. TYLER ST.
(60 FOOT RIGHT-OF-WAY)

CLOVERDALE RD.



EXHIBIT

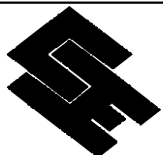
LOTS 4 & 17,
BLOCK 61,
PARK AVENUE HEIGHTS,
SECTION 2.

AN ADDITION TO THE CITY OF
MIDLAND, MIDLAND COUNTY, TEXAS,
ACCORDING TO THE PLAT RECORDED IN
VOLUME 294, PAGE 283,
PLAT RECORDS OF

MIDLAND COUNTY, TEXAS

June 25, 2007

JOB NO. 2809074



SCHUMANN
SURVEYING, INC.
A LATERAL LAND COMPANY

800 N. MARSHFIELD STREET
SUITE 100
MIDLAND, TEXAS 79701

PACKET

TEXAS FIRM No. 10148600

Office (432) 684-5548

SCALE: 1" = 40'

22.15



Item 25

Jorge Chavez

Zone Change

June 25, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

1

PACKET

22.16

June 25, 2024

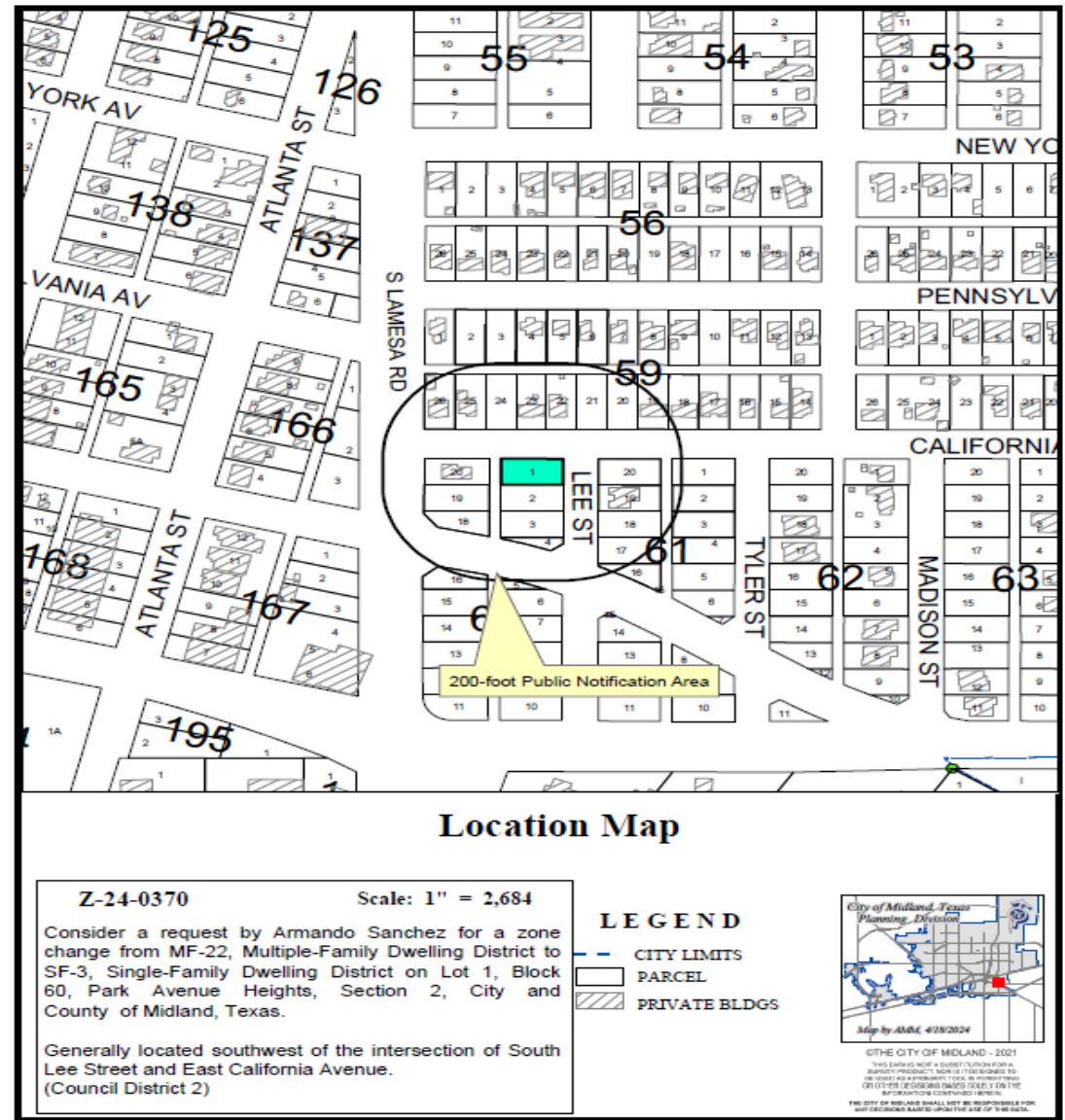


Public Hearing

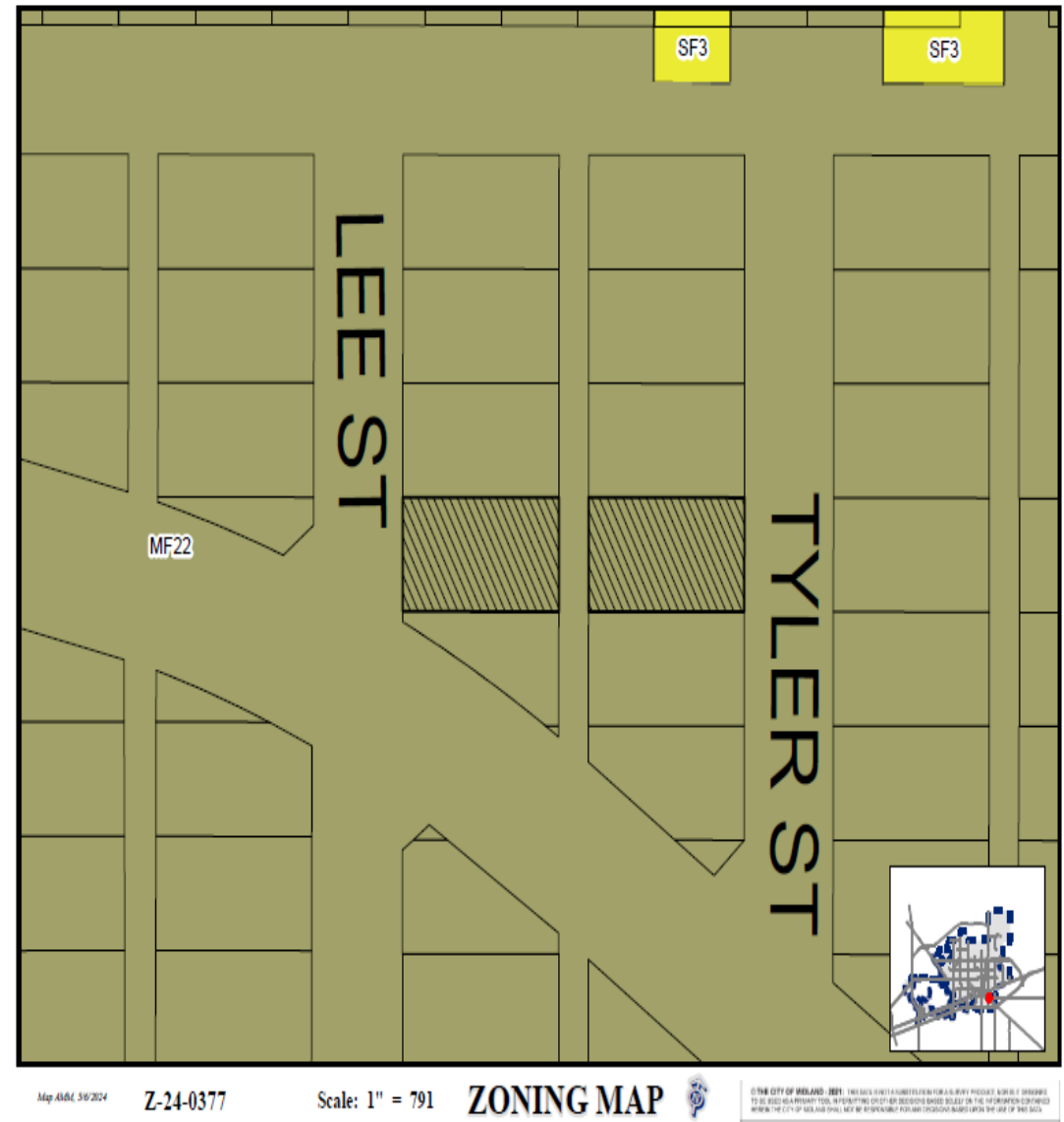
Jorge Chavez

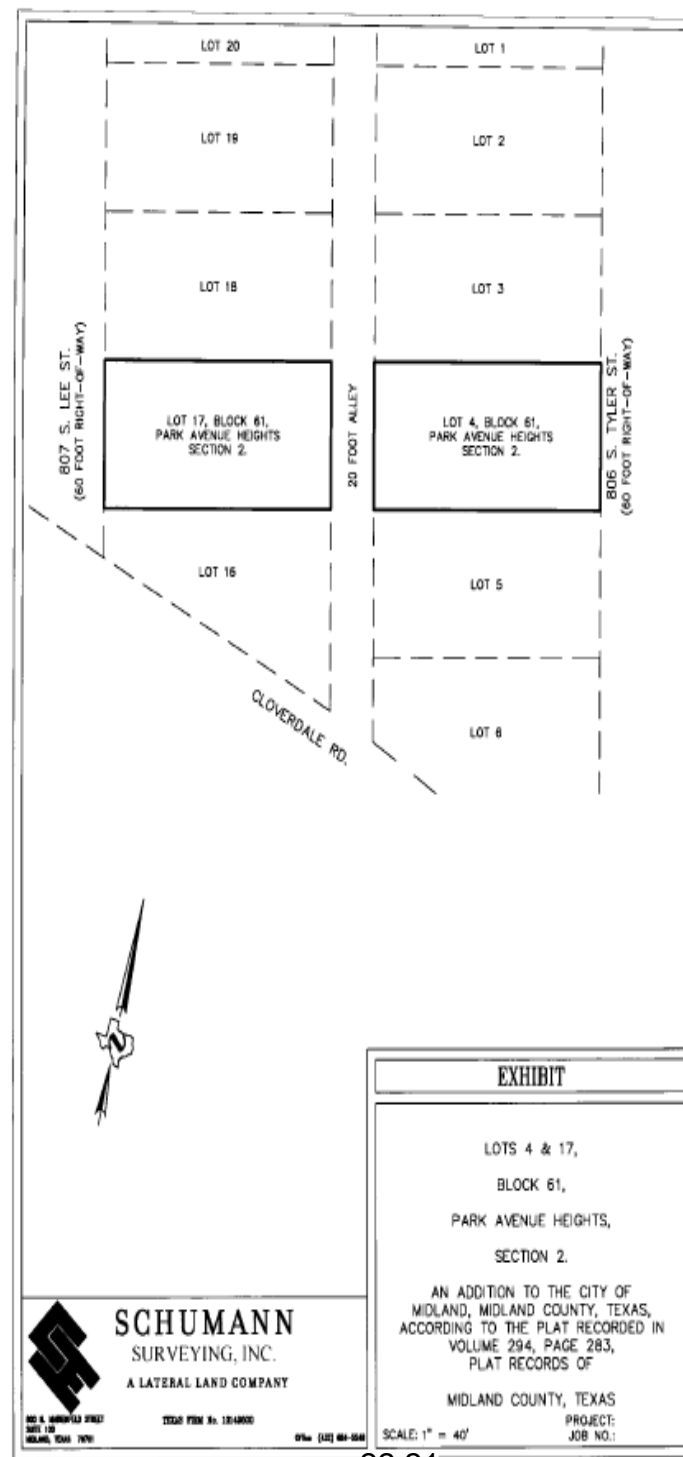
Zone Change

- Jorge Chavez
- Zone Change
- 806 S. Tyler & 807 South Lee Street
- Both are .13 acres



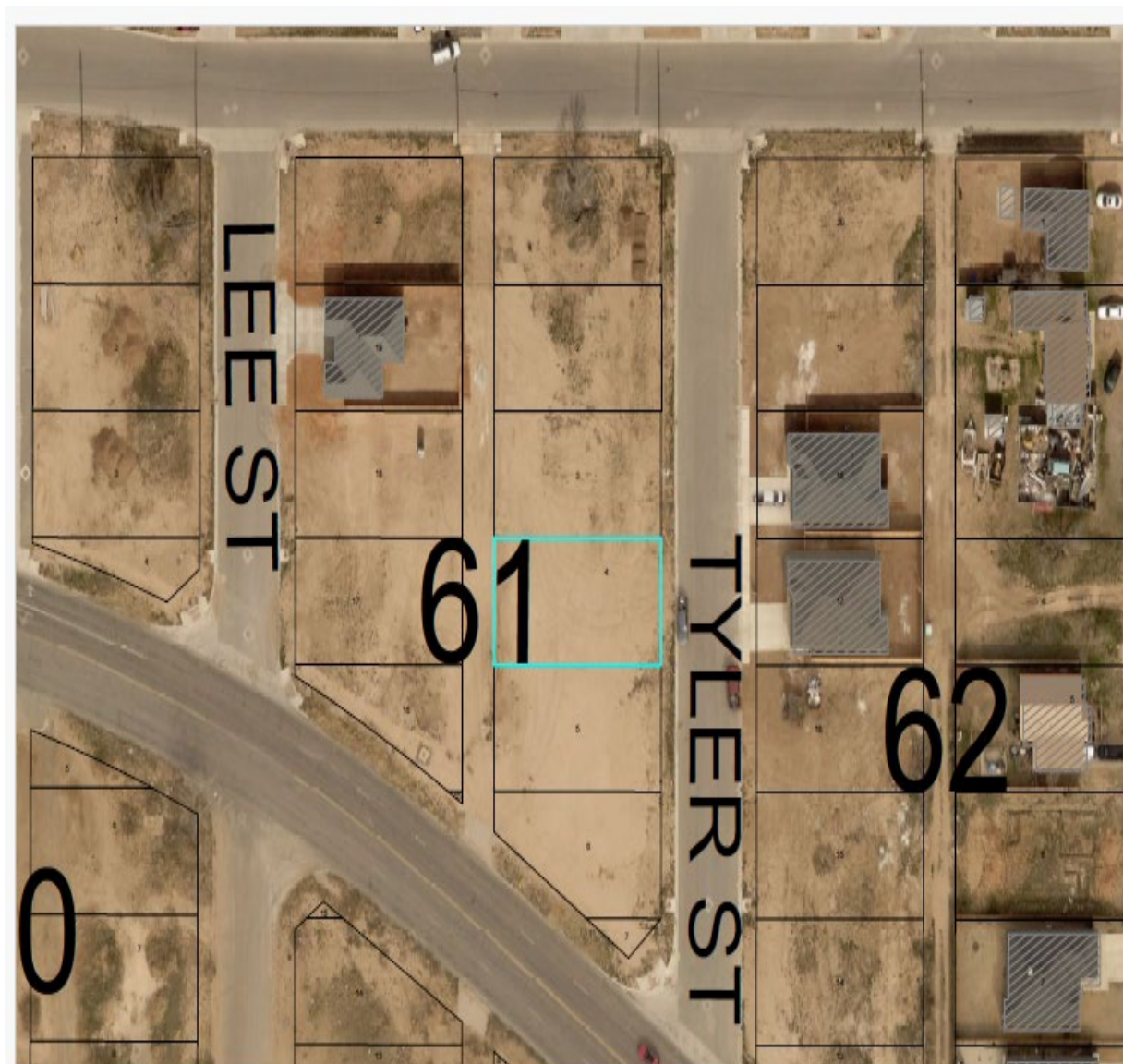
- **Current Zoning: MF-22, Multiple-Family Dwelling District**
- **Surrounding Zoning:**
- **North, South, East, and West is MF-22, Multiple-Family Dwelling District**
- **Proposed Zoning: SF-3, Single-Family Dwelling District**





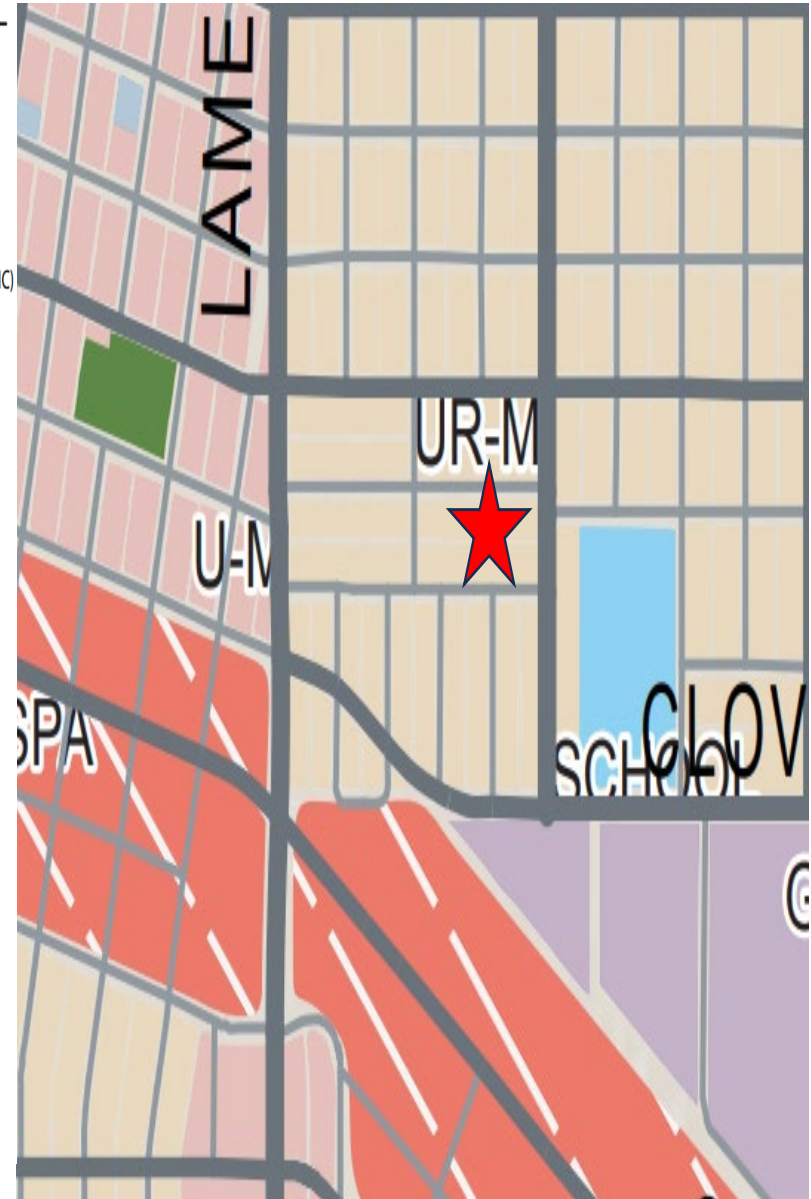
22.21

- Current use of the property:
Vacant
- Proposed use of the Property
Single- Family dwelling



- **TCT Land Use Designation: Urban-Medium Neighborhood Center (U-M)**
- **Supported Uses: Calls for any single-family zoning district**
- **Request is compatible with the surrounding area and the Tall City Tomorrow Plan.**

Future Land Use Plan*



- Staff has not received any letters of objection and the Planning and Zoning Commission recommended approval of the Zone Change on May 20, 2024.
- Therefore, staff recommends **APPROVAL** of the Zone Change from MF-22, Multiple-Family to SF-3, Single-Family District.



City Council Meeting

Item Number: 23
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Daniel Humbert, Planner
Subject: MOTION GRANTING C&J GENERAL CONTRACTING LLC'S APPEAL, ON BEHALF OF SIMON PROPERTIES, AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR LOT 10, BLOCK 17, SKYLINE TERRACE, UNIT 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND COURTYARD DRIVE) (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

C&J General Contracting LLC, on behalf of Simon Properties, is requesting a variance to the allowed area for the cumulative area of all signs exceeding the maximum sign area.

Recommended City Council Action

☐ Approve ☒ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

C&J General Contracting LLC has applied for a sign permit for Midland Park Mall located at 4511 North Midkiff Road. The applicant has proposed two (2) wall signs. The total signage allowed for each proposed wall sign is 50 square feet. The new signs are 140 square feet. Per the proposed plans, the total of all signs is 280 square feet. The maximum allowable signage on the lot is 360 square feet.

The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.

(3) In the NS District and less restrictive district, except for buildings in the C-1 District:

- j) On property with multiple street frontages, the length of each street frontage shall be used to calculate total sign area according to subparagraphs h and i above, provided that the cumulative area of all signs shall not exceed 360 square feet, and that no one sign shall exceed 180 square feet in area.

Planning:

As this request represents a deviation from the existing Sign Ordinance and no hardships have been shown to exist, staff would recommend denial of this application for a proposed maximum allowable wall signage at 4511 North Midkiff Road.

Attachments:

Appeal Request
Building Official Denial Letter
Sign Permit Application
Maps
Ordinance 6905
Ordinance 5090
Ordinance 5090A



City Manager's Office



General Contracting

June 10, 2024

Attn: City Manager of Midland
300 N Loraine Street
Midland, TX 79701

RE: 4511 North Midkiff Road

To whom this may concern,

This letter services as an appeal for denial of an application requesting a permit referencing the proposed sign dimensions at Midland Park Mall. In the document enclosed, the City of Midland denied the proposed dimensions of the installation of two signs totaling 140 square feet each. The City of Midland stated that signs may be installed but cannot exceed 50 square feet each.

The Midland Park Mall would like to file an appeal to keep the variance of the signs that were originally submitted (140 square feet each). These signs will be displayed on a blank wall at the center that currently conceals the waste handling bins. By adding additional signage to these walls, it will help enhance the Midland Park Mall's curb appeal. Enhancing the property will help drive businesses into the area creating growth and value at the center. Both signs will represent two of the mall's tenants and upstanding businesses within the Midland community. These businesses include Basin Pediatrics and Bodycure Esthetics, both within the Midland County. All graphics have been reviewed by the Simon Property Group executive team. Both the executive team and mall team have a strong desire to represent the mall and Midland community in the highest level.

I would appreciate your consideration to our appeal to keep the sign dimensions originally submitted.

Sincerely,

Chase McCain
C&J General Contracting, LLC
432-924-8171
chasebuilds@gmail.com



Chase McCain, managing member

SIGN PERMIT PLAN REVIEW LETTER

May 30, 2024

C&J General Contracting LLC
P.O. Box 13696
Odessa, TX 79768

RE: 4511 North Midkiff Road

Ms. Anderson:

The plan review for the building permit for this project has been completed. The following comments or conditions that must be addressed prior to completion of the review and issuance of the building permit. Should you or the design consultants need further clarification regarding these comments or conditions, please contact the appropriate department or staff member.

Per Midland City Code Section 11-7a-15 (C) Any person aggrieved by the action of the City Building Official in the denial of an application for a permit or in his decision with reference to the issuance of a sign permit shall have the right to appeal to the Midland City Council. Such appeal shall be taken by filing with the City Manager's Office, not later than 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Midland City Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be mailed to the appellant. The decision and order of the Midland City Council on such appeal shall be final and conclusive.

Planning Division- Daniel Humbert 432-685-7902 dhumbert@midlandtexas.gov

5/16/2024-Denied

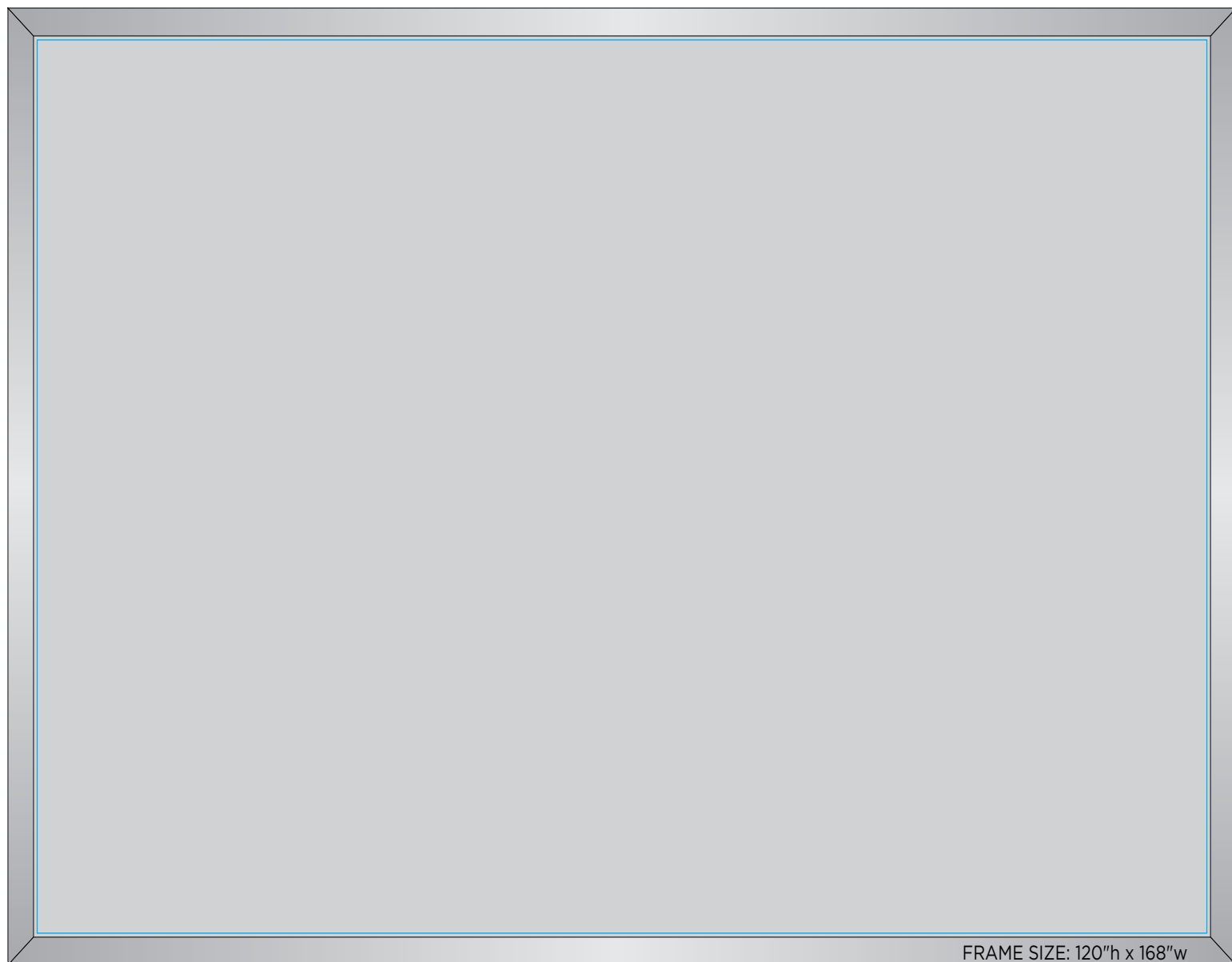
In the PD, Planned Development District (Ordinance 6905) for a shopping center, the total signage allowed for each proposed wall sign is 50 sq ft. The proposed signs 1 and 2 have a total signage of 140 sq ft each.

Building Code- Claudia Sarinana- 432-685-7396 csarinana@midlandtexas.gov

5/15/2024-Approved

Sincerely,

Daniel Humbert
Planner
City of Midland, TX, Planning and Zoning
432-685-7902, dhumbert@midlandtexas.gov



FRAME SIZE: 120"h x 168"w

FINISH SIZE: 116.375"h x 164.375"w The size of the finished product after fabrication.**BLEED SIZE: 116.875"h x 164.875"w** Printed area beyond the finish size used for fabrication or trimming.**LIVE AREA: 112"h x 160"w** The area of the print that is visible and free from fabrication obstructions.
*Keep all text, logos, and other important design elements within this area.**FABRICATION****S** SINGLE SIDED**GROMMETS****T** TRIM TO SIZE**GP** PRINT GROMMET
PLACEMENT

PACKET

ART REQUIREMENTS**CLICK HERE FOR DETAILS:**britteninc.com/art-requirements/

23.5

June 25, 2024

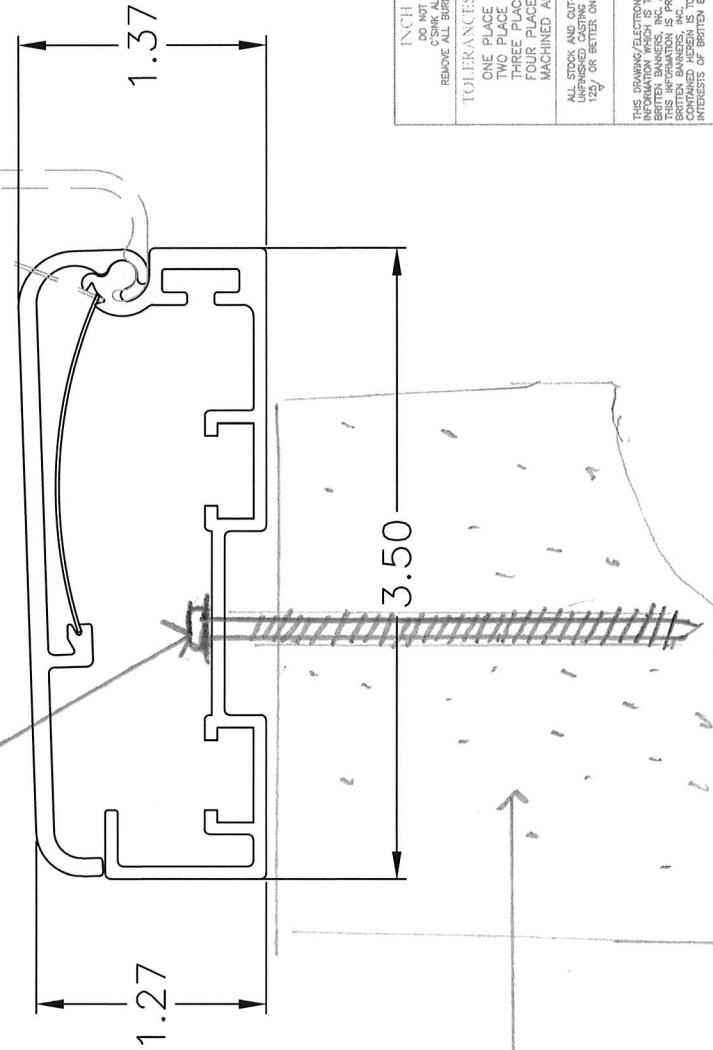
REV	DATE	DESCRIPTION	INIT
A	06/05/14	ORIGINAL RELEASE	GRH

PACKET

Anchor Detail

- attach frame to brick or CMU block using $\frac{1}{4}" \times 3\frac{1}{4}"$ masonry anchors, spaced every 24".

$\frac{1}{4}" \times 3\frac{1}{4}"$ anchor @ 24" O.C.



INCH DRAWING
DO NOT SCALE DRAWING.
DIMENSIONS ARE GIVEN IN INCHES
REMOVE ALL BORES AND SHARP CORNERS.

TOLERANCES UNLESS SPECIFIED
ONE PLACE ± 0.31
TWO PLACE ± 0.010
THREE PLACE ± 0.005
FOUR PLACE ± 0.0005
MACHINED ANGLES $\pm 1^\circ$

ALL STOCK AND CUT-OFF DIMENSIONS ± 0.031
UNFINISHED CASTING AND WELDMENT DIM. ± 0.062
1/32" OR BETTER ON ALL MACHINED SURFACES.

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Britten
Banner Partner
to the World

FRAME AND COVER
BRITTEN SERVICES
STANDARD DRAWING

DESIGN BY	GRH	CHECKED BY	DT
DRAWN BY	GRH	DATE	06/05/14
SCALE	NTS	SHEET	1
SHEET NO.			1

ULTIMATE TENSION AND SHEAR VALUES (LBS/KN) IN CONCRETE

ANCHOR DIA In.(mm)	MIN. DEPTH OF EMBEDMENT In.(mm)	f' c = 2000 PSI (13.8 MPa)		f' c = 3000 PSI (20.7 MPa)		f' c = 4000 PSI (27.6 MPa)		f' c = 5000 PSI (34.5 MPa)	
		TENSION Lbs. (kN)	SHEAR Lbs. (kN)	TENSION Lbs. (kN)	SHEAR Lbs. (kN)	TENSION Lbs. (kN)	SHEAR Lbs. (kN)	TENSION Lbs. (kN)	SHEAR Lbs. (kN)
3/16 (4.8)	1 (25.4)	600 (2.7)	720 (3.2)	625 (2.8)	720 (3.2)	650 (2.9)	720 (3.2)	800 (3.6)	860 (3.8)
	1-1/4 (31.8)	845 (3.7)	720 (3.2)	858 (3.8)	720 (3.2)	870 (3.9)	720 (3.2)	1,010 (4.5)	860 (3.8)
	1-1/2 (38.1)	1,090 (4.8)	860 (3.8)	1,090 (4.8)	860 (3.8)	1,090 (4.8)	860 (3.8)	1,220 (4.8)	860 (3.8)
	1-3/4 (44.5)	1,450 (6.5)	870 (3.9)	1,455 (6.5)	870 (3.9)	1,460 (6.5)	990 (4.4)	1,730 (7.7)	990 (4.4)
1/4 (6.4)	1 (25.4)	750 (3.3)	900 (4.0)	775 (3.4)	900 (4.0)	800 (3.6)	1,360 (6.1)	950 (4.2)	1,440 (6.4)
	1-1/4 (31.8)	1,050 (4.7)	900 (4.0)	1,160 (5.2)	900 (4.0)	1,270 (5.6)	1,360 (6.1)	1,515 (6.7)	1,440 (6.4)
	1-1/2 (38.1)	1,380 (6.1)	1,200 (5.3)	1,600 (7.2)	1,200 (5.3)	1,820 (8.1)	1,380 (6.1)	2,170 (9.7)	1,670 (7.4)
	1-3/4 (44.5)	2,020 (9.0)	1,670 (7.4)	2,200 (9.8)	1,670 (7.4)	2,380 (10.6)	1,670 (7.4)	2,770 (12.3)	1,670 (7.4)

Safe working loads for single installation under static loading should not exceed 25% of the ultimate load capacity.

ULTIMATE TENSION AND SHEAR VALUES (LBS/KN) IN HOLLOW BLOCK

ANCHOR DIA In.(mm)	ANCHOR EMBEDMENT In.(mm)	LIGHTWEIGHT BLOCK		MEDIUM WEIGHT BLOCK	
		TENSION Lbs. (kN)	SHEAR Lbs. (kN)	TENSION Lbs. (kN)	SHEAR Lbs. (kN)
3/16 (4.8)	1 (25.4)	220 (1.0)	400 (1.8)	340 (1.5)	730 (3.2)
1/4 (6.4)	1 (25.4)	250 (1.1)	620 (1.8)	500 (2.2)	1,000 (4.4)

Safe working loads for single installation under static loading should not exceed 20% of the ultimate load capacity.

NOTE: 3/16" Tapcon requires 5/32" bit, 1/4" Tapcon requires 3/16" bit.

ALLOWABLE EDGE AND SPACING DISTANCES

PARAMETER	ANCHOR DIA. In.(mm)	NORMAL WEIGHT CONCRETE			CONCRETE MASONRY UNITS (CMU)		
		FULL CAPACITY (Critical Distance Inches)	REDUCED CAPACITY (Minimal Distance Inches)	LOAD REDUCTION FACTOR	FULL CAPACITY (Critical Distance Inches)	REDUCED CAPACITY (Minimal Distance Inches)	LOAD REDUCTION FACTOR
Spacing Between Anchors - Tension	3/16	3	1-1/2	0.73	3	1-1/2	1.00
	1/4	4	2	0.66	4	2	0.84
Spacing Between Anchors - Shear	3/16	3	1-1/2	0.83	3	1-1/2	1.00
	1/4	4	2	0.82	4	2	0.81
Edge Distance - Tension	3/16	1-7/8	1	0.83	3	2	0.91
	1/4	2-1/2	1-1/4	0.82	4	2	0.81
Edge Distance - Shear	3/16	2-1/4	1-1/8	0.70	3	2	0.93
	1/4	3	1-1/2	0.59	4	2	0.80

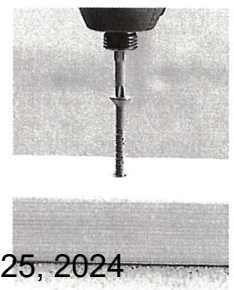
For Sl: 1 inch = 25.4 mm

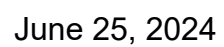
**JOB DONE RIGHT THE
FIRST TIME, EVERY TIME**

PACKET

23.7

June 25, 2024



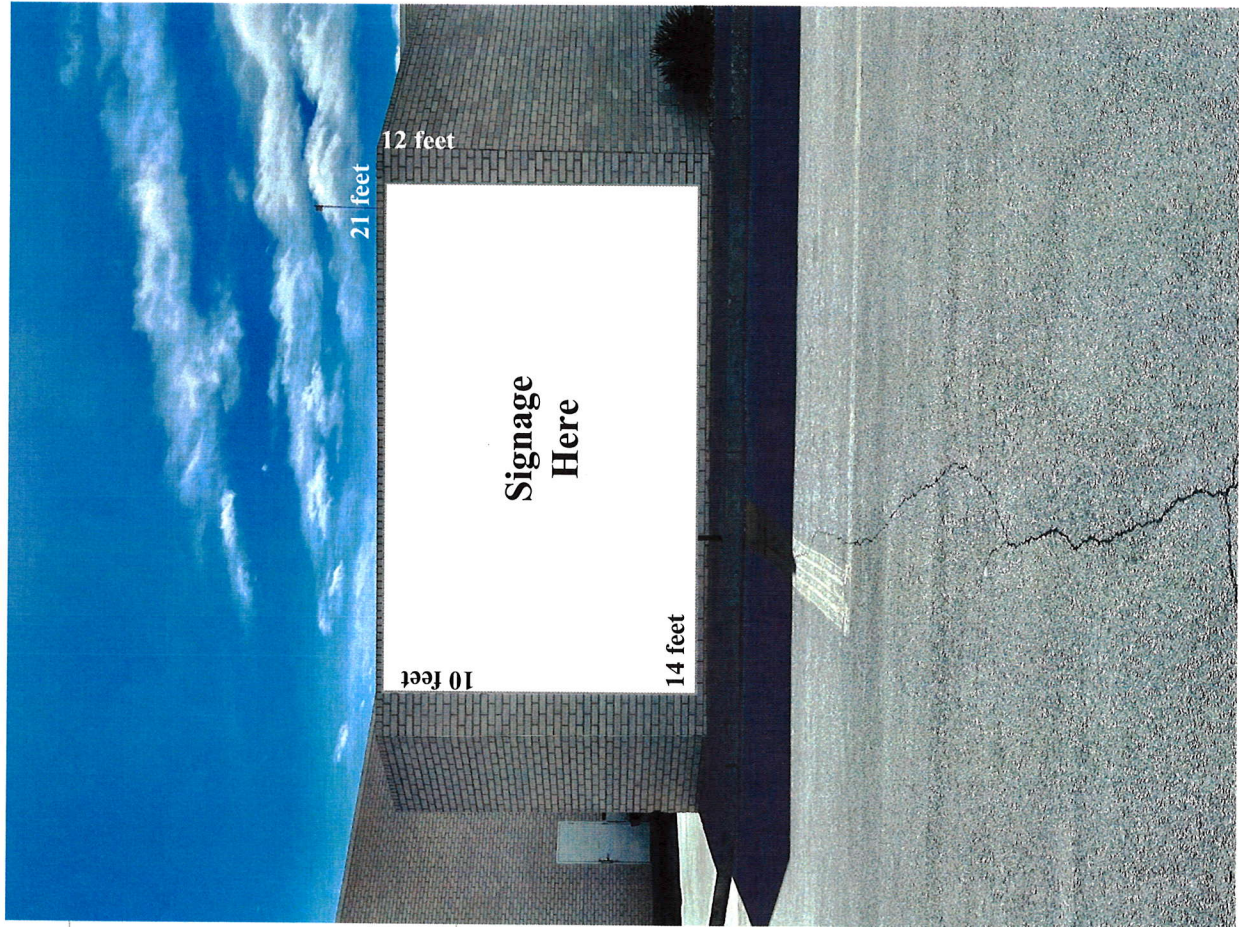


Wall #1

EXTERIOR SIGNAGE

Single-Sided Hanging Banner

- 12' x 21' Wall Dimension
- 10' x 14' Exterior Bannerstretch
- Suspended On the Exterior Wall



Wall #2

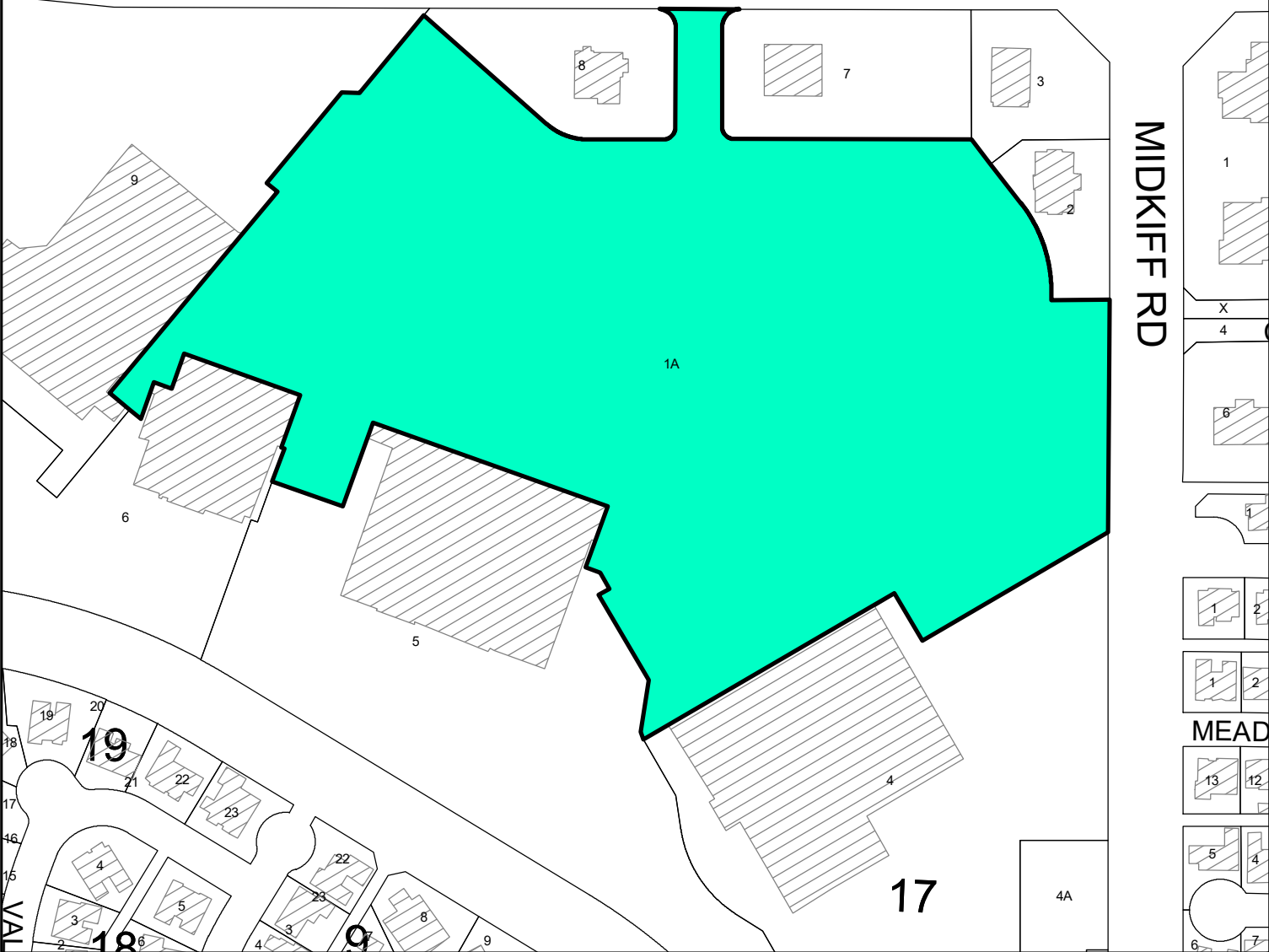
EXTERIOR SIGNAGE

Single-Sided Hanging Banner

- 12' x 17' Wall Dimension
- 10' x 14' Exterior Bannerstretch
- Suspended On the Exterior Wall



LOOP 250 NORTH



Location Map

SGN-060526-2024

Scale: 1" = 263'

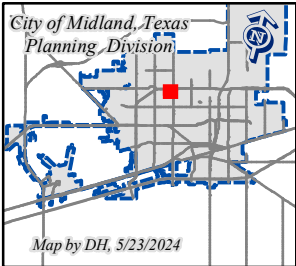
Consider a motion appealing the Building Official's denial of a sign permit application by C&J General Contracting LLC, on behalf of Simon Properties, on Lot 10, Block 17, Skyline Terrace, Unit 7, City and County of Midland, Texas.

(Generally located southwest of the intersection of North Midkiff Road and Courtyard Drive)
(Council District 1)

23.11

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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ANY DECISIONS BASED UPON THE USE OF THIS DATA.

LOOP 250 NORTH

PD

PD

PD

MIDKIFF RD

COURT

PD

PD

PD

PD

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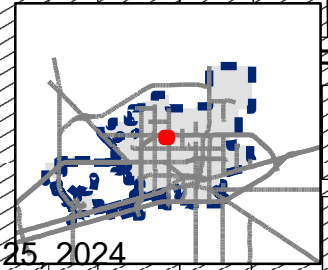
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PACKET

23.12

June 25, 2024





PACKET

23.13

June 25, 2024

ORDINANCE NO. 6905

AN ORDINANCE AMENDING ORDINANCE NO. 5090A, WHICH APPROVED THE SITE PLAN FOR TRACT V OF THE "PLANNED DISTRICT" FOR A HOUSING DEVELOPMENT AND A COMMUNITY OR REGIONAL SHOPPING CENTER CREATED BY ORDINANCE NO. 5090, BY ADOPTING A NEW SITE PLAN; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, Section Two, Subsection D-2 of Ordinance No. 5090 which created a "Planned District" for a Housing Development and a Community or Regional Shopping Center, provided that no development should be undertaken and no building permit issued on Tract V, as set out in said ordinance, without a site plan having been submitted to and approved by the Planning and Zoning Commission and the City Council; and

WHEREAS, Ordinance No. 5090A amended Ordinance No. 5090 so as to adopt a site plan in accordance with the provisions of Subsection D-2 of Section Two of said Ordinance 5090, said site plan being identified as Exhibit "A" to Ordinance 5090A and being on file in the office of the City Secretary; and

WHEREAS, the Council finds it to be in the public interest to adopt a new site plan for said "Planned District" which was created by Ordinance No. 5090, said new site plan being attached hereto as Exhibit "A" and made a part hereof for all legal purposes. The new site plan affects only that portion of the existing site plan that is currently occupied by the outdoor garden center of the Sears, Roebuck and Company retail store at Midland Park Mall;

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

SECTION ONE. That the City Council hereby amends Ordinance No. 5090A which approved a site plan for the "Planned District" for a Housing Development and a Community or Regional Shopping Center created by Ordinance No. 5090 by adopting a new site plan for said "Planned District", attached hereto as Exhibit "A" and made a part hereof for all legal purposes. Said site plan

affects only that portion of the existing site plan that is currently occupied by the outdoor garden center of the Sears, Roebuck and Company retail store at Midland Park Mall, and all other aspects of the site plan adopted under Ordinance No. 5090A shall remain in effect.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION FIVE. 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 publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 24th day of January, A.D., 1989; and passed to second reading on motion of Council member Heck, seconded by Council member Corrales, by the following vote:

Council members voting "AYE": Heck, Corrales, Williams,
Rendall, Thomas, and Marcum

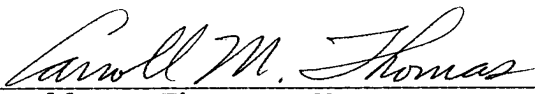
Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Corrales, seconded by Council member Marcum, on the 14th day of February, A.D., 1989, at a regular meeting of the City Council:

Council members voting "AYE": Corrales, Marcum, Thomas, Williams, Heck, Rendall, and Monaghan

Council members voting "NAY": None

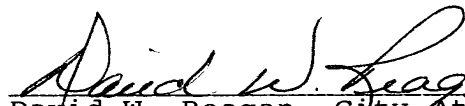
PASSED AND APPROVED THIS 14th day of February, A.D., 1989.


Carroll M. Thomas, Mayor

ATTEST:

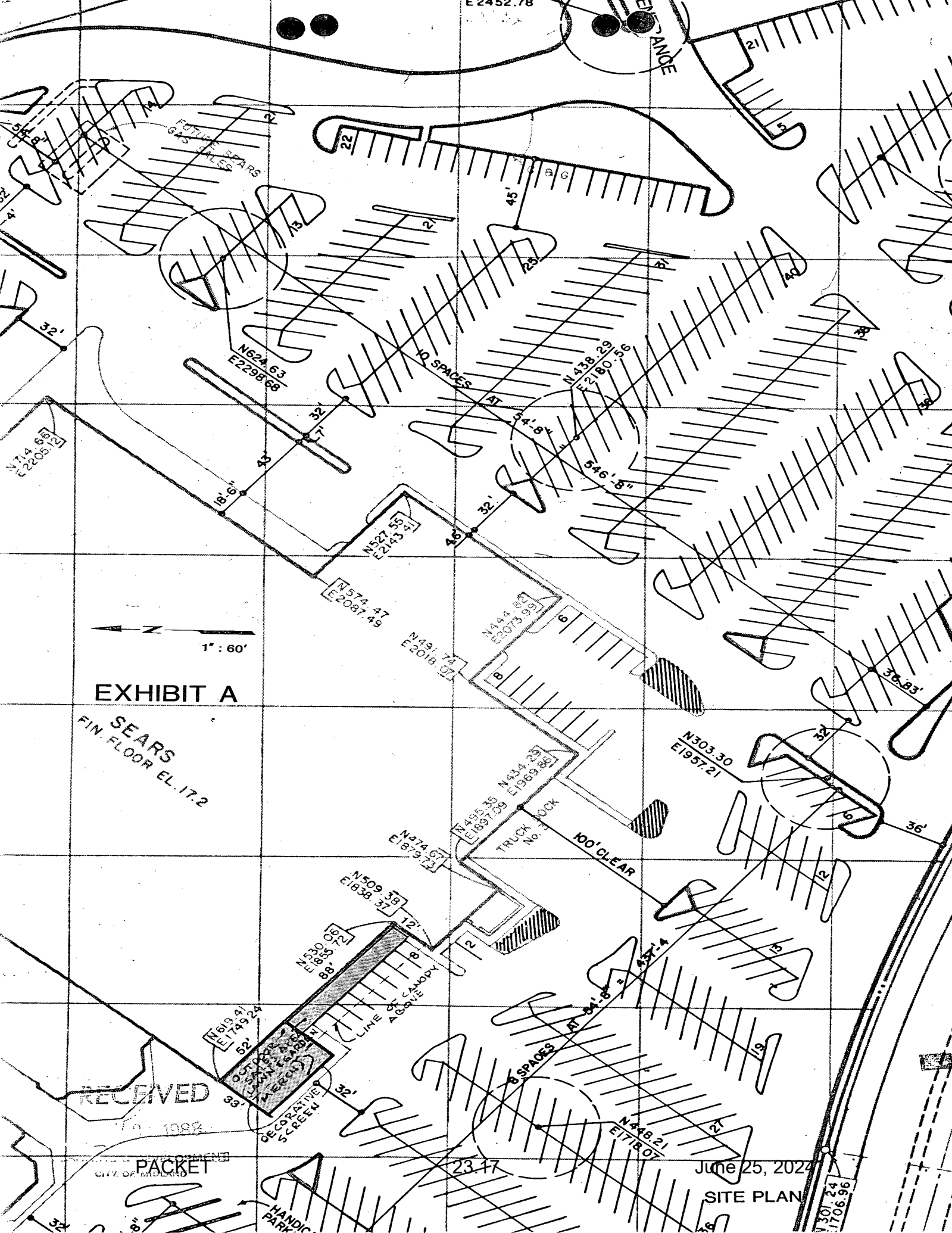

B. C. Clanton, City Secretary

APPROVED AS TO FORM:


David W. Reagan, City Attorney

E 2452.78

ENTRANCE



1" = 60'

EXHIBIT A

SEARS
FIN. FLOOR EL. 17.2

RECEIVED

JUN 25 1982

PACKET

CITY OF MICHIGAN

June 25, 2024

SITE PLAN

ORDINANCE NO. 5090

AN ORDINANCE AMENDING THE "PLANNED DISTRICT" CREATED BY ORDINANCE NO. 4887 AND ESTABLISHING ZONING CLASSIFICATIONS FOR THE AREAS IN THE NE/4 OF SECTION 17, BLOCK 39, T-1-S, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS, SET OUT AND DESCRIBED IN SECTION ONE HEREOF AND COMPRISING 155.32 ACRES OF LAND, MORE OR LESS, CONSISTING OF A "PLANNED DISTRICT" FOR A HOUSING DEVELOPMENT AND A COMMUNITY OR REGIONAL SHOPPING CENTER; SETTING OUT SPECIAL CONDITIONS AND RESTRICTIONS FOR SAID "PLANNED DISTRICT;" ADDING TRACT V OF SAID AREA TO THE FIRE DISTRICT; PROVIDING A PENALTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties of a public hearing to be held before the City Council on August 10, 1976, for the purpose of considering the establishment of an Amended "Planned District" zoning classification for the land described in Section One hereof; and

WHEREAS, such public hearing was held in the Council Chamber, beginning at 2:15 on said August 10, 1976, as advertised; and

WHEREAS, after a full hearing at which all parties in interest and citizens were given an opportunity to be heard, and after receiving and considering the recommendation of the Planning and Zoning Commission, and after considering, among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to establish the zoning regulations as set out hereinafter; and

WHEREAS, the Council, by Ordinance No. 4531, created a Fire District within the City limits of Midland, Texas, and adopted a Fire District Map, appropriately shaded; and

WHEREAS, because of the less restrictive zoning being established for portions of the property involved herein, the Council finds it to be in the public interest to amend the Fire District so as to add the premises described as Tract V in Section One hereof thereto;

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

SECTION ONE. That the "Planned District" for a housing development and a community or regional shopping center on the land described below be amended subject to the special conditions and restrictions hereinafter set out. Said property is described as follows:

TRACT I. 59.91 acres of land in Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and also being Blocks 9 thru 12, Block 15, and Blocks 18 thru 23, of the proposed Replat of Skyline Addition:

BEGINNING at a point in the south boundary line of Skyline Addition for the southeast corner of this tract from which the northwest corner of Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas bears N. 74° 55' E. 224.34 feet and N. 15° 15' W. 2641.5 feet;

THENCE S. 74° 55' W. along the south boundary line of Skyline Addition 2425.72 feet to the southwest corner of Skyline Terrace for the southwest corner of this tract;

THENCE N. 15° 14' W. along the west boundary line of Skyline Addition 1448.62 feet to a point for the northwest corner of this tract;

THENCE N. 78° 22' 45" E. along the north boundary line of Drainage Channel 679.42 feet to a point of curvature;

THENCE southeasterly, with a curve to the right, Delta Angle=27° 44' 30", Radius=1060 feet, a distance of 513.23 feet to a point of tangency;

THENCE S. 73° 52' 45" E. along the north boundary line of Drainage Channel 681.18 feet to a point of curvature;

THENCE southeasterly with a curve to the right, Delta Angle= 27° 56' 30", Radius=1060 feet, a distance of 516.93 feet to a point of tangency;

THENCE S. 45° 56' 15" E. along the northeast boundary line of Drainage Channel 629.29 feet to the PLACE OF BEGINNING and containing 59.91 acres of land.

TRACT II. 3.60 acres of land in Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and also being Block 28 of the proposed replat of Skyline Addition:

BEGINNING at a point in the west right-of-way line of Midkiff Road, for the southeast corner of Skyline Addition and the southeast corner of this tract, from which the northeast corner of Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas bears N. 15° 15' W. 2641.5 feet and N. 74° 57' E. 40 feet;

THENCE S. 74° 55' W. along the south boundary line of Skyline Addition 184.34 feet to a point for the southwest corner of this tract;

THENCE N. 45° 56' 15" W. along the north boundary line of Drainage Channel, 559.13 feet to a point for the northwest corner of this tract

THENCE N. 74° 55' E. along the center line of a 20-foot alley 469.70 feet to a point for the northeast corner of this tract;

THENCE S. 15° 15' E. along the west boundary line of Midkiff Road 480 feet to the PLACE OF BEGINNING and containing 3.60 acres of land.

TRACT III. 3.70 acres of land in Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and also being Blocks 24 and 25 of the proposed replat of Skyline Addition:

BEGINNING at a point in the south right-of-way line of FM Highway 868, for the northwest corner of this tract and the northwest corner of Skyline Addition, from which the northeast corner of Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, bears N. 15° 15' W. 250 feet, and N. 74° 57' E. 2649.8 feet;

THENCE N. 74° 57' E. along the south boundary line of FM 868 170 feet to a point for the northeast corner of this tract;

THENCE S. 15° 14' E. along the center line of a 60-foot street 954.17 feet to a point for the southeast corner of this tract;

THENCE S. 78° 22' 45" W. along north boundary line of drainage channel 170.34 feet to a point for the southwest corner of this tract;

THENCE N. 15° 14' W. along the west boundary line of Skyline Addition 943.98 feet to the PLACE OF BEGINNING and containing 3.70 acres of land.

TRACT IV. 8.64 acres of land in Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and also being Blocks 26 and 27 of the proposed replat of Skyline Addition:

BEGINNING at a point in the south right-of-way line of FM Highway 868, for the northwest corner of this tract from which the northeast corner of Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, bears N. 15° 15' W. 250 feet and N. 74° 57' E. 2479.8 feet;

THENCE N. 74° 57' E. along the south boundary line of FM 868, 304.9 feet to a point for a north corner of this tract;

THENCE N. 80° 39' 40" E. along south boundary FM 868 a distance of 85.55 feet to northeast corner of this tract;

THENCE S. 15° 14' E. along the center line of a 20-foot alley, 969.05 feet to a point for the southeast corner of this tract;

THENCE S. 78° 22' 45" W. along the north boundary line of drainage channel 390.78 feet to a point for the southwest corner of this tract;

THENCE N. 15° 14' W. along the center line of a 60-foot street, 954.17 feet to the PLACE OF BEGINNING and containing 8.64 acres of land.

TRACT V. 64.83 acres of land in Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and also being Lot 1, Block 1, of the proposed replat of Skyline Addition:

BEGINNING at a point in the south boundary of FM Highway 868 for the most northerly northeast corner of this tract, from which point the northeast corner of Section 17, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, bears N. 74° 57' E 145 feet and N. 15° 15' W. 300 feet;

THENCE S. 60° 09' E. with southerly boundary of FM 868 a distance of 120.42 feet to most easterly northeast corner of this tract;

THENCE S. 15° 15' E. along the west boundary of Midkiff Road 750 feet to an east corner this tract;

THENCE N. 74° 45' E. 20 feet to an east corner this tract;

THENCE S. 15° 15' E. with west boundary of Midkiff Road 1026.5 feet to southeast corner this tract;

THENCE S. 74° 55' W. along the center line of a 20-foot alley 469.70 feet to a point for an exterior corner of this tract;

THENCE N. 45° 56' 15" W. along the northeast boundary line of a drainage channel 70.16 feet to a point of curvature;

THENCE northwesterly with a curve to the left, Delta Angle= 27° 56' 30", Radius=1060 feet, a distance of 516.93 feet to a point of tangency;

THENCE N. 73° 52' 45" W. along the north boundary line of a drainage channel 681.18 feet to a point of curvature;

THENCE northwesterly with a curve to the left, Delta Angle= 27° 44' 30", Radius=1060 feet, a distance of 513.23 feet to a point of tangency;

THENCE S. 78° 22' 45" W. along the north boundary line of a drainage channel 118.34 feet to a point for a southwest corner of this tract;

THENCE N. 15° 14' W. along the center line of a proposed alley 969.05 feet to a point in the south right-of-way of FM 868 for the northwest corner of this tract;

THENCE N. 80° 39' 40" E. along the south boundary of FM 868 a distance of 416.95 feet to bend in right-of-way;

THENCE N. 74° 57' E. along the south boundary of FM 868 a distance of 1530 feet to the PLACE OF BEGINNING, containing 64.83 acres of land.

SECTION TWO. That said property shall be subject to the special conditions and restrictions hereinafter set out:

A. That said Tract I shall be developed and used only for single-family residences pursuant to all provisions of the City Code of Midland, Texas, applicable to a "1F-2" (One Family Dwelling District) Zone.

B. That said Tracts II and III shall be developed and used only for two-family residences pursuant to all provisions of the City Code of Midland, Texas, applicable to a "2-F" (Two Family Dwelling District) Zone.

C. That said Tract IV shall be developed and used only for multiple-family residences pursuant to all provisions of the City Code of Midland, Texas, applicable to an "MF-1" (Multiple Family Dwelling District) Zone.

D. That said Tract V shall be developed and used only for local retail purposes pursuant to all provisions of the City Code of Midland, Texas, applicable to an "LR-2" (Local Retail District) Zone; subject to the special conditions and restrictions hereinafter set out:

1. Development shall consist of an enclosed, air-conditioned shopping mall containing not less than 400,000 square feet of gross building area. In the event construction of said shopping mall is not commenced by September 9, 1978, the City Council reserves unto itself and its Planning and Zoning Commission full right, power, and authority to schedule new public hearings in connection with the zoning classification of said Tracts III, IV, and V and to change the zoning thereof to one or more other classifications if such action is deemed to be in the public interest at that time. This possibility of the rezoning of the land involved herein is expressly made a part of the plan for this "Planned District."

Construction shall be "commenced" for the purposes of this ordinance when building permits have been issued for 400,000 square feet or more of gross building area and the foundations for that area have been completed in accordance with actual construction plans on file in connection with the building permit.

2. That no development shall be undertaken and no building permit issued without a site plan for the "Planned

District" having been submitted to and approved by the Planning and Zoning Commission and the City Council, which plan, upon such approval, shall become a part of this ordinance.

3. In the event the land in Tract V is divided into two or more parcels for the purpose of selling off a tract or tracts, no Certificate of Completion or Occupancy will be issued for improvements on any such severed tract until construction has been commenced on the entire minimum shopping center as defined hereinabove.

4. As a further express part of this "Planned District," the City Council reserves full right, power, and authority to extend the time for commencement of said shopping mall, at its sole discretion, up to but not in excess of one additional year.

5. In computing compliance with the time limitation of September 9, 1978, specified in subparagraph D-1 above, the developers shall not be charged with lost time or delay caused or occasioned by labor strikes, acts of God, actions of government authorities, or other causes beyond the control of the developers, as determined by the City Council; and no such delay shall be deemed a breach of or a failure to comply with said time requirement regarding "commencement of construction as defined herein.

SECTION THREE. That said Tracts III and IV shall be held under a common ownership and no building permit shall be issued for any development in either of them until the construction of not less than 400,000 square feet of gross building area in a mall type shopping center has been commenced as that term is defined in Section Two hereof.

SECTION FOUR. No additional building permits shall be issued for, or any additional construction commenced on, any part of the land described in Section One hereof until a final subdivision replat is approved pursuant to Title XII of the City Code of Midland, Texas, and filed for record in the Plat Records in the office of the County Clerk of Midland County, Texas.

SECTION FIVE. That the Fire District be amended so as to add the premises described as Tract V in Section One above thereto, and the Building Inspector is authorized and directed to add to the Fire District Map said premises.

SECTION SIX. That any person, firm or corporation violating any of the terms or provisions of this ordinance shall be subject to a fine not to exceed Two Hundred Dollars (\$200) as provided in Section 1-3-1 of the City Code of Midland, Texas; and in the

alternative, any such violations may be restrained by injunctive or other equitable relief in a court of proper jurisdiction. Each day any violation of this ordinance shall continue, shall constitute a separate offense.

SECTION SEVEN. 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 any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION EIGHT. 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 NINE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance together with the penalty provision contained herein, in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 14th day of September, A.D., 1976; and passed to second reading on motion of Councilman Tighe, seconded by Councilman Thomas, by the following vote:

Councilmen voting "AYE":	Tighe, Thomas, Angelo, Neill, and Akins
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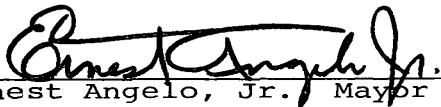
Councilmen voting "NAY":	Martin
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The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Councilman Tighe, seconded by Councilman Akins, on the 28th day of September, A.D., 1976, at a regular meeting of the City Council:

Councilmen voting "AYE": Tighe, Akins, Neill, Thomas, and Angelo

Councilmen voting "NAY": Martin

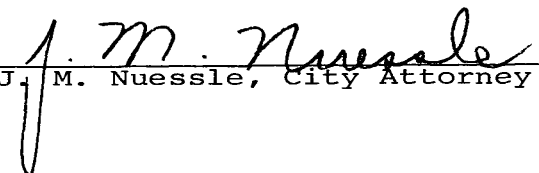
PASSED AND APPROVED THIS 28th day of September, A.D., 1976.


Ernest Angelo, Jr. Mayor

ATTEST:


J. W. McCullough, City Secretary

APPROVED AS TO FORM:


J. M. Nuessle, City Attorney

ORDINANCE NO. 5090A

AN ORDINANCE APPROVING THE SITE PLAN FOR TRACT V OF THE "PLANNED DISTRICT" CREATED BY ORDINANCE NO. 5090 PURSUANT TO SECTION TWO, SUBSECTION D-2 THEREOF, SUBJECT TO CERTAIN CONDITIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; AND CONTAINING A SAVINGS AND SEVERABILITY CLAUSE

WHEREAS, Section Two, Subsection D-2, of Ordinance No. 5090 provided that no development should be undertaken and no building permit issued on Tract V, as set out in said ordinance, without a site plan having been submitted to and approved by the Planning and Zoning Commission and the City Council; and

WHEREAS, the developers of the shopping center to be constructed on said Tract V have submitted a site plan for substantially the entire Tract V, which the Council finds to be in the public interest to approve;

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

SECTION ONE. That the site plan, identified as Exhibit "A" to this ordinance, No. 5090A, authenticated by the signature of the Mayor and attested to by the City Secretary, which site plan is on file in the office of the City Secretary, is hereby approved as a part of Ordinance No. 5090, pursuant to Section Two, Subsection D-2 thereof.

SECTION TWO. It is further ordained that the areas, dimensions, and building locations shown on said site plan are substantially in accordance with the way the shopping center will be built, but are still approximations and therefore variations up to 10% either way are acceptable insofar as issuance of building permits are concerned.

SECTION THREE. No building permit shall be issued for development of either Reserved Parcel 1, containing 1.6 acres, or Reserved Parcel 2, containing 1.3 acres, as shown on said site plan, until a site plan for such reserved parcel or parcels has been submitted to and approved by the Planning and Zoning Commission

and City Council in the same manner as the general site plan approved hereby and, at that time, also the specific type of use to which said reserved parcels will be put shall be determined.

SECTION FOUR. 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 FIVE. 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 26th day of September, A.D., 1978; and passed to second reading on motion of Councilman Akins, seconded by Councilman Howbert, by the following vote:

Councilmen voting "AYE":	Akins, Howbert, Angelo, and Sloan
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Councilmen voting "NAY":	None
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The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Councilman Thomas, seconded by Councilman Howbert, on the 10th day of October, A.D., 1978, at a regular meeting of the City Council:

Councilmen voting "AYE":

Thomas, Howbert, Angelo,
Sloan, and Akins

Councilmen voting "NAY":

None

PASSED AND APPROVED THIS 10th day of October, A.D.,
1978.

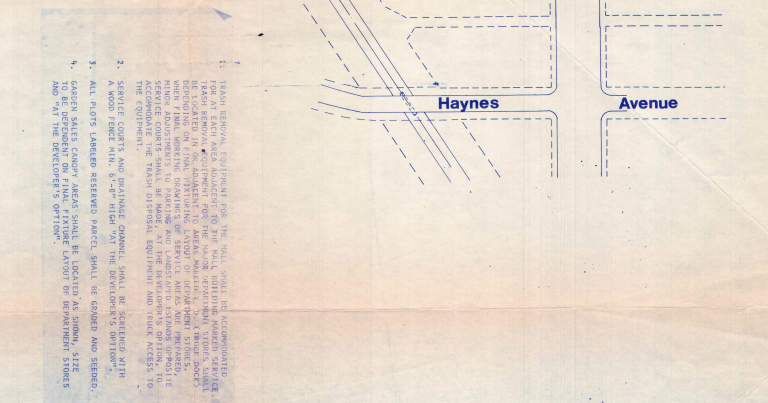
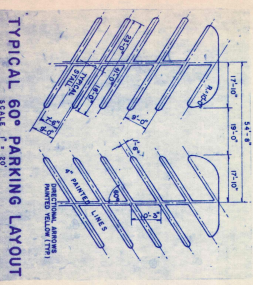

Ernest Angelo, Jr., Mayor

ATTEST:


J. W. McCullough, City Secretary

APPROVED AS TO FORM:


J. M. Nuessle, City Attorney



**MELNIN SIMON
ASSOCIATES, INC.**
1712 N. MERIDIAN ST./P.O. BOX 44230/INDIANAPOLIS, IN 46246
317-954-4070





City Council Meeting

Item Number: 24
Meeting Date: June 25, 2024
To: City Council / City Manager
From: Taha Sakrani,
Subject: AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10493; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (ENGINEERING SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Lowering the speed limit on Briarwood Avenue in response to new development is a proactive and comprehensive approach to ensuring safety, accessibility, and quality of life for all road users. This measure supports the seamless integration of new developments into the existing infrastructure, aligning with broader community goals and regulatory standards.

Additionally, lowering the speed limit on Midkiff Road to 40 MPH, consistent with the existing speed limits north of Mockingbird and south of Loop 250, ensures uniformity and safety along the corridor.

Furthermore, reducing the speed on Rankin Highway as requested by the Texas Department of Transportation addresses specific safety concerns and adheres to state recommendations for optimal traffic management.

Recommended City Council Action:

Approve

Fiscal Impact:

The cost will be negligible and can be accommodated within the Division's normal

maintenance budget. Any signs being removed due to a speed limit change will be salvaged for reuse if in good condition, or re-sheeted or recycled if their condition is no longer acceptable.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Legal Department has prepared an ordinance amending existing ordinance no. 9064 establishing speed limits as follows:

Briarwood Avenue (both directions)

45 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive.

40 mph - from the centerline of Avalon Drive to the centerline of Mathis Street.

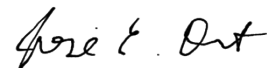
Midkiff Rd (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Wall Street.

Rankin Hwy (both directions)

30 mph - from the centerline of Interstate 20 to the centerline of Business Interstate 20.

Staff recommends approval of this ordinance.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10493; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

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

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Ashwood Court (both directions)

25 mph - in its entirety

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Blackwood Drive (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Brandy Hill Road (both directions)

25 mph - in its entirety

Brentwood Drive (both directions)

25 mph - in its entirety

Briaroaks Court (both directions)

25 mph - in its entirety

Briaroaks Drive (both directions)

25 mph - in its entirety

Briarwood Avenue (both directions)

45 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

40 mph - from the centerline of Avalon Drive to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Business State Highway 349C (both directions)

65 mph - from the northern boundary of Midland County to a point 797 feet north of Occidental Parkway

50 mph - from a point 797 feet north of Occidental Parkway to a point 370 feet south of the centerline of the south service road of Loop 250

Candlestick Drive (both directions)

25 mph - in its entirety

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Castle Wood Drive (both directions)

25 mph - in its entirety

Centerview (both directions)

25 mph - in its entirety

Champions Drive (both directions)

25 mph - from the centerline of Tradewinds Boulevard to the centerline of Koufax Court

Clemente Court (both directions)

25 mph - in its entirety

Coliseum Court (both directions)

25 mph - in its entirety

Colt Court (both directions)

25 mph - in its entirety

Comiskey Court (both directions)

25 mph - in its entirety

Coyote Trail (both directions)

40 mph - in its entirety

Cranston Place (both directions)

25 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Crosley Drive (both directions)

25 mph - in its entirety

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

Deeanna Lane (both directions)

25 mph - in its entirety

Devlin Place (both directions)

25 mph - in its entirety

DiMaggio Court (both directions)

25 mph - in its entirety

DiMaggio Drive (both directions)

25 mph - in its entirety

Drexel Court (both directions)

25 mph - in its entirety

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Fringewood Drive (both directions)

25 mph - in its entirety

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Gehrig Avenue (both directions)

25 mph - in its entirety

Gladewood Drive (both directions)

25 mph - in its entirety

Glen Mist Drive (both directions)

25 mph - in its entirety

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of

Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Grassland Boulevard (both directions)

25 mph - in its entirety

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Greenridge (both directions)

25 mph - in its entirety

Griffith Court (both directions)

25 mph - in its entirety

Griffith Drive (both directions)

25 mph - from the centerline of Deauville Boulevard to the centerline of Candlestick Drive

Hall of Fame Boulevard (both directions)

25 mph - from the centerline of Avalon Drive to the centerline of Riverfront Drive

Hathaway Court (both directions)

25 mph - in its entirety

Haywood Drive (both directions)

25 mph - in its entirety

Heartland Avenue (both directions)

25 mph - in its entirety

Heartland Court (both directions)

25 mph - in its entirety

Hereford Boulevard (both directions)

25 mph - in its entirety

Highland Boulevard (both directions)

25 mph - in its entirety

Highland Court (both directions)

25 mph - in its entirety

Hillcrest Court (both directions)

25 mph - in its entirety

Hillcrest Place (both directions)

25 mph - in its entirety

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Homeland Court (both directions)

25 mph - in its entirety

Homeland Drive (both directions)

25 mph - in its entirety

Homestead Boulevard (both directions)

25 mph - in its entirety

Homestead Court (both directions)

25 mph - in its entirety

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Ironwood Drive (both directions)

25 mph - in its entirety

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

Jadewood Drive (both directions)

25 mph - in its entirety

King Kelly Court (both directions)

25 mph - in its entirety

Kirkwood Drive (both directions)

25 mph - in its entirety

Koufax Court (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Legends Boulevard (both directions)

25 mph - in its entirety

Mac Drive (both directions)

25 mph - in its entirety

Mantle Court (both directions)

25 mph - in its entirety

Mays Drive (both directions)

25 mph - in its entirety

Mel Ott Lane (both directions)

25 mph - in its entirety

Memorial Court (both directions)

25 mph - in its entirety

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mile High Lane (both directions)

25 mph - in its entirety

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of Mockingbird Lane

Mosswood Drive (both directions)

25 mph - in its entirety

Musial Way (both directions)

25 mph - in its entirety

Neely Avenue (both directions)

30 mph - in its entirety

Nolan Ryan Drive (both directions)

25 mph - in its entirety

Olympic Court (both directions)

25 mph - in its entirety

O'Rourke Street (both directions)

25 mph - in its entirety

Pagewood Drive (both directions)

25 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Prairie Ridge Drive (both directions)

25 mph - in its entirety

Rangers Court (both directions)

25 mph - in its entirety

Rankin Highway (both directions)

30 mph - from the centerline of Interstate 20 to the centerline of Business Interstate 20

Ridgemont Court (both directions)

25 mph - in its entirety

Ridgemont Place (both directions)

25 mph - in its entirety

Riverfront Drive (both directions)

25 mph - in its entirety

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Shea Lane (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Spahn Street (both directions)

25 mph - in its entirety

State Highway 349 (both directions)

65 mph - from the northern City limits to the southern boundary of Martin County

Sterling Court (both directions)

25 mph - in its entirety

Sterling Place (both directions)

25 mph - in its entirety

Stonecrest (both directions)

25 mph - in its entirety

Sundance Court (both directions)

25 mph - in its entirety

Sundance Place (both directions)

25 mph - in its entirety

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly

Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Three Rivers Lane (both directions)

25 mph - in its entirety

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wagner Drive (both directions)

25 mph - in its entirety

Wagner Street (both directions)

25 mph - in its entirety

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Winndrift (both directions)

25 mph - in its entirety

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar (\$1.00) nor more than Two Hundred Dollars (\$200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 10493 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by

the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gabe McClelland, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney