CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
June 28, 2022 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation – Pastor Philip Teaney, Homeline Baptist Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of a Proclamation for “Fredda Turner Durham Children’s Museum Day”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR SESSION OF JUNE 14, 2022

5. 2022-078 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE UNIT STAFFING, LLC OF PERRYTON, TEXAS, TO PROVIDE SCHOOL CROSSING GUARD SERVICES FOR THE ADMINISTRATIVE SERVICES DEPARTMENT AT A TOTAL COST OF $607,362.30; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

6. 2022-079 – RESOLUTION AWARDING A CONTRACT FOR THE MOMENTUM BANK BALLPARK RENOVATIONS AND IMPROVEMENTS PROJECT TO MID-TEX OF MIDLAND, INC., IN THE AMOUNT OF $1,885,000.00; APPROVING $365,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

7. 2022-080 – RESOLUTION AWARDING A CONTRACT FOR THE ILLINOIS AVENUE MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST OF $1,284,965.30; TRANSFERRING AND

APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 3) (GENERAL SERVICES)

8. 2022-081 – RESOLUTION AWARDING A CONTRACT FOR THE ELEVATED STORAGE TANK VALVE AND T-BAR CONNECTION PROJECT TO TEXAS WATER AND SOIL CO., INC., FOR AN AMOUNT OF $616,160.00; APPROVING $124,432.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS (DISTRICT 4) (GENERAL SERVICES)

9. 2022-082 – RESOLUTION APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF BLEACHERS AND SHADE STRUCTURES AT THE FOOTBALL AND SOCCER FIELDS AT REYES-MASHBURN-NELMS PARK FOR A TOTAL COST OF $140,325.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

10. 068-2022 – MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 4 TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED MARCH 23, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING FOR (I) THE RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A PROJECT, (II) THE RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD PROJECT, AND (III) THE AIRPARK NORTH FENCE REPLACEMENT PROJECT; AND APPROPRIATING $970,176.00 FOR SAID PROJECTS (DISTRICT 4) (AIRPORTS)

11. 2022-083 – RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $20,000.00 FROM THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY AUXILIARY GRANT PROGRAM; SAID FUNDS SHALL BE USED TO PURCHASE AN AUTOMATIC LICENSE PLATE READER SYSTEM (DISTRICT: ALL) (POLICE)

12. 069-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-020) WITH NUSTAR PERMIAN TRANSPORTATION AND STORAGE, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 19, BLOCK 36, TOWNSHIP 3 SOUTH AND SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

13. 10315 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,399-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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) (FIRST READING HELD JUNE 14, 2022)

14. 10316 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,210-SQUARE FOOT PORTION OF LOT 33C, BLOCK 3, BRIARWOOD ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 428 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB 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) (FIRST READING HELD JUNE 14, 2022)

15. 10317 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.570-ACRE TRACT OF LAND OUT OF SECTION 9, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COUNTY ROAD 110, APPROXIMATELY 150 FEET EAST OF SOUTH COUNTY ROAD 1205); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JUNE 14, 2022)

16. 10318 – AN ORDINANCE VACATING AND ABANDONING A 0.871-ACRE PORTION OF WEST INDIANA AVENUE AND SOUTH K STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCKS 93, 94, 96, 104, AND 105, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH L STREET AND WEST INDIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $75,881.52; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JUNE 14, 2022)

17. 10319 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED

DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JUNE 14, 2022)

18. 10320 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), BY PERMITTING A DEVIATION FROM OFF-STREET PARKING REQUIREMENTS; ESTABLISHING A THREE- YEAR TERM FOR SAID SPECIAL EXCEPTION; 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 B Y THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JUNE 14, 2022)

PUBLIC HEARINGS

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

19. 070-2022 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: REBEL #H150SS AND REBEL #H160MS; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,942 FEET AND 2,032 FEET WEST OF SOUTH LAMESA ROAD AND BETWEEN 165 FEET AND 167 FEET SOUTH OF I-20; THIS IS A PUBLIC HEARING ONLY (DISTRICT 2) (DEVELOPMENT SERVICES)

20. 10321 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 1 AND 2, BLOCK 12, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH C STREET), BY PERMITTING A REDUCED MINIMUM NUMBER OF OFF-STREET PARKING SPACES; 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)

21. 10322 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 0.41-ACRE TRACT OF LAND OUT OF LOT 3, ASHLIN PLACE, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST SIDE OF LIVE OAK DRIVE, APPROXIMATELY 233 FEET SOUTH OF WEST SCHARBAUER DRIVE), WHICH IS PRESENTLY ZONED SF-1, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AN ACCESSORY DWELLING UNIT;

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); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

PUBLIC COMMENT

22. 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.)

Respectfully Submitted,

Robert Patrick
City Manager

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

MIDLAND CITY COUNCIL
MINUTES
June 14, 2022

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., June 14, 2022.

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

The meeting was called to order at 10:04 a.m.

The agenda items were heard in the following order: 1-3, 12-13, 23, 4-8, 10, 9, 11, 14-22, 24-26.

OPENING ITEMS

1. Invocation – Pastor Larry Droll, St. Ann's Catholic Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of Proclamation honoring Pioneer Natural Resources

   3b. Presentation of a Proclamation for "Emancipation Proclamation Celebration Days"

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   Dan Corrales moved to approve consent agenda items 4-11, excluding items 9 and 11; seconded by John Norman.

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

4a. REGULAR SESSION OF MAY 24, 2022

5. 2022-075 – RESOLUTION APPROVING A CONTRACT WITH RESTROOM FACILITIES, LTD., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF A RESTROOM AND CONCESSION FACILITY AT THE SCHARBAUER SPORTS COMPLEX AUXILIARY FIELDS FOR A TOTAL COST OF $548,179.00; APPROVING $55,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

6. 060-2022 – MOTION AUTHORIZING THE EXECUTION OF A TERMINAL LEASE AGREEMENT WITH THE PERMIAN BASIN APARTMENT ASSOCIATION REGARDING CERTAIN OFFICE FACILITIES LOCATED IN THE WRIGHT OFFICE COMPLEX AT THE MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

7. 061-2022 – MOTION AUTHORIZING THE MAYOR, CITY MANAGER, AND CITY ATTORNEY TO EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT #68 IN ORDER TO RECEIVE GRANT FUNDS FOR THE PURCHASE OF AN AQUEOUS FILM FORMING FOAM TEST CART FOR AIRCRAFT RESCUE FIRE FIGHTING VEHICLES (DISTRICT 4) (AIRPORTS)

8. 062-2022 – MOTION AUTHORIZING THE MAYOR, CITY MANAGER, AND CITY ATTORNEY TO EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT #69 IN ORDER TO RECEIVE GRANT FUNDS FOR THE FOLLOWING PROJECTS: (I) RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A; (II) RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD; AND (III) RECONSTRUCT ASPHALT AIR CARRIER APRON PAVEMENT WITH CONCRETE (DISTRICT 4) (AIRPORTS)

10. 2022-077 – RESOLUTION APPROVING THE FISCAL YEAR 2022-2023 BUDGET OF THE MIDLAND DEVELOPMENT CORPORATION, A TYPE A CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT: NONE) (CITY MANAGER)

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

9. 2022-076 – RESOLUTION OF THE CITY OF MIDLAND, TEXAS, SUSPENDING THE JUNE 17, 2022 EFFECTIVE DATE OF ONCOR ELECTRIC DELIVERY COMPANY'S ("ONCOR'S") REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR

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TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH ONCOR AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO SEND COPIES OF THIS RESOLUTION TO ONCOR AND LEGAL COUNSEL FOR THE STEERING COMMITTEE (DISTRICT: NONE) (CITY MANAGER)

Council Member Corrales noted that Oncor is looking to increase their rate by about 11%. If the City takes no action, then by default it goes to that rate.

Dan Corrales moved to approve Resolution No. 2022-076; seconded by Robin Poole.

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

11. 063-2022 – MOTION AUTHORIZING THE EXECUTION OF A 7.223-ACRE SANITARY SEWER EASEMENT AGREEMENT LOCATED IN SECTION 30, BLOCK 38, T-1-S, T & P RR COMPANY SURVEY, MIDLAND COUNTY, TEXAS, FROM DOLORES L. MCCALL; AND ORDERING THE CITY SECRETARY TO RECORD SAID INSTRUMENT IN THE OFFICIAL REAL PROPERTY RECORDS OF MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

Utilities Director Carl Craigo gave a brief overview of the item noting this is the final easement for the Northeast Waste Water System that will go from the plant up to Loanstar Trail.

John Norman moved to approve Motion No. 063-2022; seconded by Dan Corrales.

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

PUBLIC HEARINGS

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

12. 10313 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 20.719-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO SF-3 SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF MIDLAND DRIVE, APPROXIMATELY 475 FEET SOUTH OF GREENTREE BOULEVARD); 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

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ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10313.

Mayor Payton opened the public hearing at 10:14 a.m.

Travis Langdon, 500 West Texas Avenue, with Diamondback Energy opposes the proposal as they are concerned this will prohibit access to their well. They are also concerned how safe it would be to have a public road and a service road overlap.

John Newton, 5207 Hilltop, with Newton Engineering, spoke in favor of this item as a development in addition to Mockingbird Heights. Mr. Newton gave an overview of what the development would consist of once completed. It's basically an updated 2022 version of Mockingbird Heights. Mr. Newton spoke briefly on the traffic issues with Green Tree. Mr. Newton also noted the traffic on Green Tree is an existing issue.

Ryan Roberts, 4491Hackberry Court, representing the Green Tree Homeowners Association spoke in opposition to items 12, 13 and 23. Mr. Roberts voiced concerns on behalf of the Green Tree residents regarding increased traffic and traffic going through residential roads. Another concern is the increase in families that would move into the area. They would like to see more plans to have their questions answered before moving forward with this development.

Lance Friday, 5307 Ellen Jayne Way in Green Tree spoke in support of this development stating the pros of possible development. Mr. Friday gave a brief history of the area and the possibilities that could come from more development.

Jarrod Sparks, 3917 Baybrook Court, President of Mockingbird Heights Section One, spoke in opposition to this item because there is not a plan for traffic in place. This would be a huge addition and proper planning needs to take place first.

Council Member Blong acknowledged that the right-of-way issue of possibly extending Mockingbird needs to be addressed.

Michelle Finney, 4605 Island Drive in Green Tree North spoke in opposition to this item because of lot sizes, home sizes and traffic.

Kay Shrader, 6402 Driftwood Drive, spoke in opposition to this item with the main issue being traffic and privacy due to short fences.

Tamara Fisher, 4916 Island Drive, spoke in opposition to this item with concerns regarding traffic and the safety of children in the area playing and riding bikes.

Mark Varner, 5106 Green Tree Boulevard, spoke in opposition to this item noting the traffic issues with speeding through Green Tree.

Paul Evans, Stanton, representing Evans Development Family Partnership, spoke in favor of this item providing the pros of developing new construction.

Engineering Services Director Jose Ortiz spoke on long term plans for this region such as

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from Mockingbird to Holiday Hill Road. There is no funding for these plans and once funding is available it may take two plus years to complete. He addressed several other options and reported that Green Tree has the capcity to sustain more traffic.

Matt Jackson, 7004 Courtney Court, spoke in opposition to this item regarding the demographics given for people who live in the developing, noting that people will move to an area that will meet their needs. He doesn't agree it will be retired people. If someone wants their children in a certain school district, they will move there.

Clint Painter, 5000 Green Tree Boulevard, spoke in opposition to this item noting Green Tree cannot handle more capacity.

Mark Tisdale, 6951 Sunrise Court in Green Tree North, spoke in opposition to this item due to traffic, more houses and small lot sizes.

Elisa Flatt, 5503 Beechwood Court, spoke in opposition to this item stating Green Tree is a community and not a pass-through for traffic. Ms. Flatt also has safety concerns for children.

There being no one else wishing to speak, the public hearing was closed at 11:26 a.m.

Lori Blong moved to defer the first of two readings of Ordinance No. 10313 and direct the applicant to bring it back as a Planned Development; seconded by Jack Ladd.

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

13. 10314 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 5.720-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO O-1, OFFICE DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF MIDLAND DRIVE AND GREENTREE BOULEVARD); 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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10314.

Mayor Payton opened the public hearing at 11:33 a.m.

Kay Shrader, 6402 Driftwood, spoke against this item noting traffic and privacy issues.

There being no one else wishing to speak, the public hearing was closed at 11:36 a.m.

Lori Blong moved to defer the first of two readings of Ordinance No. 10314 and direct the applicant to bring it back as a planned development; seconded by Jack Ladd.

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

14. 064-2022 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: CHARGER 110 MIPA UNIT #H110SS AND CHARGER 120 MIPA UNIT #H120MS; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,750 FEET AND 2,320 FEET WEST OF RANKIN HIGHWAY AND 520 FEET SOUTH OF WEST I-20; THIS IS A PUBLIC HEARING ONLY (DISTRICT 2) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of this item noting he did receive a call about fracing noise.

Chris Hall, 500 West Wall, Senior Landman for Permian Deep Rock, reported that a sound study was conducted and it was found that the noise level for I-20 was actually louder than the drilling. They have put up 16-foot sound walls.

Mayor Payton opened the public hearing at 11:54 a.m.

Cathy LaBombard, 2704 South County Road 1102, spoke against this item due to fracing noise.

There being no one else wishing to speak, the public hearing was closed at 11:58 a.m. This was a public hearing only. No action was taken.

15. 065-2022 – THE PROPOSED GRANTING OF AN OIL AND GAS WELL PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") FOR THE DRILLING OF THE OIL AND GAS WELL MUSTANG 110 MIPA UNIT #H110SS; SAID WELL BEING GENERALLY LOCATED 2,335 FEET EAST OF RANKIN HIGHWAY AND 170 FEET SOUTH OF I-20; THIS IS A PUBLIC HEARING ONLY (DISTRICT 2) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 11:59 a.m. There being no one present wishing to speak, the public hearing was immediately closed. This was a public hearing only. No action was taken.

16. 10315 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,399-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN

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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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10315.

Mayor Payton opened the public hearing at 11:59 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10315; seconded by Dan Corrales.

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

17. 10316 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,210-SQUARE FOOT PORTION OF LOT 33C, BLOCK 3, BRIARWOOD ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 428 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB 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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10316.

Mayor Payton opened the public hearing at 12:02 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10316; seconded by Dan Corrales.

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

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18. 10317 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.570-ACRE TRACT OF LAND OUT OF SECTION 9, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COUNTY ROAD 110, APPROXIMATELY 150 FEET EAST OF SOUTH COUNTY ROAD 1205); 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)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10317.

Mayor Payton opened the public hearing at 12:03 p.m.

Susan Awbrey, 250 S. West County Road 110, spoke in favor of this item noting she is all for developing the City of Midland and giving people a chance to grow.

Jim Baker, 2609 West County Rd 110, spoke in opposition to this item noting he feels this is an illegal business.

Raul Dominguez, 106 Canyon Drive, spoke in favor of this item noting the area is already an industrialized area. Mr. Dominguez spoke on his future plans to enhance development for generations to come.

Chris Hodge, 1115 S. Duberry, spoke in opposition to this item noting his concern for safety since signs that used to say “no trucks” were removed.

There being no one else wishing to speak, the public hearing was closed at 12:30 p.m.

Council Member Norman commented on the industrial zoning area confirming with Engineering Director Jose Ortiz that the road was designed to handle trucks.

John Norman moved to approve the first of two readings of Ordinance No. 10317; seconded by Dan Corrales.

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

19. 10318 – AN ORDINANCE VACATING AND ABANDONING A 0.871-ACRE PORTION OF WEST INDIANA AVENUE AND SOUTH K STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCKS 93, 94, 96, 104, AND 105, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH L STREET AND WEST INDIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $75,881.52; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION

DRAFT

BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10318.

Development Services Director Chuck Harrington gave a brief overview of the item noting the request is being made on behalf of the two museums and the library. They are trying to redevelop the area including the parking lots and creating a pass-through type driveway.

Mayor Payton opened the public hearing at 12:37 p.m.

There being no one present wishing to speak, the public hearing was immediately closed.

Dan Corrales moved to approve the first of two readings of Ordinance No. 10318; seconded by Robin Poole.

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

20. 10319 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10319.

Mayor Payton opened the public hearing at 12:39 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Robin Poole moved to approve the first of two readings of Ordinance No. 10319; seconded by Dan Corrales.

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

21. 10320 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), BY PERMITTING A

DRAFT

DEVIATION FROM OFF-STREET PARKING REQUIREMENTS; ESTABLISHING A THREE- YEAR TERM FOR SAID SPECIAL EXCEPTION; 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 B Y THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10320.

Development Services Director Chuck Harrington gave a brief overview of the item noting this request is a two-step process. We normally require masonry walls for trash enclosures, but since they cannot be seen from the street, staff is okay with not requiring masonry walls. Staff has an issue with the second item because the materials they are using, asphalt milling, will not hold parking stripes.

City Manager Robert Patrick reported that asphalt milling was used by the two previous individuals but it is not an approved use.

Council Member Poole suggested to approve their request now and see what happens with H-E-B in two to three years.

Mayor Payton opened the public hearing at 12:47 p.m.

Betsy Wells, 5008 Mira Vista, an owner and partner of the Tailgate, reported they are asking for two exceptions for the enclosure for the dumpster and the material used in the parking lot. They prefer to not fence the dumpsters since they are temporary and H-E-B could take the property. Regarding the parking lot, they agree with the staff regarding the use of asphalt milling. They would like to leave the parking lot as is, unstriped, with the asphalt milling that is currently there.

There being no one else wishing to speak, the public hearing was closed at 12:50 p.m.

Robin Poole moved to approve the first of two readings of Ordinance No. 10320 with the amendment to revisit in three years; seconded by Dan Corrales.

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

22. 066-2022 – HOLD A PUBLIC HEARING IN ORDER FOR THE CITY OF MIDLAND AND THE CDBG PRIORITIZATION COMMITTEE TO RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2022-2023 CDBG GRANT APPLICATION SUBMISSIONS AND THE THIRD YEAR ACTION PLAN IN ACCORDANCE WITH THE FIVE-YEAR CONSOLIDATED PLAN GOALS; THIS IS A PUBLIC HEARING ONLY (DISTRICT: ALL) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 12:52 p.m.

DRAFT

Michelle McClellan, 8614 Fortuna Court, spoke in favor of this item noting they applied for a grant asking for $260,000 for the Youth Initiative at St Anns. Ms. McClellan reported that $60,000 will go to one program and the other $200,000 will go to the Indigent Program.

Lisa McGee, 4015 Dunkirk, works with adults and families with children that have barriers such as transportation, communication issues, and/or lack of social support. They help them in navigating and using the system. Ms. McGee explained what their services would entail.

Brooke Rich, 3109 MaMar Avenue, volunteers with the hospital and works with parents whose children may have attempted suicide. Ms. Rich spoke on the need and use for the program.

There being no one else wishing to speak, the public hearing was closed at 1:12 p.m. This was a public hearing only. No action was taken.

MISCELLANEOUS

23. 067-2022 – MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF MOCKINGBIRD HEIGHTS, SECTION 16, BEING A PLAT OF A 26.44-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK X, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF GREEN TREE BOULEVARD AND NORTH MIDLAND DRIVE) (DISTRICT 1) (DEVELOPMENT SERVICES)

Scott Dufford moved to approve Motion No. 067-2022; seconded by Dan Corrales.

The motion failed by the following vote:
AYE: None
NAY: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman
ABSTAIN: None
ABSENT: None

24. MOTION MAKING VARIOUS APPOINTMENTS TO BOARDS AND COMMISSIONS (CITY SECRETARY'S OFFICE)

Chris Barnhill, Stanton, is seeking the reappointment of Ryan Peckham to the Permian Basin Community Centers (PermiaCare) Board.

Dan Corrales moved to reappoint Ryan Peckham to the Permian Basin Community Centers (PermiaCare) Board; seconded by Robin Poole.

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

DRAFT

Dan Corrales moved to appoint Bryan Stubbs to the MOUTD Board; seconded by John Norman.

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

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.)

There were no citizens present wishing to speak.

EXECUTIVE SESSION

Mayor Payton recessed the meeting to go into Executive Session at 1:16 p.m.

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 551.072, Deliberation Regarding Real Property
a.1. Discuss the purchase, exchange, lease or value of real property

All the business at hand having been completed, the meeting adjourned at 2:19 p.m.

PASSED AND APPROVED June 28, 2022.

_____
Patrick Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE UNIT STAFFING, LLC OF PERRYTON, TEXAS, TO PROVIDE SCHOOL CROSSING GUARD SERVICES FOR THE ADMINISTRATIVE SERVICES DEPARTMENT AT A TOTAL COST OF $607,362.30; AND AUTHORIZING PAYMENT (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution awarding the execution of a contract for crossing guard services.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the General Fund operating budget.

Discussion:

Eleven (11) requests for bid were sent out for Crossing Guard Services and three (3) bids were received. Staff recommends awarding the contract for crossing guard services to the apparent low bidder, The Unit Staffing LLC. of Perryton, Texas. Please see the attached memo from Mark Widmann, Administrative Services Director, for additional information.

Therefore, please consider approval of a resolution awarding a contract for crossing guard services to The Unit Staffing LLC. of Perryton, Texas for a total cost of $607,362.30.

Tina Dawg

City Manager's Office

INTEROFFICE MEMORANDUM

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

FROM: **Mark Widmann, Director of Administrative Services**

SUBJECT: **School Crossing Guard Bid Award**

DATE: **June 13, 2022**

Three bids for School Crossing Guards Services were received.

The Unit Staffing, LLC is a Texas-based recruitment and consulting company that aims to optimize the Public Safety and Security industry's labor force by providing trained Crossing Guard and Security professionals. Their bid for services is $15.03 per hour per guard, for an annual cost of $607,362.30.

Other bids received by the following vendors:

- All City Management Services, Inc.
  - Hourly Rate of $20.44, Annual Cost $825,980.40

- Everything Parking Inc., dba Cross Safe
  - Hourly Rate between $27.96 and $34.53, Annual Cost $1,223,406.00

The Unit Staffing, LLC is the recommended low bidder.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE UNIT STAFFING, LLC OF PERRYTON, TEXAS, TO PROVIDE SCHOOL CROSSING GUARD SERVICES FOR THE ADMINISTRATIVE SERVICES DEPARTMENT AT A TOTAL COST OF $607,362.30; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager advertised for competitive bids for school crossing guard services (the "Services") for the Administrative Services Department; and

WHEREAS, Bid No. 22002754R was opened on June 8, 2022, with the lowest responsible bidder being The Unit Staffing, LLC of Perryton, Texas ("Contractor"), having submitted a bid of $607,362.30 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with Contractor for said Services;

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, an agreement with Contractor for said Services at a total cost of $607,362.30, said agreement to be in a form substantially similar to that attached hereto as Exhibit "B" and incorporated herein for all legal purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said agreement executed in accordance with this resolution in an amount not to exceed $607,362.30 from funds available in the General Fund operating budget upon receipt of proper invoices or statements approved by the City Manager.

SECTION THREE. That the City of Midland, upon executing an agreement with Contractor for said Services, is not rejecting bids, but reserving the right to accept the next lowest responsible bid in the event that Contractor cannot accomplish the work specified in

the agreement.

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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Mark Widmann, Administrative Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 22002754R School Crossing Guards Opened June 8, 2022					All City Management Services, Inc. 10440 Pioneer Blvd, Suite 5 Santa Fe, CA 90670 310-202-8284 david@thecrossingguardcompany.com		The Unit Staffing LLC 1610 S Indiana St Perryton, TX 79070 806-228-2123 Timorgan@theunitstaffing.com		Everything Parking Inc dba Cross Safe 4900- B Old Pineville Road Charlotte, NC 28217 Brian Haupricht hauprichtb@parkinc.com	
ITEM	SITES	HOURS/DAY	DAYS/YEAR	DESCRIPTION	HOURLY BILLING RATE	TOTAL	HOURLY BILLING RATE	TOTAL	HOURLY BILLING RATE	TOTAL
1	52	208	180	Sites at 4.0 hrs per day	$20.44	$765,273.60	$15.03	$562,723.20	$27.96	$1,046,822.40
2	3	16.5	180	Sites at 5.5 hrs per day	$20.44	$60,706.80	$15.03	$44,639.10	$27.96	$83,041.20
3	1	6.0	180	Supervisor at 6 hrs per day	NA	NA	NA	NA	$34.53	$37,292.40
4	2	10.0	180	Asst Supervisors at 5 hrs per day	NA	NA	NA	NA	$31.25	$56,250.00
				TOTAL PROPOSAL		**$825,980.40**		**$607,362.30**		**$1,223,406.00**

Bidding Summary:

11	**Bid requests were issued.**
3	**Bids listed above**
0	**NO BIDS were received.**
8	**Bidders did not respond.**

EXHIBIT "B"

AGREEMENT FOR PROVISION OF TEMPORARY EMPLOYMENT SERVICES FOR SCHOOL CROSSING GUARDS FOR THE CITY OF MIDLAND #22002754R

This 29th day of June 2022, the City of Midland, Texas, ("City"), and The Unit Staffing, LLC. ("Contractor"), do hereby enter into this Agreement for personnel services where Contractor will provide persons to work as crossing guards during the Midland Independent School District ("MISD") academic year.

1. **Term:** The term of this Agreement shall commence on August 1, 2022 and run through May 31, 2023. Thereafter, this Agreement may be extended, at the option of City, for a term of no longer than one (1) year. The number of additional one (1) year extensions agreed to shall be limited to three (3).

2. **Personnel Provided by Contractor:** Contractor agrees to provide City with not less than fifty-five (55) people to serve as temporary personnel who shall be qualified to perform the duties customarily required of a school crossing guard ("Temps" or "Guards"). Each Temp shall be available to work not less than four (4) hours each day that MISD is in session during the regular school calendar year with the exact hours and locations to be established by City; provided, however, that each Temp shall be required to be available earlier than the regularly scheduled times on at least six (6) dates to be determined by MISD.

3. **Reduction of Personnel:** City may, at its option and without penalty and cost, reduce the number of Guards required in Paragraph 2, above, by providing notice to Contractor not later than three (3) calendar days prior to the effective date of the reduction. Contractor shall be solely responsible for selecting which Guards shall be terminated from service with City pursuant to this reduction.

4. **Increase of Personnel:** Contractor agrees upon written request of City to use best efforts to provide additional personnel to City in the event City requires crossing guards in excess of the fifty-five (55) described in Paragraph 2. City agrees to pay Contractor an additional $15.03 per person per hour for each additional Temp provided pursuant to this Paragraph.

5. **Dismissal of Personnel by City:** Upon written request of City's representative, Contractor shall remove and use its best efforts to replace any Temp assigned by Contractor to perform services for City under this Agreement found by City to be unsatisfactory. Contractor's

fee shall be reduced by $15.03 per person per hour for each hour that a position remains unfilled by a replacement Temp. Contractor shall be in default of this Agreement if any position remains open more than two (2) school days after receiving notice of the request for replacement of a Temp.

6. **Background Check:** Contractor shall perform local and national criminal background checks an all potential Guards prior to commencing work for City. Said criminal background checks shall include a multi-state/multi-jurisdictional criminal records locator, or other similar commercial nation-wide database with validation (primary source search), and National Sex Offender Registry database. Potential Guards shall also be required to undergo drug and alcohol testing and physical exams prior to commencing work for City. Prior to rendering any services under this Agreement and upon receiving a request by City to do so at any time during the term, Contractor shall provide City's Director of Administrative Services with a certification of compliance, in a form acceptable to City, that Contractor has met the requirements of this Section and is in compliance hereof.

7. **Training and Supervision of Guards:** City shall be solely responsible for controlling all Guards assigned to provide services to City pursuant to this Agreement. City shall also be solely responsible for providing Guards all equipment required by City to perform this Agreement.

8. **Hiring and Discharge of Personnel:** Contractor shall have the sole right to hire or discharge Guards assigned to work under this Agreement; provided, however, Contractor shall be in default of this Agreement if a Temp is discharged by Contractor or a Temp resigns and said Temp is not replaced by another Temp by the second school day following such discharge or resignation.

9. **Payment of Personnel:** Contractor shall be solely responsible for establishing and paying all wages and salaries due the Guards for work performed pursuant to this Agreement. Contractor shall further be solely responsible for payment of all payroll taxes, FICA, and State and or Federal unemployment taxes related to Contractor's employment of the Guards assigned to work under this Agreement.

10. **Contractor's Fee:** City agrees to pay Contractor for services rendered pursuant to this Agreement the sum $607,362.30 ($15.03 per hour, per guard) during the contract period. Contractor shall bill a minimum of four (4) hours per guard, per school day unless contractor fails to perform service. The fee paid by City shall be inclusive of all costs related to obtaining the Guards from Contractor, including, but not limited to, amounts related to Contractor's

provision of workers' compensation coverage pursuant to Paragraph 12. Payment shall be made to Contractor not later than thirty (30) days after receipt of invoice from Contractor for services performed by Guards during the calendar month immediately preceding the issuance of the invoice. All payments shall be made to Contractor at Contractor's office address shown below.

11. **Disputed Amounts:** If upon receipt of an invoice, City disputes any amounts purportedly due under said invoice, Contractor shall provide, upon request of City, supporting documentation for such fees, including, but not limited to, copies of any time sheets or similar documents completed by Guards assigned to this Agreement. In case of dispute, City agrees to pay undisputed amounts in accordance with Paragraph 10, above. Upon resolution of differences over any disputed amounts, City agrees to pay the amount due based upon the agreed resolution not later than five (5) business days or the due date of the original invoice, whichever is later.

12. **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
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by 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 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. All insurance required pursuant to this Contract shall

provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by 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 CITY of Midland and policies that name CITY of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

CONTRACTOR certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

13. **INDEMNITY: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING 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 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 AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND

CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONTRACTOR OR 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 AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

14. **Notification of Guards Regarding Workers' Compensation Coverage:** Contractor shall provide written notification to every Temp assigned to work pursuant to this Agreement that statutory workers' compensation coverage is being provided by Contractor for injuries covered by the Texas Workers' Compensation Act, as amended, which are incurred while the Guards are under the direction and control of Contractor. No Temp shall commence work for Contractor under this Agreement until a copy of such notice, signed by the Temp, has been delivered to City's Director of Administrative Services.

15. **Default and Termination:** In addition to the events constituting default set forth in this Agreement, Contractor shall be in default of this Agreement upon failure of Contractor to comply with any other provision of this Agreement. City may, at its option, terminate this Agreement by providing written notice of default not later than ten (10) days prior to the proposed date of termination. Notwithstanding anything herein to the contrary, termination of this Agreement for default, shall not occur until Guards have been absent a total of twenty (20) hours during which crossing guard services are required.

16. **City's Representative:** City's representative for this Agreement shall be the Director of Administrative Services or the Director's designee.

17. **Assignment**: Contractor shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

18. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for agreement payments due under the agreement, then this agreement shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

19. **Nonwaiver:** Failure of City hereto to declare any default immediately upon occurrence hereof, or delay in taking any action in connection therewith, shall not waive such default, but City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

20. **Notice:** Any notice which may or shall be given under the provisions of this Agreement shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Mail, postage prepaid:

To City:	City of Midland
(Mailing Address)	P.O. Box 1152
	Midland, TX 79702
(Physical Address)	300 North Loraine
	Suite 310
	Midland, Texas 79701
To Contractor:	The Unit Staffing LLC.
(Fill in name/Address)	1610 S Indiana St.
	Perryton, Texas 797070

21. **Severability:** This Agreement shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in meaning to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. **Alteration:** This Agreement may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.

23. **Entire Agreement and Binding Effect:** This Agreement constitutes the entire agreement between City and Contractor. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

24. **Captions:** Paragraph captions herein are for convenience only and neither limit nor amplify the provisions of this Agreement.

25. **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.

26. **Termination Without Cause:** City may terminate this Agreement at will for no or any reason upon giving ninety (90) days written notice to Contractor. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Contractor has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

27. **Use of Other Agencies During This Agreement:** This Agreement applies solely to the use of temporary employees by City as school crossing guards and is in no way intended by the parties to obligate City to agreement with Contractor for temporary employees for any other purpose. City shall have the right under this Agreement to hire temporary employees from other contractors to be used as school crossing guards to fill in vacancies left by Contractor's inability to immediately assign one of its own employees to fill such vacancy.

28. **Compliance With Laws:** In the payment and employment of people to serve as Guards pursuant to this Agreement, Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances with respect to payment of minimum wages. Contractor shall not discriminate against people on the basis of race, sex, age, religion, national origin, or mental or physical disability in the application, hiring, termination, evaluation, or compensation of people assigned to work under this Agreement, and shall further comply with all laws, rules and regulations prohibiting such discrimination including but not limited to, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

29. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, 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 WHICH CONTRACTOR 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.

30. **WAIVER OF ATTORNEY FEES: BY EXECUTING THIS AGREEMENT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. CONTRACTOR SPECIFICALLY AGREES THAT IF CONTRACTOR 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, 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. CONTRACTOR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. CONTRACTOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

31. **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.

32. **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 City; 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 City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 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. Contractor 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 Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

33. **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 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 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 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 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 City from any liability whatsoever. City is under no obligation to provide notice to Contractor that Contractor'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, 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.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

36. **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.

37. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and

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

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

38. Records Retention and Production of Information. To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022 personally appeared, _____, an officer of The Unit Staffing LLC., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the __day of _____, 2022.

_____
Notary Public, State of Texas

Exhibit 'A'

CITY OF MIDLAND

PURCHASING DIVISION DATE: 5/24/2022

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22002754R**

OPENING TIME: 2:00 PM **OPENING DATE: 6/8/2022**

CITY OF MIDLAND
300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 2:00 P.M. 6/8/2022 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Administrative Services, 300 N. Loraine, Suite 120, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
22002754R	1	40,410	School Crossing Guard Services in accordance with the attached request for proposals, contract and quote sheet/service questionnaire.	$15.03	
				TOTAL	$607,362.30

NOTICE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.
THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: The Unit Staffing LLC.
ADDRESS
CITY Perryton ST TX ZIP 79070
PHONE NO (806)228-2123 FAX NO. N/A
EMAIL: Tlmorgan@theunitstaffing.com

CASH DISCOUNT: 5 % 9 DAYS
DELIVERY CAN BE MADE $576,994.18
AUTHORIZED SIGNATURE [signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

RFB for School Crossing Guard Services

Sealed bids will be received until 2:00 p.m. June 8, 2022, in the office of the City Secretary, City Hall, 300 N. Loraine, Midland, Texas, for the provisions of temporary employment services regarding School Crossing Guards in the City of Midland, Texas. Bid packets may be obtained from the Office of the Purchasing Agent at purhasing@midlandtexas.gov.

Interested parties should review the draft copy of our proposed contractual agreement (enclosed). We have purposely left blank the following: 1) The date the contract is to be signed; 2) The identification of the contractor; 3) The proposed hourly rate for providing the services outlined in the agreement.

In order for your proposal to be considered it must include a fully completed quote sheet (copy enclosed).

VENDOR CONTACT

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

WAIVER OF ATTORNEY FEES

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

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

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).

The Unit Staffing LLC.	June 8, 2022
Company Name	Date
Terry Morgan	(806)228-2123
Authorized Signature	Phone
Terry Morgan	N/A
Print Above Name	Fax

Tlmorgan@theunitstaffing.com

E-Mail

RFB for School Crossing Guard Services

Client Worksheet 2022-2023

Billing Rate for 2022/2023: $ $15.03/ hourly

City of Midland
P.O. Box 1152
Midland, TX 79702

KEY:
Traditional Calendar:
For sites with no regularly scheduled early release days, use 180 regular days
For sites with one regularly scheduled early release day/week, use 144 regular days and 36 minimum days

Sites with traditional calendar:

		208		180		$15.03	=	$0.00
52	Sites at 4.0 hrs per day	Total Hrs/day	X	days/yr	X	Hourly Billing Rate		$562,723.20
		16.5		180		$15.03	=	$0.00
3	Sites at 5.5 hrs per day	Total Hrs/day	X	days/yr	X	Hourly Billing Rate		$44,639.1

TOTAL ANNUAL PROJECTED COST $ 607,362.30

School Crossing Guards
Background Check Compliance Certification

On behalf of The Unit Staffing LLC. ("Contractor"), I, the undersigned authorized signatory for Contractor, hereby certify to the City of Midland, Texas (the "City") that:

(1) Contractor has fully complied with the requirements of Section 6 of that certain Agreement for Provision of Temporary Employment Services for School Crossing Guards for the City of Midland dated _____ (the "Agreement").
(2) Contractor has performed all criminal background checks on all school crossing guards ("Guards") prior to commencing work for the City as required by Section 6 of the Agreement.
(3) Contractor has required all Guards to undergo drug and alcohol testing and physical exams prior to commencing work for the City as required by Section 6 of the Agreement.
(4) Contractor has determined that each Guard is fully qualified to perform his or her duties.
(5) Contractor has determined from the results of the criminal background checks, drug and alcohol testing, and physical exams that each Guard is fully capable of performing his or her duties and will create and promote a safe environment for children.
(6) If Contractor receives information that a Guard who performs work under the Agreement has a reported criminal history, Contractor will immediately remove the Guard from his or her duties and notify the City in writing thereof within three (3) business days.
(7) Contractor agrees to provide this certification at any time during the term of the Agreement upon the City's request.

Noncompliance or misrepresentation regarding this certification may be grounds for termination of the Agreement.

_____ _____
Signature **Date**

Terry Morgan
Printed Name

President
Title

QUOTE SHEET/SERVICE QUESTIONNAIRE

1. Please indicate the hourly rate(s) you would charge for the services outlined in the enclosed draft contractual agreement (please note that it is the City of Midland's understanding that persons employed as School Crossing Guards in the State of Texas must be carried under Workers Compensation Code 7720 – if you are not going to carry these individuals under Code 7720 please provide written justification.)

   Rate: $15.03

2. Please provide background information regarding your company; include company name, state of incorporation, location of headquarters office, location of office(s) that would service the City of Midland in regard to this agreement, and identify the key personnel involved in delivering these services.

   Company Name: The Unit Staffing LLC.
   State of Incorporation: Texas
   Headquarter Office: 1610 S Indiana St. Perryton, Texas 79070
   Midland Office: 3903 S County Rd 1210 REAR, Midland Texas 79706
   Key Personnel: Terry Morgan (Single Source Point of Contact)

3. Does your local office have any experience in providing groups of non-clerical employees of temporary services similar to those requested by the City of Midland? No
   If yes, please explain.

4. Please describe your plan for providing the services outlined in the enclosed agreement. Include type and level of supervision, quality control methodology, policies regarding attendance, training/orientation activities, plan for covering crosswalk areas when absences occur.

In addition to verbal training and counseling, the Area Compliance Managers are supported using Field Training Checklist, Field Training Cards, Site Performance Evaluations, Independent field observations and a professionally produced Crossing and Security Guards safety DVD. Reports of satisfactory completion of all levels of training and ongoing safety reviews will be summarized and available to the Midland Police and Midland County Sheriff's Departments. In any event that a post is vacant due to an absence of personnel, a replacement shall be provided by The Unit utilizing our in-house paging system operating 24 hours daily to ensure an adequate and immediate response.

5. What type of monthly summary report would you be able to provide the City of Midland. Please include a sample or describe.

   Included in this RFP/RFB the City will receive monthly Site performance Evaluations (SPE), Continued and remedial training logs, Customer performance reviews, Complaints with resolutions, Absences and average response times.

6. Can you provide any or all of the pre-employment testing referenced under section 6 of the agreement document (drug and alcohol testing, physical exams, and criminal background checks)? If yes, is this cost included in your quote? If not, what would the additional cost be (per person)?

   The Unit Staffing confirms that all pre-employment and testing requirements outlined under section 6 of the agreement will be met with the cost inclusive in this quote.

7. Please provide name, address, and phone number of 3 references you would like us to speak to in regard to your ability to deliver the services outlined in the draft agreement.

   Contact Name: Mario Randal
   Contact address: 3201 Woodland Ave Amarillo, Texas 79119
   Contact Number: (432)202-2807

   Contact Name: Dewayne Sherman
   Contact address: 110 Turnburry Drive. Horseheads, NY 14845
   Contact Number: (240)687-3806

   Contact Name: Joe Rodriguez
   Contact address: 12637 County Rd. L Perryton, Texas 79070
   Contact Number: (806)346-0772

CITY OF MIDLAND

ADDENDUM # 1

BID # 22002754R

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: June 6, 2022

- Given the format of the Quote Sheet, is it possible to provide separate rates for supervisor(s) who will be working in addition to the hours reflected on the Quote Sheet?

  Yes, you may add a separate rate for supervisors.

- This RFB includes a CIS document which is to be signed and notarized by a government officer who has received gifts from the bidder, while in the original RFB there was a CIQ document, which was clearly to be signed by the bidder. Does the CIS document need to be submitted if there is no government officer who has received gifts from our company?

  Please see the attached CIQ.

- The Quote Sheet shows a total of 55 locations, but the sample contract still shows 52 personnel/posts; should we use the information shown on the Quote Sheet in formulating our pricing?

  The correct total of locations is 55.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

The Unit Staffing LLC.	
Company Name	
Bidder Authorized Signature	June 8, 2022 Date
Terry Morgan	(806)228-2123
Please Print Above Name	Phone

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

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

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

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

N/A

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

N/A

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds $100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

_____

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

_____

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

1. Name of Local Government Officer. Enter the name of the local government officer filing this statement.

2. Office Held. Enter the name of the office held by the local government officer filing this statement.

3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code. Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an 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), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.

4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3. Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.

5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds $100. List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed $100 in value.

6. Affidavit. Signature of local government officer.

Local Government Code § 176.001(2-a): "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

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

(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.

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:

Regina Stephenson
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: N/A

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: June 8, 2022

Printed Name and Title: Terry Morgan. President

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY 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/COMPANY 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/COMPANY 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.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This form is available in a Word Form fill in document. If desired please contact the Purchasing office for a copy by e-mail

No-Bid
Response For
22002754R School Crossing Guards

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Agent
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523. IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

N/A

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.**

N/A

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 Signature of vendor doing business with the governmental entity

June 8, 2022

Date

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

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

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

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

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

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

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

THE UNIT
A STAFFING AGENCY

2022

A PROPOSAL FOR THE CITY OF MIDLAND CROSSING GUARD SERVICES

June 8 ,2022

THE UNIT STAFFING
1610 South Indiana Street, Perryton, TX 79070
OFFICE PHONE: 806.228.2123
EMERGENCY DISPATCH: 806.228.0960

June 8, 2022

Purchasing Manager
City of Midland
300 North Loraine
Midland, Texas 79701

On behalf of The Unit Staffing Agency, LLC., we would like to express our deepest pride in knowing how it feels to be part of this amazing community and generate opportunities to serve our organizations, citizens and the City of Midland.

We are submitting this Response for Proposal/ Bid to our great city of Midland to provide Crossing Guard Services for the City of Midland (Independent School Districts). As a Response to this proposal should all parties proceed with an Agreement, relevant specifications shall be delivered to The Unit Staffing to ensure a best effort practice is intact. The terms of this proposal shall be valid for a period of 120 Days.

The Unit is proposing a simple solution and seamless transition in providing Midland with a model Crossing Guard program that will effectively relieve other agencies including the school district, the city and the local law enforcement agencies of the day-to-day responsibilities of managing such a program. Along with these services provided, we will assume complete responsibility for the day-to-day operations of the Crossing Guard program. This shall include recruitment, assessment, placement and management of all personnel as well as all background clearance, training, equipment, payroll, supervision and management of the program in its entirety.

As the result of understanding unique and sometimes flexible schedule requirements the city and school districts face, being headquartered in Perryton and establishing a satellite office in Midland adds significant value and an incomparable operational advantage to ensure that our quality of service and ability to meet and exceed expectations are matched with continuous lines of close communication. In any event that a post is vacant due to an absence of personnel, a replacement shall be provided by The Unit utilizing our in-house paging system operating 24 hours daily to ensure an adequate and immediate response. We will closely monitor and continue open communication with all schools participating in this program to maintain proper and adequate scheduling.

We are excited and hopeful about being able to provide Crossing Guard services for the City of Midland. We pride ourselves in leading the charge in continuing to provide public safety to our community, our neighbors, and friends here in Midland. If you have any questions, please feel free to contact me at 806.228.2123.

Best Regards,

Terry Morgan

Terry Morgan, President
Tlmorgan@theunitstaffing.com



COMPANY PROFILE

The Unit Staffing is a Perryton based recruitment and consulting company that aims to optimize the labor force in the Public Safety and Security Industry, by streamlining the hiring process and providing quality uniformed professionals. We offer the recruitment, training staffing, and onboarding of uniformed professionals to meet the growing demands of, Law enforcement agencies, federal agencies, School districts and City departments across the state of Texas.

As the bulk of employees across public safety agencies lack the proper training, motivation and compensation, turnover and shortages have significantly increased. This has led to public safety vulnerabilities including unmanned crosswalk positions on busy roads surrounding local schools and schools within the community left exposed to potential dangers, which all have potential factors of becoming life threatening, and which we have seen become a reality way too often in today's climate.

With this Proposal, the Unit will supply access to technologically advanced equipment for training to the selected candidates from the local community. These candidates will be properly trained, monitored, mentored, and compensated, to ensure the city and its school facilities will be equipped with the most professional Crossing Guard resources.

Our operations director will work with the City of Midland and schools to build a high-quality team of professionals as per the City and School districts requirements, comprising talented and knowledgeable Crossing Guards. We will ensure that every candidate has undergone a rigorous training process to diffuse any skills gaps or problems and add value to the program.

Our candidate pool will comprise of pre-vetted Crossing Guards trained for a variety of situations, who will have undergone a series of comprehensive, technical, tactical, and psychological evaluations. Our goal is to ensure that only the most acceptable quality candidates are included in our talent pool with appropriate expertise and soft skills. Furthermore, to keep our candidates up to date with the latest trends and advancements, we will provide them with intensive ongoing training and mentorship.

As we provide this seamless transition to provide privatized Crossing guards to Midland and the school district, they will become the beneficiaries of our successful implementation of Crossing Guard Services provided.

APPROACH AND MANAGEMENT PLAN

The Unit Staffing employs a Single Source Point of Contact of managing which results in efficient field operations as well as providing a multifaceted response to potential problems. The SSPOC and the Area Compliance Manager (ACM) work together (with continued input from Midland and the Independent School District) to establish specific program objectives and expectations. The SSPOC and ACM then works directly with the Crossing Guards to implement and enforce the Plan.

The SSPOC along with the ACM has responsibility for the direct management of Crossing Guards and together they will continue to ensure Midland and the School District's operational expectations are met and exceeded. Standards and expectations are communicated to all personnel of the company to allow for a better understanding of the decision-making process. This helps reduce confrontational attitudes by establishing and enhancing the common goal of providing for the safety of school children.

It is important to note that the SSPOC can at their discretion utilize an independent individual or agency to provide quality control of field operations. These individuals or agencies shall be trained and deployed to make unannounced observations of Crossing Guards at work and report on their compliance with established Midland and The Unit policies and procedures.

In addition to verbal training and counseling, the ACM are supported using Field Training Checklist, Field Training Cards, Site Performance Evaluations, Independent field observations and a professionally produced Crossing and Security Guards safety DVD. Reports of satisfactory completion of all levels of training and ongoing safety reviews will be summarized and available to the Midland Police and Midland County Sheriff's Departments.

Background checks and fingerprinting will be completed on all employees as allowed by Texas State law. Successful completion of the background check and social security verification via E-Verify is required prior to the employee being hired. Internal minimum passing standards along with Perryton established standards would prevent anyone from participating in the program who has been convicted of any felony, a crime against children, Conduct requiring registration under Texas Health and Safety Code or violation of the Texas Penal Code requiring registration.

KEY PERSONNEL

The most significant resource that The Unit Staffing brings to Midland and the Midland Crossing Guard program is our ability to manage and utilize a rapid communication system through a single source point of contact across multiple agencies and locations. Thus, limiting the response time and transfer of relevant information allowing for efficient coordination and local law enforcement agency responses.

Single Source Point of Contact (SSPOC): Terry Morgan
Terry oversees the entire Crossing and Security Guard program from recruiting, hiring, training and providing management over each site within the program. He also is responsible for the development and implementation of training programs, certification standards, development and implementation of operational standards, safety instructions and compliance with all legal requirements and restrictions. As the Single Source Point of Contact, it is extremely efficient way to coordinate the flow of information between operations and our Area Compliance Manager.

Area Compliance Manager (ACM):
The Area Compliance Manager with support from the SSPCO will have responsibilities of ensuring each employee receives the proper number of Site Performance Evaluations and completes Certification Mandates. The (ACM) will also work with the SSPOC to ensure that the training, certifications, standards, rules and regulations are all intact and being upheld, as our quality of professionalism, Safety and customer satisfaction prevail.

The Unit Staffing acknowledges that no key personnel shall be removed or replaced without the prior written concurrence of the City of Midland and the Independent School District.

EXHIBIT A

THE UNIT SCOPE OF SERVICE

1. The Unit will provide all personnel, equipment and training in the appropriate Standard Operating Procedures (SOP) for Crossing for pedestrians in marked crosswalks at the designated hours and designated schools in accordance with the final agreement contract.

2. The Unit shall provide supervisory personnel to see that proper and adequate Crossing Guard activities are in fact taking place at the required place and times, and in accordance with all items of this agreement.

3. The Unit shall maintain adequate personnel to ensure all positions are staffed if any person fails to report for work at the assigned time and location. Should this instance occur, The Unit agrees to provide an immediate response and replacement of the absent personnel.

4. The Unit shall provide personnel adequately trained as herein specified for the performance of duties of Crossing Guards. In the performance of their duties The Unit and their employees shall conduct themselves in a professional manor in accordance with the conditions of this agreement and the laws and codes of the State of Texas and the City of Midland and the Midland Independent School District pertaining to general pedestrian safety and school crossing areas and general School Campus safety.

5. Crossing Guards services shall be provided by The Unit at the designated locations, identified by the City, the School District, and at the designated hours on all days on which designated schools in the Midland Independent School District are in session.

6. The Unit shall provide all Crossing Guards with appropriate apparel by which they are easily identifiable and highly visible as Crossing Guards. Such apparel shall be uniform for all persons performing duties of Crossing and Security Guards and shall be worn at all times while performing said duties. The apparel shall be appropriate for all weather conditions. The Unit shall also provide all personnel with necessary and appropriate equipment to fully accommodate and prepare each person for the successful completion of their individual tasks.

City of Midland - Bid Tabulation

BID # 22002754R School Crossing Guards Opened June 8, 2022					All City Management Services, Inc. 10440 Pioneer Blvd, Suite 5 Santa Fe, CA 90670 310-202-8284 david@thecrossingguardcompany.com		The Unit Staffing LLC 1610 S Indiana St Perryton, TX 79070 806-228-2123 Timorgan@theunitstaffing.com		Everything Parking Inc dba Cross Safe 4900- B Old Pineville Road Charlotte, NC 28217 Brian Haupricht hauprichtb@parkinc.com	
ITEM	SITES	HOURS/DAY	DAYS/YEAR	DESCRIPTION	HOURLY BILLING RATE	TOTAL	HOURLY BILLING RATE	TOTAL	HOURLY BILLING RATE	TOTAL
1	52	208	180	Sites at 4.0 hrs per day	$20.44	$765,273.60	$15.03	$562,723.20	$27.96	$1,046,822.40
2	3	16.5	180	Sites at 5.5 hrs per day	$20.44	$60,706.80	$15.03	$44,639.10	$27.96	$83,041.20
3	1	6.0	180	Supervisor at 6 hrs per day	NA	NA	NA	NA	$34.53	$37,292.40
4	2	10.0	180	Asst Supervisors at 5 hrs per day	NA	NA	NA	NA	$31.25	$56,250.00
				TOTAL PROPOSAL		**$825,980.40**		**$607,362.30**		**$1,223,406.00**

Bidding Summary:

11 **Bid requests were issued.**

3 **Bids listed above**

0 **NO BIDS were received.**

8 **Bidders did not respond.**

AGREEMENT FOR PROVISION OF TEMPORARY EMPLOYMENT SERVICES FOR SCHOOL CROSSING GUARDS FOR THE CITY OF MIDLAND #22002754R

This 29th day of June 2022, the City of Midland, Texas, ("City"), and The Unit Staffing, LLC. ("Contractor"), do hereby enter into this Agreement for personnel services where Contractor will provide persons to work as crossing guards during the Midland Independent School District ("MISD") academic year.

1. **Term:** The term of this Agreement shall commence on August 1, 2022 and run through May 31, 2023. Thereafter, this Agreement may be extended, at the option of City, for a term of no longer than one (1) year. The number of additional one (1) year extensions agreed to shall be limited to three (3).

2. **Personnel Provided by Contractor:** Contractor agrees to provide City with not less than fifty-five (55) people to serve as temporary personnel who shall be qualified to perform the duties customarily required of a school crossing guard ("Temps" or "Guards"). Each Temp shall be available to work not less than four (4) hours each day that MISD is in session during the regular school calendar year with the exact hours and locations to be established by City; provided, however, that each Temp shall be required to be available earlier than the regularly scheduled times on at least six (6) dates to be determined by MISD.

3. **Reduction of Personnel:** City may, at its option and without penalty and cost, reduce the number of Guards required in Paragraph 2, above, by providing notice to Contractor not later than three (3) calendar days prior to the effective date of the reduction. Contractor shall be solely responsible for selecting which Guards shall be terminated from service with City pursuant to this reduction.

4. **Increase of Personnel:** Contractor agrees upon written request of City to use best efforts to provide additional personnel to City in the event City requires crossing guards in excess of the fifty-five (55) described in Paragraph 2. City agrees to pay Contractor an additional $15.03 per person per hour for each additional Temp provided pursuant to this Paragraph.

5. **Dismissal of Personnel by City:** Upon written request of City's representative, Contractor shall remove and use its best efforts to replace any Temp assigned by Contractor to perform services for City under this Agreement found by City to be unsatisfactory. Contractor's

fee shall be reduced by $15.03 per person per hour for each hour that a position remains unfilled by a replacement Temp. Contractor shall be in default of this Agreement if any position remains open more than two (2) school days after receiving notice of the request for replacement of a Temp.

6. **Background Check:** Contractor shall perform local and national criminal background checks an all potential Guards prior to commencing work for City. Said criminal background checks shall include a multi-state/multi-jurisdictional criminal records locator, or other similar commercial nation-wide database with validation (primary source search), and National Sex Offender Registry database. Potential Guards shall also be required to undergo drug and alcohol testing and physical exams prior to commencing work for City. Prior to rendering any services under this Agreement and upon receiving a request by City to do so at any time during the term, Contractor shall provide City's Director of Administrative Services with a certification of compliance, in a form acceptable to City, that Contractor has met the requirements of this Section and is in compliance hereof.

7. **Training and Supervision of Guards:** City shall be solely responsible for controlling all Guards assigned to provide services to City pursuant to this Agreement. City shall also be solely responsible for providing Guards all equipment required by City to perform this Agreement.

8. **Hiring and Discharge of Personnel:** Contractor shall have the sole right to hire or discharge Guards assigned to work under this Agreement; provided, however, Contractor shall be in default of this Agreement if a Temp is discharged by Contractor or a Temp resigns and said Temp is not replaced by another Temp by the second school day following such discharge or resignation.

9. **Payment of Personnel:** Contractor shall be solely responsible for establishing and paying all wages and salaries due the Guards for work performed pursuant to this Agreement. Contractor shall further be solely responsible for payment of all payroll taxes, FICA, and State and or Federal unemployment taxes related to Contractor's employment of the Guards assigned to work under this Agreement.

10. **Contractor's Fee:** City agrees to pay Contractor for services rendered pursuant to this Agreement the sum $607,362.30 ($15.03 per hour, per guard) during the contract period. Contractor shall bill a minimum of four (4) hours per guard, per school day unless contractor fails to perform service. The fee paid by City shall be inclusive of all costs related to obtaining the Guards from Contractor, including, but not limited to, amounts related to Contractor's

provision of workers' compensation coverage pursuant to Paragraph 12. Payment shall be made to Contractor not later than thirty (30) days after receipt of invoice from Contractor for services performed by Guards during the calendar month immediately preceding the issuance of the invoice. All payments shall be made to Contractor at Contractor's office address shown below.

11. **Disputed Amounts:** If upon receipt of an invoice, City disputes any amounts purportedly due under said invoice, Contractor shall provide, upon request of City, supporting documentation for such fees, including, but not limited to, copies of any time sheets or similar documents completed by Guards assigned to this Agreement. In case of dispute, City agrees to pay undisputed amounts in accordance with Paragraph 10, above. Upon resolution of differences over any disputed amounts, City agrees to pay the amount due based upon the agreed resolution not later than five (5) business days or the due date of the original invoice, whichever is later.

12. **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
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by 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 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. All insurance required pursuant to this Contract shall

provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by 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 CITY of Midland and policies that name CITY of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

CONTRACTOR certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

13. **<u>INDEMNITY:</u> CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING 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 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 AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND

CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONTRACTOR OR 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 AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

14. **Notification of Guards Regarding Workers' Compensation Coverage:** Contractor shall provide written notification to every Temp assigned to work pursuant to this Agreement that statutory workers' compensation coverage is being provided by Contractor for injuries covered by the Texas Workers' Compensation Act, as amended, which are incurred while the Guards are under the direction and control of Contractor. No Temp shall commence work for Contractor under this Agreement until a copy of such notice, signed by the Temp, has been delivered to City's Director of Administrative Services.

15. **Default and Termination:** In addition to the events constituting default set forth in this Agreement, Contractor shall be in default of this Agreement upon failure of Contractor to comply with any other provision of this Agreement. City may, at its option, terminate this Agreement by providing written notice of default not later than ten (10) days prior to the proposed date of termination. Notwithstanding anything herein to the contrary, termination of this Agreement for default, shall not occur until Guards have been absent a total of twenty (20) hours during which crossing guard services are required.

16. **City's Representative:** City's representative for this Agreement shall be the Director of Administrative Services or the Director's designee.

17. **Assignment**: Contractor shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

18. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for agreement payments due under the agreement, then this agreement shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

19. **Nonwaiver:** Failure of City hereto to declare any default immediately upon occurrence hereof, or delay in taking any action in connection therewith, shall not waive such default, but City shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

20. **Notice:** Any notice which may or shall be given under the provisions of this Agreement shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Mail, postage prepaid:

To City:	City of Midland
(Mailing Address)	P.O. Box 1152
	Midland, TX 79702
(Physical Address)	300 North Loraine
	Suite 310
	Midland, Texas 79701
To Contractor:	The Unit Staffing LLC.
(Fill in name/Address)	1610 S Indiana St.
	Perryton, Texas 797070

21. **Severability:** This Agreement shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in meaning to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. **Alteration:** This Agreement may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.

23. **Entire Agreement and Binding Effect:** This Agreement constitutes the entire agreement between City and Contractor. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

24. **Captions:** Paragraph captions herein are for convenience only and neither limit nor amplify the provisions of this Agreement.

25. **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.

26. **Termination Without Cause:** City may terminate this Agreement at will for no or any reason upon giving ninety (90) days written notice to Contractor. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Contractor has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

27. **Use of Other Agencies During This Agreement:** This Agreement applies solely to the use of temporary employees by City as school crossing guards and is in no way intended by the parties to obligate City to agreement with Contractor for temporary employees for any other purpose. City shall have the right under this Agreement to hire temporary employees from other contractors to be used as school crossing guards to fill in vacancies left by Contractor's inability to immediately assign one of its own employees to fill such vacancy.

28. **Compliance With Laws:** In the payment and employment of people to serve as Guards pursuant to this Agreement, Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances with respect to payment of minimum wages. Contractor shall not discriminate against people on the basis of race, sex, age, religion, national origin, or mental or physical disability in the application, hiring, termination, evaluation, or compensation of people assigned to work under this Agreement, and shall further comply with all laws, rules and regulations prohibiting such discrimination including but not limited to, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

29. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, 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 WHICH CONTRACTOR 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.

30. **WAIVER OF ATTORNEY FEES: BY EXECUTING THIS AGREEMENT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. CONTRACTOR SPECIFICALLY AGREES THAT IF CONTRACTOR 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, 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. CONTRACTOR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. CONTRACTOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

31. **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.

32. **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 City; 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 City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 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. Contractor 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 Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

33. **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 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 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 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 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 City from any liability whatsoever. City is under no obligation to provide notice to Contractor that Contractor'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, 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.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

36. **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.

37. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and

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

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

38. Records Retention and Production of Information. To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022 personally appeared, _____, an officer of The Unit Staffing LLC., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the __day of _____, 2022.

_____
Notary Public, State of Texas

CITY OF MIDLAND

PURCHASING DIVISION DATE: 5/24/2022

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 22002754R**

OPENING TIME: 2:00 PM **OPENING DATE: 6/8/2022**

CITY OF MIDLAND
300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 2:00 P.M. 6/8/2022 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Administrative Services, 300 N. Loraine, Suite 120, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
22002754R	1	40,410	School Crossing Guard Services in accordance with the attached request for proposals, contract and quote sheet/service questionnaire.	$15.03	
				TOTAL	$607,362.30

NOTICE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.
THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: The Unit Staffing LLC.
ADDRESS
CITY Perryton ST TX ZIP 79070
PHONE NO (806)228-2123 FAX NO. N/A
EMAIL: Tlmorgan@theunitstaffing.com

CASH DISCOUNT: 5 % 9 DAYS
DELIVERY CAN BE MADE $576,994.18
AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

RFB for School Crossing Guard Services

Sealed bids will be received until 2:00 p.m. June 8, 2022, in the office of the City Secretary, City Hall, 300 N. Loraine, Midland, Texas, for the provisions of temporary employment services regarding School Crossing Guards in the City of Midland, Texas. Bid packets may be obtained from the Office of the Purchasing Agent at purhasing@midlandtexas.gov.

Interested parties should review the draft copy of our proposed contractual agreement (enclosed). We have purposely left blank the following: 1) The date the contract is to be signed; 2) The identification of the contractor; 3) The proposed hourly rate for providing the services outlined in the agreement.

In order for your proposal to be considered it must include a fully completed quote sheet (copy enclosed).

VENDOR CONTACT

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

WAIVER OF ATTORNEY FEES

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

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

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

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).

The Unit Staffing LLC.	June 8, 2022
Company Name	Date
Terry Morgan	(806)228-2123
Authorized Signature	Phone
Terry Morgan	N/A
Print Above Name	Fax

Tlmorgan@theunitstaffing.com

E-Mail

RFB for School Crossing Guard Services

Client Worksheet 2022-2023

Billing Rate for 2022/2023: $ $15.03/ hourly

City of Midland
P.O. Box 1152
Midland, TX 79702

KEY:
Traditional Calendar:
For sites with no regularly scheduled early release days, use 180 regular days
For sites with one regularly scheduled early release day/week, use 144 regular days and 36 minimum days

Sites with traditional calendar:

		208		180		$15.03	=	$0.00
52	Sites at 4.0 hrs per day	Total Hrs/day	X	days/yr	X	Hourly Billing Rate		$562,723.20
		16.5		180		$15.03	=	$0.00
3	Sites at 5.5 hrs per day	Total Hrs/day	X	days/yr	X	Hourly Billing Rate		$44,639.1

TOTAL ANNUAL PROJECTED COST $ 607,362.30

School Crossing Guards
Background Check Compliance Certification

On behalf of The Unit Staffing LLC. ("Contractor"), I, the undersigned authorized signatory for Contractor, hereby certify to the City of Midland, Texas (the "City") that:

(1) Contractor has fully complied with the requirements of Section 6 of that certain Agreement for Provision of Temporary Employment Services for School Crossing Guards for the City of Midland dated _____ (the "Agreement").
(2) Contractor has performed all criminal background checks on all school crossing guards ("Guards") prior to commencing work for the City as required by Section 6 of the Agreement.
(3) Contractor has required all Guards to undergo drug and alcohol testing and physical exams prior to commencing work for the City as required by Section 6 of the Agreement.
(4) Contractor has determined that each Guard is fully qualified to perform his or her duties.
(5) Contractor has determined from the results of the criminal background checks, drug and alcohol testing, and physical exams that each Guard is fully capable of performing his or her duties and will create and promote a safe environment for children.
(6) If Contractor receives information that a Guard who performs work under the Agreement has a reported criminal history, Contractor will immediately remove the Guard from his or her duties and notify the City in writing thereof within three (3) business days.
(7) Contractor agrees to provide this certification at any time during the term of the Agreement upon the City's request.

Noncompliance or misrepresentation regarding this certification may be grounds for termination of the Agreement.

_____ _____
Signature **Date**

Terry Morgan
Printed Name

President
Title

QUOTE SHEET/SERVICE QUESTIONNAIRE

1. Please indicate the hourly rate(s) you would charge for the services outlined in the enclosed draft contractual agreement (please note that it is the City of Midland's understanding that persons employed as School Crossing Guards in the State of Texas must be carried under Workers Compensation Code 7720 – if you are not going to carry these individuals under Code 7720 please provide written justification.)

   Rate: $15.03

2. Please provide background information regarding your company; include company name, state of incorporation, location of headquarters office, location of office(s) that would service the City of Midland in regard to this agreement, and identify the key personnel involved in delivering these services.

   Company Name: The Unit Staffing LLC.
   State of Incorporation: Texas
   Headquarter Office: 1610 S Indiana St. Perryton, Texas 79070
   Midland Office: 3903 S County Rd 1210 REAR, Midland Texas 79706
   Key Personnel: Terry Morgan (Single Source Point of Contact)

3. Does your local office have any experience in providing groups of non-clerical employees of temporary services similar to those requested by the City of Midland? No
   If yes, please explain.

4. Please describe your plan for providing the services outlined in the enclosed agreement. Include type and level of supervision, quality control methodology, policies regarding attendance, training/orientation activities, plan for covering crosswalk areas when absences occur.

In addition to verbal training and counseling, the Area Compliance Managers are supported using Field Training Checklist, Field Training Cards, Site Performance Evaluations, Independent field observations and a professionally produced Crossing and Security Guards safety DVD. Reports of satisfactory completion of all levels of training and ongoing safety reviews will be summarized and available to the Midland Police and Midland County Sheriff's Departments. In any event that a post is vacant due to an absence of personnel, a replacement shall be provided by The Unit utilizing our in-house paging system operating 24 hours daily to ensure an adequate and immediate response.

5. What type of monthly summary report would you be able to provide the City of Midland. Please include a sample or describe.

   Included in this RFP/RFB the City will receive monthly Site performance Evaluations (SPE), Continued and remedial training logs, Customer performance reviews, Complaints with resolutions, Absences and average response times.

6. Can you provide any or all of the pre-employment testing referenced under section 6 of the agreement document (drug and alcohol testing, physical exams, and criminal background checks)? If yes, is this cost included in your quote? If not, what would the additional cost be (per person)?

   The Unit Staffing confirms that all pre-employment and testing requirements outlined under section 6 of the agreement will be met with the cost inclusive in this quote.

7. Please provide name, address, and phone number of 3 references you would like us to speak to in regard to your ability to deliver the services outlined in the draft agreement.

   Contact Name: Mario Randal
   Contact address: 3201 Woodland Ave Amarillo, Texas 79119
   Contact Number: (432)202-2807

   Contact Name: Dewayne Sherman
   Contact address: 110 Turnburry Drive. Horseheads, NY 14845
   Contact Number: (240)687-3806

   Contact Name: Joe Rodriguez
   Contact address: 12637 County Rd. L Perryton, Texas 79070
   Contact Number: (806)346-0772

CITY OF MIDLAND

ADDENDUM # 1

BID # 22002754R

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: June 6, 2022

- Given the format of the Quote Sheet, is it possible to provide separate rates for supervisor(s) who will be working in addition to the hours reflected on the Quote Sheet?

  Yes, you may add a separate rate for supervisors.

- This RFB includes a CIS document which is to be signed and notarized by a government officer who has received gifts from the bidder, while in the original RFB there was a CIQ document, which was clearly to be signed by the bidder. Does the CIS document need to be submitted if there is no government officer who has received gifts from our company?

  Please see the attached CIQ.

- The Quote Sheet shows a total of 55 locations, but the sample contract still shows 52 personnel/posts; should we use the information shown on the Quote Sheet in formulating our pricing?

  The correct total of locations is 55.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

The Unit Staffing LLC.	
Company Name	
Bidder Authorized Signature	June 8, 2022 Date
Terry Morgan	(806)228-2123
Please Print Above Name	Phone

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

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

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

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

N/A

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

N/A

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds $100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

_____

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

_____

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 11/30/2015

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

1. Name of Local Government Officer. Enter the name of the local government officer filing this statement.

2. Office Held. Enter the name of the office held by the local government officer filing this statement.

3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code. Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an 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), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.

4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3. Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.

5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds $100. List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed $100 in value.

6. Affidavit. Signature of local government officer.

Local Government Code § 176.001(2-a): "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

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

(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.

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:

Regina Stephenson
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: N/A

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

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

   Reseller Permit Number: _____

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

   _____

   _____

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

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: June 8, 2022

Printed Name and Title: Terry Morgan. President

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY 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/COMPANY 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/COMPANY 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.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This form is available in a Word Form fill in document. If desired please contact the Purchasing office for a copy by e-mail

No-Bid
Response For
22002754R School Crossing Guards

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Agent
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523. IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

N/A

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.**

N/A

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 Signature of vendor doing business with the governmental entity

June 8, 2022

Date

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

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

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

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

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

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

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

THE UNIT
A STAFFING AGENCY

2022

A PROPOSAL FOR THE CITY OF MIDLAND CROSSING GUARD SERVICES

June 8 ,2022

THE UNIT STAFFING
1610 South Indiana Street, Perryton, TX 79070
OFFICE PHONE: 806.228.2123
EMERGENCY DISPATCH: 806.228.0960

June 8, 2022

Purchasing Manager
City of Midland
300 North Loraine
Midland, Texas 79701

On behalf of The Unit Staffing Agency, LLC., we would like to express our deepest pride in knowing how it feels to be part of this amazing community and generate opportunities to serve our organizations, citizens and the City of Midland.

We are submitting this Response for Proposal/ Bid to our great city of Midland to provide Crossing Guard Services for the City of Midland (Independent School Districts). As a Response to this proposal should all parties proceed with an Agreement, relevant specifications shall be delivered to The Unit Staffing to ensure a best effort practice is intact. The terms of this proposal shall be valid for a period of 120 Days.

The Unit is proposing a simple solution and seamless transition in providing Midland with a model Crossing Guard program that will effectively relieve other agencies including the school district, the city and the local law enforcement agencies of the day-to-day responsibilities of managing such a program. Along with these services provided, we will assume complete responsibility for the day-to-day operations of the Crossing Guard program. This shall include recruitment, assessment, placement and management of all personnel as well as all background clearance, training, equipment, payroll, supervision and management of the program in its entirety.

As the result of understanding unique and sometimes flexible schedule requirements the city and school districts face, being headquartered in Perryton and establishing a satellite office in Midland adds significant value and an incomparable operational advantage to ensure that our quality of service and ability to meet and exceed expectations are matched with continuous lines of close communication. In any event that a post is vacant due to an absence of personnel, a replacement shall be provided by The Unit utilizing our in-house paging system operating 24 hours daily to ensure an adequate and immediate response. We will closely monitor and continue open communication with all schools participating in this program to maintain proper and adequate scheduling.

We are excited and hopeful about being able to provide Crossing Guard services for the City of Midland. We pride ourselves in leading the charge in continuing to provide public safety to our community, our neighbors, and friends here in Midland. If you have any questions, please feel free to contact me at 806.228.2123.

Best Regards,

Terry Morgan

Terry Morgan, President
TImorgan@theunitstaffing.com

THE UNIT
A STAFFING AGENCY

COMPANY PROFILE

The Unit Staffing is a Perryton based recruitment and consulting company that aims to optimize the labor force in the Public Safety and Security Industry, by streamlining the hiring process and providing quality uniformed professionals. We offer the recruitment, training staffing, and onboarding of uniformed professionals to meet the growing demands of, Law enforcement agencies, federal agencies, School districts and City departments across the state of Texas.

As the bulk of employees across public safety agencies lack the proper training, motivation and compensation, turnover and shortages have significantly increased. This has led to public safety vulnerabilities including unmanned crosswalk positions on busy roads surrounding local schools and schools within the community left exposed to potential dangers, which all have potential factors of becoming life threatening, and which we have seen become a reality way too often in today's climate.

With this Proposal, the Unit will supply access to technologically advanced equipment for training to the selected candidates from the local community. These candidates will be properly trained, monitored, mentored, and compensated, to ensure the city and its school facilities will be equipped with the most professional Crossing Guard resources.

Our operations director will work with the City of Midland and schools to build a high-quality team of professionals as per the City and School districts requirements, comprising talented and knowledgeable Crossing Guards. We will ensure that every candidate has undergone a rigorous training process to diffuse any skills gaps or problems and add value to the program.

Our candidate pool will comprise of pre-vetted Crossing Guards trained for a variety of situations, who will have undergone a series of comprehensive, technical, tactical, and psychological evaluations. Our goal is to ensure that only the most acceptable quality candidates are included in our talent pool with appropriate expertise and soft skills. Furthermore, to keep our candidates up to date with the latest trends and advancements, we will provide them with intensive ongoing training and mentorship.

As we provide this seamless transition to provide privatized Crossing guards to Midland and the school district, they will become the beneficiaries of our successful implementation of Crossing Guard Services provided.

APPROACH AND MANAGEMENT PLAN

The Unit Staffing employs a Single Source Point of Contact of managing which results in efficient field operations as well as providing a multifaceted response to potential problems. The SSPOC and the Area Compliance Manager (ACM) work together (with continued input from Midland and the Independent School District) to establish specific program objectives and expectations. The SSPOC and ACM then works directly with the Crossing Guards to implement and enforce the Plan.

The SSPOC along with the ACM has responsibility for the direct management of Crossing Guards and together they will continue to ensure Midland and the School District's operational expectations are met and exceeded. Standards and expectations are communicated to all personnel of the company to allow for a better understanding of the decision-making process. This helps reduce confrontational attitudes by establishing and enhancing the common goal of providing for the safety of school children.

It is important to note that the SSPOC can at their discretion utilize an independent individual or agency to provide quality control of field operations. These individuals or agencies shall be trained and deployed to make unannounced observations of Crossing Guards at work and report on their compliance with established Midland and The Unit policies and procedures.

In addition to verbal training and counseling, the ACM are supported using Field Training Checklist, Field Training Cards, Site Performance Evaluations, Independent field observations and a professionally produced Crossing and Security Guards safety DVD. Reports of satisfactory completion of all levels of training and ongoing safety reviews will be summarized and available to the Midland Police and Midland County Sheriff's Departments.

Background checks and fingerprinting will be completed on all employees as allowed by Texas State law. Successful completion of the background check and social security verification via E-Verify is required prior to the employee being hired. Internal minimum passing standards along with Perryton established standards would prevent anyone from participating in the program who has been convicted of any felony, a crime against children, Conduct requiring registration under Texas Health and Safety Code or violation of the Texas Penal Code requiring registration.

KEY PERSONNEL

The most significant resource that The Unit Staffing brings to Midland and the Midland Crossing Guard program is our ability to manage and utilize a rapid communication system through a single source point of contact across multiple agencies and locations. Thus, limiting the response time and transfer of relevant information allowing for efficient coordination and local law enforcement agency responses.

Single Source Point of Contact (SSPOC): Terry Morgan
Terry oversees the entire Crossing and Security Guard program from recruiting, hiring, training and providing management over each site within the program. He also is responsible for the development and implementation of training programs, certification standards, development and implementation of operational standards, safety instructions and compliance with all legal requirements and restrictions. As the Single Source Point of Contact, it is extremely efficient way to coordinate the flow of information between operations and our Area Compliance Manager.

Area Compliance Manager (ACM):
The Area Compliance Manager with support from the SSPCO will have responsibilities of ensuring each employee receives the proper number of Site Performance Evaluations and completes Certification Mandates. The (ACM) will also work with the SSPOC to ensure that the training, certifications, standards, rules and regulations are all intact and being upheld, as our quality of professionalism, Safety and customer satisfaction prevail.

The Unit Staffing acknowledges that no key personnel shall be removed or replaced without the prior written concurrence of the City of Midland and the Independent School District.

EXHIBIT A

THE UNIT SCOPE OF SERVICE

1. The Unit will provide all personnel, equipment and training in the appropriate Standard Operating Procedures (SOP) for Crossing for pedestrians in marked crosswalks at the designated hours and designated schools in accordance with the final agreement contract.

2. The Unit shall provide supervisory personnel to see that proper and adequate Crossing Guard activities are in fact taking place at the required place and times, and in accordance with all items of this agreement.

3. The Unit shall maintain adequate personnel to ensure all positions are staffed if any person fails to report for work at the assigned time and location. Should this instance occur, The Unit agrees to provide an immediate response and replacement of the absent personnel.

4. The Unit shall provide personnel adequately trained as herein specified for the performance of duties of Crossing Guards. In the performance of their duties The Unit and their employees shall conduct themselves in a professional manor in accordance with the conditions of this agreement and the laws and codes of the State of Texas and the City of Midland and the Midland Independent School District pertaining to general pedestrian safety and school crossing areas and general School Campus safety.

5. Crossing Guards services shall be provided by The Unit at the designated locations, identified by the City, the School District, and at the designated hours on all days on which designated schools in the Midland Independent School District are in session.

6. The Unit shall provide all Crossing Guards with appropriate apparel by which they are easily identifiable and highly visible as Crossing Guards. Such apparel shall be uniform for all persons performing duties of Crossing and Security Guards and shall be worn at all times while performing said duties. The apparel shall be appropriate for all weather conditions. The Unit shall also provide all personnel with necessary and appropriate equipment to fully accommodate and prepare each person for the successful completion of their individual tasks.

City Council Meeting

Item Number: 6

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE MOMENTUM BANK BALLPARK RENOVATIONS AND IMPROVEMENTS PROJECT TO MID-TEX OF MIDLAND, INC., IN THE AMOUNT OF $1,885,000.00; APPROVING $365,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Resolution awarding a contract for the construction of Momentum Bank Ballpark Renovations and Improvements to Mid-Tex of Midland, Inc., in the amount of $1,885,000.00; approving $365,000.00 for contingencies; and appropriating funds for said project for the Community Services Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Scharbauer Sports Complex Fund Unappropriated Fund Balance and will be transferred and appropriated to a project in the Capital Projects Fund.

Discussion:

Motion 049-2022 approved plans and specifications and authorized the City Manager or the City Manager’s designee to advertise for competitive bids for the Momentum Bank BallPark Project. One hundred thirty-seven (137) contractors were notified that the competitive sealed proposal was available. We received a sole proposal from Mid-Tex of Midland Inc. Staff's recommendation is to issue one contract to Mid-Tex of Midland, Inc. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Therefore, please consider a resolution awarding a contract for the construction of Momentum Bank BallPark Renovations and Improvements Project to Mid-Tex of Midland, Inc. of Midland, Texas for a cost of $1,885,000.00 plus $365,000.00 in contingences, for a total project cost of $2,250,000.00.

Tina Gaug

City Manager's Office

CITY OF MIDLAND

Community Services Department
Scharbauer Sports Complex Division
Interoffice Memorandum

Date: June 14, 2022
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Recommend Award Construction contract - Momentum Bank Ballpark Renovation Project

The Midland RockHounds communicated that Major League Baseball is requiring new minimum facility standards, resulting in needed renovations and improvements to the facilities at Momentum Bank Ballpark. Through a task order with Parkhill, plans were prepared to address the needed renovations to the facilities and the field. Areas of improvement include expansion and renovations of the home and visitor's club houses, addition of dugout shades, and grading and drainage on the field. The Opinion of Probable cost for the project had been estimated at $1.35 million.

The Request for Proposals for the renovations at Momentum Bank Ballpark was distributed, and Mid-Tex of Midland submitted the sole proposal in the amount of $1,885,000.

Due to rapidly increasing construction costs, and a short time frame to complete the project, staff recommends awarding the bid to Mid-Tex. A contingency amount of $365,000 is also recommended to cover any unforeseen costs that may arise during construction. Total funding requested for the project is $2,250,000.

The schedule for the work requires starting work in August and completion is expected in February, in time for the 2023 baseball season.

$2,250,000.00 is available in the Sports Complex unappropriated fund balance and is hereby appropriated and will be transferred to a project in the Special Revenue Capital Projects Fund.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE MOMENTUM BANK BALLPARK RENOVATIONS AND IMPROVEMENTS PROJECT TO MID-TEX OF MIDLAND, INC., IN THE AMOUNT OF $1,885,000.00; APPROVING $365,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, Motion 049-2022 approved plans and specifications and authorized the advertisement for bids for the Momentum Bank Ballpark Renovations and Improvements Project; and

WHEREAS, the sole bid was opened on June 8, 2022, for a total cost of $1,885,000.00 submitted by Mid-Tex of Midland, Inc., as shown on the bid tabulation attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Mid-Tex of Midland, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Mid-Tex of Midland, Inc., for the Momentum Bank Ballpark Renovations and Improvements Project; and

WHEREAS, the City Council finds it to be in the public interest to approve $365,000.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Mid-Tex of Midland, Inc., for the Momentum Bank Ballpark Renovations and Improvements Project in the amount of $1,885,000.00. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $365,000.00 for contingencies is hereby approved for said project.

SECTION THREE. That the sum of $2,250,000.00 is hereby appropriated from the Scharbauer Sports Complex Fund Unappropriated Fund Balance to a project established by the City of Midland Finance Department in the Capital Projects Fund.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Mid-Tex of Midland, Inc., pursuant to the terms of said contract from funds available in the 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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

Parkhill

CITY OF MIDLAND

MIDLAND MOMENTUM BANK BALLPARK ADDN-RENOV
Midland, Texas
June 8, 2022 – 2:00 PM

PSC Project No. 03.6147.21

Contractor	Bid Bond	Addendum #1	Base Proposal
Mid-Tex of Midland 5206 West Wadley Midland, Texas 79707	√	√	$1,885,000.00

Parkhill

CITY OF MIDLAND

MIDLAND MOMENTUM BANK BALLPARK ADDN-RENOV
Midland, Texas
June 8, 2022 – 2:00 PM

PSC Project No. 03.6147.21

Contractor	Bid Bond	Addendum #1	Base Proposal
Mid-Tex of Midland 5206 West Wadley Midland, Texas 79707	√	√	$1,885,000.00

THE CITY OF MIDLAND

CONTRACT

Contract No. 22003072

THIS CONTRACT, effective the 29 day of June, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Mid-Tex of Midland, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 1,885,000.00 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the construction of Momentum Bank Ballpark Renovations and Improvements in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

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

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

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

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

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

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

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

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

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 240 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, 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 COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. 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.

16.1. The CITY may make periodic payments to COMPANY; 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 COMPANY 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.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY 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." COMPANY 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 COMPANY 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.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY'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 day that COMPANY 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 COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY 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.

17.3. 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 COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or 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 COMPANY, 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.

17.4. Provided, further, that COMPANY shall, within ten (10) 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 COMPANY within a reasonable time of its decision in the matter.

17.5. **COMPANY 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, 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 ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'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.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY 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. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party

beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

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

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

22. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

26. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

29. **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.

30. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §

§

COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Mid-Tex of Midland, 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 _____

MIDLAND
Feel the Energy!

Request for Proposal

Scharbauer Sports Complex
Momentum Bank Ballpark
Renovations & Improvements
Midland, Texas

MID-TEX OF MIDLAND

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

5206 W. Wadley Ave. Midland, Texas 79707
432.697.2282 (o) ▪ 432.694.9627 (f)
www.midtexofmidland.com

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707
Phone: (432) 697-2282
Fax: 694-9627

June 8, 2022

Ms. Amy Tuner, City Secretary
City of Midland
300 N. Loraine Street
Midland, Texas 79701

Re: City of Midland
Momentum Bank Ballpark
Renovations and Improvements
5514 Champions Drive
Midland, Texas 79706

Dear Ms. Turner,

Please find in the enclosed booklet our proposal for the Momentum Bank Ballpark Renovations & Improvements project. Our team from Mid-Tex of Midland, Inc. greatly appreciates the opportunity to submit our proposal and looks forward to the opportunity to work with City of Midland and Parkhill teams.

Thank you again for this opportunity, we look forward to hearing from you and your team soon. We will be available as necessary to review or discuss this information as you may require.

Respectfully,

Alan White
President & Co-Owner

Request for Proposal

1. Bid Proposal, Schedule, Bid Bond & Supplemental Forms
   A…List of Subcontractors & Major Material Suppliers
   B…Resident Bidder Certification

2. Firm Information, Insurance & Litigation Claims, Letter of Intent to Issue Bonds & Qualification Statement

3. Project Team & Resumés

4. Projects Completed, Clients Served & References

5. Safety History & Program

1

DOCUMENT 00 42 00 - PROPOSAL FORM

Date: ***June 08*** 20***22***

City of Midland
300 North Loraine Street
Midland, Texas 79701

City Secretary:

The undersigned, having carefully examined the specifications, drawings, and related documents entitled:

MOMENTUM PARK BALLPARK FACILITY RENOVATIONS AND IMPROVEMENTS
MIDLAND, TEXAS

all as prepared by Parkhill 1700 West Wall Street, Suite 100, Midland, Texas 79701; 432.697.1447, as well as having attended a pre-proposal conference and made an on-site inspection of the premises and all other conditions affecting the cost and/or execution of the Work, proposes to furnish all materials, labor, and equipment necessary to complete the Work in accordance with said documents, of which this bid is a part, for the following sum:

I. BASE PROPOSAL: ***One Million Eight Hundred Eighty Five Thousand*** Dollars ($ ***1,885,000.00***)

(**Note:** All amounts shall be shown in both written and figure form. In case of discrepancy between the written amount and the figure, the written amount will govern. For alternates, check whether it is an add, deduct or no change.)

The undersigned acknowledges receipt of ***1*** addenda to the Drawings and Project Manual as follows:

No. ***01*** Date : ***06/06/2022*** No. _____ Date _____ No. _____ Date _____

No. _____ Date _____ No. _____ Date _____ No. _____ Date _____

(The Proposer is to fill in I.D. Number and date of each thereby acknowledging receipt of Addenda).
If awarded the contract, the undersigned agrees to commence work under this contract on or before a date to be specified in Written Notice to Proceed, but not later than June 30, 2022, and to substantially complete the project on or before February 28, 2023 unless modified by change order.

Proposer agrees to pay the Owner $250.00 per day, as liquidated damages, for each day the substantial completion of this Project extends beyond the stipulated substantial completion date.
If notified of the acceptance of this bid within 30 days of the time set for the opening of proposals, Proposer agrees within 10 days of notification, to execute a contract in the form of the on the Owner provided form for the above Work, for the above stated compensation.

PROPOSAL SECURITY, as defined in the Request For Proposals and Instructions to Proposers, which the Undersigned agrees to disposition of, is attached to this Proposal.

Upon acceptance of this Proposal by Owner, Contractor shall furnish, at the time of the signing of the contract, a PERFORMANCE BOND AND LABOR/MATERIAL PAYMENT BOND, in the amount of 100 percent of the Contract Price. Surety shall meet requirements specified in the Owner/Contractor Agreement.

It is understood that the Owner reserves the right to accept or reject any and all Proposals and to waive all formalities in accordance with State law.

ATTACHMENTS

In accordance with Instructions to Proposers, complete the attached forms and submit with the Proposal Form.

Respectfully Submitted,

By: T. Alan White

Title: President & Co-Owner

MID-TEX OF MIDLAND, INC. CORPORATE SEAL TEXAS

Business Address with Zip Code

(SEAL: If Proposal is by Corporation)

Mid-Tex of Midland, Inc.

5206 W. Wadley Ave.

Midland, Texas 79707

Telephone Number with Area Code 432.697.2282

Fill in the applicable information:

A Corporation, chartered in the State of Texas.

Authorized to do business in the State of Texas.

A Partnership, composed of N/A, and

_____ and _____.

An Individual operating under the name of N/A

_____.

Corporate Seal:

END PROPOSAL FORM

WESTFIELD INSURANCE COMPANY

Westfield Group®1 Park Circle, P O Box 5001, Westfield Center, Ohio 44251-5001

Conforms to Document A310™ - 2010

Bid Bond

CONTRACTOR:
(Name, legal status and address)
MID-TEX OF MIDLAND, INC.
5206 WEST WADLEY
MIDLAND, TEXAS 79707

SURETY:
(Name, legal status and principal place of business)
WESTFIELD INSURANCE COMPANY
1 Park Circle, PO Box 5001
Westfield Center, OH 44251-5001

OWNER:
(Name, legal status and address)
CITY OF MIDLAND
300 NORTH LORAINE
MIDLAND, TEXAS 79702

BOND AMOUNT: FIVE PERCENT OF THE GREATEST AMOUNT BID----------

PROJECT:
(Name, location or address, and Project number, if any)
MOMENTUM BANK BALLPARK ADDITION & RENOVATION

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 8th day of JUNE, 2022

T. A. White (Witness)

Marla Hill
MARLA HILL (Witness)

MID-TEX OF MIDLAND, INC. (Principal) (Seal)
By: [signature] (Title)

MID-TEX OF MIDLAND, INC. CORPORATE SEAL TEXAS

WESTFIELD INSURANCE COMPANY (Surety) (Seal)
By: Howard Cowan
HOWARD COWAN, ATTORNEY-IN-FACT (Title)

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BD5084 OFWWN (10/2010)

PACKET
6.29
June 28, 2022

General
Power
of Attorney

CERTIFIED COPY

POWER NO. 4220352 01

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.

Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

MARLA HILL, HOWARD COWAN, JOINTLY OR SEVERALLY

of **LUBBOCK** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship**- - - -

DOCUMENT 00 43 00 - PROCUREMENT FORM SUPPLEMENTS

To: City of Midland

Project: Momentum Bank Ballpark Renovations and Improvements

Date: ***June 08, 2022***

Submitted by: ***Mid-Tex of Midland, Inc.***
(full name)

(full address) ***5206 W. Wadley Ave.***

Midland, Texas 79707

In accordance with Instructions to Proposers and the - Proposal Form, we include the following Appendices listed below. The information provided shall be considered an integral part of the Proposal Form.
The following Appendices are attached to this document:

Appendix A - List of Subcontractors: Include names of all Subcontractors and portions of the Work each Subcontractor will perform.

Appendix B - Resident Bidder Certification.

PROPOSAL FORM SUPPLEMENTS SIGNATURES

The Corporate Seal of

Mid-Tex of Midland, Inc.
(Proposer - print the full name of your firm)

was hereunto affixed in the presence of:

T. Alan White,
President & Co-Owner
(Authorized signing officer Title)

(Seal)

Paul Renz
Vice President & Co-Owner
(Authorized signing officer Title)

(Seal)

APPENDIX A - LIST OF SUBCONTRACTORS AND MAJOR MATERIAL SUPPLIERS

Herewith is the list of subcontractors and major material suppliers referenced in the proposal submitted by:

Proposer) ***Mid-Tex of Midland, Inc.***

To (Owner) City of Midland

Dated ***June 08, 2022*** and which is an integral part of the Proposal Form.

The following work will be performed (or provided) by subcontractors and coordinated by us:

WORK SUBJECT/MATERIAL SUPPLIER	NAME
Sitework	***TBD***
Landscape	***A&A Landscaping***
Masonry	***South West Masonry***
Millwork	***Pioneer Millworks***
Roofing	***TBD***
Drywall & Acoustical	***Majestic Drywall***
Flooring	***Sunset Endeavors & Callaway's***
Paint	***Dean Hagler, Ltd.***
Mechanical	***TMI Mechanical***
Electrical	***Davis Electrical Service***

APPENDIX B - RESIDENT BIDDER CERTIFICATION

RESIDENT BIDDER CERTIFICATION

In order for the proposal to be considered, the following information must be provided. **Failure to complete may result in rejection of the proposal:**

As defined by Texas Government Code Section 2252.01 et seq., a "nonresident bidder" means a bidder whose principal place of business is not in Texas but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

I certify that my company is a "resident bidder":

Signature: _____ Date: ***June 08, 2022***

If you qualify as a "nonresident bidder," you must furnish the following information:
What is your resident state? (The state your principal place of business is located.)

City: ***N/A*** State: _____ Zip: _____

Company Name: _____ Address: _____

(A) Does your "residence state" require bidders whose principal place of business is in Texas to underbid bidders whose residence state is in the same as yours by a prescribed amount or percentage to receive a comparable contract? "Residence state" means the state in which the principal place of business is located. YES_____NO_____

(B) What is the amount or percentage? _____%

I certify that the above information is correct.

T. Alan White, President & Co-Owner
Type Name / Position

Mid-Tex of Midland, Inc.
Company Name

END OF DOCUMENT

2

Firm Information

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707

(432) 697-2282
(432) 694-9627 Fax

Form of Business Organization: Subchapter S Corporation

Year Founded: 1941

Primary Individual to Contact: Alan White
President & Co-Owner
alan@midtexofmidland.com

Secondary Individual to Contact: Paul Renz
Vice-President & Co-Owner
paul@midtexofmidland.com

Insurance & Litigation

Mid-Tex of Midland, Inc. has not had any insurance claims or litigation within the last 5 years.

Letter of Intent to Issue Payment & Performance Bonds

Please see attached…

COWAN-HILL BOND AGENCY

5223 79th Street 79424
P. O. Box 54020
Lubbock, Texas 79453-4020

June 2, 2022

City of Midland
300 North Loraine
Midland, Texas 79702

RE: Momentum Bank Ballpark Addition & Renovation

To Whom It May Concern:

We are pleased to recommend Mid-Tex of Midland, Inc. We have had the privilege of serving as the bond agent for Mid-Tex since 2002. Mid-Tex of Midland, Inc. is widely recognized as one of the premier contractors in their part of the state. We have executed performance and payment bonds for contracts in excess of $25,000,000 and with a backlog in excess of $50,000,000. In view of the work available in the Permian Basin, Mid-Tex of Midland, Inc. has arranged a surety line of $100,000,000. The surety bonds executed on behalf of Mid-Tex of Midland, Inc. will be written through Westfield Insurance Company which has handled Mid-Tex's surety program for over a decade. Westfield Insurance Company is on the U.S. Treasury List of approved surety and carries the "A" rating for financial strength given by the AM Best organization.

This letter will serve as confirmation that if a contract is entered into with Mid-Tex of Midland, Inc., we are currently in a position, upon the request of our contractor, to execute 100% performance and payment bonds for the Momentum Bank Ballpark Addition & Renovation.

Of course, approval of any bonds would be contingent upon a contract and underwriting terms that are acceptable to Mid-Tex of Midland, Inc. and Westfield Insurance Company.

Very truly yours,

Marla Hill

Marla Hill
Attorney-in-Fact

(806) 722-BOND (2663)
(806) 722-2662 FAX

howardcowan@sbcglobal.net
marlahill@sbcglobal.net

PACKET
6.36
June 28, 2022

General
Power
of Attorney

CERTIFIED COPY

POWER NO. **4220352 01**

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.

Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

MARLA HILL, HOWARD COWAN, JOINTLY OR SEVERALLY

of **LUBBOCK** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.**

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this **02nd** day of **JANUARY** A.D., **2020**.

Corporate Seals Affixed

WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

State of Ohio
County of Medina ss.:

By: **Gary W. Stumper,** *National Surety Leader* and *Senior Executive*

On this **02nd** day of **JANUARY** A.D., **2020**, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Hartford, CT;** that he is **National Surety Leader** and **Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed

State of Ohio
County of Medina ss.:

David A. Kotnik, Attorney at Law, *Notary Public*
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, **Frank A. Carrino,** Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 2ND day of JUNE A.D., 2022.

Secretary

Frank A. Carrino, *Secretary*

BPOAC2 (combined) (06-02)

PACKET
6.37
June 28, 2022

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A305

Contractor's Qualification Statement

1986 Edition

This form is approved and recommended by the American Institute of Architects (AIA) and the Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by the AIA or AGC.

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: Ms. Amy Turner, City Secretary
COMPANY: City of Midland
ADDRESS: 300 North Loraine
Midland, Texas 79702

SUBMITTED BY: Mr. T. Alan White
COMPANY: Mid-Tex of Midland, Inc.
ADDRESS: 5206 West Wadley
Midland, Texas 79707

Corporation X

PRINCIPAL OFFICE: Same as above

NAME OF PROJECT: Momentum Bank Ballpark
Renovations & Improvements

TYPE OF WORK (file separate form for each Classification of Work):

X	General Construction	_____	HVAC
_____	Plumbing	_____	Electrical
_____	Other _____ (Please Specify)		

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1. ORGANIZATION

1.1 How many years has your organization been in business as a Contractor?

Since 1962

1.2 How many years has your organization been in business under its' present business name?

Since 1969

1.2.1 Under what other or former names has your organization operated?

Mid-Tex Paint Company

1.3 If your organization is a corporation, answer the following:

1.3.1	Date of incorporation:	April 6, 1990
1.3.2	State of incorporation:	Texas
1.3.3	President's name:	T. Alan White
1.3.4	Vice-president's name(s):	Paul Renz
1.3.5	Secretary's name:	Paul Renz
1.3.6	Treasurer's name:	Paul Renz

1.4 If your organization is a partnership, answer the following: N/A

1.4.1 Date of organization:
1.4.2 Type of partnership (if applicable):
1.4.3 Name(s) of general partner(s):

1.5 If your organization is individually owned, answer the following: N/A

1.5.1 Date of organization:
1.5.2 Name of owner:

1.6 If the form of your organization is other that those listed above, describe it and name the principals:

N/A

2. LICENSING

2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

N/A

2.2 List jurisdictions in which your organization's partnership or trade name is filed.

The State of Texas

3. EXPERIENCE

3.1 List the categories of work that your organization normally performs with its' own forces.

Project Management	Resilient Flooring & Base
Project Supervision	Carpet
Rough Carpentry	Specialty Flooring
Finish Carpentry	Laminated Tops
Ceramic Tile	Specialties Labor

3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

3.2.1 Has your organization ever failed to complete any work awarded to it?

No

3.2.2 Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its' officers?

No

3.2.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

No

3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

No

3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete, and scheduled completion date.

3.4.1 State total worth of work in progress and under contract:

See Attached

3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amounts, date of completion and percentage of the cost of the work performed with your own forces.

3.5.1 State average annual amount of construction work performed during the past five years:

$ 38,000,000

3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

See Attached

4. REFERENCES

4.1 Trade References: See Attached

4.2 Bank References: See Attached

4.3 Surety:

4.3.1 Name of bonding company: Westfield Group

4.3.2 Name and address of agent: 555 Republic Place, Suite 450
Plano, Texas 75074
Ms. Gwen Bechtold
(800) 368-3597

Local Representative: Cowan-Hill Bond Agency
Mr. Howard Cowan / Ms. Marla Hill
(877) 640-2663

5. FINANCING

5.1 Financial Statement. **FINANCIAL STATEMENT FURNISHED UPON REQUEST**

5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items.

5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

Beal & Wilkes, PC
24 Smith Road, Suite 225
Midland, Texas 79705
(432) 688-3946

5.1.3 Is the attached financial statement for the identical organization named on page one?

Yes

5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

Yes

6. SIGNATURE

6.1 Dated this day June 08, 2022
Name of Organization: Mid-Tex of Midland, Inc.

By:

T. Alan White
President & Co-Owner

6.2 Mr. T. Alan White, President & Co-Owner being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this day June 08, 2022

Notary Public:

3

Project Team

Estimating & Negotiations	Alan White
General Superintendent	David Mays
Project Superintendent	Wilcey Koinzan
Lead Project Manager	Rob Rose
Executive Support	Leslie Salgado

Please see resumes and experience of the proposed project superintendents in the following pages...

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707

(432) 697-2282
(432) 694-9627 Fax
alan@midtexofmidland.com

Mr. Alan White President / Co-Owner

Personal

Born December 13, 1957 **Married** **2 Children**

Objective

Develop a vibrant, growing and strong company; to support the community. Doing the best job we can and employing the professionals necessary to support the Company and Community.

Experience

1990 - Present Mid-Tex of Midland, Inc. Midland, Texas
President – Co-Owner
Coordinate and oversee construction operations
Project negotiation with Owners & Architects
Estimating
Monthly project billings

1986 - 1990 Mid-Tex of Midland, Inc. Midland, Texas
Estimator / Business Development
Develop construction business
Negotiate with Owners, Architects and Property Managers
Estimate, expedite and coordinate all projects

1985 - 1986 J.L. Moore Construction Odessa, Texas
Chief Estimator and Project Manager

1983 - 1985 Area Builders, Inc. Odessa, Texas
Estimator and Project Coordinator

1982 - 1983 Area Builders, Inc. Odessa, Texas
Assistant Project Superintendent
North Petroleum Center Midland, Texas
Cornerstone Shopping Center Midland, Texas

Education

1977 - 1982 Texas Tech University Lubbock, Texas
B.S. Construction Engineering
1976 Midland High School Graduate Midland, Texas

Mid-Tex of Midland, Inc.
5206 W. Wadley Ave.,
Midland, Texas 79707

Ofc: (432) 697-2282
Fax: (432) 694-9627
david@midtexofmidland.com

William David Mays

Objective

Provide the best leadership as necessary to assist in completing the projects efficiently. Assist and coordinate project development with the Owners, Architects, Superintendents and Company.

Experience

2017 – Present | Mid-Tex of Midland, Inc. | Midland, Texas

Project Manager

- Jobsite meetings with Owners and Architects to insure the quality and timely completion of the project.
- Jobsite meetings with subcontractors to insure quality and timely completion of the project
- Project Scheduling
- Review all correspondence: daily reports, RFIs, pay requests, change requests, change proposals, correspondence to and from the Architect and Owner.
- Company Workforce scheduling to insure adequate manpower is available on the project
- Assist with estimating and expediting projects
- Coordinate safety meetings

2007 – 2017 | Mid-Tex of Midland, Inc. | Midland, Texas

Project Coordinator / Expeditor

- Coordinate the flow of all information on projects, making sure all parties involved are informed of new developments.
- Coordinate all submittals (shop drawings, product literature, samples, test reports, test data, mock-up samples, etc…) between the Subs / Suppliers, Architects / Engineers and the Project Superintendent. Submittals MUST be obtained in an expeditious manner from the Subs / Suppliers then transmitted to and returned from the Architect / Engineer promptly. Once the submittals are returned from the Architect / Engineer and are approved for construction use, they must be promptly returned to the Subs / Suppliers and distributed to the Project Superintendent, and, if necessary, distributed to any other Subs / Suppliers that may need the particular submittal to coordinate their work. Make sure all markings from the Architect / Engineer have been transferred to all copies of submittals.
- Attend progress meetings at jobsite (as often as possible).
- Upon receipt of a CCR issued by the Architect, distribute to all subcontractors & suppliers affected; review and assemble pricing and send to Architect for approval. Upon pricing approval, change orders to Subcontractors & Suppliers must be issued.
- Expedite delivery of material to the jobsite. This pertains to both materials ordered by Mid-Tex for Mid-Tex to install (flooring, finishes, etc…), materials ordered by Mid-Tex for other Subcontractors to install or materials ordered by Suppliers / Subcontractors. The Project Superintendent should let the expeditor know if there are any concerns or special needs for material deliveries.
- Assemble, with the assistance of the Project Manager, Project Superintendent and Executive Assistant all Project Closeout Documents. Assembling of these documents should begin soon after the project begins.
- Assemble, maintain and send out weekly all required logs to Project Manager and Project Superintendent. Subcontractor log, RFI Log, ASI Logs, Change Order Logs, Etc…

2000 – 2007 Mid-Tex of Midland, Inc. Midland, Texas

Warehouse Manager

- Check-in and send-out freight.
- Daily MTS all materials to jobs as needed.
- Organize and clean warehouse.
- Load installers; verify material-leaving warehouse at all times.
- Check stock weekly on bath tile, hardi-backer, shower pan, carpet pad and miscellaneous material.
- Verify materials needed and assist with order placement
- Maintain the forklift and wet saw as required.
- Stock sundries periodically.
- Check-in and checkout tools; verify the correct information.
- Deliveries and pick-up of miscellaneous materials
- Assist customers with carry-in and carry-out of materials.
- Keep all in-stock materials organized, cut samples for in-stock roll good materials.
- Keep area rugs organized daily.
- Measure, roll-up, stack and price remnants.
- Keep store in clean and organized manner.
- Set-up and relocate displays.
- Check-in and checkout tools; verify the correct information.

Education

Graduated May 2000 Robert E. Lee High School Midland, Texas

Interests

Hunting, Fishing…pretty much any outdoor activities

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707

(432) 697-2282
(432) 694-9627 Fax
wkoinzan@midtexofmidland.com

Mr. Wilcey Koinzan — Superintendent

Personal

Born: October 20, 1948 **Married** **2 Children**

Objective

Improve project quality, control, coordinate and manage a safe, efficient, profitable project. Assist with the coordination between the Architect, Owner and General Contractor.

Experience

2015 - Present **Mid-Tex of Midland, Inc.** **Midland, Texas**
Project Superintendent:

COM MAISP Multiple Renovations ($4,500,000)
Midland, Texas

Parks Bell NWC Center ($3,000,000)
Odessa, Texas

BTA Phase II Addition & Renovation ($1,500,000)
Midland, Texas

City of Midland – Fire Station No. 6 ($4,575,000)
Midland, Texas

Multiple Projects Ranging ($700,000 - $3,000,000)

1999 – 2007
Owner of 3rd Generation Construction:

Projects included masonry, concrete and steel construction for religious, educational and military facilities. Also performed Superintendent duties for the National Guard Armory in Midland, Texas

Prior to 1999
Gained experience and leadership skills in the construction industry throughout Central and West Texas

Education

1967 – 1971 Texas Tech University Lubbock, Texas
B.S. Agricultural Economics

Interests

Family and spending time outdoors

Resume

Robby Rose

Professional Summary:

18 years as Project manager for commercial and residential construction.
Responsible for purchasing and setting delivery schedules of materials for construction projects in a timely manner to complete construction projects. Schedule labor to meet prepared completion schedules set by contractors and owners. Maintaining and preparing MSDS, Submittals, and Safety programs of projects in progress. Prepare closeout documents, invoices, and project status reports. And communicate with other contractors, Architects, and owners.

18 years as an Estimator for commercial and residential projects.
As Estimator I was responsible for successful interpretation of blue prints and project manuals. Communicating with Architects and Contractors while preparing take offs. Price materials, labor, and equipment costs. Prepare and present written proposal's to Contractors.

18 years as AutoCAD Lt Draftsman.
Drafting and designing custom and spec homes for the residential industry. To meet with prospective clients in order to determine what style, size, and layout of a home they need and want.

Skills / Qualifications:

Computer Skills include online research, county records research, Auto Cad Lt Program, Microsoft Word, Excel, Quick Bid Estimating and On Screen Takeoff, and Adobe Acrobat.

Accomplishments:

I was a former member of the Board of Directors for the Permian Basin Home Builders Association (3 yrs).
I was a former member of the Council of the YMCA Indian Guides program (4yrs) with the highest position held as Nation Chief

Experience:

2011 thru Present
Project Coordinator
Mid-Tex of Midland, Inc.
Midland, Texas

2000 thru 2011
President / Project Manager / Estimator / Draftsman
Rose Drywall & Acoustical Construction, Inc;
Midland, Texas

1996 thru 2000
Project Manager / Estimator / Draftsman
Woodruff - Rose Construction;
Midland, Texas

1987 thru 1996
Estimator / Project Administrator/ Draftsman
Woodruff Drywall;
Midland, Texas

1986 thru 1999
Texas Army National Guard
Midland, Texas

Prior to 1987
Information Technician
Petroleum Information
Midland, Texas

Education / Training:

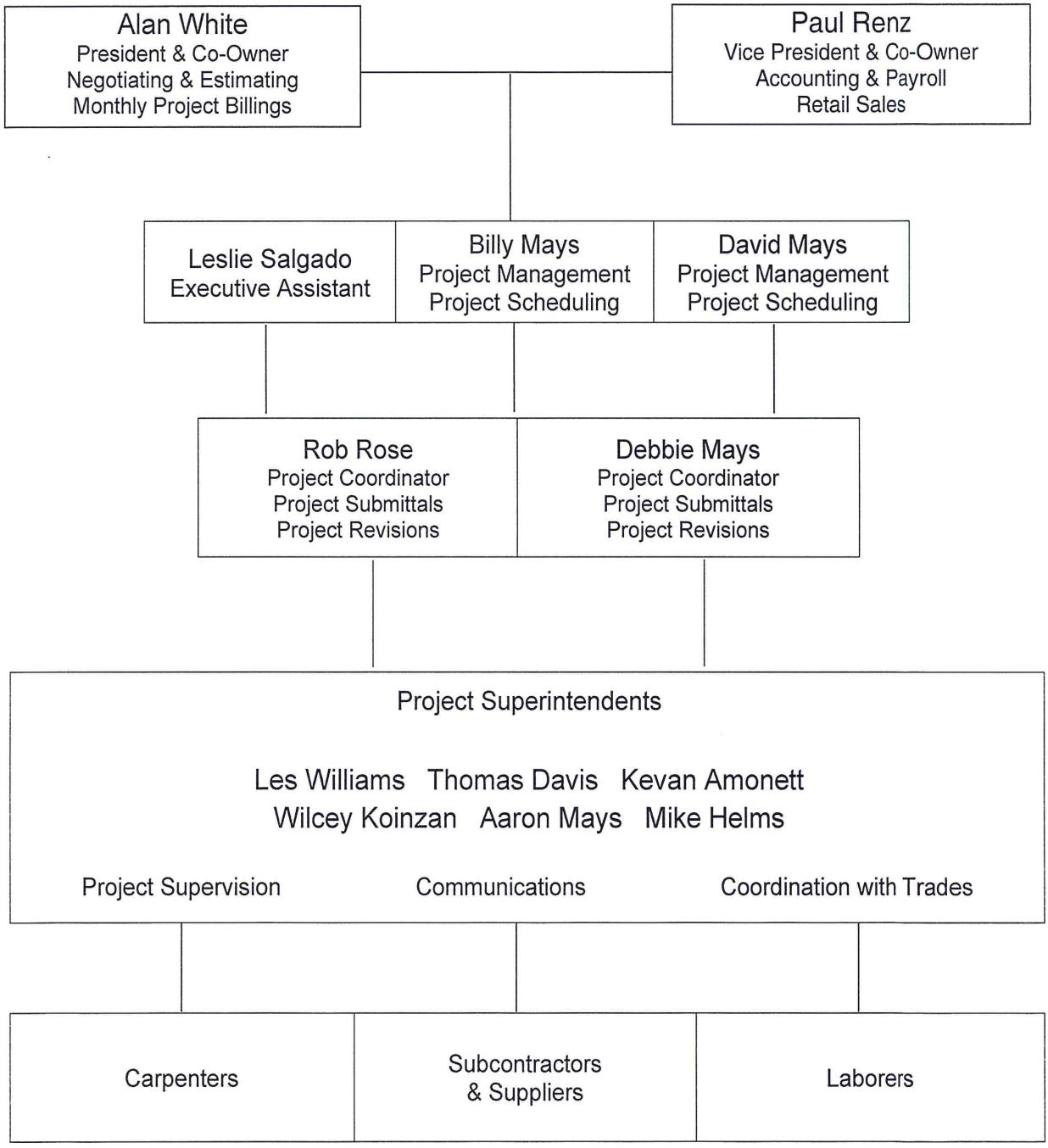
1984 – 1989
General Studies,
Midland College,
Midland, Texas

1996
Autolisp Work Shop
Midland College Continuing Education
Midland, Texas

1998
Estimating using Quick Bid and On Screen Take Off
Carter's School of Estimating
Florida

1986 – 1999
Chemical Specialist, Combat Engineer, Mechanized Infantry, Field Medic
Texas Army National Guard
Midland, Texas

Organizational Chart



4

CONSTRUCTION PROJECTS

EDUCATIONAL		PROJECT AMOUNT
Midland College	Truck Driving Facility	255,000
	F Marie Hall SimLife Center	1,300,000
	IT Renovations	370,000
	Science Labs	600,000
	Student Center	5,700,000
	Physical Education Building	5,300,000
	Chaparral Center Expansion	5,600,000
	Child Development, LRC & OTC	4,900,000
	Science Building	4,600,000
	Residence Hall 3	4,200,000
	Technology Center – Fort Stockton	1,200,000
	Advance Technology Center	2,400,000
	P.E. Building	350,000
Midland ISD	West Education Center	5,500,000
	Freezer Warehouse	1,200,000
	Goddard JHS Addition & Renovation	2,500,000
	Pease & Washington	900,000
	LHS Additions & Renovations	349,000
	Midland Freshman Renovations	450,000
Region 18 ESC	Additions & Renovations	1,560,000
Ector County ISD	Hays Elementary Addition & Renovation	2,300,000
	Bowie JHS Addition & Renovation	2,370,000
	Bowie Elementary	604,000
	Soccer & Softball Complex	1,400,000
	Ector Junior High Cafeteria	1,900,000
	AIM High School and Nursery	359,000
	Permian HS Gymnastics Gym	370,000
Greenwood ISD	Baseball & Softball Complex	1,600,000
	Elementary, Middle & High School	4,850,000
Angelo State University	Carr Fine Arts	200,000
	Plaza Verde Stairs	160,000
	Biology Greenhouse	1,500,000
	Norris Baseball Clubhouse	600,000
San Angelo ISD	Maintenance & HVAC Replacement	1,800,000
	Summer 2017 – 4 Projects	5,500,000
	Fort Concho Elementary	1,800,000
	Central High Doors	55,000
	Lou Gehrig Hall Renovation	2,900,000
	McGill HVAC Replacement	1,057,000
	Glenn Elementary Addition	1,730,000
	Glenn Elementary Bathrooms	600,000
	Alta Loma & Belaire Renovations	1,940,000
	Food Service Fire Sprinklers	250,000
	Austin Elementary Addition & Renov.	1,200,000
	Glenn Bathroom Renovations	1,826,000
	Glenn & Lee Gym Renovations	1,230,000
	Reagan Elementary	6,300,000
	Glenmore Elementary	5,500,000
	Goliad Elementary	8,300,000
	Stadium Bathroom Renovations	140,000
	Stadium Restrooms	141,000
	Glenn & Lee Renovations	920,000
Rankin ISD	Miscellaneous Projects	2,000,000
	Elementary & Junior High Renovations	1,700,000
Fort Stockton ISD	Transportation Facility	1,600,000
Fort Davis ISD	New Gym & Renovations	573,000
Odessa College	ET Center Addition & Renovation	1,100,000
	Sedate Hall	1,120,000

	Cosmetology Building	470,000
Forsan ISD	Additions & Renovations	201,000
Alpine ISD	Junior High School Addition	501,000
Sul Ross State University	Museum of the Big Bend	3,000,000
	Child Care Center	450,000
	Food Services Renovations	250,000
UTPB	Student Housing Renovations	680,000
	Demarc 2	300,000
	Utility & Parking Additions	700,000
	STEM Academy Addition	1,800,000
	Sheriff Department Renovations	475,000
	Nursing Sumulation Renovations	730,000
	Various Projects 2015	730,000
	Accounting Offices	325,000
	Demarc 1	252,000
	Cooling Tower	1,750,000
	Various Projects 2013-14	1,670,000
	Nursing Simulation Center	1,000,000
	IT Building Renovations	1,100,000
	Student Housing – Phase IV	5,450,000
	IT Building Renovations	200,000
	Student Housing – Phase III	5,900,000
	Softball Fields	440,000
	Baseball Field	175,000
	Mesa Building Renovations	1,250,000
	Marquee Monument Signs	215,000
	New Dormitories	645,000
	Tennis Courts	350,000
Buena Vista ISD	Renovations	1,200,000
	Library	215,000
McCamey ISD	Teacher Housing	137,000
	2001 Renovations	570,000
	Gym & Locker Rooms	365,000
Pecos ISD	District Wide Additions & Renovations	15,000,000
	District Wide Parking Lots	2,200,000
	High School Renovations	3,900,000
	Pool / Gym Renovations	1,000,000
	Field House	2,100,000
	Vocational Building	3,700,000
	Austin & Kindergarten	9,300,000
	Crockett & Haynes Schools	12,000,000
	C.A.T.E. Building	1,975,000
	School Renovations	2,100,000
	School Renovations	1,415,000
	High School Softball Field	700,000
Terrell County ISD	Field House	1,300,000
	Elementary, Gym & Cafeteria	3,000,000
	High School & Vocational Buildings	5,400,000
Howard College	SWCID (2 Projects)	1,200,000
Terlingua CSD	Big Bend High School	615,000
Iraan-Sheffield ISD	Texas Challenge Academy	1,100,000
	Phase 1 Renovations	5,200,000
	Phase 2 Renovations	5,400,000
	Phase 3 Renovations	3,200,000
	Technology Center	825,000
	Gymnasium Re-Roofing	375,000
Crane ISD	Elementary Addition, Phase II	9,030,000
	Gym & Locker Rooms	770,000
	Elementary & Primary Schools	1,360,000
	High School Renovations	1,000,000

GOVERNMENT		PROJECT AMOUNT
Glasscock County	New Annex / Sheriff Renovations	4,000,000
Midland County	Courts & Administration	22,000,000
Reeves County	Rodeo Arena – Phase 2	2,760,000
	Rodeo Arena – Phase 1	1,100,000
	Civic Center & Show Barns – Phase 2	2,600,000
	Jail Renovations	1,300,000
City of Midland	Dennis the Menace Park	1,000,000
	EZ Rider Expansion	1,900,000
	Terminal Building Improvements	2,600,000
	Sports Complex Soccer & Football	2,100,000
	Fire Station 6	5,700,000
	Scharbauer Sports Complex	653,000
	MLK Community Center	1,900,000
	Scharbauer Sports Complex	1,800,000
	MLK Community Center	1,500,000
	New Fire Station	766,000
	Police Department	1,482,000
City of Odessa	Floyd Gwin Auditorium	100,000
	Floyd Gwin Restrooms	185,000
	Floyd Gwin Pool House Renovations	320,000
	Woodson Park Renovations	100,000
City of San Angelo	Fire Station 4	6,000,000
	Fire Training Facility	3,800,000
	Columbarium	340,000
	Concession Building	350,000
Tom Green County	Goodfellow NCO Club	900,000
City of Big Spring	Municipal Auditorium Renovations-2015	470,000
	Municipal Auditorium Renovations-2012	414,000
City of Monahans	City Hall Renovations	925,000
City of Kermit	City Hall Renovations	805,000
Sterling County CC	Interior Renovations	708,000
Dyess AFB	New Mini-Mall - Abilene	3,000,000
Goodfellow AFB	Main Exchange Upgrade – San Angelo	1,250,000
	Shoppette w/ Gas – San Angelo	650,000
Social Security Administration	New Offices	107,000
Alpine Housing Authority	Renovations & Additions	313,000
V.A. Medical Center	5th Floor Renovation	845,000
Lincoln Tower Alterations	Retirement Center	1,453,000
Lincoln Plaza	Park	1,143,000
Texas Health & Human Serv.	Hardware & Elevator	450,000
	Addition & Elevators	1,020,000
	Freezer Replacement	700,000
	State School Additions	406,000
	Elevator Additions	155,000
	Interior Renovations & Additions	460,000
TxDOT	Safety Rest Area – San Angelo	2,150,000
	Area Engineers Office – San Angelo	680,000
	Office Construction	353,000
	Maintenance Office – San Angelo	435,000
	Office & Lab – San Angelo	688,000
	Vehicle Title & Registration	400,000
Texas Parks & Wildlife	Office Renovations	633,000
	Law Enforcement Office – San Angelo	240,000
	Indian Lodge Renovations	1,200,000

RETAIL		PROJECT AMOUNT
McCoy's Building Supply Center	New Facility – Alpine, Texas	1,800,000
Family Powersports	New Facility – San Angelo	1,800,000
Midland Powersports	New Facility	1,200,000
Charles Schwab	Interior Renovations	173,000
Cornerstone Shopping Center	Interior Renovations	508,000
Coach House Gifts	Interior Renovations	184,000
Pier 1 Imports	Interior Renovations	165,000
New York Bagel Café	New Building	390,000
International House of Pancakes	New Building	715,000
Natural Foods Market	New Building	725,000
Westlake ACE Hardware	Interior Renovations	170,000

MEDICAL		PROJECT AMOUNT
Mitchell County Hospital	New Rural Health Clinic	3,600,000
Shannon Medical Center	Shannon Develop Center	1,600,000
	Surgical & MOB GI Additions	2,800,000
	Acute Care Facility	750,000
	MHMR Renovations	1,700,000
La Esperanza Clinic	New Facility – San Angelo	1,100,000
Permian General Hospital	Interior Renovations	132,000
	Doctors Clinic	662,000
	Business Offices	155,000
	Surgery Center & Patient Rooms	2,300,000
	Maternity Ward	624,000
	Convalescent Center	270,000
Midland Memorial Hospital	Entrances & 8th Floor Renovation	1,300,000
	Pharmacy Addition & Renovation	790,000
	LDR Renovations	490,000
	Isolation Room Upgrade	150,000
	CT Imaging	175,000
	SemperCare Acute Care	450,000
	Interior Renovations	141,000
	3rd Floor Children's Oncology	1,480,000
Martin County Hospital	Additions & Renovations	4,400,000
V. A. Medical Center	Basement & Corridor Addition	761,000
Scenic Mountain Medical Ctr.	Interior Renovations & Addition	315,000
TTU Health Sciences Center	Nurses Classrooms	900,000
Medical Center Hospital	Infusion Services	550,000
	Sterile Processing	1,200,000
	7 West Renovations	2,800,000
	Trauma Renovations	270,000
	Family Health	320,000
	Sim Lab Renovation	2,600,000
	Doctor Offices	475,000
	Sky Bridge	141,000
	Histology Renovations	250,000
	4 West Renovations	550,000
	MOB Tenant Build-Out	750,000
	Stewart Wheatley Build-Out	450,000
Hudspeth Memorial Hospital	Addition & Renovation	3,600,000
	Sonora Medical Center	1,200,000

ENERGY		PROJECT AMOUNT
Parsley Energy	New Campus	36,000,000
BTA 2	Additions & Renovations	1,600,000
BTA 1	Additions & Renovations	1,450,000
Anadarko Oil	Interior Renovations	1,095,000

Texaco Oil	Interior Renovations	1,700,000
OXY USA	Interior Renovations	835,000
	Interior Renovations	1,280,000
	Interior Renovations	780,000
	Interior Renovations	615,000
	Interior Renovations	490,000
	Interior Renovations	850,000
	Interior Renovations	627,000
Coastal Management	Interior Renovations	760,000
Halliburton (30 Days)	Interior Renovations	208,000
UNOCAL (45 Days)	Interior Renovations	615,000
Enron	Interior Renovations	1,179,000
Halliburton	Interior Renovations	2,498,000
Burlington Resources	Building 5 Renovation	245,000
	Building 3 Retrofit & Addition	1,900,000
ARCO Oil & Gas	Interior Renovations	1,235,000
	Interior Renovations	387,000
Chevron USA	McElroy Pump Station	118,000
	MID2A Building Renovation	640,000
	Bathroom Renovations	1,400,000
	Building Entrances Reconstruction	580,000
	Interior Renovations	505,000
	New Office Building	900,000
	Interior Renovations	1,190,000
ChevronTexaco	Bathrooms & Common Areas	598,000
	2nd & 3rd Floors	396,000
	4th Floor & Basement	789,000
Dawson Geophysical	Building Addition & Renovation	295,000
Key Energy Services	Interior Renovations	515,000
	Interior Renovations	475,000
	Interior Renovations	375,000
	Interior Renovations	1,300,000
	Interior Renovations	425,000
Marathon Oil	Interior Renovations	423,000

CHURCH		PROJECT AMOUNT
The Bridge	New Facility	6,500,000
Grace Lutheran Church	Classroom Center Additions	2,900,000
	Addition	700,000
St. Luke's Methodist	Classrooms	175,000
	Sanctuary	640,000
Midland Lutheran	Interior Renovations	187,000
LDS Church	Addition – Fort Stockton, Texas	815,000
First Baptist Church	Sanctuary	190,000
Church of Christ	New Facility	700,000

PROPERTY MANAGEMENT		PROJECT AMOUNT
JMB / Sike's Center	Mall Renovations	248,000
Property Management Systems	Interior Renovations	148,000
ClayDesta Corporation	Interior Renovations	173,000
U. S. Realty & Investment Co.	Interior Renovations	110,000
Mike Lewis & Associates	Interior Renovations	213,000
Landmark Management	Interior Renovations	163,000
The Davis Company	Interior Renovations	187,000
The Bonner Group	Interior Renovations	797,000
TRW Properties	Interior Renovations	856,000
Cummings-Baccus	Interior Renovations	375,000

HOTEL		PROJECT AMOUNT
Midland Hilton	Phase 1 & Phase 2	620,000
Odessa Hilton	AMRESCO	775,000

BANK		PROJECT AMOUNT
Community National Bank	New Branch Building	1,800,000
Bank of America	New Branch Building	1,600,000
	New Facility	1,500,000
Citibank	New Branch Building	1,240,000
First American	New Branch Building	775,000
	New Branch Interior	125,000
	Miscellaneous Projects	230,000
Bank One Building	Interior Renovations	600,000
Western National	Interior Renovations	104,000
Texas Commerce	Interior Renovations	866,000
Midland American	Interior Renovations	700,000
First National	Midland	255,000
	Monahans	370,000
Medical Community C.U.	New Facility - Midland	480,000
West Texas National Bank	Renovations – Midland	170,000
	Renovations – Midland	200,000
	Renovations – Seminole	370,000
	Renovations – Midland	460,000
	New Facility – Midland	2,500,000
	New Facility - Midland	680,000
	Addition & Renovation – Alpine	790,000
	Interior Renovations	115,000

MISCELLANEOUS		PROJECT AMOUNT
BlueCross BlueShield	Renovations	800,000
Odessa Country Club	Additions & Renovations	1,115,000
High Sky Children's Ranch	Interior Renovations	140,000
	Flooring Replacement	93,000
	Interior Renovations	165,000
PEH Investments / Mazda	New Facility	750,000
Leonard's Pharmacy	New Facility	600,000
Fasken Foundation	Interior Renovations	141,000
Green Tree Country Club	Interior Renovations	155,000
Masters Golf Training Facility	New Facility	114,000
Ostrich Products of America	New Facility	725,000
Sitel Telemarketing (30 Days)	Interior Renovations	235,000
Schisow Residence	Addition & Renovation	200,000
Yummi's Deli	New Facility	245,000

PARTIAL LIST OF CLIENTS SERVED

ARCHITECTS
Chapman Harvey Architects
Gary Donaldson Architecture
JSA Architects
Komatsu Architecture
R.W. Gregonis Architects
Parkhill, Smith & Cooper
Pate & Associates
O'Connell Robertson & Associates
Rhotenberry Wellen Architects
James Riggen - MISD
Luck Design, LLC
Kinney Franke Architects
Vandergriff Group Architects
Jack Cumpton & Associates
ACR Engineering
Z Design Group, LLC
Hunter Coral Associates
Claycomb Associates

ENERGY COMPANIES
Parsley Energy
ARCO Oil Company
BTA
Bass Enterprises
Chevron USA
Burlington Resources
Exxon Company USA
Halliburton Services
Fasken Foundation
Flag-Redfern Oil
Hunt Energy
Mobil Oil
ORYX Energy
Southland Royalty
Texaco Oil
Enron Oil & Gas
Unocal
Exxon
OXY USA
Coastal Management
ARCO Pipeline Company
Key Energy
BP America

HOSPITALS
Medical Center Hospital - Odessa
Midland Memorial Hospital
Glenwood Hospital
Rankin County Hospital
Permian General Hospital - Andrews, Texas
V. A. Medical Center - Big Spring, Texas
Scenic Mountain Medical Center - Big Spring, Texas

PROPERTY MANAGEMENT COMPANIES
ClayDesta Corporation
Dinero Plaza Management
Heitman Properties
Horne Company
JMB Property Management
Landmark Management of Texas
Lehndorff Management
Midland Mall Management
Mike Lewis & Associates, Inc.
Property Management Systems
Rubloff Management
Stephenson Management
Vista / SCI Management
The Bonner Group
The Davis Company
P M Realty Group
TRW Properties

GOVERNMENT AGENCIES
Alpine Housing Authority
City of San Angelo
Tom Green County
City of Midland
City of Odessa
Permian Basin Reg. Planning Comm.
University of Texas Lands
Sterling County Commissioners
Veteran's Administration
City of Big Spring
City of Kermit
Texas MHMR
Texas Department of Transportation
Crockett County Commissioners
Presidio County
Texas Parks & Wildlife
Region 18 Education Service Center
AAFES

CHURCHES
First Baptist
First Christian
Grace Lutheran Church
St. Luke's United Methodist
St. Paul's Angelican
Church of Christ
Midland Lutheran

BANKS
Medical Community Credit Union
Midland American
Citibank
Bank 1
Texas Commerce
First National of Monahans
First National of Midland

Hudspeth Memorial Hospital
Mitchell County Hospital

SCHOOL DISTRICTS
Midland ISD
Ector County ISD
Big Lake ISD
Big Spring ISD
Forsan ISD
Alpine ISD
Fort Davis ISD
Pecos-Barstow-Toyah ISD
Terlingua CSD
McCamey ISD
Iraan-Sheffield ISD
Greenwood ISD
San Angelo ISD

RESTAURANTS
New York Bagel Café
T & T Donuts
International House of Pancakes

MISCELLANEOUS
McCoy Corporation
Family Powersports
Midland Powersports
Natural Foods Market

Bank of America
Chase Bank

COLLEGES & UNIVERSITIES
Angelo State University
Texas Tech University
University of Texas
UTPB
Midland College
Odessa College
Howard College
Sul Ross State University

Numerous Projects for hotels, insurance companies, restaurants, and commercial & residential general contractors.

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707
Phone: (432) 697-2282
Fax: 694-9627

Project Details for CMAR

Owner:	Shannon Medical Center		
Project:	Multiple Projects in Various Buildings		
Project Location:	San Angelo, Texas		
Project Dates:	Start: 2020	Completion:	Late 2021
Project Size:	70,000 sf +/-		
Project Cost:	Start: $5,500,000	Final: TBD	
Delivery Method:	CMAR		
Project Detail:	Interior Renovations		
Personnel:	Thomas Davis, Mike Helms, Kevan Amonett		
	Billy Mays		
	Rob Rose		
	Leslie Salgado		
Client Contact:	Mr. Dale Droll	(325) 656-3749	

Owner:	High Sky Children's Ranch	Private
Project:	Demolition of Existing Building	Multiple Phases
	4 New Buildings	
Project Location:	Midland, Texas	
Project Dates:	Start: 2019 Completion:	Late 2020
Project Size:	Multiple Phases New Construction	
Project Cost:	Start: $10,000,000 Final: TBD	
Delivery Method:	CMAR	
Project Detail:	New facility construction	
Personnel:	Joe Marquez	
	David Mays	
	Rob Rose	
	Leslie Salgado	
Client Contact:	Mr. Walter Pate (432) 697-0037	

Owner:	Parks Bell Development	Private
Project:	Office & Retail Development	Multiple Phases
Project Location:	Odessa, Texas	
Project Dates:	Start: 2018 Completion:	Late 2020
Project Size:	Multiple Phases New Construction	
Project Cost:	Start: $7,000,000 Phase 1 &2	Final: TBD
Delivery Method:	CMAR	
Project Detail:	New facility construction	
Personnel:	Billy Reynolds	
	Billy Mays	
	Tom Dragisic	
	Leslie Salgado	
Client Contact:	Mr. T.J. McClure (432) 682-1252	

Owner:	Pecos-Barstow-Toyah ISD	Public
Project:	School Renovations & Additions	7 Campuses
Project Location:	Pecos, Texas	
Project Dates:	Start: 2017	Completion: Mid 2020
Project Size:	+/- 100,000 sf	New & Renovation
Project Cost:	Start: $14,100,000	Final: TBD
Delivery Method:	CMAR	
Project Detail:	New facility construction; ties-in to existing facility with renovations	
Personnel:	Les Williams & Stanley Lee	
	Billy Mays	
	Tom Dragisic	
	Leslie Salgado	
Client Contact:	Mr. Tim Gilbert	(432) 448-5364

Owner:	Parsley Energy	Private
Project:	2 New Office Buildings and Conference Center	
Project Location:	Midland, Texas	
Project Dates:	Start: 2017	Completion: Early 2020
Project Size:	+/- 85,000 sf	3 Buildings; New construction
Project Cost:	Start: $35,000,000	Final: TBD
Delivery Method:	CMAR	
Project Detail:	New facility construction	
Personnel:	David Blackwell	
	Billy Mays	
	Bill Baker	
	Rob Rose	
	Leslie Salgado	
Client Contact:	Mr. Walter Pate AIA	(432) 697-0037

Owner:	Glasscock County	Public
Project:	New Annex Building & Sheriff Renovation	
Project Location:	Garden City, Texas	
Project Dates:	Start: 2016	Completion: Early 2017
Project Size:	+/- 11,000 sf	New; +/- 8,000 sf renovation
Project Cost:	Start: $3,800,000	Final: $3,600,000
Delivery Method:	CMAR	
Project Detail:	New facility construction; ties-in to existing facility with renovations	
Personnel:	Bill Baker	
	Billy Mays	
	David Blackwell	
	David Mays	
	Leslie Ramirez	
Client Contact:	Judge Kim Halfman	(432) 354-2477

Owner:	Mitchell County Hospital District	Public
Project:	New Rural Health Clinic	
Project Location:	Colorado City, Texas	
Project Dates:	Start: 2015	Completion: 2016
Project Size:	+/- 13,000 sf	
Project Cost:	Start: $3,507,000	Final: $3,324,000
Delivery Method:	CMAR	
Project Detail:	New facility construction; ties-in to existing facility with renovations	
Personnel:	Bill Baker	
	Billy Mays	
	Joe Marquez	
	David Mays	
	Leslie Ramirez	
Client Contact:	Mr. Robbie Dewberry	(325) 728-3431

Owner:	City of San Angelo	Public
Project:	Fire Training Facility	
Project Location:	San Angelo, Texas	
Project Dates:	Start: 2015	Completion: 2017
Project Size:	+/- 15,500 sf	
Project Cost:	Start: $3,800,000	Final: $3,500,000
Delivery Method:	CMAR	
Project Detail:	New facility construction; fire training building; fire training site facilities	
Personnel:	Bill Baker	
	Billy Mays	
	Kevan Amonett	
	Rob Rose	
	Leslie Ramirez	
Client Contact:	Mr. David Knapp	(325) 657-4279

Owner:	Iraan-Sheffield ISD	Public
Project:	PK – 12 Facilities renovations & Additions	
Project Location:	Iraan, Texas	
Project Dates:	Start: 2011	Completion: 2014
Project Size:	+/- 45,000 sf; 7 Buildings;	
Project Cost:	Start: $14,268,752	Final: $14,360,626
Delivery Method:	CMAR	
Project Detail:	Multiple building renovations and additions; coordination for student relocation and continuing operations	
Personnel:	Bill Baker	
	Billy Mays	
	Les Williams	
	Thomas Davis	
	Leslie Ramirez	
Client Contact:	Mr. Kevin Allen	(432) 639-2512

Owner:	San Angelo ISD	Public
Project:	Glenmore Elementary Addition & Renovation	
Project Location:	San Angelo, Texas	
Project Dates:	Start: 2011	Completion: 2014
Project Size:	+/- 30,000 sf; 4 Buildings;	
Project Cost:	Start: $4,800,000	Final: $5,149,354
Delivery Method:	CMAR	
Project Detail:	Multiple building renovations and additions; coordination for student relocation and continuing operations	
Personnel:	Bill Baker Billy Mays Thomas Davis Rob Rose Leslie Ramirez	
Contact:	Mr. Jeff Bright	(325) 947-3766

Owner:	Pecos-Barstow-Toyah ISD	Public
Project:	Multiple School Additions & Renovations	
Project Location:	Pecos, Texas	
Project Dates:	Start: 2009	Completion: 2013
Project Size:	+/- 90,000 sf; 6 different campuses; multiple buildings	
Project Cost:	Start: $28,433,477	Final: $28,348,953
	100% of unused funds were returned to owner	
Delivery Method:	CMAR	
Project Detail:	Multiple building renovations and additions; coordination for student relocation and continuing operations	
Personnel:	Bill Baker Billy Mays Les Williams David Mays Leslie Ramirez	
Contact:	Ms. Cookie Canon	(432) 447-7201

Owner:	Midland County	Public
Project:	County Court New Location Renovations	
Project Location:	Midland, Texas	
Project Dates:	Start: 2007	Completion: 2011
Project Size:	+/- 140,000 sf; 12 story building complete interior demolition; construct county courts and offices	
Project Cost:	Start: $19,951,773	Final: $21,591,302
	2 additional floors of offices and courtrooms were added to the project	
Delivery Method:	CMAR	
Project Details:	Structural reinforcement on multiple floors, county office and courtrooms throughout 12 floors in an existing building	
Personnel:	Bill Baker Billy Mays Jay Haney David Mays Leslie Ramirez	
Contact:	Honorable Judge Mike Bradford	(432) 688-4310

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707
Phone: (432) 697-2282
Fax: 694-9627

Contact Information

OWNERS

Owner:	Parks Bell Development	
Contact:	Mr. Brian Bell brian@ccim.net	(817) 377-1997
Owner:	High Sky Children's Ranch	
Contact:	Ms. JaLynn Hogan jalynnh@highsky.org	(432) 694-7728
Owner:	Parsley Energy	
Contact:	Mr. Jeff Bradley JBradley@parsleyenergy.com	(512) 600-8845
Owner:	San Angelo ISD	
Contact:	Mr. Jeff Bright Jeff.bright@saisd.org	(325) 947-3766
Owner:	Pecos-Barstow-Toyah ISD	
Contact:	Mr. Tim Gilbert tgilbert@pbtisd.esc18.net	(432) 448-5364
Owner:	Glasscock County	
Contact:	Judge Kim Halfman kim.halfmann@co.glasscock.tx.us	(432) 354-2477
Owner:	Midland College	
Contact:	Dr. Steve Thomas sthomas@midland.edu	(432) 685-4690
Owner:	Angelo State University	
Contact:	Mr. Cody Guins Cody.guins@angelo.edu	(325) 942-2380
Owner:	UTPB	
Contact:	Mr. Jay Haney Haney_j@utpb.edu	(432) 552-2763

Owner:	Mitchell County Hospital District	
Contact:	Mr. Robbie Dewberry	(325) 728-3431
	rdewberry@mitchellcountyhospital.com	
Owner:	Midland ISD	
Contact:	Mr. James Riggen	(432) 240-1000
	jriggen@midlandisd.net	
Owner:	BTA	
Contact:	Mr. Stuart Beal	(432) 682-3753
	sebeal@btaoil.com	
Owner:	City of Midland	
Contact:	Mayor Jerry Morales	(432) 685-7204
	jfmorales@midlandtexas.gov	
Owner:	City of San Angelo	
Contact:	Mr. David Knapp	(325) 657-4279
	David.knapp@cosatx.us	
Owner:	Tom Green County	
Contact:	Mr. Darin Schell	(325) 659-6519
	darin.schell@co.tom-green.tx.us	

ARCHITECTS

Architect:	Pate Associates	
Contact:	Mr. Walter Pate	(432) 697-0037
	WFP.AIA@patearchitects.com	
Architect:	Parkhill Architects	
Contact:	Mr. Jay Edwards	(432) 697-1447
	jedwards@team-psc.com	
Architect:	Komatsu Architects	
Contact:	Mr. Les Edmonds	(817) 710-1378
	ledmonds@komatsu-inc.com	
Architect:	Vandergriff Group	
Contact:	Mr. Mark Pelletier	(432) 687-0781
	mpelletier@vandergriff-group.com	
Architect:	Chapman Harvey Architects	
Contact:	Mr. Larry Harvey	(806) 749-1153
	larryh@chapmanharvey.com	

Architect:	Johnson Seefeldt Architects	
Contact:	Mr. Cruz Castillo CruzC@jsarch.com	(432) 362-6565
Architect:	Rhotenberry WellenArchitects	
Contact:	Mr. T.J. McClure tjm@rwarchitects.com	(432) 682-1252
Architect:	Gary Donaldson Architecture	
Contact:	Mr. Gary Donaldson donaldson@suddenlinkmail.com	(325) 655-4805
Architect:	Kinney Franke Architects	
Contact:	Mr. Craig Kinney craig@kinneyfranke.com	(325) 653-2900
Architect:	O'Connell Robertson Architects	
Contact:	Mr. Kim Cochran austininfo@oconnellrobertson.com	(512) 478-7286
Architect:	Huckabee Associates	
Contact:	Tim Caddell Tim.caddell@huckabee-inc.com	(210) 579-4668

Mid-Tex of Midland, Inc.
5206 West Wadley
Midland, Texas 79707
Phone: (432) 697-2282
Fax: 694-9627

BUSINESS REFERENCES & CONTACTS

BANK REFERENCE

West Texas National Bank
300 North Marienfeld Street, Suite 100
Midland, Texas 79701
Mr. Bill Mewhorter
(432) 685-6500

TAX RESALE #: *75-2322458-6*
D & B Rating: *3A2*
D & B#: *02-684-4316*

SURETY REFERENCE

Westfield Group
555 Republic Place, Suite 450
Plano, Texas 75074
Ms. Gwen Bechtold
(972) 516-2600, Fax: (972) 516-2911

BOND REFERENCE

Cowan Hill Agency Bonding Agent
9810 Indiana Avenue, Suite 160
Lubbock, Texas 79423
Mr. Howard Cowan
Ms. Marla Hill
(877) 640-2663, Fax: (806) 722-2662

TRADE REFERENCES

ABCO Fire Protection
14202 Highway 87 South
Lubbock, Texas 79423
(800) 999-0048
(806) 745-1275 Fax
Rusty Abbe

Browns Permian Electric
P.O. Box 5073
Midland, Texas 79704
(432) 683-2971
(432) 683-2977 Fax
Mike Brown

Bosworth Company
2205 West Industrial
Midland, Texas 79701
(432) 683-5233
(432) 683-2960 Fax
Farris Parson

Dean Hagler, Ltd.
P.O. Box 3832
Abilene, Texas 79608
(325) 677-8627
(325) 676-0236 Fax
Clinton Hagler, Jr.

Hallgren Company
P.O. Box 3832
Midland, Texas 79702
(432) 561-8705
(432) 561-5405 Fax
Janet Lawrence

Lydick-Hooks Roofing Co.
2131 Market Street
Midland, Texas 79701
(432) 694-7718
(432) 520-3423 Fax
Mike Austin

Howard Butts Lath & Plaster
P.O. Box 8489
Midland, Texas 79702
(432) 697-1077
(432) 697-8533 Fax
Howard Butts

South West Masonry
4312 SCR 1311
Odessa, Texas 79765
(432) 563-2639
(432) 563-2640 Fax
Juan Valeriano

National Heating & Plumbing
620 Ryan
Odessa, Texas 79761
(432) 580-3342
(432) 333-9960 Fax
Mike Stahl

Mid-West Glass Co.
P.O. Box 10965
Midland, Texas 79702
(432) 682-7373
(432) 682-7446 Fax
Brandon Herring

Reece Albert, Inc.
P.O. Box 3238
Midland, Texas 79702
(432) 682-3769
(432) 682-3916 Fax
Mike Hester

Tierra Drywall
P.O. Box 8526
Midland, Texas 79708
(432) 683-8185
(432) 683-1492 Fax
Bill Musar

5

Safety

		Year 1 (2021)	Year 2 (2020)	Year 3 (2019)
1.	Total hours worked by all employees	62,875	80,347	97,154
2.	Total number of occupational fatalities	0	0	0
3.	Total number of cases with days away from work	0	1	1
4.	Total number of cases with job transfer or restriction	0	0	0
5.	Total number of other recordable cases	1	0	1
6.	Total number of days away from work	0	14	14
7.	Total number of days of job transfer or restriction	0	0	0
8.	Total Recordable Incidence Rate (TRIR) Lines (3+4+5x200,000 / Line 1)	3.18	2.48	4.12
9.	Lost Workday Case Rate (LWCR) Line 3x200,000 / Line 1	0	2.48	2.05
10.	Restricted Workday Case Rate (RWCR) Line 4x200,000 / Line 1	0	0	0

Please see documentation of our OSHA Form 300A – Summary of Work-Related Injuries and Illness and Experience Modifier Rates (EMR) for each of the past three (3) full years

Primary Insurance Provider: Milam-Felker Insurance Services, Inc.
401 East 7th Street
Odessa, Texas 79761
Mr. Jim Rose (432) 580-0711

Project Safety Administrator: Samuel Brzozowski
Project Monthly Involvement: As Necessary
OSHA Certified
Developed Safety Program

Job site safety meetings are conducted on a weekly basis, or more if necessary. Daily continued monitoring and assistance in maintaining a safe and secure job site.

On-Site Safety Education & Training
Personal Protective Equipment, Signage & Hardware
First Aid & Emergency Response Equipment
Safety Incentives and Recognition
Contingency for Post Incident Drug Testing and Incident Management Costs
Miscellaneous Safety-Related Expenses

The project management team monitors and maintains all safety requirements for each project. The team understands that no project can be successful without a safe work environment. Subsequently, Mid-Tex of Midland, Inc. has never had a major safety incident on any project. Each and every employee is required to read, and sign-off, their understanding of our safety policy. Additionally, we have weekly safety meetings at our project sites. We strive to operate our business and construction projects with 'SAFETY FIRST' attitude.

CONSTRUCTION & SAFETY

Once directed to begin the construction phase of the project the project will then be turned over to the team at Mid-Tex which will be responsible for all on-site operations. This team will consist of Lead Project Coordinator, Project Manager, Project Coordinators and Project Superintendent. Their responsibility is to ensure the adherence to the schedule, quality of work, all coordination and scheduling of subcontractors and suppliers and assist the team with any issues that may arise during the course of the project.

In order to ensure a smooth and safe project we take the following measures:

1. Pre-Construction Meeting with subs and suppliers before the project starts to plan how to ensure that the safety of the building occupants without compromising their working environment

2. Review and discuss the project schedule, submittal process, access to work area, storage, parking etc.

3. Issue and update construction schedules as required. The schedule will be a Microsoft Project bar chart schedule and will show all major portions of the work that is scheduled to be performed.

4. Mid-Tex holds weekly site meetings with subcontractors to go over the schedule, submittals, material delivery dates, labor requirements, installation requirements and any issues or questions that may arise. These meetings will be used to monitor the schedule, identify any issues that may affect the schedule, formulate a recovery plan and to implement that plan. These meetings will allow the entire project team to be aware of any issue or conflicts that have arisen or may arise and to plan the projected work more efficiently.

We take safety on our projects very seriously and strive to have an efficient and effective company safety plan. To accomplish this the most cost effective way possible we have an independent safety firm to create, implement and monitor our plan. As we have clients in the Energy Industry, we had the plan created to meet their corporate requirements, which are more stringent than OSHA. We believe that this plan promotes a safer work environment for the on-site work force and visitors.

Mid-Tex of Midland is also aware that this project is being performed in a highly visible public setting and additional precautions need to be taken to ensure the safety and protection of teaching staff, the general public, construction personnel, delivery personnel, storage areas, parking and the building.

We will coordinate the security efforts with Midland College, which will include barricades, fencing, directional & informational signage, etc. These precautions are to ensure that efficient placement of work can be achieved while minimizing the interaction between the construction personnel and everyone else.

Mid-Tex of Midland has a group of experienced superintendents and all of them have an excellent knowledge of the building industry and have years of experience in all types of commercial renovations and new construction. We have experience in dealing with a multitude of special requirements as may be necessary for any individual project. We have worked successfully with many owners and architect teams to accomplish these goals are confident we can successfully perform as CMAR on this project.

WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2021 Production Date: 04/12/2021 State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
TX	.08	17,039	26,115	9,076	7,248	24,500	29,272	22,024

(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.08		17,039	26,115	9,076	7,248	24,500	26,456	19,208

	Primary Losses	Stabilizing Value	Ratable Excess	Totals
Actual	(I) 19,208	C * (1 - A) + G 40,176	(A) * (F) 580	(J) 59,964
Expected	(E) 9,076	C * (1 - A) + G 40,176	(A) * (C) 1,363	(K) 50,615

	ARAP	FLARAP	SARAP	MAARAP	Exp Mod
Factors					(J) / (K) 1.18

REVISED RATING
RATING REFLECTS A DECREASE OF 70% MEDICAL ONLY PRIMARY AND EXCESS LOSS DOLLARS WHERE ERA IS APPLIED.
RATING REVISED TO REFLECT APPROVED RATING VALUES

Carrier: 29939-000 Policy: 0001202391 Eff-Date: 07-01-2020 Exp-Date: 07-01-2021

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2021 Production Date: 04/12/2021 State: TEXAS

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2017 Exp Date: 07/01/2018

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.12	.35	611,020	6,843	2,395					
5606	.18	.29	1,044,866	1,881	545					
8017	.45	.53	68,603	309	164					
8742	.07	.39	407,665	285	111					
8809	.04	.39	114,000	46	18					
8810	.03	.46	572,831	172	79					
Policy Total:			2,818,985	Subject Premium:	40,291	Total Act Inc Losses:			0	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2018 Exp Date: 07/01/2019

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.12	.35	477,571	5,349	1,872	6001134456	04	F	25,248	18,000
5606	.18	.29	1,214,453	2,186	634					
8017	.45	.53	78,659	354	188					
8742	.07	.39	447,304	313	122					
8809	.04	.39	124,800	50	20					
8810	.03	.46	639,488	192	88					
Policy Total:			2,982,275	Subject Premium:	29,342	Total Act Inc Losses:			25,248	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2019 Exp Date: 07/01/2020

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.12	.35	476,008	5,331	1,866	1001211185	06	F	219	219
5606	.18	.29	1,040,279	1,873	543	0001194093	06	F	3,805	3,805
8017	.45	.53	85,900	387	205					
8742	.07	.39	423,316	296	115					
8809	.04	.39	114,000	46	18					
8810	.03	.46	672,843	202	93					
Policy Total:			2,812,346	Subject Premium:	36,738	Total Act Inc Losses:			4,024	

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* Total by Policy Year of all cases $2000 or less. D Disease Loss X Ex-Medical Coverage U USL&HW

C Catastrophic Loss E Employers Liability Loss # Limited Loss

OSHA's Form 300 (Rev. 01/2004)
Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 2021

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an injury and illness incident report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment name Mid-Tex of Midland, Inc

City Midland State Texas

Identify the person			Describe the case			Classify the case											
						CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g. Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g. Second degree burns on right forearm from acetylene torch)	Death (G)	Days away from work (H)	Remained at work: Job transfer or restriction (I)	Remained at work: Other record-able cases (J)	Away From Work (days) (K)	On job transfer or restriction (days) (L)	(M) Injury (1)	Skin Disorder (2)	Respiratory Condition (3)	Poisoning (4)	Hearing Loss (5)	All other illnesses (6)
1	Kevan Amonett	Superintendent	08/04/21	Construction site	Fell on uneven ground.				1			X					
					Page totals	0	0	0	1	0	0	1	0	0	0	0	0

Be sure to transfer these totals to the Summary page (Form 300A) before you post it.

Injury	Skin Disorder	Respiratory Condition	Poisoning	Hearing Loss	All other illnesses	
(1)	(2)	(3)	(4)	(5)	(6)	

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

PACKET
6.75
June 28, 2022

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

Year 2021

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	1
(G)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

Injury and Illness Types

Total number of... (M)			
(1) Injury	1	(4) Poisoning	0
(2) Skin Disorder	0	(5) Hearing Loss	0
(3) Respiratory Condition	0	(6) All Other Illnesses	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor. OSHA Office of Statistics. Room N-3644. 200 Constitution Ave. NW. Washington. DC 20210. Do not send the completed forms to this office.

Establishment Information

Your establishment name: Mid-Tex of Midland, Inc

Street: 5206 West Wadley

City: Midland State: Texas Zip: 79707

Industry description (e.g., Manufacture of motor truck trailers)
Construction

Standard Industrial Classification (SIC), if known (e.g., SIC 3715)
____ ____ ____ ____

OR North American Industrial Classification (NAICS), if known (e.g., 336212)
2 3 6 2 2 0

Employment Information

Annual average number of employees: 31

Total hours worked by all employees last year: 62,875

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Paul Renz
Company executive

Vice President
Title

(432) 697-2282
Phone

01/24/22
Date

WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2020 Production Date: 02/21/2020 State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
*TX	.09	21,588	35,254	13,666	8,248	25,375	28,732	20,484

(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.09		21,588	35,254	13,666	8,248	25,375	28,732	20,484

	Primary Losses	Stabilizing Value	Ratable Excess	Totals
Actual	(I) 20,484	C * (1 - A) + G 45,020	(A) * (F) 742	(J) 66,246
Expected	(E) 13,666	C * (1 - A) + G 45,020	(A) * (C) 1,943	(K) 60,629

	ARAP	FLARAP	SARAP	MAARAP	Exp Mod
Factors					(J) / (K) 1.09

NOTICE - THIS IS A PRELIMINARY MODIFICATION
COMPLETE PAYROLL AND LOSS DATA HAVE BEEN APPLIED TO CURRENT
RATING VALUES BUT A FINAL MODIFICATION CANNOT BE PROMULGATED
UNTIL PENDING RATE FILING HAS BEEN APPROVED.

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2020 Production Date: 02/21/2020 State: TEXAS

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2016 Exp Date: 07/01/2017

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.52	.39	564,509	8,581	3,347	2001034444	05	F	3,484	3,484
5606	.24	.38	797,769	1,915	728					
8017	.49	.40	71,022	348	139					
8742	.07	.37	404,160	283	105					
8809	.05	.34	124,800	62	21					
8810	.04	.40	430,364	172	69					
Policy Total:			2,392,624	Subject Premium:	35,922	Total Act Inc Losses:			3,484	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2017 Exp Date: 07/01/2018

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.52	.39	611,020	9,288	3,622					
5606	.24	.38	1,044,866	2,508	953					
8017	.49	.40	68,603	336	134					
8742	.07	.37	407,665	285	105					
8809	.05	.34	114,000	57	19					
8810	.04	.40	572,831	229	92					
Policy Total:			2,818,985	Subject Premium:	40,291	Total Act Inc Losses:			0	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2018 Exp Date: 07/01/2019

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.52	.39	477,571	7,259	2,831	6001134456	04	F	25,248	17,000
5606	.24	.38	1,214,453	2,915	1,108					
8017	.49	.40	78,659	385	154					
8742	.07	.37	447,304	313	116					
8809	.05	.34	124,800	62	21					
8810	.04	.40	639,488	256	102					
Policy Total:			2,982,275	Subject Premium:	29,342	Total Act Inc Losses:			25,248	

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* Total by Policy Year of all cases $2000 or less. D Disease Loss X Ex-Medical Coverage U USL&HW

C Catastrophic Loss E Employers Liability Loss # Limited Loss

OSHA's Form 300 (Rev. 01/2004)
Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 2020

U.S. Department of Labor
Occupational Safety and Health Administration

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an injury and illness incident report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Form approved OMB no. 1218-0176

Establishment name Mid-Tex of Midland, Inc

City Midland State Texas

Identify the person			Describe the case			Classify the case											
						CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g. Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g. Second degree burns on right forearm from acetylene torch)	Death (G)	Days away from work (H)	Remained at work: Job transfer or restriction (I)	Remained at work: Other record-able cases (J)	Away From Work (days) (K)	On job transfer or restriction (days) (L)	(M) Injury (1)	Skin Disorder (2)	Respiratory Condition (3)	Poisoning (4)	Hearing Loss (5)	All other illnesses (6)
1	Robby Rose	Project Manager	03/12/20	Trailer on location	Stepped into conference room to set up and tripped over threshold.							X					
2	Christopher Gutierrez	Laborer	12/15/20	N/A	Employee was in a vehicle accident resulting in him being injured. He was driving to purchase material for job		14			14		X					
					Page totals	0	0	0	0	14	0	2	0	0	0	0	0

Be sure to transfer these totals to the Summary page (Form 300A) before you post it.

Injury (1) | Skin Disorder (2) | Respiratory Condition (3) | Poisoning (4) | Hearing Loss (5) | All other illnesses (6)

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

PACKET
6.79
June 28, 2022

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

Year 2020

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	1	0	0
(G)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
14	0
(K)	(L)

Injury and Illness Types

Total number of...	(M)		
(1) Injury	0	(4) Poisoning	0
(2) Skin Disorder	0	(5) Hearing Loss	0
(3) Respiratory Condition	0	(6) All Other Illnesses	0

Establishment information

Your establishment name Mid-Tex of Midland, Inc

Street 5206 West Wadley

City Midland State Texas Zip 79707

Industry description (e.g., Manufacture of motor truck trailers)
Construction

Standard Industrial Classification (SIC), if known (e.g., SIC 3715)

OR North American Industrial Classification (NAICS), if known (e.g., 336212)
2 3 6 2 2 0

Employment information

Annual average number of employees 35

Total hours worked by all employees last year 80,347

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Paul Renz Paul Renz Vice President
Company Executive Title

(432) 697-2282 04/05/21
Phone Date

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2019 Production Date: 02/13/2019 State: TEXAS

State	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exc Losses	Ballast	Act Inc Losses	Act Prim Losses
*TX	.09	24,533	39,560	15,027	0	25,125	3,484	3,484

(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.09		24,533	39,560	15,027	0	25,125	3,484	3,484

	Primary Losses	Stabilizing Value	Ratable Excess	Totals
Actual	(I) 3,484	C * (1 - A) + G 47,450	(A) * (F) 0	(J) 50,934
Expected	(E) 15,027	C * (1 - A) + G 47,450	(A) * (C) 2,208	(K) 64,685

	ARAP	FLARAP	SARAP	MAARAP	Exp Mod
Factors					(J) / (K) .79

NOTICE - THIS IS A PRELIMINARY MODIFICATION
COMPLETE PAYROLL AND LOSS DATA HAVE BEEN APPLIED TO CURRENT
RATING VALUES BUT A FINAL MODIFICATION CANNOT BE PROMULGATED
UNTIL PENDING RATE FILING HAS BEEN APPROVED.

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WORKERS COMPENSATION EXPERIENCE RATING

Risk Name: MID TEX OF MIDLAND INC Risk ID: 420023618

Rating Effective Date: 07/01/2019 Production Date: 02/13/2019 State: TEXAS

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2015 Exp Date: 07/01/2016

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.68	.38	590,491	9,920	3,770					
5606	.29	.38	615,250	1,784	678					
8017	.55	.40	67,872	373	149					
8742	.07	.35	470,601	329	115					
8809	.05	.31	124,800	62	19					
8810	.04	.40	356,804	143	57					
Policy Total:			2,225,818	Subject Premium:	39,511	Total Act Inc Losses:			0	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2016 Exp Date: 07/01/2017

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.68	.38	564,509	9,484	3,604	2001034444	05	F	3,484	3,484
5606	.29	.38	797,769	2,314	879					
8017	.55	.40	71,022	391	156					
8742	.07	.35	404,160	283	99					
8809	.05	.31	124,800	62	19					
8810	.04	.40	430,364	172	69					
Policy Total:			2,392,624	Subject Premium:	35,922	Total Act Inc Losses:			3,484	

42-TEXAS Firm ID: Firm Name: MID TEX OF MIDLAND INC

Carrier: 29939 Policy No. 0001202391 Eff Date: 07/01/2017 Exp Date: 07/01/2018

Code	ELR	D-Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
5437	1.68	.38	611,020	10,265	3,901					
5606	.29	.38	1,044,866	3,030	1,151					
8017	.55	.40	68,603	377	151					
8742	.07	.35	407,665	285	100					
8809	.05	.31	114,000	57	18					
8810	.04	.40	572,831	229	92					
Policy Total:			2,818,985	Subject Premium:	40,291	Total Act Inc Losses:			0	

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* Total by Policy Year of all cases $2000 or less. D Disease Loss X Ex-Medical Coverage U USL&HW

C Catastrophic Loss E Employers Liability Loss # Limited Loss

OSHA's Form 300 (Rev. 01/2004)
Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 2019

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an injury and illness incident report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment name Mid-Tex of Midland, Inc

City Midland State Texas

Identify the person			Describe the case			Classify the case											
						CHECK ONLY ONE box for each case based on the most serious outcome for that case:				Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:					
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g. Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g. Second degree burns on right forearm from acetylene torch)	Death (G)	Days away from work (H)	Remained at work: Job transfer or restriction (I)	Remained at work: Other record-able cases (J)	Away From Work (days) (K)	On job transfer or restriction (days) (L)	(M) Injury (1)	Skin Disorder (2)	Respiratory Condition (3)	Poisoning (4)	Hearing Loss (5)	All other illnesses (6)
1	William D Mays	Project Manager	04/22/19	BTA Oil Parking Bumper	Unloading steel piope for bumper							X					
2	Johnny Martinez	Laborer	07/02/19	Johnson St - SPW	Scorching concrete to break it out and as soon as he started scorching concrete blade broke and one piece flew off & hit him on chin and cut him open.							X					
3	Kevan Amonett	Superintendent	10/21/19	San Angelo Warehouse	Was at office warehouse unloading trailer when he tripped and fell.							X					
					Page totals	*0*	*0*	*0*	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*0*	*0*

Be sure to transfer these totals to the Summary page (Form 300A) before you post it.

	Injury (1)	Skin Disorder (2)	Respiratory Condition (3)	Poisoning (4)	Hearing Loss (5)	All other illnesses (6)

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

PACKET
6.83
June 28, 2022

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

Year 2019

U.S. Department of Labor
Occupational Safety and Health Administration
Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	3
(G)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

Injury and Illness Types

Total number of...	(M)		
(1) Injury	3	(4) Poisoning	
(2) Skin Disorder		(5) Hearing Loss	
(3) Respiratory Condition		(6) All Other Illnesses	

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor. OSHA Office of Statistics. Room N-3644. 200 Constitution Ave. NW. Washington. DC 20210. Do not send the completed forms to this office.

Establishment Information

Your establishment name Mid-Tex of Midland, Inc

Street 5206 West Wadley

City Midland State Texas Zip 79707

Industry description (e.g., Manufacture of motor truck trailers)
Construction

Standard Industrial Classification (SIC), if known (e.g., SIC 3715)

OR North American Industrial Classification (NAICS), if known (e.g., 336212)
2 3 6 2 2 0

Employment Information

Annual average number of employees 45

Total hours worked by all employees last year 97,154

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Paul Renz
Company executive

Vice President
Title

(432) 697-2282
Phone

Date

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)……..	$ 13.55	
ELECTRICIAN.....	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	$ 12.36	

Structures.....$ 13.52

LABORER
- Asphalt Raker.....$ 12.28
- Flagger.....$ 9.30
- Laborer, Common.....$ 10.30
- Laborer, Utility.....$ 11.80
- Work Zone Barricade Servicer.....$ 10.30

POWER EQUIPMENT OPERATOR:
- Asphalt Distributer.....$ 14.87
- Asphalt Paving Machine.....$ 13.40
- Broom and Sweeper.....$ 11.21
- Crane, Lattice Boom 80 Tons or Less.....$ 16.82
- Crawler Tractor Operator……...$ 13.96
- Excavator, 50,000 lbs or less.....$ 13.46
- Front End Loader Operator, Over 3 CY.....$ 12.77
- Front End Loader, 3CY or less.....$ 12.28
- Loader/Backhoe.....$ 14.18
- Mechanic.....$ 20.14
- Milling Machine.....$ 15.54
- Motor Grader, Rough.....$ 16.15
- Motor Grader, Fine.....$ 17.49
- Pavement Marking Machine…….....$ 16.42
- Reclaimer/Pulverizer…….....$ 12.85
- Roller, Asphalt.....$ 10.95
- Roller, Other.....$ 10.36
- Scraper.....$ 10.61
- Spreader Box.....$ 12.60

Servicer.....$ 13.98

Steel Worker (Reinforcing).....$ 13.50

TRUCK DRIVER
- Lowboy-Float.....$ 14.46
- Single Axle.....$ 12.74
- Single or Tandem Axle Dump……$ 11.33
- Tandem Axle Tractor with Semi.....$ 12.49

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

City Council Meeting

Item Number: 7

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE ILLINOIS AVENUE MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST OF $1,284,965.30; TRANSFERRING AND APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 3) (GENERAL SERVICES)

Purpose:

Resolution awarding the execution of a contract for the Illinois Mill and Inlay Project.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY22 General Fund operating budget.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the Illinois Mill and Inlay Project. Bid requests were issued to thirty (30) contractors. We received three (3) bids. Staff recommends awarding the base bid items to the lowest responsive bidder, Jones Bros. Dirt & Paving Contractors, Inc. Please see the attached memo from Abe Langston, Transportation Manager, for further information.

Therefore, please consider a resolution awarding the contract for the Illinois Mill and Inlay Project to Jones Bros. Dirt & Paving Contractors, Inc. of Odessa, Texas for a cost of $1,284,965.30. Staff also recommends authorizing the City Manager to execute change orders up to the contingency amount of $128,496.53. The total cost for this project should not exceed $1,413,461.83.

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston, Transportation Manager

SUBJECT: Illinois Ave. Mill & Inlay Paving Project FY2022
Bid# 22003289; Recommend Award

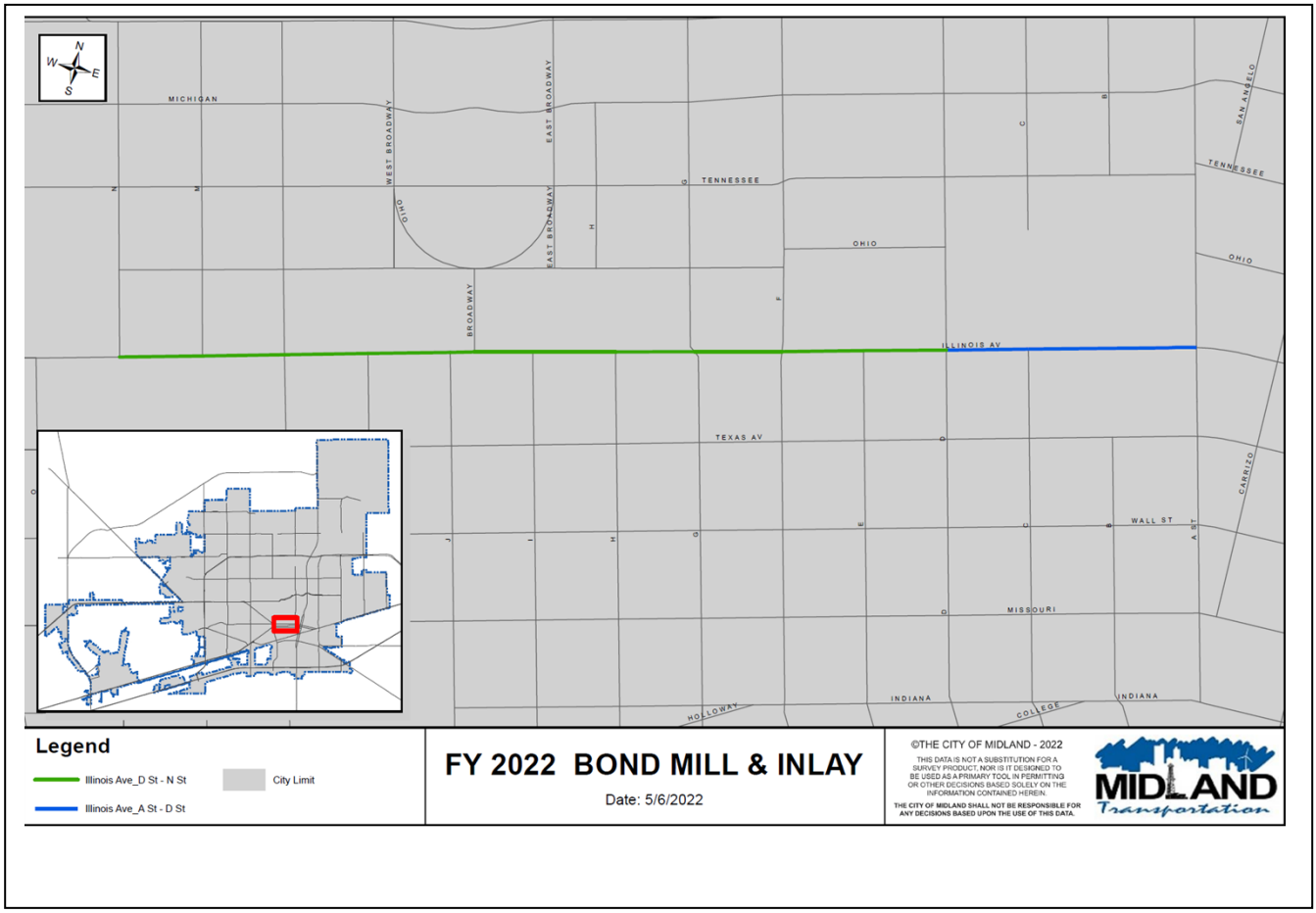
DATE: June 13, 2022

CC: Gabe McClelland, Senior Engineering Manager

Mill and Inlay includes removing all the existing distressed asphalt and replacing it with new pavement. The existing asphalt is removed, stockpiled, and often reused by the City of Midland Transportation Division for street and alley maintenance, or it is blended and reused to make new hot mix asphalt. The Illinois Ave. Mill & Inlay Paving Project FY 2022 is located on Illinois from A Street to N Street. Please see the map on page 2.

We have reviewed the bid tabulation for the Illinois Ave. Mill & Inlay Paving Project FY 2022. Jones Brothers Dirt and Paving Contractors, Inc. is the apparent low bidder and has a track record of successfully completing work in the City of Midland and the surrounding area. In addition, the unit prices appear to be in line with current pricing trends. Therefore, we are recommending award of the Illinois Ave. Mill & Inlay Paving Project FY 2022 to Jones Brothers Dirt and Paving Contractors, Inc. in the amount of $1,413,461.83 (Base Bid + 10% Contingency).

Base Bid:	$1,284,965.30
Contingency 10%:	$128,496.53
Total Contract Amount:	**$1,413,461.83**


MICHIGAN
WEST BROADWAY
EAST BROADWAY
OHIO
BROADWAY
TENNESSEE
OHIO
ILLINOIS AV
TEXAS AV
WALL ST
MISSOURI
INDIANA
HOLLOWAY
COLLEGE
INDIANA
SAN ANGELO
CARRIZO
Legend
Illinois Ave_D St - N St
Illinois Ave_A St - D St
City Limit
FY 2022 BOND MILL & INLAY
Date: 5/6/2022
©THE CITY OF MIDLAND - 2022
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.
MIDLAND
Transportation

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE ILLINOIS AVENUE MILL AND INLAY PROJECT TO JONES BROS. DIRT & PAVING CONTRACTORS, INC. OF ODESSA, TEXAS, AT A TOTAL COST OF $1,284,965.30; TRANSFERRING AND APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT

WHEREAS, the City Manager approved the plans and specifications and advertised for competitive bids for the Illinois Avenue Mill and Inlay Project (the "Project"); and

WHEREAS, Bid No. 22003289 was opened on June 8, 2022, with the lowest responsible bidder being Jones Bros. Dirt & Paving Contractors, Inc. of Odessa, Texas ("Contractor"), having submitted a bid of $1,284,965.30 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the total cost of the work to be completed, according to the previously advertised plans and specifications and the unit prices in Exhibit "A", shall not exceed $1,284,965.30; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Contractor for said Project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Contractor for said Project at a total cost not to exceed $1,284,965.30, said contract being on file in the 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 $128,496.53.

SECTION THREE. That the sum of $1,413,461.83 shall be transferred and appropriated from the FY22 General Fund operating budget to a project account for said Project.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Contractor pursuant to the terms of said contract and change orders executed in accordance with this resolution in an amount not to exceed $1,413,461.83 from funds available in the aforementioned project account 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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

City of Midland - Bid Tabulation

BID # 22003289 Illinois Mill/Inlay Project Opened 6/8/2022				Permian Paving Inc 4416 Brairwood Ave ste 110 #55 Midland TX 79707 432-425-1214 permianpavinginc@icloud.com		Jones Bros. Dirt & Paving Contractors, Inc 1401 S Grandview Odessa TX 79761 432-332-0724 r.chitty@jonesdp.com		Danny's Asphalt Paving Inc 2000 E 42nd #C310 Odessa TX 79762 432-563-1274 Gw@dannyspaving.com	
ITEM	Description	Unit	Qty	Unit	TOTAL	Unit	Total	Unit	TOTAL
	Phase- Illinois from A St. to D St.								
1	Mobilization, Job Site Safety, Erosion Protection, & Traffic Control	LS	1	$111,557.50	$111,557.50	$28,600.00	$28,600.00	$13,000.00	$13,000.00
2	Unclassified Excavation	SY	20	$25.00	$500.00	$6.25	$125.00	$225.00	$4,500.00
3	Cold Milling Pavement (Nominal 5")	SY	6,170	$5.40	$33,318.00	$5.25	$32,392.50	$7.50	$46,275.00
4	Prime Coat	GAL	1,234	$8.00	$9,872.00	$4.45	$5,491.30	$8.50	$10,489.00
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	1235	$89.50	$110,532.50	$101.00	$124,735.00	$140.00	$172,900.00
6	2" Minimum TY. D Asphalt Paving Surface Course (City Mix Design)	TON	680	$89.50	$60,860.00	$101.00	$68,680.00	$160.00	$108,800.00
7	6"Rock Base Repair (City Base)	SY	20	$45.00	$900.00	$6.85	$137.00	$200.00	$4,000.00
8	Full Depth Sawcut (Asphalt)	LF	185	$10.00	$1,850.00	$0.95	$175.75	$1.50	$277.50
9	Adjust Manhole	EA	12	$100.00	$1,200.00	$1,680.00	$20,160.00	$1,200.00	$14,400.00
10	Adjust Water Valve Box	EA	9	$100.00	$900.00	$560.00	$5,040.00	$950.00	$8,550.00
				Total	**$331,490.00**		**$285,536.55**		**$383,191.50**
	Phase- Illinois Ave. from D St. to N ST.								
1	Mobilization, Job Site Safety, Erosion Protection, & Traffic Control	LS	1	$341,231.40	$341,231.40	$28,600.00	$28,600.00	$13,000.00	$13,000.00
2	Unclassified Excavation	SY	75	$25.00	$1,875.00	$6.25	$468.75	$85.00	$6,375.00
3	Cold Milling Pavement (Nominal 5")	SY	24,345.0	$5.40	$131,463.00	$5.25	$127,811.25	$6.50	$158,242.50
4	Prime Coat	GAL	4870	$8.00	$38,960.00	$4.45	$21,671.50	$8.50	$41,395.00
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	4870	$89.50	$435,865.00	$101.00	$491,870.00	$130.00	$633,100.00
6	2" Minimum TY. D Asphalt Paving Surface Course (City Mix Design)	TON	2680	$89.50	$239,860.00	$101.00	$270,680.00	$150.00	$402,000.00
7	6"Rock Base Repair (City Base)	SY	75	$45.00	$3,375.00	$6.85	$513.75	$75.00	$5,625.00
8	Full Depth Sawcut (Asphalt)	LF	730	$10.00	$7,300.00	$0.95	$693.50	$1.50	$1,095.00
9	Adjust Manhole	EA	23	$100.00	$2,300.00	$1,680.00	$38,640.00	$1,200.00	$27,600.00
10	Adjust Water Valve Box	EA	33	$100.00	$3,300.00	$560.00	$18,480.00	$950.00	$31,350.00
				Total	**$1,205,529.40**		**$999,428.75**		**$1,319,782.50**
				Grand Total	**$1,537,019.40**		**$1,284,965.30**		**$1,702,974.00**

Bidding Summary:

30 Bid Requests were Issued
3 Bids listed above
1 NO BIDS were received
27 Bidders did not respond

City of Midland - Bid Tabulation

BID # 22003289 Illinois Mill/Inlay Project Opened 6/8/2022				Permian Paving Inc 4416 Brairwood Ave ste 110 #55 Midland TX 79707 432-425-1214 permianpavinginc@icloud.com		Jones Bros. Dirt & Paving Contractors, Inc 1401 S Grandview Odessa TX 79761 432-332-0724 r.chitty@jonesdp.com		Danny's Asphalt Paving Inc 2000 E 42nd #C310 Odessa TX 79762 432-563-1274 Gw@dannyspaving.com	
ITEM	Description	Unit	Qty	Unit	TOTAL	Unit	Total	Unit	TOTAL
	Phase- Illinois from A St. to D St.								
1	Mobilization, Job Site Safety, Erosion Protection, & Traffic Control	LS	1	$111,557.50	$111,557.50	$28,600.00	$28,600.00	$13,000.00	$13,000.00
2	Unclassified Excavation	SY	20	$25.00	$500.00	$6.25	$125.00	$225.00	$4,500.00
3	Cold Milling Pavement (Nominal 5")	SY	6,170	$5.40	$33,318.00	$5.25	$32,392.50	$7.50	$46,275.00
4	Prime Coat	GAL	1,234	$8.00	$9,872.00	$4.45	$5,491.30	$8.50	$10,489.00
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	1235	$89.50	$110,532.50	$101.00	$124,735.00	$140.00	$172,900.00
6	2" Minimum TY. D Asphalt Paving Surface Course (City Mix Design)	TON	680	$89.50	$60,860.00	$101.00	$68,680.00	$160.00	$108,800.00
7	6"Rock Base Repair (City Base)	SY	20	$45.00	$900.00	$6.85	$137.00	$200.00	$4,000.00
8	Full Depth Sawcut (Asphalt)	LF	185	$10.00	$1,850.00	$0.95	$175.75	$1.50	$277.50
9	Adjust Manhole	EA	12	$100.00	$1,200.00	$1,680.00	$20,160.00	$1,200.00	$14,400.00
10	Adjust Water Valve Box	EA	9	$100.00	$900.00	$560.00	$5,040.00	$950.00	$8,550.00
				Total	**$331,490.00**		**$285,536.55**		**$383,191.50**
	Phase- Illinois Ave. from D St. to N ST.								
1	Mobilization, Job Site Safety, Erosion Protection, & Traffic Control	LS	1	$341,231.40	$341,231.40	$28,600.00	$28,600.00	$13,000.00	$13,000.00
2	Unclassified Excavation	SY	75	$25.00	$1,875.00	$6.25	$468.75	$85.00	$6,375.00
3	Cold Milling Pavement (Nominal 5")	SY	24,345.0	$5.40	$131,463.00	$5.25	$127,811.25	$6.50	$158,242.50
4	Prime Coat	GAL	4870	$8.00	$38,960.00	$4.45	$21,671.50	$8.50	$41,395.00
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	4870	$89.50	$435,865.00	$101.00	$491,870.00	$130.00	$633,100.00
6	2" Minimum TY. D Asphalt Paving Surface Course (City Mix Design)	TON	2680	$89.50	$239,860.00	$101.00	$270,680.00	$150.00	$402,000.00
7	6"Rock Base Repair (City Base)	SY	75	$45.00	$3,375.00	$6.85	$513.75	$75.00	$5,625.00
8	Full Depth Sawcut (Asphalt)	LF	730	$10.00	$7,300.00	$0.95	$693.50	$1.50	$1,095.00
9	Adjust Manhole	EA	23	$100.00	$2,300.00	$1,680.00	$38,640.00	$1,200.00	$27,600.00
10	Adjust Water Valve Box	EA	33	$100.00	$3,300.00	$560.00	$18,480.00	$950.00	$31,350.00
				Total	**$1,205,529.40**		**$999,428.75**		**$1,319,782.50**
				Grand Total	**$1,537,019.40**		**$1,284,965.30**		**$1,702,974.00**

Bidding Summary:

30 Bid Requests were Issued
3 Bids listed above
1 NO BIDS were received
27 Bidders did not respond

THE CITY OF MIDLAND

CONTRACT

22003289

THIS CONTRACT, effective the 29 day of June 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Jones Bros. Dirt and Paving Contractors, Inc, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 1,284,965.30 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for Illinois Mill and Inlay Project in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

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

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

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

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

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

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

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

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

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 60 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, 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 COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. 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.

16.1. The CITY may make periodic payments to COMPANY; 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 COMPANY 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.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY 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." COMPANY 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 COMPANY 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.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY'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 day that COMPANY 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 COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY 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.

17.3. 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 COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or 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 COMPANY, 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.

17.4. Provided, further, that COMPANY shall, within ten (10) 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 COMPANY within a reasonable time of its decision in the matter.

17.5. **COMPANY 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, 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 ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'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.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY 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. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party

beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

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

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

22. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

26. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

29. **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.

30. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §

§

COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022 personally appeared, _____, an officer of Jones Bros. Dirt & Paving Contractors, 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 _____, 2022.

_____

Notary Public, State of _____

Exhibit A

CITY OF MIDLAND

PURCHASING DIVISION DATE: 5/16/2022

BID REQUEST PAGE: 1

(THIS IS NOT AN ORDER) **BID NO: 22003289**

OPENING TIME: 2:00 PM **CLOSING DATE: June 8, 2022**

CITY OF MIDLAND
300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE Office of the City Secretary, Suite 330, Midland, TX
UNTIL 2:00 P.M. 6/8/2022 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:

Illinois Avenue, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, material, equipment, and supervision necessary for the Illinois Mill/Inlay Project in accordance with the attached specifications and contract.	$1,284,965.30	
				TOTAL	$1,284,965.30

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
4. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
5. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Jones Bros. Dirt & Paving Contractors, Inc.
ADDRESS 1401 S. Grandview
CITY Odessa ST Texas ZIP 79761
PHONE NO. 432-332-0721 FAX NO. 432-332-0724
EMAIL: r.chitty@jonesdp.com

CASH DISCOUNT: N/A % N/A DAYS

DELIVERY CAN BE MADE

AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Phase – Illinois Ave. from A Street to D Street – Illinois Ave. Mill & Inlay Paving Project FY2022

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	LS	1	$28,600.00	$28,600.00
2	Unclassified Excavation	SY	20	$6.25	$125.00
3	Cold Milling Pavement (Nominal 5")	SY	6,170	$5.25	$32,392.50
4	Prime Coat	GAL	1,234	$4.45	$5,491.30
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	1,235	$101.00	$124,735.00
6	2" Minimum Ty. D Asphalt Paving Surface Course (City Mix Design)	TON	680	$101.00	$68,680.00
7	6" Rock Base Repair (City Base)	SY	20	$6.85	$137.00
8	Full Depth Sawcut (Asphalt)	LF	185	$0.95	$175.75
9	Adjust Manhole	EA	12	$1,680.00	$20,160.00
10	Adjust Water Valve Box	EA	9	$560.00	$5,040.00

PHASE – ILLINOIS from A St. to D St. TOTAL: $285,536.55

Phase – Illinois Ave. from D Street to N Street – Illinois Ave. Mill & Inlay Paving Project FY2022

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	LS	1	$28,600.00	$28,600.00
2	Unclassified Excavation	SY	75	$6.25	$468.75
3	Cold Milling Pavement (Nominal 5")	SY	24,345	$5.25	$127,811.25
4	Prime Coat	GAL	4,870	$4.45	$21,671.50
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	4,870	$101.00	$491,870.00
6	2" Minimum Ty. D Asphalt Paving Surface Course (City Mix Design)	TON	2,680	$101.00	$270,680.00
7	6" Rock Base Repair (City Base)	SY	75	$6.85	$513.75
8	Full Depth Sawcut (Asphalt)	LF	730	$0.95	$693.50
9	Adjust Manhole	EA	23	$1,680.00	$38,640.00
10	Adjust Water Valve Box	EA	33	$560.00	$18,480.00

PHASE – ILLINOIS from D St. to N St. TOTAL: $999,428.75

GRAND TOTAL BID: $1,284,965.30

X _____

Contractor

Date: June 8, 2022

CITY OF MIDLAND

ADDENDUM

BID # 22003289

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: May 23, 2022

The following questions were raised by one or more of the proposers. The answers are provided as a matter of clarification for all proposers as follows:

Q1. Can you send me or tell me where I can find the base and asphalt specification for the city of Midland?

A1. If you go to: www.midlandtexas.gov

Click "Departments"

Click "Engineering and Transportation"

Click "Documents and Forms"

Q2. Have a ? Is stripping included in price or no?

A2. Stripping is not included in the Mill and Inlay Project.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Jones Bros. Dirt & Paving Contractors, Inc.
Company Name

Bidder Authorized Signature

June 8, 2022
Date

Rex Chitty
Please Print Above Name

432-332-0721
Phone

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. 6822

KNOW ALL MEN BY THESE PRESENTS, THAT Jones Bros. Dirt & Paving Contractors, Inc.

(hereinafter called the Principal), as Principal, and National Fire Insurance Company of Hartford

(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 (5%) of the Largest Possible Lump Sum 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 with the obligee to Bid No: 22003289 Illinois Ave. Mill & Inlay Paving Project FY2022.

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 AGREED 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 such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this 8th day of June, 2022.

Jones Bros. Dirt & Paving Contractors, Inc.
Principal

By _____

Address 1401 South Grandview Ave.
Odessa, TX 79761

National Fire Insurance Company of Hartford
Surety

By _____
Linda K. Edwards, Attorney-in-Fact

Address 2900 Marquita Dr.
Fort Worth, TX 76116

APPROVED AS TO FORM:

_____
City Attorney

NOTE: ATTACH POWER OF ATTORNEY

FORMBIDBOND.FRM

REVISED: March 30, 2011

PACKET
7.29
June 28, 2022

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

Linda K Edwards, Steven B Siddons, Shirong Chen, Lorrie E Scott, Individually

of Fort Worth, 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 12th 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 12th 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.

M. BENT
NOTARY PUBLIC
SOUTH DAKOTA

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 8th day of, June, 2022.

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

D. Johnson — Assistant Secretary

Form F6853-4/2012

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

PACKET
7.30
June 28, 2022

MIDLAND
Purchasing Division

On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

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

OR

Physical Address:

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

ATTENTION: The public bid opening will be in the City Council Chambers in order to maintain social distancing due to COVID-19.

BID SCHEDULE

Illinois Ave. Mill & Inlay Paving Project FY2022

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, and transportation necessary to complete the construction of the various items of the Illinois Ave. Mill and Inlay Paving Project FY 2022.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished. The roadway sections to be paved are shown on the attached Illinois Ave. Mill and Inlay Paving Project FY 2022 map and more fully described on the attached summary of said roadway sections.

The Bidder hereby agrees to commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within ninety (60) calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

This project shall be substantially completed by August 1, 2022.

Illinois Ave. Mill & Inlay Paving Project FY2022

Special Provisions—Illinois Ave.

1. General

Work shall include milling the existing asphaltic pavement to a 5-inch depth, blading and/or cleaning the underlying surface, spraying a tack-coat, placing a 3" Ty. C HMAC intermediate course at selected roadways, re-paving the roadway with 2 inches minimum of Ty. D HMAC, applying new reflectorized pavement markings, and the work zone traffic control necessary to complete all phases of the project. Work shall also include the adjustment of water valve covers and manhole lids to the surface elevation and installing concrete collars. All work shall be completed according to the City of Midland Standard Specifications and Design & Construction Standards, unless otherwise noted. The streets to be paved are shown on the attached Illinois Ave. Mill & Inlay Paving Project FY 2022 map.

The Contractor shall commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within 60 calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

This project shall be substantially completed by August 1, 2022.

Street List Table

Phase	Area SY	Average Width	Valves	Manholes
Illinois Ave. from A St. to D St.	6,100	51 Ft	8	11
Illinois Ave. from D St. to N St.	23,830	63 Ft	31	22
TOTALS	**29,930**		**39**	**33**

Testing—it is the Contractor's responsibility to perform all required testing for all materials and workmanship performed or installed as part of the project's work. The cost of all such testing shall be borne solely by the Contractor. The cost of testing rework resulting from a failed test will also be borne by the Contractor. Contractor's cooperation will also be required for material sampling by the City's material testing consultant.

Contractor shall share all testing results with the Project Manager (Rick Brown: rbrown@midlandtexas.gov).

Required Testing and Proof of Reporting Will Include:

BASE—all base surfaces shall be proof rolled in accordance with City of Midland standards with a City employee present at all times. All areas identified as failing during proof rolling shall be repaired

in a method approved by the Project Manager. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced.

Asphalt Hot-Mix—a Nuclear Gage Density Test will be required for every 250 linear feet of asphalt pass. The acceptable field density range for construction of this project shall be 93% - 98% with a target density of 96.5%. Test results shall be given to the Project Manager upon completion of each test.

Qualification of Material Sources—tack coat, material used for underseal, hot mix asphalt concrete, and any reinforced concrete material used for the project shall conform to The City of Midland's Standard Specifications, unless otherwise noted. In addition, producers of hot mix asphalt concrete are to have a proven record of acceptance by the Texas Department of Transportation.

OSHA requirements and all other applicable federal, state, or City of Midland safety requirements are to be followed and complied with at all times.

Any issues, conflicts, or discrepancies encountered in the field that conflict with the planned progress of the project are to be brought to the attention of the Project Manager prior to making any changes in the field.

The contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.

Notifications

Contractor shall provide and distribute notice to all impacted residents and property owners at least three (3) days prior to beginning work.

- Contractor shall indicate dates for milling operations and then paving operations; if necessary include a map showing closed-off areas.
- Provide the name of the company and the phone number of a person of authority on site who represents the CONTRACTOR who can be reached at any time during the work.
- Warn of potential vehicle tow away and other construction issues affecting the neighborhood.
- Should work not occur on a specified day after the notices have been distributed, the contractor shall issue an updated notice.
- A copy of the notice shall be submitted to the Transportation Division prior to the beginning of the project for approval.

- If the City of Midland supplies the Contractor with notices, the Contractor shall distribute the City supplied notices instead of their own three (3) days prior to beginning work.

2. Construction Methods

Construction Schedule—it shall be the responsibility of the contractor to provide a project schedule to City staff prior to construction. The schedule should outline the anticipated start and end dates for each phase of the mill and Inlay project.

Phases—The sequence of work shall be divided into two distinct phases: 1) Illinois from A St. to D St. 2) Illinois from D St. to N St. The order of phases shall be agreed upon by the Contractor and the Project Manager prior to construction. The schedule should outline the anticipated start and end dates for each phase of the mill and inlay project. The phasing plan shall meet the following requirements.

1. Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed before the next begins. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, backfill, fine grading, applying tack coat, HMAC overlays, and cleanup.

2. Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Project Manager prior to beginning work.

Intersections—except where concrete valley gutters are in place (or unless otherwise specified), paving at all intersecting streets will be through the end of radius (ER).



City and TXDot/County Street Intersections—Contractor shall pave to the curb line of any intersecting state or county roads (unless otherwise specified).



- **Paving Limits:**
    - Illinois Ave. from A Street to D Street



    - Illinois Ave. from D Street to N Street
        - East Limit



- West Limit



Traffic Control—proper traffic control is the sole responsibility of the contractor and shall be in accordance with the TMUTCD. Care shall be used to create a safe work area, with minimal impact on the flow of traffic. Access to properties adjacent to the work zone shall be maintained at all times unless otherwise directed by City staff. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets. If the milled area is opened to traffic, it will be the contractor's responsibility to provide and place temporary flexible-reflective road marker tabs designating lane lines.

The contractor shall place ramps, as directed by City staff, to provide for a smooth transition from existing pavement to the milled surface.

Residential streets and minor collectors may be closed when workers are present; however, access to properties adjacent to the work zone shall be maintained at all times. No more than two consecutive adjacent roadways shall be closed during the Mill and Inlay Project. Streets receiving Mill and Inlay shall be opened to local traffic when workers are not present.

For the entire Mill/Inlay project, the maximum length under construction at any time shall not exceed one mile, or the distance between two arterials.

A traffic control plan for each phase of the mill and Inlay project shall be submitted to the City of Midland's Transportation Division (Rick Brown: rbrown@midlandtexas.gov) no less than 48 hours prior to the beginning of construction. It will then be sent to Midland's Traffic Operations Division for final approval before any construction can commence.

If the contractor elects to remove the cast iron features at water valves and sewer manholes prior to the removal of pavement, two-way traffic shall be maintained, and all holes shall be filled with material

suitable for vehicular traffic. The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase. Construction cannot begin without a traffic control plan approved by the City of Midland's Transportation and Traffic Operations Divisions.

Stop equipment for traffic when crossing any traffic lanes. Lane closures in accordance with TMUTCD shall be used at arterial roadways adjacent to streets receiving Mill and Inlay when needed.

Place orange fencing around sidewalk, wheelchair ramps, and other pedestrian areas that pose a hazard to pedestrian traffic.

Existing Infrastructure—all existing manholes and valves shall be adjusted to finished roadway elevation, matching the finished cross-slope including concrete collars as per standard details.

It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the Project Manager, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.

Two-way traffic shall be maintained while adjustments are being made to cast iron features. All holes resulting from the initial lowering of manholes and valves shall be filled with material suitable for vehicular traffic. **The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase.**

Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around valve boxes shall be at least 2'x2'.

Milling and Cleaning of Existing Pavement—mill designated area to a nominal depth of 5" using a self-propelled asphalt planer. Care should be taken to ensure that the specified depth and cross-slope is maintained. Perform milling operation, including removal of the milled material, in a manner that prevents dust and other particulate matter from escaping into the air. Millings will become the property of the Contractor and hauled away. Removal of pavement millings shall be the responsibility of the Contractor. This work shall be incidental to the work.

Ensure that the milled area is free from gouges, continuous grooves, ridges, and delaminated areas and has a uniform texture. Correct deviations greater than ¼ inch in 16 ft. measured longitudinally or greater than ¼ inch over the entire width of the cross-section. Correct by loosening, adding, or removing material and recompact, as necessary. If pavement below the specified milling level becomes dislodged or delaminated, remove and replace. When the underlying rock base is exposed after milling, the surface shall be finished to a smooth surface by blading, watering, and compacting. All milled surfaces shall be proof – rolled in accordance with City of Midland Standards prior to the application of a tack

coat. All existing base course will be proof rolled with a minimum 25-ton pneumatic roller. All areas identified as failing during proof – rolling shall be repaired prior to paving.

Except where concrete valley gutters exist, saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

Saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

When the milled surface is opened to traffic a "wedge" of material shall be placed longitudinally between lanes, at intersections, and at driveways. The "wedge" shall be removed and properly disposed of prior to paving operations. Material will be approved by the Project Manager. This work will not be paid for directly but is subsidiary to various bid items. At transverse edges of milled areas, provide a smooth transition from the milled surface to the existing pavement.

Tack Coat—uniformly spray tack coat using materials and methods outlined in the City of Midland's Standard Specifications. Uniformly apply tack coat to all longitudinal and transverse joints. Correct uncoated or lightly coated areas. Blot areas showing an excess of tack coat with sand or other similar material and remove blotting material before paving.

Tack coat will be subsidiary to hot-mix paving items.

Prime Coat—prime coat shall be placed as per City Standard Specifications on top of all prepared base course surfaces. Prime coat shall be measured by the gallon **before** dilution. Water will not be included in the measurement for payment.

Paving with Hot Mix Asphaltic Concrete— Install a 3-inch Ty. C hot mix asphaltic concrete intermediate course at selected roadways according to the City of Midland's Standard Specifications and Design and Construction Standards, unless otherwise noted.

Then install a 2-inch minimum Ty. D hot mix asphaltic concrete surface course according to the City of Midland's Standard Specifications and Design and Construction Standards, unless otherwise noted.

Before paving, the existing surface shall be saw cut at least 6 inches beyond all sides of the milled area, or the limits of broken or undermined pavement. Square off edges of the surface pavement to a 90 degree angle to the underlying surface. Offset the joint in the surface course from the lane lines by 6 inches. When constructing a joint between lanes of opposing traffic, offset the joint by 6 inches into either lane.

At crowned roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage to the curb flowline. At inverted roadway sections, the proposed pavement elevation shall also be flush with the existing curb to allow for positive drainage.

After paving, the contractor shall place temporary flexible-reflective road marker tabs designating lane lines.

Joints—all longitudinal pavement joints shall be offset from any traffic wheel paths. Transverse pavement joints shall only be permitted at intersections.

Contractor shall seal all concrete and pavement joints with Texas Department of Transportation (TxDOT) DMS-6310 SL-2 seal and, an American Society for Testing and Materials (ASTM) D 1190 hot-applied single component joint sealant, or a City of Midland approved equal. This does not include pedestrian access ramps or sidewalks.

If applicable, Contractor shall use and place approved expansion joint material between the existing curb and any proposed new curb.

Reflectorized Pavement Markings—if required to remove existing pavement markings and markers, Contractor is to repair excessive damage to the pavement with an approved material at the Contactor's expense. When required, removed pavement markers will be disposed of properly. The Contractor shall be responsible for the maintenance of temporary marker tabs while applied. The Contractor shall also be responsible for the removal and proper disposal of temporary marker tabs from the project in coordination with the placement of new permanent markings.

Non-removable work zone pavement markings will be paint in accordance with Item 666, Type II, or other approved materials of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Apply thermoplastic Type I reflectorized pavement markings for long-line markings in accordance with Item 666 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition. Short-line and symbol markings shall be thermoplastic in accordance with item 666, Type I, or Item 668 of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Thermoplastic pavement markings shall be placed no sooner than 30 days, and no later than 90 days, after hot mix asphaltic concrete is installed. The contractor shall replace temporary road marker tabs as necessary throughout the project until permanent pavement markings are installed, and shall remove all tabs with installation of permanent markings.

Final Cleanup—Contractor shall make all reasonable effort to clean and restore project site to original or better condition at the conclusion of construction activity. This includes but is not limited to street sweeping and other sediment removal, and the removal of construction material and debris.

After construction, restore adjacent surfaces to a condition approved by the Project Manager. This work is subsidiary to mobilization.

3. Additional Notes

The intent of the Mill and Overlay Project at all adjacent street and intersections includes surface improvements and drainage improvements. The contractor shall ensure positive surface drainage in the mill and inlay areas with special attention to surface drainage within all intersections. At the intersections, do not simply repeat the longitudinal slope.

Contractor should provide and place erosion control protection at gutter locations at the limits of the work zone, including applicable intersections adjacent to the work zone. Erosion control protection shall also be placed at storm drain inlets in the work zone. All BMPs shall be installed in accordance with industry standards and regulations.

If concrete is used as a part of this contract, the Contractor shall have an approved concrete washout location within the work zone.

4. Pay Item Notes

1. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

2. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).

3. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 5"

    - Street width may vary ± in the field. Payment for this item will be based upon a standard street width provided in the Street List Table above.
    - Exceptions: variations at intersections, turn lanes, bulbs, cul-de-sacs, etc.

4. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.20 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.

5. Shall include the necessary equipment, labor and material to install the asphalt intermediate course on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative.

6. Shall include the necessary equipment, labor and material to install the asphalt surface course on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative.

7. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.

8. Shall include the necessary equipment, labor and material to saw cut asphalt to full depth for removal and replacement in pay items 2 & 7. Unit payment shall be linear foot. All other saw cuts are subsidiary to Items # 5 &6.

9-10. Shall include the necessary equipment, labor and material to provide traffic control, remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.

Jones Bros. Dirt & Paving Contractors, Inc.
Vendor Name

INSTRUCTIONS TO BIDDERS

Bid # 22003289

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

The City of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152 E-Mail: purchasing@midlandtexas.gov
Midland, TX 79702

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

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

3. **BID WAIVERS:**

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

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

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

B. **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).

C. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:**

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred 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 Contract are reasonable.

The bidder agrees that this is the intentional relinquishment of the above listed rights.

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

Jones Bros. Dirt & Paving Contractors, Inc.		June 8, 2022
Company Name		Date
Authorized Signature		432-332-0721 Phone
Rex Chitty		432-332-0724
Print Above Name		Fax

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

Jones Bros. Dirt & Paving Contractors, Inc.

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

Signature of vendor doing business with the governmental entity

June 8, 2022

Date

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

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

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

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

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

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

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

CITY OF MIDLAND

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY 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/COMPANY 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/COMPANY 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.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)……..	$ 13.55	
ELECTRICIAN.....	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	$ 12.36	

Structures.....$ 13.52

LABORER
- Asphalt Raker.....$ 12.28
- Flagger.....$ 9.30
- Laborer, Common.....$ 10.30
- Laborer, Utility.....$ 11.80
- Work Zone Barricade Servicer.....$ 10.30

POWER EQUIPMENT OPERATOR:
- Asphalt Distributer.....$ 14.87
- Asphalt Paving Machine.....$ 13.40
- Broom and Sweeper.....$ 11.21
- Crane, Lattice Boom 80 Tons or Less.....$ 16.82
- Crawler Tractor Operator……...$ 13.96
- Excavator, 50,000 lbs or less.....$ 13.46
- Front End Loader Operator, Over 3 CY.....$ 12.77
- Front End Loader, 3CY or less.....$ 12.28
- Loader/Backhoe.....$ 14.18
- Mechanic.....$ 20.14
- Milling Machine.....$ 15.54
- Motor Grader, Rough.....$ 16.15
- Motor Grader, Fine.....$ 17.49
- Pavement Marking Machine…….....$ 16.42
- Reclaimer/Pulverizer…….....$ 12.85
- Roller, Asphalt.....$ 10.95
- Roller, Other.....$ 10.36
- Scraper.....$ 10.61
- Spreader Box.....$ 12.60

Servicer.....$ 13.98

Steel Worker (Reinforcing).....$ 13.50

TRUCK DRIVER
- Lowboy-Float.....$ 14.46
- Single Axle.....$ 12.74
- Single or Tandem Axle Dump……$ 11.33
- Tandem Axle Tractor with Semi.....$ 12.49

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

City Council Meeting

Item Number: 8

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE ELEVATED STORAGE TANK VALVE AND T-BAR CONNECTION PROJECT TO TEXAS WATER AND SOIL CO., INC., FOR AN AMOUNT OF $616,160.00; APPROVING $124,432.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Resolution awarding the execution of a contract for the Elevated Storage Tank Valve and T-Bar Connection Project.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY22 Utilities Fund operating budget.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the Elevated Storage Tank Valve and T-Bar Connection Project. Bids were issued to Thirty-three (33) contractors. We received two (2) bids. Staff recommends awarding the base bid items to the lowest responsive bidder, Texas Water & Soil Co., Inc. Please see the attached memo from Carl Craigo, Utilities Director, for further information.

Therefore, please consider a resolution awarding the contract for the Elevate Storage Tank Valve and T-Bar Connection Project to Texas Water & Soil Co., Inc. of San Angelo, Texas for a cost of $616,160.00 Staff also recommends authorizing the City Manager to execute change orders up to the contingency amount of $124,432.00. The total cost for this project should not

exceed $740,592.00

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Munoz, Purchasing Manager

FROM: Carl Craigo, PE, Utilities Director

SUBJECT: Consider a resolution awarding a construction contract for the Airport Valve and T-Bar connection.

DATE: June 28, 2022

Freese and Nichols, Inc under the Utilities on call program prepared plans and specification for the Airport Valve and T-Bar Connection. The project is to change the water source of the airport system from groundwater around the airport to the T-Bar water source. This involves installing a valve at the elevated storage tank in the airport parking lot and at the ground storage tank off of 1788.

The lowest responsive bid was received from Texas Water & Soil Co., Inc. The total bid price was $740,592 which includes a 20% contingency. Funds will be allocated from the Water and Sewer Operating Fund.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE ELEVATED STORAGE TANK VALVE AND T-BAR CONNECTION PROJECT TO TEXAS WATER AND SOIL CO., INC., FOR AN AMOUNT OF $616,160.00; APPROVING $124,432.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the Elevated Storage Tank Valve and T-Bar Connection Project; and

WHEREAS, the bid was opened on May 25, 2022, with the lowest bid being submitted by Texas Water and Soil Co., Inc., as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Texas Water and Soil Co., Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Texas Water and Soil Co., Inc., for the Elevated Storage Tank Valve and T-Bar Connection Project;

WHEREAS, the City Council finds it to be in the public interest to approve $124,432.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Texas Water and Soil Co., Inc., for the Elevated Storage Tank Valve and T-Bar Connection Project for an amount of $616,160.00. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $124,432.00 for contingencies is hereby approved for said agreement.

SECTION THREE. That funds are available in the FY22 Utilities Fund operating budget and will be transferred and appropriated to a project for said purpose.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Texas Water and Soil Co., Inc., pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Attachment A - Detailed Tabulation of Bids Received

Project	Airport EST Valve and T-Bar Connection	**Project Number**	
Owner	City of Midland		
Construction Manager			
Design Professional	Freese and Nichols, Inc.	MDD20704	

Item No.	Description	Quantity	Units	Edgardo Madrid and Associates, LLC 9602 W County Rd 60 Midland, TX 79707 Unit Cost	Extended Amount	Note	Texas Water and Soil Co., Inc. 3022 W Farm to Market Rd 2105 San Angelo, TX 76901 Unit Cost	Extended Amount	Note	AVERAGE Unit Cost	Extended Amount	Note	ENGINEER'S ESTIMATE Unit Cost	Extended Amount	Note
	Items in Base Offer (excluding Allowances) per Section 01 29 01 Measurment and Basis for Payment														
A-01	Mobilization	1	LS	25,550.00	25,550.00		34,786.01	34,786.00		30,168.01	30,168.01		29,417.00	29,417.00	
	West PS and GST T-Bar Connection							-						-	
A-02	12-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	46	LF	234.60	10,791.60	1	327.00	15,042.00		280.80	12,916.80		521.00	23,966.00	
A-03	12-in Solid Wedge Gate Valve with Non-Rising Stem	2	EA	10,994.00	21,988.00		5,229.00	10,458.00		8,111.50	16,223.00		8,458.00	16,916.00	
A-04	6-in Solid Wedge Gate Valve with Rising Stem	2	EA	5,497.00	10,994.00		3,057.50	6,115.00		4,277.25	8,554.50		4,627.00	9,254.00	
A-05	6-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	30	LF	185.00	5,550.00		188.00	5,640.00		186.50	5,595.00		261.00	7,830.00	
A-06	6-in Pressure Reducing Valve	1	LS	65,458.50	65,458.50		38,992.00	38,992.00		52,225.25	52,225.25		45,541.00	45,541.00	
A-07	Pre-Cast Concrete Valve Vault (12' x 6')	1	LS	93,150.50	93,150.50		50,614.00	50,614.00		71,882.25	71,882.25		101,202.00	101,202.00	
A-08	Trench Safety	46	LF	119.50	5,497.00		13.50	621.00		66.50	3,059.00		3.00	138.00	
A-09	As-Built Survey	1	LS	7,170.00	7,170.00		3,382.00	3,382.00		5,276.00	5,276.00		7,229.00	7,229.00	
A-10	Site Preparation, Grubbing, and Earthwork	150	SY	119.50	17,925.00		37.00	5,550.00		78.25	11,737.50		9.00	1,350.00	
A-11	Storm Water Pollution Prevention Plan	1	LS	11,950.00	11,950.00		3,545.00	3,545.00		7,747.50	7,747.50		4,338.00	4,338.00	
A-12	Connection to Existing 12-in Waterline	1	EA	15,535.00	15,535.00		8,016.00	8,016.00		11,775.50	11,775.50		7,229.00	7,229.00	
A-13	Connection to Existing 16-in Waterline	1	EA	19,837.00	19,837.00		10,046.00	10,046.00		14,941.50	14,941.50		8,675.00	8,675.00	
A-14	Cut and Plug Existing 6-in Waterline	1	EA	5,616.50	5,616.50		2,611.00	2,611.00		4,113.75	4,113.75		1,735.00	1,735.00	
A-15	Electrical and Instrumentation	1	LS	83,650.00	83,650.00		131,631.00	131,631.00		107,640.50	107,640.50		72,721.00	72,721.00	
	Airport EST Control Valve				-			-						-	
A-16	12-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	20	LF	234.60	4,692.00		535.75	10,715.00	2	385.18	7,703.50		521.00	10,420.00	
A-17	12-in Solid Wedge Gate Valve with Rising Stem	1	EA	11,997.80	11,997.80		7,482.00	7,482.00		9,739.90	9,739.90		8,458.00	8,458.00	
A-18	12-in Solenoid Control Valve	1	LS	60,765.00	60,765.00		47,245.00	47,245.00		54,005.00	54,005.00		47,999.00	47,999.00	
A-19	Pre-Cast Concrete Valve Vault (7' x 7')	1	LS	87,187.20	87,187.20		36,915.00	36,915.00		62,051.10	62,051.10		57,830.00	57,830.00	
A-20	Trench Safety	20	LF	119.50	2,390.00		14.00	280.00		66.75	1,335.00		3.00	60.00	
A-21	Site Preparation, Grubbing, and Earthwork	50	SY	119.50	5,975.00		82.00	4,100.00		100.75	5,037.50		9.00	450.00	
A-22	Storm Water Pollution Prevention Plan	1	LS	8,365.00	8,365.00		3,748.00	3,748.00		6,056.50	6,056.50		2,892.00	2,892.00	
A-23	Connection to Existing 12-in Waterline	1	EA	15,535.00	15,535.00		2,395.00	2,395.00		8,965.00	8,965.00		7,229.00	7,229.00	
A-24	Electrical and Instrumentation	1	LS	83,650.00	83,650.00		126,231.00	126,231.00		104,940.50	104,940.50		94,868.00	94,868.00	
A	**Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item)**				$ 681,220.10			$ 566,160.00			$ 623,690.06			$ 567,747.00	
B	**Add (+) or Deduct (-) (See Note 1)**				$ -			$ -							
C	**Total Adjusted Base Bid Amount (A plus B)**				$ 681,220.10			$ 566,160.00			$ 623,690.06			$ 567,747.00	
Allowances in Base Offer per Section 01 23 10 Alternates and Allowances															
D-01	Owner's Allowance for SCADA				50,000.00			50,000.00			50,000.00			50,000.00	
D	**Total Allowance Amount (Sum of Extended Amounts for Each Allowance Line Item)**				$ 50,000.00			$ 50,000.00			$ 50,000.00			$ 50,000.00	
E	**Total Base Bid with Allowances (Sum of C and D)**				$ 731,220.10			$ 616,160.00			$ 673,690.06			$ 617,747.00	

General Notes		Offeror Notes:	Offeror Notes:	Offeror Notes:	Offeror Notes:
1	Extended amount in submitted bid form has an error. Unit Cost shown will take precedence.				
2	Different unit cost for A-02 and A-16 despite having the same pipe material at similar quantities.				
3					
4					
5					
6					
7					
8					
9					
10					

PACKET
8.7
June 28, 2022

CONTRACT DOCUMENTS

FOR CONSTRUCTION OF

Airport EST Valve and T-Bar Connection

#MDD20704

DOCUMENTS ISSUED FOR CONSTRUCTION
These “Issued for Construction” Contract Documents have been prepared by revising the Bidding Documents to record references to addenda, field orders or change orders issued. The Bidding Documents may have been revised to incorporate these revisions directly into the “Issued for Construction” Contract Documents. Contractor is responsible for determining that these documents are consistent with their understanding of the Bidding Documents as modified per the appropriate provisions of the Contract Documents. The Bidding Documents, as modified per the appropriate provisions of the Contract Documents, take precedence over these “Issued for Construction” documents.

July 2021

00 01 07 DESIGN PROFESSIONAL SEALS

	Specification Sections Sealed
THE SEAL THAT ORIGINALLY APPEARED ON THIS DOCUMENT WAS AUTHORIZED BY AARON B. CONINE, P.E., TEXAS NO. 109794 ON APRIL 4, 2022. FREESE AND NICHOLS, INC. TEXAS REGISTERED ENGINEERING FIRM F- 2144. ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION OF THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS	DIV 00 DIV 01 DIV 03 DIV 31 DIV 32 DIV 33 DIV 40
TEXAS REGISTERED ENGINEERING FIRM F-2144	

	Specification Sections Sealed
THE SEAL THAT ORIGINALLY APPEARED ON THIS DOCUMENT WAS AUTHORIZED BY WADE ZEMLOCK, P.E., TEXAS NO. 92701 ON JULY 9, 2021. FREESE AND NICHOLS, INC. TEXAS REGISTERED ENGINEERING FIRM F- 2144. ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION OF THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS	DIV 26
TEXAS REGISTERED ENGINEERING FIRM F-2144	

END OF SECTION

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END SECTION

DIVISION 00

PROCUREMENT AND CONTRACTING REQUIREMENTS

00 11 16 INVITATION TO BID

ARTICLE 1 – GENERAL NOTICE

1.01 The City of Midland (Owner) is requesting Bids for the construction of the following Project:

Airport EST Valve and T-Bar Connection
Owner's Project Identification No. MDD20704

1.02 Description of the Work

A. Install a 12-inch solenoid control valve and pre-cast valve vault with associated electrical and instrumentation at the Airport EST site. Install a combination pressure-reducing, pressure-sustaining valve and valve vault with a 6-inch bypass line and associated electrical. Work shall also include abandonment of an existing 6-inch waterline and connections to existing 16-inch and 12-inch waterlines.

1.03 The Project is to be substantially complete and ready for operation within 120 days of the Selected Contractor receiving the Notice to Proceed. The Project is to be complete and eligible for final payment 30 days after the date for Substantial Completion.

ARTICLE 2 – EXAMINATION AND PURCHASE OF DOCUMENTS

2.01 Advertisement and bidding information for the Project can be found at the following procurement website:

http://construction.freese.com

2.02 Prospective Offerors must register with the procurement website as a plan holder, even if the Contract Documents are obtained from a plan room or other site. All official notifications, Addenda, and other documents will be offered only through the procurement website.

2.03 The Contract Documents may be downloaded from the procurement website by prospective Offerors registered as plan holders. Offerors are responsible for ensuring that a complete set of documents are used in the preparation of their Bids. The documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download does not confer a license or grant permission or authorization for any other use. Authorization to download documents includes the right for Offerors to print documents for their sole use, provided they pay all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

2.04 The procurement website will be updated periodically with Addenda, lists of interested parties, reports, or other information relevant to submitting a Bid for the Project.

2.05 Printed copies of the Contract Documents, Technical Data, and other information may be examined free of charge at the following address:

City of Midland
300 North Loraine, 3rd Floor
Midland, Texas 79701
Hours Available for Viewing: 8 a.m. to 5 p.m.

ARTICLE 3 – QUESTIONS REGARDING BIDDING PROCESS OR SOLICITATION DOCUMENTS

3.01 Questions are to be submitted using the question and answer process on the procurement website. Responses to questions posted on the procurement website will be posted for the benefit of all Offerors. A response will be posted for questions submitted until 12:00 p.m. on Thursday, May 19, 2022.

3.02 A response to a question posted on the procurement website that requires modification of the Contract Documents will be made by Addenda. Modifications to the Contract Documents prior to the award of the Contract can only be made by Addenda. Only answers in Addenda posted on the procurement website will be binding. Oral and other interpretations or clarifications will be without legal effect.

3.03 **A non-mandatory pre-bid conference for the Project will be held on May 10, 2022, at 2:00 pm at the following location:**

1

Midland City Hall, Basement Conference Room

300 North Loraine

Midland, Texas 79701

The non-mandatory pre-bid conference will be held in person and virtually via Microsoft® Teams. Additional information with a link to the Teams meeting will be sent to all plan holders registered on the procurement website 48 hours prior to the time of the pre-bid conference.

The date and location for the receipt of Bids remains unchanged.

ARTICLE 4 – BID SECURITY

4.01 Offerors must submit an acceptable Bid Security with their Bids as a guarantee that the Successful Offeror will enter into a contract for the Project with the Owner within 15 days of Notice of Award of the Contract. The Bid Security must be payable to the City of Midland in the amount of 5 percent of the proposed Contract Price. The Successful Offeror must execute the Contract and bonds on the forms provided in the Contract Documents and provide evidence of insurance as required by the Contract Documents.

4.02 Bid Security must be in the form of a bid bond. The bid bond may be submitted on the form provided in Section 00 43 13 “Bid Bond” or Offerors may provide their surety’s standard penal sum bid bond form. The bid bond must reference the Owner and the Project by name as identified in this Section.

ARTICLE 5 – DELIVERY OF BIDS

5.01 Sealed Bids must be delivered to the Owner at the address below no later than 2:00 p.m. C.S.T. on Wednesday, May 25, 2022, to be accepted. The Bids will be publicly opened and read aloud at this time and place including the names of the Offerors and their Bids. Bids received after this time will be returned unopened. Address Bids to the Owner as follows:

The City of Midland
Amy Turner – City Secretary
Attn: Bid - Airport EST Valve and T-Bar Connection
300 North Loraine, 3rd Floor

Midland, Texas 79701

5.02 All Bids delivered at least 30 minutes before the time designated in Paragraph 7.01 must be delivered to the address shown in Paragraph 7.01.

5.03 All Bids delivered less than 30 minutes before the time designated in Paragraph 7.01 must be delivered to the following address:

The City of Midland
Amy Turner – City Secretary
Attn: Bid - Airport EST Valve and T-Bar Connection
300 North Loraine, 1st Floor
Midland, Texas 79701

ARTICLE 6 – AWARD OF CONTRACT

6.01 It is the intent of the Owner to award this Contract to the lowest responsible Offeror. The Owner reserves the right to adopt the most advantageous interpretation of the Bids submitted in the case of ambiguity or lack of clearness in stating bid prices, to reject any or all Bids, and/or waive formalities. Bids will remain subject to acceptance and may not be withdrawn within 90 days from the date on which Bids are opened.

ARTICLE 7 – OTHER CONTRACT REQUIREMENTS

7.01 Selected Contractor will be required to pay the prevailing wage rates established for this Project in accordance with the Contract Documents and Tex. Gov't Code Chapter 2258.

7.02 Performance and payment bonds will be required for this Project.

END OF SECTION

00 21 13 INSTRUCTIONS TO OFFERORS

ARTICLE 1 – DEFINED TERMS

1.01 The terms used in these Instructions to Offerors have the meanings assigned to them in the General Conditions and Supplementary Conditions.

ARTICLE 2 – RECEIPT OF BIDS

2.01 Refer to Section 00 11 16 "Invitation to Bid" for information on receipt of Bids.

ARTICLE 3 – COPIES OF CONTRACT DOCUMENTS

3.01 Use complete sets of Contract Documents in preparing Bids. Offeror assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

3.02 Owner makes copies of Contract Documents available for the sole purpose of obtaining Bids for completion of the Project and does not confer a license or grant permission or authorization for any other use.

ARTICLE 4 – QUALIFICATIONS STATEMENT

4.01 Submit information as required in Section 00 45 13 "Qualifications Statement" within 5 days of the date Bids are due if requested to do so by the Owner.

ARTICLE 5 – EXAMINATION OF THE CONTRACT DOCUMENTS AND THE SITE

5.01 Examine the Contract Documents, the Site, and other information readily available before submitting a Bid.

A. Examine the Contract Documents and supplemental data:

1. Carefully study the Contract Documents.
2. Carefully study supplemental information, including Technical Data, record drawings from previous projects, available utility maps, reports, and studies referenced or made available to the Offeror.
3. Promptly notify the Design Professional of all conflicts, errors, ambiguities, or discrepancies that the Offeror discovers in the Contract Documents, Addenda, and supplemental information.
4. Determine that the Contract Documents, Addenda, and supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work to the degree necessary to prepare a Bid for the Project.
5. Make observations and investigations, correlate knowledge and observations with the requirements of the Contract Documents, and consider these in preparation of a Bid for the Project.

B. Become familiar with all federal, state, and local Laws and Regulations that may affect cost, progress, or the completion of Work.

C. The Offeror may request a Site visit with the Owner. Visit the Site to become familiar with any general, local, or Site conditions that may affect the cost, progress, or performance of the Work in any manner. Coordinate access to private property through the Owner.

D. Subsurface exploration using a backhoe, drilling rig, or other equipment can be done prior to receiving a notice to proceed, provided the following procedures are followed:

1. Contact the following individual to coordinate the details for the subsurface exploration:

   Cory Moose
   City of Midland
   cmoose@midlandtexas.gov

2. Backfill excavation with material acceptable to the Owner and process backfill to prevent future settling.

3. Pay all costs for soils investigation including the cost for excavation, backfill, access, and testing.

E. The submission of a Bid will constitute an incontrovertible representation by the Offeror that the Offeror has complied with every requirement of this Article, and that without exception the Bid is premised on the following:

1. Work will be completed in accordance with the Contract Documents for the Contract Price within the Contract Times;

2. Offeror has given the Design Professional written notice of all conflicts, errors, ambiguities, and discrepancies that the Offeror has discovered in the Contract Documents, Addenda, and the related supplemental data;

3. Written resolutions provided by the Design Professional are acceptable to the Offeror; and

4. Contract Documents, Addenda, and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work.

ARTICLE 6 – INTERPRETATIONS AND ALTERNATE BIDS

6.01 Submit all questions about the meaning or intent of the Contract Documents, Addenda, and the related supplemental data to the Design Professional using the procurement website as indicated in Section 00 11 16 “Invitation to Bid.”

6.02 Submit any offer of alternate terms and conditions or offer of Work not in strict compliance with the Contract Documents to the Design Professional or Construction Manager no later than 10 days after the date Project is advertised. Construction Manager and Design Professional will issue Addenda as appropriate if any of the proposed changes to the Contract Documents are accepted. A Bid submitted with clarifications or taking exceptions to the Contract Documents, except as modified by Addenda, will be considered non-responsive.

6.03 Offeror may submit a separate and additional Bid if the Offeror includes exceptions or the Offeror wishes to make a Bid that is not in accordance with the terms and conditions of the Contract Documents, or for Work that is not in strict compliance with the Contract Documents.

Describe the intent and substance of the changes in the additional Bid in adequate detail so they are clearly understood. Alternate Bids will not be considered in the evaluation of the Bids. Upon selection of the Bid of the lowest responsible Offeror, and after the award of the Contract, the Engineer may issue a Request for a Change Proposal if Owner chooses to accept any Bid alternates.

6.04 Addenda may be issued to clarify, correct, or change the Contract Documents, Addenda, or the related supplemental data as deemed advisable by the Owner or Designer.

ARTICLE 7 – BID SECURITY

7.01 Offerors must submit an acceptable bid bond as Bid Security with their Bids as required by Section 00 11 16 "Invitation to Bid." The acceptable bid bond must be issued by a surety legally authorized to do business in Texas and meet the requirements of the General Conditions.

ARTICLE 8 – CONTRACT TIMES

8.01 The Project must be substantially complete no later 120 days from receiving the Notice to Proceed in accordance with Section 00 11 16 "Invitation to Bid." Final Completion is to be reached within 30 days of the date for Substantial Completion. Liquidated damages as defined in the Contract will start to accrue after the days for Final Completion are exceeded.

8.02 Upon award of the contract, a limited Notice to Proceed for prepurchase of long lead time items will be issued. Long lead items are identified as any item the selected Contractor would need to prepurchase to complete the work within 120 days. The selected Contractor should begin the submittal and procurement process for identified long lead time items immediately upon award of contract. Once delivery confirmation of those items is received, a second Notice to Proceed will be issued to start the contractual schedule as indicated in Section 00 11 16 "Invitation to Bid."

8.03 If the selected Contractor anticipates a delay greater than 180 days from the date of the Notice of Award, the Contractor must notify the Owner and Engineer.

ARTICLE 9 – LIQUIDATED DAMAGES, RETAINAGE, AND INTEREST

9.01 Provisions for liquidated damages and the payment of retainage and interest are set forth in the Contract Documents.

ARTICLE 10 – PREPARATION OF THE BID FORM

10.01 The Bid Form is included with the Contract Documents and is also available at the procurement website. Complete all blanks on the Bid Form by typing or printing in ink. Indicate prices for each item or alternate shown in the Bid Form.

10.02 The unit price governs if a conflict exists between the extended amount derived by multiplying the unit price by the stated quantity of units and the extended amount shown in the Bid Form.

10.03 Execute the Bid Form as indicated in the document and include evidence of authority to sign.

10.04 Acknowledge receipt of all Addenda by filling in the number and date of each Addendum. Provide a signature as indicated to verify that the Addenda were received. A Bid that does not acknowledge the receipt of all Addenda may be considered non-responsive.

10.05 Provide the name, address, and telephone number of the individual to be contacted for any communications regarding the Bid in the Bid Form.

10.06 Provide evidence of the Offeror's authority and qualification to do business in Texas or agree to obtain such qualification prior to award of the Contract. Failure to obtain this qualification will render the Bid non-responsive and Offeror will forfeit its Bid Security.

ARTICLE 11 – CONFIDENTIALITY OF BID INFORMATION

11.01 The Owner is a governmental body subject to the limitation of Tex. Gov't Code Chapter 552 and has limited obligations with regard to protecting confidential information submitted by Offerors. Bids will be opened in a manner that avoids disclosure of trade secrets and confidential information to competing Offerors and keeps the Bids from the public until a contract is awarded. The Owner will protect trade secrets and confidential information to the extent allowed by Laws and Regulations.

11.02 Clearly indicate which specific documents are considered to be trade secrets or confidential information by stamping or watermarking all such documents with the word "confidential" prominently on each page or sheet or on the cover of bound documents. Place "confidential" stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document. Submit all confidential information in a different binder so this confidential material is separate for the rest of the Bid.

11.03 The Owner, upon receiving an application or other request for the disclosure of confidential information, will promptly notify Offeror of the request as required by Section 552.305 and request a ruling by the Texas Attorney General as to whether any such information may be released.

11.04 Offeror acknowledges and agrees that it will be solely responsible for submitting any arguments, authorities, or other information to the Attorney General of Texas regarding release of the information marked as confidential as provided by Section 552.305(b) and that if disclosure is required, the Owner has no liability for releasing this information and Offeror will not be entitled to exercise any remedy for a disclosure made pursuant to the Chapter 552.

11.05 The obligations of the Owner as recipient with respect to confidential information under the terms of this Contract are subject to the following exceptions:

A. If confidential information becomes a part of the public domain through publication or otherwise but through no fault of the Owner;

B. Owner can demonstrate through suitable documentation that the confidential information was already in the Owner's possession or otherwise publicly available prior to the date of disclosure hereunder;

C. The confidential information is subsequently disclosed to the Owner by a third party who has a lawful right to disclose such information; or

D. The Owner is required to disclose the confidential information by court order or by applicable law.

11.06 If the Owner is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, including requests under Chapter 552, or similar process) or is required by

a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Contract, the Owner will provide Offeror with prompt notice of this request so that it may seek an appropriate protective order or other appropriate remedy.

ARTICLE 12 – DELIVERY OF BIDS

12.01 Complete and deliver the Bid Form along with all required documents identified in the Bid Form.

12.02 Submit the Bid no later than the date and time prescribed and at the place indicated in Section 00 11 16 "Invitation to Bid." Enclose the Bid in an opaque sealed envelope plainly marked with the Project name and the name and address of the Offeror, along with the Bid Security and other required documents. Enclose the sealed envelope containing the Bid in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED" if the Bid is sent by mail or other delivery system. Address the outer envelope to the mailing address shown in Section 00 11 16 "Invitation to Bid." Offeror assumes full responsibility for ensuring that the Bid arrives at the prescribed location before the prescribed time.

ARTICLE 13 – MODIFICATION OR WITHDRAWAL OF BIDS

13.01 Modify or withdraw a Bid using a document executed in the same manner that a Bid must be executed. Deliver the document to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

13.02 An Offeror may withdraw its Bid within 24 hours after Bids are opened if the Offeror files a signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of its Bid. The Bid Security will be returned if it is clearly demonstrated to the Owner that there was a material and substantial mistake in its Bid. An Offeror that requests to withdraw its Bid under these conditions may be disqualified from responding to a reissued Invitation to Bid for the Work to be furnished under these Contract Documents.

ARTICLE 14 – OPENING OF BIDS

14.01 Bids will be opened at the time and place indicated in Section 00 11 16 "Invitation to Bid." The Owner will publicly acknowledge receipt of Bids received in time to be considered and then open and read aloud the names of the Offerors and the amount bid as required by applicable Laws and Regulations.

ARTICLE 15 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

15.01 All Bids will remain subject to acceptance for the number of days specified in Section 00 11 16 "Invitation to Bid." The Owner may, at its sole discretion, release any Bid and return the Bid Security prior to the end of this period.

ARTICLE 16 – EVALUATION OF BIDS

16.01 The Owner will consider the proposed Contract Price and Contract Times and the qualifications of the Offerors to determine the lowest responsible Offeror.

16.02 Owner will consider earlier completion dates in selecting the Contractor for the Project. The value of this early completion will be determined by calculating the number of days between the Offeror's proposed completion dates and the Owner's completion dates indicated in Section 00 11 16 "Invitation to Bid." This number of days will be multiplied by the Liquidated Damages amounts indicated in the Contract to determine the value of early completion. This value for early completion will be used to adjust the Contract Price when evaluating the proposed Contract Price. The calculation is solely for the evaluation of Bids and does not alter the Contract Price from the amounts included in the Bid.

16.03 Owner may conduct such investigations as it deems necessary to establish the responsibility, qualifications, and financial ability of consultants, individuals, or entities proposed to furnish parts of the Work in accordance with the Contract Documents.

16.04 Each Offeror agrees to waive any claim it has or may have against the members of the OPT and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any Bid.

16.05 Notwithstanding any other provision of the Contract Documents, it is stipulated and agreed that by accepting a Bid, the Owner has not and does not waive its sovereign immunity from suit and/or liability.

ARTICLE 17 – AWARD OF CONTRACT

17.01 Owner reserves the right to reject any and all Bids, including non-conforming, non-responsive, or conditional Bids. The Owner may also reject the Bid of any Offeror if the Owner believes that it would not be in the best interest of the Owner to make an award to that Offeror. The Owner reserves the right to waive all formalities.

17.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered, except as additional Bids in accordance with Article 7. Reasonable grounds for believing that any Offeror has an interest in more than one Bid for the Work will be cause for disqualification of that Offeror and the rejection of all Bids in which that Offeror has an interest.

17.03 The Contract will be awarded to the lowest responsible Offeror if a contract is to be awarded.

17.04 Owner may consider the following in evaluating the Bids and awarding the Contract:

A. Offeror's qualifications and ability to demonstrate current capability to complete the Project in conformance with the requirements of the Contract Documents.

B. Compliance of the Bids with requirements of the Contract Documents.

C. Alternates and unit prices if requested in the bid forms.

D. The amount bid.

E. Proposed date of completion and the ability to meet intermediate Milestones that may have been established for the Project.

ARTICLE 18 – BONDS AND INSURANCE

18.01 The General Conditions set forth the Owner's requirements as to bonds and insurance. When the Successful Offeror delivers the executed Contract to the Owner, it must be accompanied by the performance and payment bonds and required evidence of insurance.

18.02 Provide performance and payment bonds for this Project that fully comply with the provisions of Tex. Gov't Code Chapter 2253. Administration of these bonds will conform to Chapter 2253 and the provisions of the Contract Documents.

ARTICLE 19 – SIGNING OF THE CONTRACT

19.01 The Notice of Award to the Successful Offeror will be accompanied by the required number of unsigned counterparts of the Contract with the other Contract Documents. The Successful Offeror must sign and deliver the required number of counterparts of the Contract and attached documents to the Owner within 15 days. The Owner will deliver two fully signed counterparts to the Successful Offeror within 10 days after receiving the signed documents from the Successful Offeror.

ARTICLE 20 – SALES AND USE TAXES

20.01 The Owner generally qualifies as a tax-exempt agency as defined by the statutes of the State of Texas and is usually not subject to any local or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Offerors assume responsibility for including any applicable sales taxes in their Bids and for complying with all applicable statutes and rulings of the State of Texas Comptroller.

20.02 It is the Owner's intent to have this Contract qualifies as a "separated contract." In order for this Contract to qualify:

A. Obtain a sales tax permit from the State of Texas Comptroller if awarded this Contract.

B. Identify the dollar value of materials exempt from the sales tax. This information must be reported in Section 00 45 04 "State Sales Tax Requirements." Bids that do not include the information requested in this Section may be considered non-responsive.

ARTICLE 21 – WAGE RATES

21.01 This Contract is subject to Tex. Gov't Code Chapter 2258 concerning payment of prevailing wage rates. Requirements for paying the prevailing wage rates are discussed in Section 00 73 43 "Wage Rate Requirements." A schedule listing the minimum wage rates for various classifications of laborers which have been established by the Owner for this Project are included in Section 00 73 46 "Wage Determination Schedule." Offerors will be required to pay at least the minimum wages shown on this list and comply with all applicable federal, state, and local Laws and Regulations related to the payment of prevailing wage rates.

ARTICLE 22 – PROHIBITED CONTRACTS

22.01 Owner may not enter into contracts with companies that are engaged in business with Iran, Sudan, or a company known to have contracts with or provide suppliers or services to a foreign

terrorist organization in accordance with Tex. Gov't Code Chapter 2252 or a company boycotting Israel in accordance with Tex. Gov't Code Chapter 2271.

END OF SECTION

00 41 13 BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 Offeror submits this Bid to:

The City of Midland
City Secretary's Office
300 North Loraine, 3rd Floor
Midland, Texas 79701
Attention: Amy Turner
Airport EST Valve and T-Bar Connection

ARTICLE 2 – OFFEROR'S ACKNOWLEDGMENTS

2.01 Offeror proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the form included in the Contract Documents and to perform all Work specified or indicated in Contract Documents for the Contract Price indicated in this Bid or as modified by Contract Amendment. Offeror agrees to complete the Work within the Contract Times established in the Contract Documents or as modified by Contract Amendment and comply with all other terms and conditions of the Contract Documents.

2.02 Offeror accepts all of the terms and conditions of Section 00 11 16 "Invitation to Bid" and Section 00 21 13 "Instructions to Offerors."

2.03 Offeror accepts the provisions of the Contract as to liquidated damages in the event of its failure to complete Work in accordance with the schedule set forth in the Contract Documents.

2.04 Offeror acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt
No. 01	04/27/2022	Todd [illegible]

ARTICLE 3 – OFFEROR'S REPRESENTATIONS

3.01 Offeror has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

3.02 Offeror has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3.03 Offeror is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.

3.04 Offeror has carefully studied the following Site-related reports and drawings as identified in the Supplementary Conditions:

A. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;

B. Underground Facilities referenced in reports and drawings;

C. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and

D. Technical Data related to each of these reports and drawings.

3.05 Offeror has considered the:

A. Information known to the Offeror;

B. Information commonly known to contractors doing business in the locality of the Site;

C. Information and observations obtained from visits to the Site; and

D. The Contract Documents.

3.06 Offeror has considered the items identified in this Article with respect to the effect of such information, observations, and documents on:

A. The cost, progress, and performance of the Work;

B. The means, methods, techniques, sequences, and procedures of construction to be employed by Offeror; and

C. Offeror's safety precautions and programs.

3.07 Offeror agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents based on the information and observations referred to in the preceding paragraphs.

3.08 Offeror is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

3.09 Offeror has correlated the information known to the Offeror, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

3.10 Offeror has given the Design Professional written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror has discovered in the Contract Documents, and the written resolution provided by the Design Professional is acceptable to the Offeror.

3.11 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

3.12 Offeror's submittal of a Bid constitutes an incontrovertible representation that, without exception, all prices in the Contract Documents are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 4 – BASIS OF OFFER

4.01 Offeror will complete the Work in accordance with the Contract Documents at the unit prices shown in the attached in Section 00 41 16 "Bid Form Exhibit A":

A. Extended amounts have been computed in accordance with the General Conditions.

B. Offeror acknowledges that the estimated quantities are not guaranteed, and final payment for all unit price items will be based on actual quantities provided, measured as provided in the Contract Documents.

C. Unit prices will be used to compute the actual Bid price.

ARTICLE 5 – TIME OF COMPLETION

5.01 Offeror agrees that the Work will be Substantially Complete and will be completed and ready for final payment in accordance with the General Conditions within the number of calendar days indicated in Section 00 41 16 "Bid Form Exhibit A."

ARTICLE 6 – ATTACHMENTS TO THIS BID

6.01 The following documents are attached to and made a condition of this Bid:

A. Section 00 41 16 "Bid Form Exhibit A."

B. City of Midland Standard - "Bid Bond."

C. City of Midland Standard - "Local Preference Affidavit."

D. Conflict of Interest Questionnaire.

ARTICLE 7 – VENUE

7.01 Offeror agrees that venue will lie exclusively in Midland County, Texas for any legal action.

ARTICLE 8 – BID DELIVERY

8.01 This Bid is offered by:

Offeror: Texas Water & Soil Co., Inc.
(typed or printed name of organization)

Signature: Todd Neff
(individual's signature)

Name: Todd Neff
(typed or printed)

Title: President
(typed or printed

Address for giving notices:

2908 West F.M. 2105

San Angelo, Texas 76901

Phone: (325) 658-8533 Email: Todd@texaswaterandsoil.com

(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)

END OF SECTION

Project:	Airport EST Valve and T-Bar Connection		**Project No.:**
Owner:	The City of Midland		
Design Professional:	Freese and Nichols, Inc.		MDD20704
Offeror:	Texas Water and Soil Co., Inc.		

Base Bid

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Amount
Items in Base Bid (excluding Allowances) per Section 01 29 01 "Measurement and Basis for Payment"					
A-01	Mobilization	LS	1	$34,786.01	$34,786.01
	West PS and GST T-Bar Connection				
A-02	12-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	LF	46	$327.00	$15,042.00
A-03	12-in Solid Wedge Gate Valve with Non-Rising Stem	EA	2	$5,229.00	$10,458.00
A-04	6-in Solid Wedge Gate Valve with Rising Stem	EA	2	$3,057.50	$6,115.00
A-05	6-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	LF	30	$188.00	$5,640.00
A-06	6-in Pressure Reducing Valve	LS	1	$38,992.00	$38,992.00
A-07	Pre-Cast Concrete Valve Vault (12' x 6')	LS	1	$50,614.00	$50,614.00
A-08	Trench Safety	LF	46	$13.50	$621.00
A-09	As-Built Survey	LS	1	$3,382.00	$3,382.00
A-10	Site Preparation, Grubbing, and Earthwork	SY	150	$37.00	$5,550.00
A-11	Storm Water Pollution Prevention Plan	LS	1	$3,545.00	$3,545.00
A-12	Connection to Existing 12-in Waterline	EA	1	$8,016.00	$8,016.00
A-13	Connection to Existing 16-in Waterline	EA	1	$10,046.00	$10,046.00
A-14	Cut and Plug Existing 6-in Waterline	EA	1	$2,611.00	$2,611.00
A-15	Electrical and Instrumentation	LS	1	$131,631.00	$131,631.00
	Airport EST Control Valve				
A-16	12-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe)	LF	20	$535.75	$10,715.00
A-17	12-in Solid Wedge Gate Valve with Rising Stem	EA	1	$7,482.00	$7,482.00
A-18	12-in Solenoid Control Valve	LS	1	$47,245.00	$47,245.00
A-19	Pre-Cast Concrete Valve Vault (7' x 7')	LS	1	$36,915.00	$36,915.00
A-20	Trench Safety	LF	20	$14.00	$280.00
A-21	Site Preparation, Grubbing, and Earthwork	SY	50	$82.00	$4,100.00
A-22	Storm Water Pollution Prevention Plan	LS	1	$3,748.00	$3,748.00
A-23	Connection to Existing 12-in Waterline	EA	1	$2,395.00	$2,395.00
A-24	Electrical and Instrumentation	LS	1	$126,231.00	$126,231.00
A	**Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item)**				$ 566,160.00
B	**Add (+) or Deduct (-) (See Note 1)**				
C	**Total Adjusted Base Bid Amount (A plus B)**				$ 566,160.00
Allowances in Base Bid per Section 01 23 10 "Alternates and Allowances"					
D-01	Owner's Allowance for SCADA	LS	1	50000	50,000.00
D	**Total Allowance Amount (Sum of Extended Amounts for Each Allowance Line Item)**				$ 50,000.00
E	**Total Base Bid with Allowances (Sum of C and D)**				$ 616,160.00

Contract Time

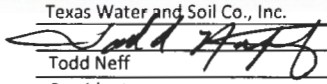
L	Offeror agrees to reach Substantial Completion in	120	days
M	Offeror agrees to reach Final Completion in	150	days

Cost + Time Evaluation

N	Total Base Bid (Line E)	$ -	
O	Offeror Days to Substantial Completion		days
P	Value per Day of Construction	$ -	per day
Q	Value for Days of Construction (O X P)		
R	Basis for Comparison of Bids (N + Q)		

Notes	
1	Provision is made for Offeror to include an addition or deduction in the Bid to reflect any last minute adjustments in price. The addition or deduction, if made, will be applied proportionately to the following Items:

BID SUBMITTED BY:

Offeror:	Texas Water and Soil Co., Inc.
Signature:	
Printed Name:	Todd Neff
Title:	President
Date:	5.25.2022

Texas Water & Soil Co., Inc.
CONCRETE, CIVIL & UTILITY CONSTRUCTION

Resolution On Authorized Representative

I hereby certify that it was RESOLVED by a quorum of the directors of Texas Water & Soil Co., Inc. meeting on the 1st day of January, 2019, that Todd Neff be, and hearby is authorized to act on behalf of Texas Water & Soil Company, Inc. as it's representative in all business transactions conducted in the United States of America.

That the above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded or amended and is now in full force and effect.

In authentication of the adoption of this resolution, I subscribe my name This 1st day of January, 2019.

Secretary

3022 West F.M. 2105 • San Angelo, Texas 76901 • 325-658-8533 • FAX 325-653-8159

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

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PACKET 8.38 June 28, 2022

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

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recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

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33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

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43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

    c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

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1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

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into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

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ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

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inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

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B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

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established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;

2. Abnormal weather conditions;

3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and

4. Acts of war or terrorism.

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D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.

2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.

3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;

2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;

3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;

4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

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B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ANY SUCH CLAIM, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER, ENGINEER, OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART BY, OR BASED UPON, CONTRACTOR'S PERFORMANCE OF THE WORK, OR BECAUSE OF OTHER ACTIONS OR CONDUCT OF THE CONTRACTOR OR THOSE FOR WHICH CONTRACTOR IS RESPONSIBLE.**

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

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C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

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5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

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a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

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4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in

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Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

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2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in

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Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, OWNER SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR, SUBCONTRACTORS, AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION, PROVIDED THAT SUCH HAZARDOUS ENVIRONMENTAL CONDITION (1) WAS NOT SHOWN OR INDICATED IN THE DRAWINGS, SPECIFICATIONS, OR OTHER CONTRACT DOCUMENTS, IDENTIFIED AS TECHNICAL DATA ENTITLED TO LIMITED RELIANCE PURSUANT TO PARAGRAPH 5.06.B, OR IDENTIFIED IN THE CONTRACT DOCUMENTS TO BE INCLUDED WITHIN THE SCOPE OF THE WORK, AND (2) WAS NOT CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.I OBLIGATES OWNER TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**

J. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.J OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

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C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of

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applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent

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insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

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3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary

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Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

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6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

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B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that the proposed item:

1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

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2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

3) has a proven record of performance and availability of responsive service; and

4) is not objectionable to Owner.

b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

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3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

    a. will certify that the proposed substitute item will:

        1) perform adequately the functions and achieve the results called for by the general design;

        2) be similar in substance to the item specified; and

        3) be suited to the same use as the item specified.

    b. will state:

        1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

        2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

        3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

    c. will identify:

        1) all variations of the proposed substitute item from the item specified; and

        2) available engineering, sales, maintenance, repair, and replacement services.

    d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

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H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, OWNER SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR, AND ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE SPECIFIED IN THE CONTRACT DOCUMENTS, BUT NOT IDENTIFIED AS BEING SUBJECT TO PAYMENT OF ANY LICENSE FEE OR ROYALTY TO OTHERS REQUIRED BY PATENT RIGHTS OR COPYRIGHTS.**

C. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF**

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7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. **IF CONTRACTOR PERFORMS ANY WORK OR TAKES ANY OTHER ACTION KNOWING OR HAVING REASON TO KNOW THAT IT IS CONTRARY TO LAWS OR REGULATIONS, CONTRACTOR SHALL BEAR ALL RESULTING COSTS AND LOSSES, AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH WORK OR OTHER ACTION. IT IS NOT CONTRACTOR'S RESPONSIBILITY TO MAKE CERTAIN THAT THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS IS IN ACCORDANCE WITH LAWS AND REGULATIONS, BUT THIS DOES NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER PARAGRAPH 3.03.**

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

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7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

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G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

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c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

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3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted

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or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

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5. Any review and approval of a Shop Drawing or Sample submittal;
6. The issuance of a notice of acceptability by Engineer;
7. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM LOSSES, DAMAGES, COSTS, AND JUDGMENTS (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING FROM THIRD-PARTY CLAIMS OR ACTIONS RELATING TO OR RESULTING FROM THE PERFORMANCE OR FURNISHING OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, COST, JUDGMENT OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.**

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications,

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certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

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D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the

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Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) **INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ANY SUCH CLAIMS, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH DAMAGE, DELAY, DISRUPTION, OR INTERFERENCE**.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

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9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

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ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

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E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

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ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

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B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

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1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
   1. A mutually acceptable fixed fee; or
   2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
      a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
      b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
      c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
      d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
      e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
      f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

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11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

    a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

    b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

    The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

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Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and

4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

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and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

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2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

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consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

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Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

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thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

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D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

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losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

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or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

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establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

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4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

    a. to supervise, direct, or control the Work;

    b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

    c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

    d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

    e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

    a. the Work is defective, requiring correction or replacement;

    b. the Contract Price has been reduced by Change Orders;

    c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

    d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

    e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

    a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

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b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

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submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

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1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents;

b. consent of the surety, if any, to final payment;

c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

d. a list of all duly pending Change Proposals and Claims; and

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e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

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B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their

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reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

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ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and

2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if

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repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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00 73 00 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement Section 00 72 00 “General Conditions.” The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below.

The paragraph numbers used in the Supplementary Conditions correspond to the General Condition paragraphs they modify with the prefix "SC" added—for example, “Paragraph SC-4.05.” modifies General Conditions Paragraph 4.05.

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

A. Supplement Paragraph 1.01.A by inserting the following defined terms as numbered items in their proper alphabetical positions:

1. *Bid Security*—The financial security provided by Offeror at the time the Bid is submitted and held by Owner until the Contract is executed and the evidence of insurance and bonds required by the Contract Documents are provided.

2. *Construction Manager*—The individual or entity named as the Construction Manager in the Contract Documents and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management as advisor services to the Owner.

3. *Contract Amendment*—A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:

    a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or

    b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.

4. *Contractor’s Team*—Contractor, Subcontractors, Suppliers, and individuals or entities directly or indirectly employed or retained by Contractor, Subcontractors, or Suppliers to perform part of the Work, or anyone for whose acts they may be liable.

5. *Defective*—When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:

    a. Does not conform to the Contract Documents;

    b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or

    c. Has been damaged prior to Construction Manager’s recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 15.03 or 15.04.

6. *Design Professional*—The entity named as the Engineer in the Contract Documents and the subconsultants, individuals, or entities directly or indirectly employed or retained by Design Professional to provide design or other technical services to the Owner. Design Professional has responsibility for design and technical issues related to the Contract Documents. The Design Professional consists of:

    a. Freese and Nichols, Inc. – 801 Cherry St. Suite 2800, Fort Worth, TX 76102

7. *Final Completion*—The point where the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner and the Project is ready for Final Payment.

8. *Indemnified Costs*—All costs, losses, judgments, and damages resulting from claims or demands against Owner's Indemnitees. These costs include fees for design professionals, attorneys, and other professionals and any legal, court, arbitration, or other dispute resolution costs.

9. *Manufacturer*—The individual or entity that designs, casts, fabricates, manufactures, assembles, tests, and provides materials or equipment to be incorporated in the Work.

10. *Modification*—Change made to the Contract Documents by Contract Amendment, Change Order, Field Order, or Work Change Directive.

11. *Offeror*—An individual or entity that submits a Bid or Proposal to Owner. When used in the Bidding Documents, Proposal Documents, or Contract Documents, the term Bidder has the same meaning as the term Offeror.

12. *Owner's Budget*—The amount budgeted by the Owner for the construction of the Project.

13. *Owner's Indemnitees*—Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.

14. *Owner's Project Team (OPT)*—The Owner, Design Professional, Construction Manager, and the other entities identified in the Supplementary Conditions and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide services to the Owner. The OPT consists of the following organizations:

    a. City of Midland – 300 N. Loraine Midland, TX 79701

    b. Freese and Nichols, Inc. – 801 Cherry St. Suite 2800, Fort Worth, TX 76102

15. *Project Construction Manager (PCM)*—The authorized representative of the OPT assigned to assist the Construction Manager at the Site. The term Project Construction Manager includes assistants and field staff of the Construction Manager.

16. *Project Management Information System (PMIS)*—The online project management system that will be used by OPT and Contractor to submit and share documentation and other related communications and information for this Project.

17. *Schedule of Anticipated Payments*—A detailed tabulation, prepared and maintained by Contractor, showing the anticipated amount of each Application for Payment and the month in which they will be submitted.

18. Schedule of Documents—A detailed tabulation, prepared and maintained by Contractor, of each required document submittal and the time requirements for review and approval of each submittal. When used in the Bidding Requirements, Proposal Requirements, or Contract Documents, the term Schedule of Submittals has the same meaning as the term Schedule of Documents.

19. *Set-off*–A reduction in payment due to Contractor under Article 15.

SC-1.02 Terminology

A. Supplement Paragraph 1.02 by adding the following paragraphs:

"H. The terms "includes" and "including" are used as terms of enlargement and not of limitation or exclusive enumeration, and use of these terms does not create a presumption that components not expressed are excluded. The terms "consist of" or "consisting of" limits the interpretation to only those items specifically listed."

"I. It is understood that the cost of providing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions like "at no additional cost to Owner," "at Contractor's expense," or similar words mean that the Contractor is to include the cost of this Work in their Contract Price and perform or provide specified Work without an increase in the Contract Price."

"J. Written documents are required where reference is made to notices, reports, approvals, consents, statements, instructions, opinions, or other types of documentation or communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT's Project Management Information System or other electronic media as required by the Contract Documents or approved by the Construction Manager."

"K. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice."

ARTICLE 2—PRELIMINARY MATTERS

SC-2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

A. Delete Paragraph 2.01.B in its entirety and insert the following in its place:

"B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver copies of the insurance policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in this Contract. Contractor may redact any confidential premium or pricing information contained in any policy or endorsement furnished under this provision."

B. Delete Paragraph 2.01.C in its entirety.

SC-2.02 Copies of Documents

A. Delete Paragraph 2.02.A in its entirety and insert the following in its place:

"A. Owner shall furnish to Contractor five (5) printed copies of the Contract Documents (including one fully signed counterpart of the Contract), and one copy in electronic portable document format (PDF).

SC-2.06 Electronic Submittals

A. Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

"B. Electronic Documents Protocol: The parties shall conform to the provisions in Section 01 30 00 "Contract Administration" for exchange of electronic transmittals.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 Intent

A. Delete Paragraph 3.01.A in its entirety and insert the following in its place:

"A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all. The Drawings and Specifications do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Engineer. Provide any work, materials, or equipment required for a complete and functional system even if they are not detailed or specified.

1. The Contract requirements described in the General Conditions, Supplementary Conditions, and General Requirements apply to each and all Sections of the Specifications unless specifically noted otherwise.

2. Organization of Contract Documents is not intended to control or to lessen the responsibility of the Contractor when dividing Work among Subcontractors, or to establish the extent of Work to be performed by any trade, Subcontractor, or Supplier. Specifications or details do not need to be indicated or specified in each specification or drawing. Items shown in the Contract Documents are applicable regardless of location in the Contract Documents.

3. Standard paragraph titles and other identifications of subject matter in the Specifications are intended to aid in locating and recognizing various requirements of the Specifications. Titles do not define, limit, or otherwise restrict specification text."

B. Supplement Paragraph 3.01.D by adding the following sentence:

"The Contract Documents comprise the entire Agreement between Owner and Contractor and may be modified only by Field Order, Change Order, Contract Amendment, or Work Change Directive."

C. Supplement Paragraphs 3.01 by adding the following paragraphs:

"H. Where compliance with two or more standards is specified and they establish different or conflicting requirements for minimum quantities or quality levels, Contractor shall comply with the most stringent requirements unless the Contract Documents indicate otherwise.

1. Quantity or quality level shown or indicated shall be the minimum to be provided or performed in every instance.

2. Actual installation shall comply exactly with minimum quality indicated or may exceed that minimum within reasonable limits.

3. In complying with these requirements, indicated numeric values are minimum or maximum values, as noted, or appropriate for context of requirements.

4. Refer instances of uncertainty to the Engineer for a decision before proceeding."

"I. Provide materials and equipment comparable in quality to similar materials and equipment incorporated in the Project or as required to meet the minimum requirements of the application if the materials and equipment are shown in the Drawings but are not included in the Specifications."

SC-3.02 Reference Standards

A. Supplement Paragraph 3.02.A by adding the following subparagraph:

"3. Comply with applicable construction industry standards as if bound or copied directly into the Contract Documents regardless of lack of reference in the Contract Documents. Apply provisions of the Contract Documents where Contract Documents include more stringent requirements than the referenced standards.

a. Standards referenced directly in the Contract Documents take precedence over standards that are not referenced but recognized in the construction industry as applicable.

b. Comply with standards not referenced but recognized in the construction industry as applicable for performance of the Work except as otherwise limited by the Contract Documents. Engineer will determine whether codes or standards are applicable to the performance of the Work.

c. Make copies of reference standards available as requested by Engineer or Owner."

SC-3.03 Reporting and Resolving Discrepancies

A. Delete Paragraph 3.03.A.3 in its entirety and insert the following in its place:

"3. In the event of a conflict in the Drawings, Specifications, or other portions of the Contract Documents which were not reported prior to the bidding of the Contract, the Contractor shall be deemed to have included the most expensive item, system, procedure, etc. in its Bid or Proposal."

SC-3.05 Reuse of Documents

A. Delete the last sentence of Paragraph 3.05.B and insert the following in its place:

"Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes, unless specifically prohibited in writing by the Owner for security reasons. If the Owner so directs, Contractor shall surrender all copies of the construction Contract Documents and other related documents, in paper or digital format and remove these documents from computer equipment or storage devices as a condition of final payment."

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01 Commencement of Contract Times; Notice to Proceed

A. Delete Paragraph 4.01.A in its entirety and insert the following in its place:

"A. A Notice to Proceed for the prepurchase of long lead time items may be given at any time within 30 days of the Effective Date of the Contract. Long lead items are identified as any item for which the Contractor must begin the submittal and procurement process early to complete the work within the Contract Times. A second Notice to Proceed will be issued to start the contractual schedule once delivery confirmation of long lead time items is received."

SC-4.04 Progress Schedule

A. Supplement Paragraph 4.04 by adding the following paragraph:

"C. Contractor assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents."

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.01 Availability of Lands

A. Supplement Paragraph 5.01.C by adding the following sentence:

"A copy of the written agreements for the use of such land shall be provided to the Owner for record purposes."

SC-5.02 Use of Site and Other Areas

A. Delete Paragraph 5.02.A.2 in its entirety and insert the following in its place:

"2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent

jurisdiction; and (c) **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ANY SUCH CLAIM, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER, ENGINEER, OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART BY, OR BASED UPON, CONTRACTOR'S PERFORMANCE OF THE WORK, OR BECAUSE OF OTHER ACTIONS OR CONDUCT OF THE CONTRACTOR OR THOSE FOR WHICH CONTRACTOR IS RESPONSIBLE**."

SC-5.03 Subsurface and Physical Conditions

A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.03 of the General Conditions related to subsurface and physical conditions.

1. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Report Date	Technical Data
No applicable reports		

2. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawing Title	Drawing Date	Technical Data
No applicable drawings		

3. Copies of reports and drawings may be downloaded from the project procurement website.

SC-5.04 Differing Subsurface or Physical Conditions

A. Amend Paragraph 5.04.A by deleting the word "promptly" and inserting "promptly, but no later than within 3 days," in its place.

SC-5.05 Underground Facilities

A. Amend Paragraph 5.05.B by deleting the word "promptly" and inserting "promptly, but no later than within 3 days," in its place.

SC-5.06 Hazardous Environmental Conditions at Site

A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.06 of the General Conditions related to Hazardous Environmental Conditions at the Site.

1. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Report Date	Technical Data
No applicable reports		

2. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawing Title	Drawing Date	Technical Data
No applicable reports		

3. Copies of reports and drawings may be downloaded from the project procurement website.

B. Delete Paragraph 5.06.I in its entirety.

C. Delete Paragraph 5.06.J in its entirety and insert the following in its place:

"J. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.J OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE."

ARTICLE 6—BONDS AND INSURANCE

SC-6.01 Performance, Payment, and Other Bonds

A. Supplement Paragraph 6.01 by adding the following paragraphs:

"I. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond or payment bond. By Contractor furnishing and Owner accepting these bonds, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor under these bonds, subject to Owner's priority to use the funds for the completion of the Work."

"J. Contractor or surety on behalf of Contractor shall promptly notify the Owner of all claims filed against the payment bond. When a claimant has satisfied the conditions prescribed by Laws and Regulations, the Contractor, or surety on behalf of Contractor, shall, with reasonable promptness, notify the claimant and Owner of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Contractor, or surety on behalf of Contractor shall, with reasonable promptness, pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Contractor or surety on behalf of Contractor to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Contractor or surety as to such claim or otherwise constitute a waiver of the Contractor's or surety's defenses to, or right to dispute, such claim.

"K. Owner shall not be liable for payment of any costs or expenses of any claimant under payment bonds, and shall have no obligations to make payments to, give notices on behalf of, or otherwise have obligations to claimants under payment bonds."

SC-6.02 Insurance—General Provisions

A. Delete Paragraph 6.02.A in its entirety and insert the following in its place:

"A. Obtain and maintain insurance in accordance with the City of Midland Contract Documents."

SC-6.05 Property Losses; Subrogation

A. Delete the words "Owner and Contractor waive" in the first sentence of Paragraph 6.05.A.1 and replace it with the words "Contractor waives".

B. Delete Paragraph 6.05.B.1 in its entirety.

SC-6.06 Receipt and Application of Property Insurance Proceeds

A. Delete Paragraph 6.06 in its entirety.

SC-6.07 Owner's Insurance for Project

A. Add a new Paragraph 6.08 as follows:

"6.07 *Owner's Insurance for Project*

A. Owner shall not be responsible for purchasing and maintaining any insurance to protect the interest of the Contractor, Subcontractors, or others in the Work. The stated limits of insurance required are minimum only. Contractor shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, resulting from or connected with operations under this Contract whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by the Owner, Engineer, and/or others listed as an additional insured, that in any respect do not comply with the Contract requirements does not release the Contractor from compliance herewith."

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

SC-7.03 Labor; Working Hours

A. Delete Paragraph 7.03.C in its entirety and insert the following in its place:

"C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, no Work shall be performed at the Site between 6:00 p.m. and 7:00 a.m. Contractor will not permit the performance of Work on a Saturday, Sunday, or any Owner holiday without Owner's written consent. Should Contractor desire to work on these days, Contractor shall contact the Owner, in writing, for approval at least 48 hours in advance. Emergency work may be done without prior permission. Tie ins and connections to existing facilities will be made at time authorized by the Owner. Owner's legal holidays are New Year's Day, Martin Luther King Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas, and New Year's Eve."

B. Supplement Paragraph 7.03 by adding the following paragraph:

"D. Contractor shall be responsible for the cost of overtime pay or other expense incurred by the Owner for Construction Management Services, Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable Set-off against payments due under Article 15. For purposes of administering the foregoing requirement, additional overtime costs will be billed at rates shown in SC-15.01.E."

SC-7.08 Patent Fees and Royalties

A. Delete Paragraph 7.08.B in its entirety.

B. Delete Paragraph 7.08.C in its entirety and insert the following in its place:

"C. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE NOT SPECIFIED IN THE CONTRACT DOCUMENTS."

SC-7.11 Laws and Regulations

A. Delete Paragraph 7.11.B in its entirety and insert the following in its place:

"B. IF CONTRACTOR PERFORMS ANY WORK OR TAKES ANY OTHER ACTION KNOWING OR HAVING REASON TO KNOW THAT IT IS CONTRARY TO LAWS OR REGULATIONS, CONTRACTOR SHALL BEAR ALL RESULTING COSTS AND LOSSES, AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH WORK OR OTHER ACTION. IT IS NOT CONTRACTOR'S RESPONSIBILITY TO MAKE CERTAIN THAT THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS IS IN ACCORDANCE WITH LAWS AND REGULATIONS, BUT THIS DOES NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER PARAGRAPH 3.03."

SC-7.15 Emergencies

A. Amend Paragraph 7.15.A by deleting the last sentence and inserting the following in its place:

"Contractor may submit a Change Proposal if the incident giving rise to the emergency action was not the responsibility of the Contractor and a change in the Contract Documents is required because of the emergency or the action taken by Contractor in response to such an emergency."

SC-7.16 Submittals

A. Delete Paragraph 7.16.A.3 in its entirety and insert the following in its place:

"3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents on a Shop Drawing Deviation Request form provided by the Engineer and request that a Field Order or Change Order be issued for each of the specific variations submitted for approval. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation."

B. Delete Paragraph 7.16.C.4 in its entirety and insert the following in its place:

"4. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A and Engineer has given written approval of each such variation by issuing a Field Order or Change Order. If the proposed Modification is approved by the Engineer, the submittal will be considered to be in strict compliance with the Contract Documents and it will be reviewed in accordance with the Contract Documents. If the proposed Modification is not approved, the submittal will be returned to the Contractor with appropriate comments. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A."

C. Delete Paragraph 7.16.D.1 in its entirety and insert the following in its place:

"1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Resubmittals shall reference and respond directly to Engineer's previous comments. Any variations from strict compliance with the Contract Documents will be identified in the same manner as required in Paragraph 7.16.A and will require the same approvals."

SC-7.18 Indemnification

A. Delete Paragraph 7.18.A in its entirety and insert the following in its place:

"A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM LOSSES, DAMAGES, COSTS, AND JUDGMENTS (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING FROM THIRD-PARTY CLAIMS OR ACTIONS RELATING TO OR RESULTING FROM THE PERFORMANCE OR FURNISHING OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, COST, JUDGMENT OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE."

B. Supplement Paragraph 7.18 by adding the following paragraph:

"C. Contractor's obligations to indemnify or hold Owner's Indemnitees harmless against losses, damages, or expenses specified in these General Conditions shall be subject to the applicable limitations of Chapter 130 of the Texas Civil Practice and Remedies Code."

SC-8.03 Legal Relationships

A. Delete Paragraph 8.03.C in its entirety and insert the following in its place:

"C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) **INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ANY SUCH CLAIMS, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING**

BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH DAMAGE, DELAY, DISRUPTION, OR INTERFERENCE."

SC-8.04 Claims Between Contractors

A. Supplement Article 8 by adding the following paragraph:

"8.04 *Claims between Contractors*

A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.

B. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER'S INDEMNITEES FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING DIRECTLY, INDIRECTLY OR CONSEQUENTIALLY OUT OF ANY ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY OTHER CONTRACTOR AGAINST MEMBERS OF THE OPT TO THE EXTENT SAID CLAIM IS BASED ON OR ARISES OUT OF CONTRACTOR'S PERFORMANCE OF THE WORK. SHOULD ANOTHER CONTRACTOR CAUSE DAMAGE TO THE WORK OR PROPERTY OF CONTRACTOR OR SHOULD THE PERFORMANCE OF WORK BY ANY OTHER CONTRACTOR AT THE SITE GIVE RISE TO ANY OTHER CLAIM, CONTRACTOR SHALL NOT INSTITUTE ANY ACTION, LEGAL OR EQUITABLE, AGAINST OWNER'S INDEMNITEES OR PERMIT ANY ACTION AGAINST ANY OF THEM TO BE MAINTAINED AND CONTINUED IN ITS NAME OR FOR ITS BENEFIT IN ANY COURT OR BEFORE ANY ARBITER WHICH SEEKS TO IMPOSE LIABILITY ON OR TO RECOVER DAMAGES FROM MEMBERS OF THE OPT ON ACCOUNT OF ANY SUCH DAMAGE OR CLAIM.**

C. Contractor may submit a Change Proposal for an extension of Contract Times, in accordance with Article 11, if Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor. An extension of the Contract Times will be Contractor's exclusive remedy with respect to members of the OPT for any delay, disruption, interference, or hindrance caused by any other contractor."

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

SC-10.03 Resident Project Representative

A. Supplement Paragraph 10.03.A by adding the following subparagraph:

"1. Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work on this Project by agreement with the Owner."

ARTICLE 11—CHANGES TO THE CONTRACT

SC-11.02 Change Orders

A. Supplement Paragraph 11.02 by adding the following paragraph:

"C. Contractor assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents unless the variation is specifically approved by Change Order."

SC-11.11 No Damage for Delays

A. Supplement Article 11 by adding the following paragraph:

"11.11 *No Damage for Delays*

A. Contractor agrees to make no Claims for damage for delay in the performance of the Contract occasioned by any act or omission to act of the Owner, Engineer, or any of the Engineer's or Owner's agents, and agrees that any such Claim shall be fully compensated by an extension of time, as set forth in a Change Order, to complete performance of the Work as provided herein."

ARTICLE 12—CLAIMS

SC-12.01 Claims

A. Amend Paragraph 12.01.B by deleting "but in no event later than 30 days" and inserting "but in no event later than 7 days" in its place.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-13.01 Cost of the Work

A. Amend Paragraph 13.01.B by deleting the following words in the first sentence:

"commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:"

and insert the following in its place:

"those paid for the Work included in the Contract Price, and shall not include any of the costs itemized in Paragraph 13.01.C. Contractor shall provide certified payroll records listing personnel classifications and salaries for all individuals involved in additional Work. Salaries for those not included in the certified payroll will be considered as being compensated under Paragraph 13.01.C, and shall include only the following items:"

B. Amend Paragraph 13.01.B.1 by deleting the following words in the second sentence:

", without limitation, superintendents, foremen"

and inserting the following in its place:

"one foreman (unless agreed upon prior to beginning Work)"

C. Amend Paragraph 13.01.B.1 by deleting the following words in the last sentence:

"be included in the above"

and inserting the following in its place:

"not exceed 1.5 times regular pay and shall be included in the above"

D. Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

"The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition EquipmentWatch Cost Recovery Rental Rate Blue Book."

E. Amend Paragraph 13.01.C.1 by adding "superintendents" to the list of excluded personnel in the first sentence.

SC-13.03 Unit Price Work

A. Delete Paragraph 13.03.E in its entirety and insert the following in its place:

"E. *Adjustments in Unit Price*

1. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

a. If the total cost of a particular item of Unit Price Work amounts to 20 percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of such item indicated in the Contract; and

b. If there is no corresponding adjustment with respect to any other item of Work; and

c. If Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the Unit Price, either the Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variation in the quantity of the Unit Price Work performed."

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

SC-15.01 Progress Payments

A. Delete Paragraph 15.01.B.1 in its entirety and insert the following in its place:

"1. On the first working day following the 25th of each month, Contractor shall submit to Owner for review an Application for Payment, filled out and signed by Contractor, covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents."

B. Amend Paragraph 15.01.C.1 by deleting "10" and inserting "30" in its place.

C. Amend Paragraph 15.01.E.1 by deleting Subparagraph 15.01.E.1.l and adding the following in its place:

"l. Owner has been notified of failure to make payments to Subcontractors or Suppliers or for labor;"

"m. failure to submit up to date record documents as required by the Contract Documents;"

"n. failure to submit monthly Progress Schedule updates or revised schedules as requested by the Owner or Engineer;"

"o. failure to provide Project videos or photographs required by the Specifications;"

"p. Other items entitle Owner to a set off against the amount recommended."

D. Amend Paragraph 15.01.E.3 by deleting "and subject to interest as provided in the Contract."

E. Supplement Paragraph 15.01.E by adding the following subparagraph:

"4. Owner may permanently withhold payment from Contract Price for:

a. Liquidated damages incurred by Contractor.

b. Compensation for OPT for overtime charges of Design Professional, Construction Manager, Resident Project Representative, third review of submittals, review of substitutions, re inspection fees, inspections, or designs related to correction of defective Work, or other Services identified as requiring payment by the Contractor.

1) Compensation will be based on the following rates:

Position	Hourly Rate
Principal in Charge	415
Project Manager	370
Project Engineer	236
Construction Manager	300
Resident Representative	233
Design Engineer	185
Engineering Technician	130
Clerk	145

2) Expenses will be billed at the actual cost multiplied by 1.15.

c. Costs for tests performed by the Owner to verify that Work previously tested and found to be defective has been corrected. Verification testing is to be provided at the Contractor's expense to verify products or constructed works are in compliance after corrections have been made."

F. Supplement Paragraph 15.01 by adding the following paragraph:

"F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may

require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment."

SC-15.03 Substantial Completion

A. Supplement Paragraph 15.03.B by adding the following subparagraph:

"1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable Set-off against payments due under this Article 15."

SC-15.06 Final Payment

A. Delete Paragraph 15.06.E in its entirety and insert the following in its place:

"E. *Final Payment Becomes Due*: The first working day following the 10th day of the second month following the submittal of the final Application for Payment and accompanying documentation, the amount recommended by the Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set offs for liquidated damages and set offs allowed under the provisions above with respect to progress payments) will become due and will be paid by Owner to Contractor."

SC-15.08 Correction Period

A. Supplement Paragraph 15.08 by adding the following paragraph:

"G. When early acceptance of a Substantially Completed portion of the Work is accomplished in the manner indicated in the Contract Documents, the correction period for that portion of the Work shall commence at the time of Substantial Completion of that Work."

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

SC-16.02 Owner May Terminate for Cause

A. Delete Subparagraphs 16.02.A.3 and 16.02.A.4 in their entirety and replace them with the following:

"3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;"

"4. Contractor's repeated disregard of the authority of Owner or Engineer;"

"5. Contractor fails to provide a replacement bond or insurance coverage as required by the General Conditions and as amended by the Supplementary Conditions; or"

"6. If any petition of bankruptcy is filed by or against Contractor, or if Contractor is adjudged as bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of Contractor's creditors, or if a receiver is appointed on account of Contractor's insolvency, upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 7 days of delivery of the request shall entitle Owner to terminate this Contract and to the accompanying rights set forth in Article 16 of the General Conditions. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis. The cost of work by Owner or other contractors will be back charged against the Contract Sum hereof."

B. Delete Paragraph 16.02.G in its entirety.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

SC-17.01 Methods and Procedures

A. Delete Paragraph 17.01 in its entirety and insert the following in its place:

"17.01 *Methods and Procedures*

A. The Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Law."

ARTICLE 18—MISCELLANEOUS

SC-18.02 Computation of Times

A. Supplement Paragraph 18.02 by adding the following paragraph:

"B. All references and conditions for a "Calendar Day Contract" in the General Conditions and Supplementary Conditions shall apply for a "Fixed Date Contract." A "Fixed Date Contract" is one in which the calendar dates for reaching Substantial Completion and/or final completion are specified in lieu of identifying the actual calendar days involved."

SC-18.10 Headings

A. Delete Paragraph 18.08.A in its entirety and insert the following in its place:

"A. The Article and paragraph headings in this Contract are inserted for convenience only and do not constitute parts of these General Conditions or act as a limitation of the scope of the particular section to which they refer. This Contract will be fairly interpreted in accordance with its terms and conditions and not for or against either party."

SC-18.09 Independent Contractor

A. Supplement Article 18 by adding the following paragraph:

"18.11 *Independent Contractor*

A. Each Party will perform its duties under this Contract as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Contract will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Contract will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind."

SC-18.12 Severability

A. Supplement Article 18 by adding the following paragraph:

"18.12 *Severability*

A. If a court of competent jurisdiction renders any part of this Contract invalid or unenforceable, that part will be severed and the remainder of this Contract will continue in full force and effect."

SC-18.13 No Third Party Beneficiaries

A. Supplement Article 18 by adding the following paragraph:

"18.13 *No Third Party Beneficiaries*

A. Nothing in this Contract shall be construed to create any right in any third party not a signatory to this Contract, and the parties do not intend to create any third party beneficiaries by entering into this Contract."

SC-18.14 Sovereign Immunity

A. Supplement Article 18 by adding the following paragraph:

"18.14 *Sovereign Immunity*

A. The parties agree that the Owner has not waived its sovereign immunity by entering into and performing its obligations under this Contract."

END OF SECTION

00 73 17 TEXAS WORKERS' COMPENSATION INSURANCE

ARTICLE 1 – REQUIRED NOTICE

1.01 Workers' Compensation Insurance Coverage

A. Definitions:

1. Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form 81, DWC Form 82, DWC Form 83, or DWC Form 84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

2. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

3. Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than 7 days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4. obtain from each other person with whom it contracts, and provide to the contractor:

   a. a certificate of coverage, prior to the other person beginning work on the project; and

   b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. contractually require each person with whom it contracts, to perform as required by paragraphs 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the

division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

END OF SECTION

00 73 43 WAGE RATE REQUIREMENTS

ARTICLE 1 – PAYMENT OF PREVAILING WAGE RATES

1.01 Contractor and Subcontractors employed on this Project must pay not less than the rates established by the Owner as required by Tex. Gov't Code Chapter 2258.

1.02 The minimum wage rates for various labor classifications as established by the Owner are included in "Exhibit D – Heavy and Highway Wage Rates rev 01-01-21."

ARTICLE 2 – PENALTY

2.01 In accordance with Section 2258.023(b), any Contractor or Subcontractor who violates the requirements of Chapter 2258 shall pay the Owner $60 for each worker employed or each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract.

2.02 Failure to comply with the requirements of Chapter 2258 may subject the Owner, Contractor, or Subcontractor(s) to additional civil and criminal penalties.

ARTICLE 3 – RECORDS

3.01 In accordance with Section 2258.024, the Contractor and its Subcontractors, if any, shall keep a record showing:

A. The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work; and

B. The actual per diem wages paid to each worker.

3.02 This record shall be open at all reasonable hours to inspection by the officers and agents of the OPT.

ARTICLE 4 – ENFORCEMENT

4.01 Owner will enforce the provisions of this Contract related to the payment of prevailing wage rates as required by Chapter 2258, Subchapter C.

4.02 Owner may be required to withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the Contractor. If required, these amounts will be withheld from payments to the Contractor through a Set-off in accordance with the General Conditions.

END OF SECTION

CITY OF MIDLAND

FRONT END DOCUMENTS

THE CITY OF MIDLAND

CONTRACT

Contract No. 22001649R

THIS CONTRACT, effective the 29 day of June, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and Texas Water & Soil Co., Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 616,160.00 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for Airport EST Valve and T-Bar Connection Project in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

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

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

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

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

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

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

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

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

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 150 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, 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 COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. 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.

16.1. The CITY may make periodic payments to COMPANY; 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 COMPANY 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.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY 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." COMPANY 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 COMPANY 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.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY'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 day that COMPANY 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 COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY 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.

17.3. 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 COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or 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 COMPANY, 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.

17.4. Provided, further, that COMPANY shall, within ten (10) 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 COMPANY within a reasonable time of its decision in the matter.

17.5. **COMPANY 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, 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 ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'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.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY 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. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

18. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party

beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

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

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

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

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

22. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

26. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

29. **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.

30. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §

§

COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Texas Water & Soil Co., 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 _____

EXHIBIT C

Bonding Requirements

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

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

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

AIA Document 310 - 2010 Bid Bond

CONTRACTOR (Name, legal status and address):

Texas Water & Soil Co., Inc.
2908 West FM 2105
San Angelo, TX 76901

SURETY (Name, legal status and principal place of business):

FCCI Insurance Company
6300 University Parkway
Sarasota, FL 34240-8424

OWNER (Name, legal status and address):
City of Midland
300 N. Loraine St.
Midland, TX 79701-4725

Bond Amount: **Five Percent of the Greatest Amount Bid (5% GAB)**

PROJECT: (Name, location or address, and Project number, if any):

City of Midland, Airport EST Valve & T-Bar Connection, Midland, Texas

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters in to a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding ninety (90) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond ninety (90) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed by the Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **25th** day of **May, 2022**

(Witness) (Seal)

(Witness) (Seal)

Texas Water & Soil Co., Inc.
(Principal) (Seal)
(Name & Title): ,

FCCI Insurance Company
(Surety)
(Name & Title): Andrea Rose Crawford , Attorney-in-Fact

Language conforms to AIA Document A310 Bid Bond
BID70001ZZ0311f

FCCI INSURANCE GROUP

GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

John William Newby; Debra Lee Moon; Andrea Rose Crawford; Troy Russell Key; Sandra Lee Roney; Suzanne Elizabeth Niedzwiedz; Cheri Lynn Irby; Joshua D. Tritt

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed $10,000,000.00): $10,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest: Christina D. Welch

Christina D. Welch, President
FCCI Insurance Company

FCCI INSURANCE COMPANY CORPORATE SEAL 1941 FLORIDA

Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida
Peggy Snow
My Commission GG 283505
Expires 02/27/2023

Peggy Snow
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

Notary Public State of Florida
Peggy Snow
My Commission GG 283505
Expires 02/27/2023

Peggy Snow
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 25th day of May, 2022

Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

1-IONA-3592-NA-04, 7/2020

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call FCCI Insurance Group's (FCCI)* toll-free telephone number for information or to make a complaint at 1-800-226-3224.

You may also write to FCCI Insurance Group Compliance Department e-mail at StateComplaints@fcci-group.com.

For Claims, you may write to FCCI Insurance Group Claim Department e-mail at newclaim@fcci-group.com.

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at 1-800-252-3439.

You may write the Texas Department of Insurance:

PO Box 149104
Austin TX 78714-9104
Fax: 1-512-475- 1771
Web: http://www.tdi.state.tx.us
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES

Should you have a dispute concerning your premium or about a claim you should contact FCCI first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR BOND

This notice is for information only and does not become a part or condition of the attached documents.

*The FCCI Insurance Group includes the following insurance carriers: Brierfield Insurance Company, FCCI Advantage Insurance Company, FCCI Commercial Insurance Company, FCCI Insurance Company, Monroe Guaranty Insurance Company, and National Trust Insurance Company.

Copyright 2012 FCCI Insurance Group.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT Texas Water & Soil Co., Inc., of the City of San Angelo, of the County of Tom Green and State of Texas as Principal, and FCCI Insurance Company, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of Six Hundred Sixteen Thousand One Hundred Sixty DOLLARS ($616,160.00) 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 _____, 2022, for the furnishing of materials, equipment to perform all labor and work necessary for the Airport EST Valve & T-Bar Connection Project, 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_____, 2022.

Texas Water & Soil Co., Inc.
Principal

By: _____
Todd Neff, President

Address: 2908 West FM 2105

San Angelo, Texas 76901

FCCI Insurance Company
Surety

By: _____
Andrea Rose Crawford, Attorney-in-Fact

Address: 6300 University Parkway

Sarasota, Florida 34240

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT Texas Water & Soil Co., Inc., (Hereinafter called the Principal(s), as Principal(s), and FCCI Insurance 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 Six Hundred Sixteen Thousand One Hundred Sixty DOLLARS ($616,160.00) 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_____, 2022, for the furnishing of materials and equipment to perform all labor and work necessary for the construction of the Airport EST Valve & T-Bar Connection Project, 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_____, 2022.

Texas Water & Soil Co., Inc.
Principal

By: _____
Todd Neff, President

Address: 2908 West FM 2105
San Angelo, Texas 76901

FCCI Insurance Company
Surety

By: _____
Andrea Rose Crawford, Attorney-in-Fact

Address: 6300 University Parkway
Sarasota, Florida 34240

APPROVED AS TO FORM:

_____
City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/gov contracts.

Modification Number	Publication Date
0	01/01/2021

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)……..	$ 13.55	
ELECTRICIAN.....	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	$ 12.36	

Structures.....$ 13.52

LABORER
- Asphalt Raker.....$ 12.28
- Flagger.....$ 9.30
- Laborer, Common.....$ 10.30
- Laborer, Utility.....$ 11.80
- Work Zone Barricade Servicer.....$ 10.30

POWER EQUIPMENT OPERATOR:
- Asphalt Distributer.....$ 14.87
- Asphalt Paving Machine.....$ 13.40
- Broom and Sweeper.....$ 11.21
- Crane, Lattice Boom 80 Tons or Less.....$ 16.82
- Crawler Tractor Operator……...$ 13.96
- Excavator, 50,000 lbs or less.....$ 13.46
- Front End Loader Operator, Over 3 CY.....$ 12.77
- Front End Loader, 3CY or less.....$ 12.28
- Loader/Backhoe.....$ 14.18
- Mechanic.....$ 20.14
- Milling Machine.....$ 15.54
- Motor Grader, Rough.....$ 16.15
- Motor Grader, Fine.....$ 17.49
- Pavement Marking Machine…….....$ 16.42
- Reclaimer/Pulverizer…….....$ 12.85
- Roller, Asphalt.....$ 10.95
- Roller, Other.....$ 10.36
- Scraper.....$ 10.61
- Spreader Box.....$ 12.60

Servicer.....$ 13.98

Steel Worker (Reinforcing).....$ 13.50

TRUCK DRIVER
- Lowboy-Float.....$ 14.46
- Single Axle.....$ 12.74
- Single or Tandem Axle Dump……$ 11.33
- Tandem Axle Tractor with Semi.....$ 12.49

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 _____ _____

Signature of vendor doing business with the governmental entity Date June 28, 2022

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

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

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

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

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

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

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

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

***

(2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

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

(2) the date the vendor becomes aware:

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

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

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

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY 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/COMPANY 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/COMPANY 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.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADDENDA

See Attached Issued Addenda

00 91 01 ADDENDUM NUMBER 1

Owner:	City of Midland
Project:	Airport EST Valve and T-Bar Connection
Project No.:	MDD20704
Addendum No.	1
Addendum Date:	April 27, 2022

The following additions, deletions, modifications, or clarifications shall be made to the appropriate portions of the Contract Documents. Offerors must acknowledge receipt of this Addendum in the space provided on the Bid Form.

Approved by:	Freese and Nichols, Inc.
Name:	Aaron B. Conine, P.E.
Date:	April 27, 2022



FREESE AND NICHOLS, INC.
TEXAS REGISTERED
ENGINEERING FIRM
F-2144

Addendum Items:

Article 2 – Bid Requirements

Section 00 11 16

ARTICLE 1 – ADDENDUM

1.01 Amend the Contract Documents

A. Make the additions, modifications, or deletions to the Contract Documents described in this Addendum.

1.02 Acknowledge Addenda

A. Acknowledge receipt of this Addendum in the Bid Form submitted for this Project. Failure to acknowledge receipt of this addendum in the Bid Form may render the Bid as non-responsive and serve as the basis for rejecting the Bid.

ARTICLE 2 – BID REQUIREMENTS

2.01 Section 00 11 16 “Invitation to Bid”

A. Add new Paragraph 3.03 immediately following Paragraph 3.02:

1. A non-mandatory pre-bid conference for the Project will be held on May 10, 2022, at 2:00 pm at the following location:

   Midland City Hall, Basement Conference Room
   300 North Loraine
   Midland, Texas 79701

   The non-mandatory pre-bid conference will be held in person and virtually via Microsoft® Teams. Additional information with a link to the Teams meeting will be sent to all plan holders registered on the procurement website 48 hours prior to the time of the pre-bid conference.

2. The date and location for the receipt of Bids remains unchanged.

END OF SECTION

DIVISION 01

GENERAL REQUIREMENTS

01 11 00 SUMMARY OF WORK

PART 1 - GENERAL

1.01 SUMMARY

A. Construct Work as described in the Contract Documents.

1. Provide the materials, equipment, and incidentals required to make the Project completely and fully operable.
2. Provide the labor, equipment, tools, and consumable supplies required for a complete Project.
3. Provide the civil, architectural, structural, mechanical, electrical, instrumentation, and all other Work required for a complete and operable Project.
4. Test and place the completed Project in operation.
5. Provide the special tools, spare parts, lubricants, supplies, or other materials as indicated in the Contract Documents for the operation and maintenance of the Project.
6. The Contract Documents do not indicate or describe all Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Construction Manager.

1.02 DESCRIPTION OF WORK

A. Work is described in general, non-inclusive terms as:

1. Installation of a 12-inch solenoid control valve at the Airport Elevated Storage Tank.
   a. Work shall include solenoid control valve, valve vault, isolation valves, and ductile iron fittings.
   b. Associated electrical and instrumentation.
2. Installation of combination pressure-reducing, pressure sustaining valve at the West Pump Station and Ground Storage Tank.
   a. Work shall include combination pressure reducing, pressure sustaining valve, valve vault, isolation valves, bypass lines and ductile iron fittings.
   b. Associated electrical and instrumentation.

1.03 WORK UNDER OTHER CONTRACTS

A. The Owner has no knowledge of work, other than the Work included in this Contract, which may impact construction scheduling, testing, and startup.

1.04 WORK BY OWNER

A. The Owner has no knowledge of work, other than the Work included in this Contract that may impact construction scheduling, testing, and startup.

B. Owner will provide normal operation and maintenance of the existing facilities during construction, unless otherwise stated.

1.05 CONSTRUCTION OF UTILITIES

A. Existing utilities will be used for this Project. Coordinate with others performing Work associated with this Project.

B. Power and Electrical Services:

1. Contractor may use the permanent power source for construction purposes in lieu of temporary power source when permanent power is available at the Site.

a. Notify Construction Manager and Owner of intent to use the permanent power source.

b. Arrange with the power utility and pay the charges for connections and monthly charges for use of this power.

c. Pay for the power consumed until the Project has been accepted as Substantially Complete unless noted otherwise.

1.06 NOMINATED SUBCONTRACTOR

A. Owner has or will select a Subcontractor for furnishing, installing, and testing the following products:

Description	Supplier
SCADA Implementation	Signature Automation, LLC

B. These Subcontractors will be designated as “Nominated Subcontractors.” Agreements for services are described in the referenced appendices. Obtain clarification from the Construction Manager in the case of a disagreement between the above list and those specified elsewhere in the Contract Documents.

C. Execute an agreement with each Nominated Subcontractor upon receiving the Notice to Proceed (execution of the Contract Documents).

D. Include the Nominated Subcontractor costs in the Contract Price.

E. Assume responsibilities for Nominated Subcontractors’ products and installation as for those products selected and installed by the Contractor.

F. Coordinate Work performed by Nominated Subcontractors.

G. Provide labor, materials, equipment, tools, consumable supplies, and incidentals not specifically required by the subcontract required to provide a complete and operable Project.

PACKET

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 23 10 ALTERNATES AND ALLOWANCES

PART 1 - GENERAL

1.01 SUMMARY

A. Allowances:

1. Include the specified allowance amounts in the Contract Price.
2. The amount of each allowance includes:
    a. The cost of the product to the Contractor less any applicable trade discounts;
    b. Delivery to the Site; and
    c. Applicable taxes.
3. Include in the Contract Price all costs for:
    a. Handling at the Site, including unloading, uncrating, and storage per Section 01 31 00 “Project Management and Coordination.”
    b. Cost for labor and equipment for installation and finishing.
    c. Cost for related products not specifically listed in the allowance required for installation, including consumable supplies and materials.
    d. All overhead, profit, and related costs.
4. Assist Owner in the selection of products.
    a. Identify qualified Suppliers.
    b. Obtain bids or proposals from qualified Suppliers.
    c. Present available alternates to the Owner through the Construction Manager. Notify Construction Manager of:
        1) Any objections to a particular Supplier or product.
        2) Effect on the construction schedule anticipated by the selection of each option.
        3) Cost of each option.
5. Upon selection of the product:
    a. Purchase and install the product.
    b. Contractor’s responsibilities for products will be the same as for products selected by the Contractor.
6. Submit a Change Proposal per Section 01 26 00 “Change Management” to adjust the Contract Price if the net cost of the product is more or less than the specified amount.
    a. Adjust the unit cost applied to the quantities installed per the method of payment described in Section 01 29 00 “Application for Payment Procedures” for products specified as Unit Price Work.

b. Do not perform Work until selection of alternate has been approved by the Owner.

c. Provide actual invoices for the materials.

1.02 DOCUMENTATION

A. Provide documents for materials furnished as part of each alternate in accordance with Section 01 30 00 “Contract Administration.”

1.03 DESCRIPTION OF ALLOWANCES

A. Allowance D-1 **-** Owner’s Allowance for SCADA

1. Payment for instrumentation and SCADA will be provided through an owner’s allowance, provided as a lump sum.

2. All labor, equipment, materials and installation of SCADA and instrumentation at both the Airport EST site and the West PS and GST shall be covered under the owner’s allowance.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 29 01 MEASUREMENT AND BASIS FOR PAYMENT

PART 1 - GENERAL

1.01 PAYMENT FOR MATERIALS AND EQUIPMENT

A. Provide a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of Liens. Provide documentation of payment for materials and equipment with the next Application for Payment. Remove items from the tabulation of materials and equipment if this documentation is not provided with the next Application for Payment.

B. Provide evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest.

C. The Work covered by progress payments becomes the property of the Owner at the time of payment. The Contractor's obligations with regard to proper care and maintenance, insurance, and other requirements are not changed by this transfer of ownership until final acceptance in accordance with the General Conditions.

D. Payment for materials and equipment does not constitute acceptance of the product.

1.02 MEASUREMENT AND BASIS FOR PAYMENTS ON LUMP SUM ITEMS

A. Measurement for progress payments is the invoice value for stored materials and the earned value for all other cost for constructing each item. Earned value is expressed as the value of the Work completed divided by the total value of installation cost. The total amount paid will be equal to the total lump sum amount for that item.

1.03 MEASUREMENT AND BASIS FOR PAYMENTS ON UNIT PRICE ITEMS

A. Measure the Work using the unit of measure indicated in this Section for each unit price line item. Payment will be made only for the actual measured unit and/or computed length, area, solid contents, number, and weight unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside dimensions shown in the Contract Documents.

B. Payment will be made for the actual quantity of Work completed and for materials and equipment stored during the payment period. Payment amount is the Work quantity measured per Paragraph A above multiplied by the unit price for that line item in the Agreement.

1.04 MEASUREMENT AND BASIS FOR PAYMENT FOR BASE ITEMS

A. Item A-01 - Mobilization

1. Measuring for payment is on a lump sum basis. Payment for mobilization will be based on the earned value of Work completed.

B. Item A-02 and A-16 – 12-in Waterline by Open Cut

1. Measurement for 12-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe) shall be per linear foot of horizontal length from center of fitting to center of pipe without any

deduction for fittings and valves and shall include appurtenances and all other items required for installation as shown in the plans.

2. Payment made at a unit price bid shall include: furnishing, hauling, and laying of pipe, fittings, flexible joints, joint bonds, special coatings (where indicated), appurtenances (including air valves and blow-off valves in manholes as shown in the plans), closure sections and tie-ins, welding joints, mechanical thrust restraint, concrete thrust blocking, shoring, dewatering, and pumping where necessary, trench excavation, backfilling, embedment material, pipeline and appurtenance markers, clearing and grubbing, curb and gutter replacement, permanent grading, replacement of topsoil, diversion dikes, terracing, protecting or replacing or temporarily relocating existing structures or utilities, testing, disposal of surplus materials, cleaning up and maintenance, sign replacement, surveying and replacement of monuments, dust control, removal of mud from roadways, test plugs and temporary piping, filling pipe with water and hydro-testing, disinfecting the pipeline, replacement of driveways, sidewalks, pipeline markers and post, replacement of drainage structures, temporary fencing and gates, fire hydrants, flowable fill, concrete encasement where shown in the plans; and any incidental work and materials not otherwise indicated in other pay items, all in strict accordance with the Plans and Specifications.

C. Item A-03 – 12-in Solid Wedge Gate Valve with Non-Rising Stem

1. Payment for 12-in Solid Wedge Gate Valve with Non-Rising Stem at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include complete valve assembly installation, including excavation and connection to proposed or existing pipe. Contractor shall remove all abandoned valves, boxes and stacks as shown in the Contract Documents. All valves will be vertical unless specified otherwise.

D. Item A-04 – 6-in Solid Wedge Gate Valve with Rising Stem

1. Payment for 6-in Solid Wedge Gate Valve with Rising Stem at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include complete valve assembly installation, including valve box, lid, excavation, embedment, and backfill. Contractor shall remove all abandoned valves, boxes and stacks as shown in the Contract Documents. All valves will be vertical unless specified otherwise.

E. Item A-05 – 6-in Waterline by Open Cut

1. Measurement for 6-in Waterline by Open Cut (AWWA C110 Ductile Iron Pipe) shall be per linear foot of horizontal length from center of fitting to center of pipe without any deduction for fittings and valves and shall include appurtenances and all other items required for installation as shown in the plans.

2. Payment made at a unit price bid shall include: furnishing, hauling, and laying of pipe, fittings, flexible joints, joint bonds, special coatings (where indicated), appurtenances (including air valves and blow-off valves in manholes as shown in the plans), closure sections and tie-ins, welding joints, mechanical thrust restraint, concrete thrust blocking, shoring, dewatering, and pumping where necessary, trench excavation, backfilling, embedment material, pipeline and appurtenance markers, clearing and

grubbing, curb and gutter replacement, permanent grading, replacement of topsoil, diversion dikes, terracing, protecting or replacing or temporarily relocating existing structures or utilities, testing, disposal of surplus materials, cleaning up and maintenance, sign replacement, surveying and replacement of monuments, dust control, removal of mud from roadways, test plugs and temporary piping, filling pipe with water and hydro-testing, disinfecting the pipeline, replacement of driveways, sidewalks, pipeline markers and post, replacement of drainage structures, temporary fencing and gates, fire hydrants, flowable fill, concrete encasement where shown in the plans; and any incidental work and materials not otherwise indicated in other pay items, all in strict accordance with the Plans and Specifications.

F. Item A-06 – 12-in Pressure Reducing Valve

1. Payment for 12-in Pressure Reducing Valve at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. This item shall consist of valve provision, factory and on-site calibration, installation, integration into existing system, appurtenances not limited to bolts, gaskets, couplings, expansion joints, and all other items outlined in the Contract Documents. The unit price for the pressure reducing valve shall include pressure gauges, pressure transmitters, valve position transmitters, pilot controls, valve controllers, and other options elected in accordance with the Plans and Specifications.

G. Item A-07 – Pre-Cast Concrete Valve Vault (12' x 6')

1. Payment for Pre-Cast Concrete Valve Vault (12' x 6') at the T-Bar Connection shall be made at the lump sum price bid.

2. Work shall include furnishing and delivering the pre-cast vault, storage of vault, excavation, backfill, flowable fill, with related appurtenances including ladders, pipe supports, pipe penetrations, sumps, and hatches as shown in the Contract Documents.

H. Item A-08 and A-20 – Trench Safety

1. Measurement for Trench Safety shall be per linear foot installed.

2. Work shall include any pipe installed, any foundation installation for the Elevated Storage Tank, and any location where required not specified therein. Payment shall be full compensation for trench safety as outlined in the Contract Documents.

I. Item A-09 – As-Built Survey

1. The Contractor shall have a Registered Professional Land Surveyor (RPLS) tie “as-built” locations of all valves, blowoffs, manholes, inlets, bends, tees, crosses, headwalls, air release valves, P.C.’s, P.T.’s, and at every five hundred (500) feet along straight lines and curves on proposed mains based on the Texas State Plane Coordinate System. Horizontal and vertical data must be collected for each tie. Ties shall be made at the top of pipe and all control points and benchmarks used in the survey shall be consistent with the plans and reported. Such work will be performed prior to backfill and the results furnished to the City. The points shall be recorded and reviewed monthly on the “as-built” drawings required by Section 9-3.01 of these specifications. The Contractor shall also provide an ASCII file containing point number, northing coordinate, easting coordinate, elevation, and point description for each tie and control point used in the survey. The ASCII file shall be submitted with the “as-built”

drawings in electronic format on a Digital Video Disc (DVD) accompanied with a hard copy print of the file. As-Built Survey shall be for the West PS and GST site location only.

2. Payment for this item shall be made on the basis of lump sum (per site) for full compensation for all labor, material, and other items not specifically listed in other bid items.

J. Item A-10 and A-21 – Site Preparation, Grubbing and Earthwork

1. Payment for Site Preparation, Grubbing, and Earthwork shall be made at the unit price bid per square yard.

2. Work shall be full compensation for supplying all labor, equipment, and materials including tree removal and disposal, grubbing of stumps, earthwork, excavation, cut/fill material, and compaction necessary to obtain the contours indicated on the plans, including any material hauling and disposal costs. Hydromulch or grass seeding as required to stabilize disturbed areas are included under this bid item.

K. Item A-11 and A-22 – Storm Water Pollution Prevention Plan

1. Payment for Storm Water Pollution Prevention Plan shall be made at the lump sum price bid. Payment shall be allowed for 25% of the lump sum bid price upon receipt and approval of the plan by the Owner. The remaining 75% of the lump sum bid price shall be paid in equal, monthly installments based on the time remaining to achieve substantial completion.

2. Work shall be full compensation for design, implementation, and removal of the plan for the duration of the project.

L. Item A-12 – Connection to Existing 12-in Waterline

1. Payment for Connection to Existing 12-in Waterline at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include all pipe, fittings, flowable fill, concrete, thrust blocking, welding, mechanical thrust restraints, joints, shoring, dewatering, pumping, trench excavation, backfilling and embedment required to make a connection to the existing 12-in waterline for the T-Bar Connection at the West PS and GST.

M. Item A-13 – Connection to Existing 16-in Waterline

1. Payment for Connection to Existing 16-in Waterline at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include all pipe, fittings, flowable fill, concrete, thrust blocking, welding, mechanical thrust restraints, joints, shoring, dewatering, pumping, trench excavation, backfilling and embedment required to make a connection to the existing 16-in waterline for the T-Bar Connection at the West PS and GST.

N. Item A-14 – Cut and Plug Existing 6-inch Waterline

1. Payment for Cut and Plug Existing 6-inch Waterline at the West PS and GST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include all pipe, fittings, flowable fill, concrete, thrust blocking, welding, mechanical thrust restraints, joints, shoring, dewatering, pumping, trench excavation,

backfilling and embedment required to plug and abandon the 6-in waterline at the West PS and GST.

O. Item A-15 – Electrical and Instrumentation for the West PS and GST T-Bar Connection

1. Payment for Electrical and Instrumentation for the West PS and GST T-Bar Connection shall be made at the lump sum price bid. Payment shall be allowed for 25% of the lump sum bid price upon receipt and approval of the plan by the Owner. The remaining 75% of the lump sum bid price shall be paid in equal, monthly installments based on the time remaining to achieve substantial completion.

2. Work shall be full compensation for the following items:

a. Routing power and control wiring from valve control panel to pressure reducing valve.

b. Contractor shall utilize underground duct bank for routing of power and control wiring to valve vault.

c. Valve vault will include utility lights and controls, convenience receptacles, heat tape and controls, valve controls, pressure transmitters, and position transmitters.

d. Valve control panel located in electrical room will have an electric power converter with a 120v circuit going to LP-AP.

e. Contractor will add new circuit breakers for new loads to panel LP-AP.

f. Contractor will make connections and to existing RTU for required controls.

P. Item A-17 – 12-in Solid Wedge Gate Valve with Rising Stem

1. Payment for 12-in Solid Wedge Gate Valve with Rising Stem at the Airport EST shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include complete valve assembly installation, including valve box, lid, excavation, embedment, and backfill. Contractor shall remove all abandoned valves, boxes and stacks as shown in the Contract Documents. All valves will be vertical unless specified otherwise.

Q. Item A-18 – 12-in Solenoid Control Valve

1. Payment for 12-in Solenoid Control Valve at the Airport EST shall be made per each at the price bid as shown in the Contract Documents.

2. This item shall consist of valve provision, factory and on-site calibration, installation, integration into existing systems, installation of bolts, couplings, gaskets, and expansion joints and all other items outlined in the Contract Documents. The unit price for the pressure reducing valve shall include pressure gauges, pressure transmitters, valve position transmitters, pilot controls, valve controllers, and other options elected in accordance with the Plans and Specifications.

R. Item A-19 – Pre-Cast Concrete Valve Vault (7' x 7')

1. Payment for Pre-Cast Concrete Valve Vault (7' x 7') at the Airport EST Valve shall be made at the lump sum price bid.

2. Work shall include furnishing and delivering the pre-cast vault, storage of vault, excavation, backfill, flowable fill, with related appurtenances including ladders, pipe supports, pipe penetrations, sumps, and hatches as shown in the Contract Documents.

S. Item A-23 – Connection to Existing 12-in Waterline

1. Payment for Connection to Existing 12-in Waterline at the Airport EST Valve shall be made per each at the price bid as shown in the Contract Documents.

2. Work shall include all pipe, fittings, flowable fill, concrete, thrust blocking, welding, mechanical thrust restraints, joints, shoring, dewatering, pumping, trench excavation, backfilling and embedment required to make a connection to the existing 12-in waterline.

T. Item A-24 – Electrical and Instrumentation for the Airport EST Valve

1. Payment for Electrical and Instrumentation for the Airport EST Valve shall be made at the lump sum price bid. Payment shall be allowed for 25% of the lump sum bid price upon receipt and approval of the plan by the Owner. The remaining 75% of the lump sum bid price shall be paid in equal, monthly installments based on the time remaining to achieve substantial completion.

2. Work shall be full compensation for the following items:

a. Routing power and control wiring from valve control panel to altitude valve.

b. Contractor shall utilize underground duct bank for routing of power and control wiring to valve vault.

c. Valve vault will include utility lights and controls, convenience receptacles, heat tape and controls, valve controls, pressure transmitters, and position transmitters.

d. Valve control panel located in electrical room will have an electric power converter with a 120v circuit going to LP-A1.

e. Contractor will add new circuit breakers for new loads to panel LP-A1.

f. Contractor will make connections and to existing RTU for required controls.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

01 30 00 CONTRACT ADMINISTRATION

PART 1 - GENERAL

1.01 DOCUMENTATION

A. General Requirements for Documentation:

1. Submit documentation as required by the Contract Documents and as reasonably requested by the PCM. Use the Project Management Information System (PMIS) workflows and templates provided by the PCM for contract administration, applications for payment, submittals, documentation of test results, products information, and project closeout. PMIS software used will be FNiManager.

2. Contractor is responsible for reviewing documents prior to submission for accuracy and completeness. Make certifications as required by the Contract Documents and as indicated on PCM provided forms and templates.

3. Submit all documents as Portable Document Format (PDF) files. In additions to PDF files, submit Applications for Payment and Schedules in native format files.

a. Create PDF document using Bluebeam Revu software or other compatible software that will create files that can be opened and annotated using Bluebeam Revu software.

b. Create PDF documents from native format files unless files are only available from scanned documents.

c. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.

d. Submit PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.

e. Submit color PDF documents where color is required to interpret the document.

f. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.

g. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.

h. Use Bluebeam Revu software to reduce file size using default settings except the option for "Drop Metadata". Uncheck the "Drop Metadata" box when reducing file size

i. Add footers to each document with the Project Designator, Project Name and Document Name.

1.02 CONTRACT ADMINISTRATION / COMMUNICATIONS

A. Communications

1. The PCM is to be the first point of contact for all parties on matters concerning this project and will facilitate the administration of the Contract.
2. The PCM will normally communicate only with the Contractor. Any required communication with Subcontractors or Suppliers will only be with the direct involvement of the Contractor.

B. Project Meetings

1. Pre-construction Conference:
    a. Attend a pre-construction conference at the location determined by the PCM. The date of the meeting will be determined by the PCM but will be no later than 15 days after the Notice to Proceed is issued.
    b. The OPT, Contractor's project manager and superintendent must attend the conference. Representatives of utility companies, and representatives from major Subcontractors and Suppliers may also attend the conference.
    c. Provide and be prepared to discuss:
        1) Contractor's organizational chart as it relates to this Project;
        2) List of Subcontractors and Suppliers;
        3) Contractor's safety program, including the designated safety representative, requirement for personal protective equipment and safety protocols;
        4) List of individuals authorized for access to the PMIS on behalf of the Contractor;
        5) Preliminary construction schedule per Paragraph 1.06;
        6) Schedule for major product deliveries and priorities.
        7) Status of building permits and crossing permits;
        8) Requirements for surveying or establishing controls;
        9) Status of Storm Water Pollution Prevention Plans;
        10) Preliminary submittal schedule per Paragraph 1.02;
        11) Schedule of values and anticipated schedule of payments Paragraph 1.05; and
        12) Letter indicating the agents of authority for the Contractor and the limit of that authority with respect to the execution of legal documents, Modifications and Applications for Payment.
2. Progress Meetings:
    a. Attend meetings with the OPT.
        1) Meet on a monthly basis or as requested by the PCM to discuss the Project at the Site or other location as designated by the PCM.
        2) Contractor's superintendent and other key personnel are to attend the meeting. Other individuals may be requested to attend to discuss specific matters.

3) Notify the PCM of any specific items to be discussed a minimum of 1 week prior to the meeting.

b. Provide information as requested by the PCM or Owner concerning this Project. Prepare to discuss:

1) Status on items assigned to the Contractor on the Action Item Register;

2) Review items on the Project Decision Register added since the previous meeting;

3) Status of submittals;

4) Status of RFIs;

5) Changes in Contractor's resources including staffing, major equipment and Subcontractors;

6) Proposed or pending modifications to the Contract Documents;

7) Overview of Work completed since the previous meeting with emphasis on planned but not executed Work;

8) Contractor's detailed schedule for the next 6 weeks, identifying planned efforts on critical path Work;

9) Anticipated delivery dates for products;

10) Status of overall project schedule;

11) Coordination with the Owner on operations;

12) Information or clarification of the Contract Documents;

13) Status on correction of any outstanding Defective Work and maintenance of quality standards;

14) Field observations, problems, or conflicts;

15) Site Management issues;

16) Status of Record Documentation;

17) Proposed pre-submittal, pre-installation or other meetings for specific issues;

18) Other items of old business or concerns; and

19) New business items.

c. PCM will prepare minutes of meetings. Review the minutes of the meeting and notify the PCM of any discrepancies within ten days of the date of the meeting memorandum. The minutes will not be corrected after the ten days have expired. Corrections will be reflected in revised minutes.

C. Project Decision and Action Item Registers

1. PCM will maintain a Project Decision Register to document key decisions made at meetings, telephone conversation or site visits using the format provided by the PCM. Review the register prior to each regular meeting and report any discrepancies to the PCM for correction or discussion at the next monthly meeting.

2. PCM will maintain an Action Item register in conjunction with the Project Decision Register to track assignments made at meetings, telephone conversation or site visits using the format provided by the PCM. Review the register prior to each regular meeting and report any discrepancies to the PCM for correction or discussion at the next monthly meeting. Report actions taken subsequent to the previous progress meeting on items in the register assigned to the Contractor to the PCM at each progress meeting to update the register.

3. Decisions or action items in the register that require a change in the Contract Documents will have the preparation of a Modification as action items if appropriate. The Contract Documents can only be changed by a Modification.

D. Requests for Information

1. Submit a Request for Information to the Design Professional to obtain additional information or clarification of the Contract Documents. Submit a separate RFI for each item. Attach adequate information to permit a response to the RFI without further clarification. PCM will return requests to the Contractor that do not have adequate information. Resubmit a new RFI when adequate information is available. Contractor is responsible for all delays resulting from RFIs returned for additional information.

2. Do not use RFIs to confirm decisions or directives. Use the Project Decision Register to document decisions or directives in accordance with Paragraph 1.01.C.

3. Response to an RFI is given to provide additional information, interpretation, or clarification of the requirements of the Contract Documents, and does not modify the Contract Documents. PCM will initiate a Request for a Change Proposal (RCP) per Paragraph 1.04 if the RFI indicates that a contract modification is required.

4. Pay for abuse of RFIs. Abuse of RFIs is defined as multiple reviews of RFIs due to inadequate information, use of "confirmation" RFIs or RFIs for which the answer is clearly shown in the Contract Documents. Cost for additional review time will be billed to the Owner by the Design Professional for the actual hours required for the review of RFIs by Design Professional at the rates listed in Section 00800 Supplementary Conditions. A Set-off will be included in the Application for Payment for this cost.

E. Notifications

1. Submit Notifications by Contractor (NBC) using the form provided by the PCM to make notifications required by the Contract Documents to the PCM. Provide notification a minimum of 2 weeks in advance in order to allow OPT time to respond appropriately to the notification, unless a shorter time is agreed to by the PCM.

2. PCM may submit Notifications to Contractor (NTC) to provide information or direction related to the administration of the construction contractor. Provide a response to the NTC as directed by the PCM.

F. Record Data

1. Submit information required by the Contract Documents that is not related to a product as Record Data using the form provided by the Construction Manager.

G. Plans of Action

1. Submit a Plan of Action prior to shutting down any essential services or utility. Describe the following in the Plan of Action:
    a. Scheduled dates for construction;
    b. Work to be performed;
    c. Utilities, piping, or services affected;
    d. Length of time the service or utility will be disturbed;
    e. Procedures to be used to carry out the Work;
    f. Contingency plans for emergencies;
    g. List of manpower, equipment, and ancillary supplies;
    h. Backups for key pieces of equipment and key personnel; and
    i. Contingency plan that will be used if the original schedule cannot be met.
2. Submit the Plan of Action for approval 30 day prior to beginning the Work and conduct a pre-action conference with OPT members involved in the process prior to implementing the Plan of Action.

1.03 PRODUCT INFORMATION

A. Schedule of Submittals

1. Provide a Schedule of Submittals to list the documents that are to be submitted, the dates on which product submittals are to be sent to the PCM for review and proposed dates that product submittals must be returned to comply with the project schedule.
2. Incorporate the dates for processing product submittals into the Progress Schedule and provide submittals in accordance with the schedule so construction of the Project is not delayed. Allow a reasonable time for the review of submittals when preparing the progress schedule. Assume a 21-day review cycle for each submittal unless a longer period is indicated in the Contract Documents or agreed to by PCM and Contractor.
3. Provide the following product information submittals:

Specification Section	Description	Submittal Required		
		Shop Drawings	Product Data	O&M Manual
03 41 19	Precast Reinforced Concrete Valve Vault	X		
26 05 00	Common Work Results for Electrical	X		X
26 05 19	Low Voltage Wire, Ground Wire, Terminations and Connections	X		
26 05 26	Grounding & Bonding for Electrical Systems		X	
26 05 33.01	Conduits	X		
26 05 33.03	Outlet Boxes	X		

26 05 33.04	Pull and Junction Boxes with Sizing Calculations	X		
26 05 50	Heat Trace	X		X
26 05 53	Identification for Electrical Systems		X	
26 27 26	Wiring Devices	X		
26 42 13	Drawings Catalog Data for flanged gaskets, insulating sleeves and washers, anodes, test stations	X		
33 05 01.02	Mechanical joint connections	X		
33 05 01.02	Ductile Iron Pipe and Fittings	X		
33 05 01.09	PVC Pressure Pipe and Fittings	X		
33 12 16.21	Pressure Reducing Valves	X		X
40 05 43	Miscellaneous Valves	X		X
40 05 61	Gate Valves	X		X
40 05 73.13	Altitude Valve	X		X
40 90 00	Instrumentation and Control	X		X

B. Shop Drawings

1. Shop Drawings are required for those products that cannot adequately be described in the Contract Documents to allow fabrication, erection or installation of the product without additional detailed information from the Supplier.

2. Submit Shop Drawings as required by the Contract Documents and as reasonably requested by the OPT to:

   a. Provide a record of the products incorporated into the Project;

   b. Provide detailed information for the proposed products regarding their fabrication, installation, commissioning, and testing;

   c. Compare the proposed performance and features of the product with the specified features to determine that the products will, in general, conform to the Contract Documents; and

   d. Review required certifications, guarantees, warranties, and service agreements for compliance with the Contract Documents.

3. Submittals will be accepted only from the Contractor. Review and approve submittals prior to submitting them to the OPT for review. Submit legible, accurate, complete documents presented in a clear, easily understood manner. Submittals not meeting this criteria will be returned without review.

4. Demonstrate and certify that all Shop Drawings have been reviewed by the Contractor and are in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order or Contract Amendment when submitting Shop Drawings except for deviations specifically brought to the OPT's attention on an attached Shop Drawings Deviation Request form in accordance with Paragraph 1.03.A. Modifications to the Contract Documents can only be approved by Change Order or Field Order.

5. Furnish and install products that fully comply with the information included in the submittal. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the review of Shop Drawings.
6. Fabrication or installation of any products prior to the approval of Shop Drawings is done at the Contractor's risk. Products not meeting the requirements of Contract Documents are defective.
7. Payment will not be made for products for which submittals are required until the submittals have been received. Payment will not be made for products for which Shop Drawings are required until these are approved by the OPT.
8. Provide Shop Drawings using the following guidelines for Shop Drawings packages:
    a. Submit each specific product, class of material, or equipment system separately so these can be tracked and processed independently. Do not submit Shop Drawings for more than one system in the same Shop Drawing.
    b. Submit Shop Drawings that require coordination with other Shop Drawings at the same time. Shop Drawings requiring coordination with other Shop Drawings will not be reviewed until a complete package is submitted.
    c. Submit information for all the components and related equipment required for a complete and operational system in one Shop Drawing. Include electrical, mechanical, and other information required to indicate how the various components of the system function together as a system.
9. Provide a complete description of the material or equipment to be furnished, including:
    a. Type, dimensions, size, arrangement, model number, and operational parameters of the components;
    b. Weights, gauges, materials of construction, external connections, anchors, and supports required;
    c. Performance characteristics, capacities, engineering data, motor curves, and other information necessary to allow a complete evaluation of mechanical components;
    d. All applicable standards including ASTM or Federal specification numbers;
    e. Fabrication and installation drawings, setting diagrams, manufacturing instructions, templates, patterns, and coordination drawings;
    f. Wiring and piping diagrams and related controls;
    g. Mix designs for concrete, asphalt, or other materials proportioned for the Project; and
    h. Complete and accurate field measurements for products which must fit existing conditions. Indicate on the submittal that the measurements represent actual dimensions obtained at the Site.
10. Define abbreviations and symbols used in Shop Drawings. Use terms and symbols in Shop Drawings consistent with the Contract Documents. Provide a list of

abbreviations and their meaning as used in the Shop Drawings. Provide a legend for symbols used on Shop Drawings.

11. Mark Shop Drawings to reference:
    a. Related Specification sections;
    b. Drawing number and detail designation;
    c. Equipment designation or name;
    d. Schedule references;
    e. System into which the product is incorporated; and
    f. Location where the product is incorporated into the Project.
12. Markup Shop Drawings for review using directions provided by the PCM:
    a. Make comments and corrections in blue. Add explanatory comments to the markup. Add comments where selections or decisions by the Design Professional are required, but such selections do not constitute a deviation from the Contract Documents.
    b. Make comments in green that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Include explanatory comments in the Shop Drawing Deviation Request form.
    c. Redact or highlight items in black that are not being furnished when the Supplier's standard drawings or information sheets are provided so that only the products to be provided are in their original color.
    d. Mark dimensions with the prefix FD to indicate field verified dimensions on the Shop Drawings.
13. Provide all required special certifications, reports and other documentation with the Shop Drawings as specified in the individual Specification sections including:
    a. Certified Test Reports (CTR): A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the Specifications. This report is to demonstrate that the product when installed will meet the requirements of the Contract Documents and is part of the Shop Drawing. Field tests may be performed by the Owner to determine that in place materials or products meet the same quality as indicated in the CTR submitted as part of the Shop Drawing.
    b. Certificate of Local Field Service (CLS): A certified letter stating that field service is available from a factory or supplier approved service organization located within a 300-mile radius of the Site. Include names, addresses, and telephone numbers of approved service organizations with the certificate.
    c. Certificate of Adequacy of Design (CAD): A certified letter from the manufacturer of the equipment stating that the equipment has been designed to be structurally stable and to withstand all imposed loads without deformation, failure, or adverse effects to the performance and operational requirements of the unit. The letter shall state that mechanical and electrical components have been

adequately sized to be fully operational for the conditions specified or normally encountered by the product's intended use.

d. Certification of Applicator/Subcontractor (CSQ): A certified letter stating that the Applicator or Subcontractor proposed to perform a specified function is duly designated as factory authorized and trained for the application of the specified product.

14. Requests for Deviation

a. Bring deviations to the Shop Drawings to the attention of the OPT for approval by using the Shop Drawing Deviation Request form. Use a single line for each requested deviation so the Status and Action for each deviation can be determined for that requested deviation. If approval or rejection of a requested deviation will impact other requested deviation, then all related deviations should be included in that requested deviation line so the status and action can be determined on the requested deviation.

b. Requested deviations will be reviewed as possible modifications to the Contract Documents.

1) A requested deviation will be rejected as "Not Approved" if the requested deviation is unacceptable. Contractor is to revise and resubmit the Shop Drawing with corrections for approval.

2) A Field Order will be issued by the PCM for deviations approved by the OPT if the requested deviation is acceptable and if the requested deviation will not result in a change in Contract Price or Contract Time. Requested deviations from the Contract Documents may only be approved by Field Order.

3) A requested deviation will be rejected if the requested deviation is acceptable but the requested deviation will or should result in a change in Contract Price or Contract Time. Submit any requested deviation that requires a change in Contract Price or Contract Time as a Change Proposal for approval prior to resubmitting the Shop Drawing.

15. OPT Review

a. OPT's review and approval will be only to determine if the products describe in the Shop Drawing will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

b. OPT's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

c. OPT's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

d. Any marks made by the OPT do not constitute a blanket review of the submittal or relieve the Contractor from responsibility for errors or deviations from the Contract requirements. OPT will respond to Contractor's markups by either

making markups in red directly in the Shop Drawings file or by attaching a Submittal Review Comments form with review comments keyed to the drawings or Shop Drawing Deviation Request.

e. Shop Drawings that are reviewed will be returned with one or more of the following status designations:

   1) Approved - Shop Drawing is found to be acceptable as submitted.

   2) Approved as Noted - Shop Drawing is approved so long as corrections or notations made by OPT are incorporated into the Shop Drawing;

   3) Not Approved - Shop Drawing or products described are not acceptable; or

   4) Canceled - This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.

f. Shop Drawing will also be designated for one of the following actions:

   1) Documents Filed - Shop Drawing is acceptable without further action and has been filed as a record document;

   2) Cancelled - This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease; or

   3) Revise and resubmit - Submittal has deviations from the Contract Documents, significant errors, or is inadequate and must be revised and resubmitted for subsequent review.

g. Drawings with a significant or substantial number of markings by the Contractor or OPT may be given the status of Approved as Noted with the action Revise and Resubmit. These drawings are to be revised to provide a clean record of the submittal. Proceed with ordering products as the documents are revised.

h. Dimensions or other data that do not appear to conform to the Contract Documents will be marked as “At Variance With” (AVW) the Contract Documents or other information provided. The Contractor is to make revisions as appropriate to comply with Contract Documents.

16. Contractor is to resubmit the Shop Drawing until it is acceptable and marked Approved or Approved as Noted and is assigned an action of “Documents Filed” or “Cancelled” per Paragraph 1.03.A.16.f that indicates that the Shop Drawing process is closed.

17. Information that is submitted as a Shop Drawings that should be submitted as Product Data or other type of submittal, or is not required may be returned without review, or may be deleted. No further action is required and the Shop Drawing process for this document will be closed.

18. Resubmission Requirements - Make all corrections or changes in the submittals required by the OPT and resubmit to the PCM until approved. Revise initial drawings or data and resubmit as specified for the original submittal.

19. Pay for excessive review of Shop Drawings.

a. Excessive review of Shop Drawings is defined as any review required after the original review has been made and the first resubmittal has been checked to see that corrections have been made.

b. Review of Shop Drawings be an additional service requiring payment by the Contractor if the Contractor submits a substitution for a product for which a Shop Drawing or Sample has previously been approved, unless the need for such change is beyond the control of Contractor.

c. Cost for additional review time will be billed to the Owner by the Design Professional for the actual hours required for the review of Shop Drawings by Design Professional and in accordance with the rates listed in Section 00800 Supplementary Conditions.

d. A Set-off will be included in each Application for Payment to pay cost for the additional review submitted to the Owner on a monthly basis. The Set-off will be based on invoices submitted to Owner for these services.

e. Need for more than one resubmission or any other delay in obtaining Design Professional's approval of Shop Drawings will not entitle the Contractor to an adjustment in Contract Price or an extension of Contract Time.

C. Product Data

1. Submit Product Data as required by the Contract Documents and as reasonably requested by the OPT. Provide Product Data for all products unless a Shop Drawing or Operations and Maintenance manuals are required for the same item.

2. Submit Product Data to provide documents that allow the Owner to:

   a. Record the products incorporated into the Project for the Owner;

   b. Review detailed information about the products regarding their fabrication, installation, commissioning, and testing; and

   c. Provide replacement or repair of the products at some future date

3. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the receipt or cursory review of Product Data. Modifications can only be approved by Change Order or Field Order.

4. Product Data must meet all the requirement for Shop Drawing per Paragraph B.

5. Upload Product Data to the PMIS. PCM may take the following action in processing Product Data:

   a. File Product Data as received if the cursory review indicates that the document meets the requirements of Paragraph 1.02 Quality Assurance. Document will be given the status of "Documents Filed" and no further action is required on that Product Data.

   b. Reject the Product Data for one of the following reasons:

      1) The submittal requirements of the Contract Documents indicate that the document submitted as Product Data should have been submitted as a Shop Drawing. The submittal will be marked "Not Approved" and "Submit Shop Drawing". No further action is required on this document as Product Data

and the Product Data process will be closed. Resubmit the document as a Shop Drawing per Section 01302 Shop Drawings.

2) The cursory review indicates that the document does not meet the requirements of Paragraph 1.02 Quality Assurance. The Product Data will be marked “Not Approved” and “Revise and Resubmit”. Contractor is to resubmit the Product Data until it is acceptable and marked “Filed as Received”. When Product Data is filed, no further action is required and the Product Data process will be closed.

3) The Product Data is not required by the Contract Documents nor is applicable to the Project. The Product Data will be marked “Not Approved” and “Cancelled”. No further action is required and the Product Data process will be closed.

c. Contractor is to resubmit the Product Data until it is acceptable and marked "Filed as Received".

D. Warranties and Guarantees

1. Provide all required warranties, guarantees, and related documents with Shop Drawing or Product Data. The effective date of warranties and guarantees will be the date of acceptance of the Work by the Owner.

2. Identify all extended warranties which are defined as any guarantee of performance for the product or system beyond the one-year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a warranty bond for extended warranties if required by Specification sections.

3. Provide a table listing all equipment covered under the one-year correction period specified in the General Conditions and all products for which special or extended warranties or guarantees are provided. Index the log by Specification section number on forms provided by the PCM. Provide a copy of specific warranties or guarantees under a tab indexed to the log. Each warranty or guarantee document is to include:

a. A description of the product or Work item;

b. The firm name, with the name of the principal, address, and telephone number;

c. Signature of the respective Supplier or Subcontractor to acknowledge existence of the warranty obligation for extended warranties and service agreements;

d. Scope of warranty, bond or services agreement;

e. Indicate the start date for the correction period specified in the General Conditions for each product and the date on which the specified correction period expires;

f. Indicate the start date for extended warranties for each product and the date on which the specified extended warranties period expires;

g. Start date, warranty or guarantee period, and expiration date for each warranty bond and service agreement;

h. Procedures to be followed in the event of a failure; and

i. Specific instances that might invalidate the warranty or bond.

4. Submit copies of the documents through the PMIS within 10 days after equipment or components are placed in service.

1.04 RECORD DOCUMENTS

A. Maintain one complete set of printed Record Documents at the Site including:

1. Drawings;
2. Specifications;
3. Addenda;
4. Modifications;
5. Product Data and approved Shop Drawings;
6. Construction photographs;
7. Test Reports;
8. Clarifications and other information provided in Request for Information responses; and
9. Reference standards.

B. Store printed Record Documents and Samples in the Contractor's field office.

1. Record Documents are to remain separate from documents used for construction.
2. Provide files and racks for the storage of Record Documents.
3. Provide a secure storage space for the storage of Samples.
4. Maintain Record Documents in clean, dry, legible conditions, and in good order.
5. Make Record Documents and Samples available at all times for inspection by the OPT.

C. Maintain an electronic record of Specifications and Addenda to identify products provided in PDF format.

1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
2. Reference Modifications by type and number for all changes.

D. Maintain an electronic record of Drawings in PDF format.

1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
2. Reference Modifications by type and number for all changes.
3. Record information as construction is being performed. Do not conceal any Work until the required information is recorded.
4. Mark drawings to record actual construction.
5. Depths of various elements of the foundation in relation to finished first floor datum or the top of walls.

6. Horizontal and vertical locations of underground utilities and appurtenances constructed, and existing utilities encountered during construction.
7. Location of utilities and appurtenances concealed in the Work. Refer measurements to permanent structures on the surface. Include the following equipment:
    a. Piping;
    b. Ductwork;
    c. Equipment and control devices requiring periodic maintenance or repair;
    d. Valves, unions, traps, and tanks;
    e. Services entrance;
    f. Feeders; and
    g. Outlets.
8. Changes of dimension and detail.
9. Changes by Modifications.
10. Information in Requests for Information or included in the Decision Register.
11. Details not on the original Drawings. Include field verified dimensions and clarifications, interpretations, and additional information issued in response to Requests for Information.

E. Mark Drawings with the following colors:
1. Highlight references to other documents, including Modifications in blue.
2. Highlight mark ups for new or revised Work (lines added) in yellow.
3. Highlight items deleted or not installed (lines to be removed) in red.
4. Highlight items constructed per the Contract Documents in green.

F. Submit Record Documents to Construction Manager for review and acceptance 30 days prior to Final Completion of the Project.

G. Applications for Payment will not be recommended for payment if Record Documents are found to be incomplete or not in order. Final payment will not be recommended without complete Record Documents.

1.05 CHANGE MANAGEMENT

A. Requests for a Change Proposal
1. PCM will initiate Modifications by issuing a Request for a Change Proposal.

B. Change Proposals
1. Submit a Change Proposal to the PCM for Contractor initiated changes in the Contract Documents or in response to a Request for a Change Proposal. Submit the Change Proposal through the PMIS attaching forms required by the PCM.
2. Provide a complete description of the proposed Modification if the Change Proposal is Contractor initiated. Provide a complete description of any proposed changes to the

PCM's description of Modifications. Explain why the Modification is requested if not in response to a Request for a Change Proposal.

3. Provide a detailed breakdown of the proposed cost that complies with Article 13 of the General Conditions for Cost of Work if the Modification requires a change in Contract Price. The itemized breakdown is to be submitted on forms provided by the PCM and include:
    a. List of materials and equipment to be installed;
    b. Man-hours for labor by classification and billing rates by individual or classification of employee;
    c. Equipment used in construction;
    d. Consumable supplies, fuels, and materials;
    e. Subcontractor or Supplier costs;
    f. Royalties and patent fees;
    g. Taxes;
    h. Bonds and insurance;
    i. Overhead and profit;
    j. Field office costs; and
    k. Other items of cost.
4. Provide a revised schedule. Show the effect of the change on the Project Schedule and the Contract Times.
5. Submit a Change Proposal to the PCM to request a Field Order if there is no proposed changed in Contract Price or Contract Times.
6. A Change Proposal is required for all substitutions or deviations from the Contract Documents, other than those requested a part of a Shop Drawings submitted in accordance with Paragraph 1.02. B.15.

C. PCM will evaluate the request for a Modification.
    1. PCM will issue a Modification per the General Conditions if the Change Proposal is acceptable to the Owner. PCM will issue a Change Order or Contract Amendment for any changes in Contract Price or Contract Times.
    2. The Contractor may be informed that the Request for a Change Proposal is not approved, and construction is to proceed in accordance with the Contract Documents.

D. Substitutions
    1. Substitutions are defined as any product that the Contractor proposes to provide for the Project in lieu of the specified product. Submit a Change Proposal per Paragraph 1.04.B along with a Shop Drawing as required by Paragraph 1.03.A.
    2. Prove that the product is acceptable as a substitute. It is not the Design Professional's responsibility to prove the product is not acceptable as a substitute.

1.06 COST MANAGEMENT

A. The Contract Price is to include all costs for constructing the Project including:

1. All home office overhead costs and expenses, including profit made directly or indirectly for the Project;

2. Bonds and insurance;

3. Permits, licenses, and taxes;

4. Contract Administration;

5. Correcting defective Work;

6. Maintenance of Project until transferred to Owner;

7. Cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price.

B. Submit a detailed Schedule of Values for the Work at least 10 days prior to submitting the first Application for Payment using the form provided by the PCM.

1. These line items may be used to establish the value of Work to be added or deleted from the Project.

2. The sum of all values listed in the schedule must equal the total Contract Price.

3. Subdivide each line item, where appropriate, in the Schedule of Values into two payment components. The first component is the direct cost for products, materials and equipment permanently incorporated into the Project. The second component is all other cost associated with the item in the Agreement. The sum of the two components must equal the value of the line item in the Schedule of Values.

4. Do not alter the Schedule of Values without approval of the PCM.

5. Provide written approval of the surety company providing performance and payment bonds for the Schedule of Values, Application for Payment form, and method of payment prior to submitting the first Application for Payment. Submit approval using the Consent of Surety Company to Payment Procedures form provided by the PCM. Payment will not be made without this approval.

C. Schedule of Anticipated Payments

1. Submit a schedule of the anticipated Payment Applications showing the application numbers, submission dates and the anticipated amount to be requested.

2. Update the schedule of anticipated payments as necessary to provide a reasonably accurate indication of the funds required to make payments each month to the Contractor for Work performed.

D. Basis for Payments

1. Lump Sum Items:

a. Payment will be made for the earned value of Work completed during the payment period expressed as a percentage of Work completed for each line item during the payment period per the Contract Documents.

b. Payment amount is the value of Work completed per the Contract Documents multiplied by the percentage of Work completed.

c. Payment for lump sum items divided into an estimated number of units to determine earned value per Paragraph 1.05.B.2 will be made for the measured number of units.

d. Payment for stored materials and equipment will be made per Paragraph 1.05.E.

2. Unit Price Items:

a. Payment will be made for the actual quantity of Work completed during the payment period and for materials and equipment stored during the payment period per the Contract Documents. Payment amount is the Work quantity measured per the Contract Documents multiplied by the unit prices for that line item in the Agreement.

b. Measure the Work described in the Agreement for payment. Payment will be made only for the actual measured and/or computed length, area, solid contents, number and weight, unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside finished dimensions shown in the Contract Documents. Include cost for waste, overages and tolerances in the Unit Price for that line item.

c. Payment for stored materials and equipment will be made per Paragraph 1.05.E.

E. Payment for Stored Materials And Equipment.

1. Payment will be made for materials and equipment stored properly at the Site, provided that the materials and equipment are complete and ready for installation.

2. Payment for materials and equipment shown in the Payment Application on Attachment A or B will be made for the invoice amount, up to the value shown in the Schedule of Values for that line item. Costs for material and equipment in excess of the value shown in the Schedule of Values cannot be added to other line items.

3. Payment will be made in full for the value shown in the line item for products and materials if invoices for materials and equipment are less than the amount shown in the line item and it can be demonstrated that no additional materials or equipment are required to complete Work described in that item.

4. Provide invoices at the time materials are included on Attachment E - Tabulation of Valued for Materials and Equipment. Include invoice numbers on Attachment E so that a comparison can be made between invoices and amounts included on Attachment E.

5. Payment for materials and equipment does not constitute acceptance of the product.

6. The Work covered by progress payments becomes the property of the Owner at the time of payment. The Contractor's obligations regarding proper care and maintenance, insurance and other requirements are not changed by this transfer of ownership until accepted in accordance with the General Conditions.

F. Retainage and Set-Offs

1. Reduce payments for set offs per the General Conditions. Include Attachment C—Set offs in the Application for Payment.

2. Retainage will be withheld from each Application for Payment per the Agreement and as calculated on Attachment D–Retainage Calculation. Retainage may be released per the Agreement.

G. Procedures for Submitting Application for Payment

1. Submit a draft Application for Payment to the PCM at the end of the payment period established in the Agreement using the PMIS.

    a. Number each application sequentially and include the dates for the application period.

    b. Show the total amounts for earned value of original Contract performed, earned value for Work on approved Contract Amendments, Work Change Directives and Change Orders, and Set-offs. Show total amounts that correspond to totals indicated on the attached tabulation for each.

    c. Include Attachment A—Tabulation of Earned Value to show the earned value on each line item in the Schedule of Values for Work shown in the original Contract and for approved Modifications. Add items to Attachment A as Modifications are approved. Modifications must be approved before payment can be made on Modifications items.

    d. Include Attachment B—Tabulation of Values for Materials and Equipment to allow tracking of invoices used to support amounts requested as materials in Attachment A. Enter materials to show the amount of the invoice assigned to each item in Attachment A if an invoice includes materials used on several line items.

    e. Include Attachment C—Summary of Set offs to document Set offs required per the Contract Documents.

    f. f. Include Attachment D—Retainage Calculation worksheet to show method for calculating retainage.

    g. Include Attachment E—EVA Calculation to compare planned earned value to actual earned value for the project

    h. Complete the certification stating that all Work, including materials and equipment, covered by this Application for Payment have been completed or delivered and stored in accordance with the Contract Documents, that all amounts have been paid for Work, materials, and equipment for which previous Payment has been made by the Owner, and that the current payment amount shown in this Application for Payment is now due.

    i. Provide the Application for Payment in Excel and PDF formats. Contractor is responsible for checking equations and calculations each month to determine that equations incorporated into the spreadsheet have not been altered. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 papers.

2. Review the draft Application for Payment with the PCM to determine concurrence with:

    a. The earned value for each lump sum item including the value of properly stored and documented materials and equipment for each item in the original Contract;

    b. The quantity of Work completed for each unit price item;

    c. Set offs included in the Application for Payment;

    d. Values requested for stored materials and equipment consistent with invoices for materials and equipment; and

    e. Retainage withheld.

3. PCM will submit Application for Payment for final approval and payment through the PMIS once agreement on the Application for Payment is reached with the Contractor.

H. Final Application for Payment

1. Final payment requires additional procedures and documentation per Paragraph 1.08.

2. The final Application for Payment is to incorporate adjustments to the Contract Price including those for:

    a. Approved Change Orders,

    b. Allowances not previously adjusted by Change Order,

    c. Deductions for Defective Work that has been accepted by the Owner,

    d. Penalties and bonuses,

    e. Deductions for liquidated damages,

    f. Deduction for all final Set-offs, and

    g. Other adjustments if needed.

3. PCM will prepare a final Change Order reflecting the approved adjustments to the Contract Price which have not been covered by previously approved Change Orders and if necessary, reconcile estimate unit price quantities with actual quantities.

1.07 TIME MANAGEMENT

A. Schedule Requirements

1. Prepare and submit a Progress Schedule for the Work in adequate detail to allow OPT to determine that adequate planning has been performed to coordinate the Work of the Contractor, Subcontractors and Suppliers and assist in evaluating proposed changes to the Contract Times and Project schedule.

    a. Submit a preliminary progress schedule within 10 days after the Notice of Award. The preliminary schedule is to be available at the pre-construction conference.

    b. Submit a detailed progress schedule at least 10 days prior to the first payment request.

2. Provide the schedule which includes all Work to be performed on the Project. It is intended that the schedule accomplish the following:

a. Give early warning of delays in time for correction.

b. Provide detailed plans for the execution of the Work in the form of activities and events in sequential relationships.

c. Permit schedules to be revised when the existing schedule is not achievable.

3. Provide a time scaled horizontal bar chart which indicates graphically the Work scheduled at any time during the Project. The chart is to indicate:

a. Complete sequence of construction by activity;

b. Chronological order of the start of each item of Work;

c. The activity start and stop dates, duration, and successor and predecessor relationships for each activity; and

d. A critical path. Where several subsystems each have a critical path, the subsystem with the longest time of completion is the critical path and float time is to be assigned to other subsystems.

4. Incorporate the dates for submission and review of Shop Drawings. Allow a reasonable time to review Shop Drawing, taking into consideration the size and complexity of the Shop Drawing, other submittals being processed, and other factors that may affect review time. Allow time for re-submission of each Shop Drawing. Contractor is responsible for delays associated with additional time required to review incomplete or erroneous Shop Drawings and for time lost when Shop Drawings are submitted for products that do not meet specification requirements.

5. Provide the schedule to the PCM in a PDF file and in the schedules native format.

B. Schedule Revisions

1. Revise the schedule if it appears that the schedule no longer represents the actual progress of the Work.

2. Submit a Plan of Action for schedule recovery if the schedule indicates that the Project is more than 30 days behind schedule. The report is to report the number of days the Project is behind schedule and provide a narrative description of the steps to be taken to bring the Project back on schedule. Submit a revised schedule based on the proposed Plan of Action showing the anticipated time required complete the Project within the Contract Times.

3. Revise the schedule to indicate any adjustments in Contract Times approved by Modification. Include a revised schedule with Change Proposals if a change in Contract Times is requested. OPT will deem any Change Proposal that does not have a revised schedule and request for a change in Contract Time as having no impact on the ability of the Contractor to complete the Project within the Contract Times.

4. Updating the project schedule to reflect actual progress is not considered a revision to the project schedule.

5. The Application for Payment may not be recommended for payment if a revised schedule is required with the report indicating the Contractor's plan for bringing the Project back on schedule.

C. Use of Schedule Float Time

1. Define float time as the amount of time between the earliest start date and the latest start date of a chain of activities on the construction schedule.
2. Float time is not for the exclusive use or benefit of either the Contractor or Owner.
3. Contract Times cannot be changed by the submission of a schedule. Contract Times can only be modified by a Change Order or Contract Amendment.
4. Schedule completion date must be the same as the Contract completion date. Time between the end of construction and the Contract completion date is float time.

1.08 QUALITY MANAGEMENT

A. Contractor's Responsibilities

1. Review the Owner's Quality Management Plan to determine which quality management activities will be provided by the Owner and those that are to be provided by the Contractor.
2. Contractor is to determine additional testing or inspections that may be required to implement the Contractor's Quality Control Plan. Include cost for additional testing and inspections required to meet Contractors quality control obligations, including the cost for correcting Defective Work in the Contract Price.
3. Implement the Contractor's Quality Control Plan to control the quality of the Work and verify that the Work meets the standards of quality established in the Contract Documents. Provide information to Owner on quality control, verification, and acceptance testing procedures for each specific test. Include:
    a. Name of tests to be performed,
    b. Specification paragraph requiring test,
    c. Parameters of Work to be tested,
    d. Test frequency,
    e. Persons responsible for each test, and
    f. Applicable industry testing standards and laboratory facilities to be used for the test;
4. Perform tests as indicated in this and other sections of the Specifications. Technical Specifications govern if any testing and inspection requirements of this section conflict with the testing and inspection requirements of the technical Specifications.
5. Perform testing per recognized test procedures as listed in the various sections of the Specifications, standards of the State Department of Highways and Public Transportation, American Society of Testing Materials (ASTM), or other testing associations. Perform tests in accordance with published procedures for testing issued by these organizations.
6. Provide and pay for the services of an approved professional materials testing laboratory acceptable to the Owner to provide testing that demonstrates that products proposed in Shop Drawings and Product Data for the Project fully comply with the Contract Documents. Inspect products to be incorporated into the Project. Ensure that Suppliers have adequate quality control systems to ensure that products

that comply with the Contract Documents are provided. Provide Certified Test Reports for inspections and testing through the PMIS to report the results of inspections and tests.

7. Integrate quality control measures into construction activities to produce Work which meets quality expectations of the Contract Documents. Inspect the Work of the Contractor, Subcontractors and Suppliers. Correct Defective Work.

8. All verification testing is to be observed by the PCM or designated representative. Notify the PCM and testing laboratories prior to the time that testing is required, providing adequate lead time to allow arrangements for inspections or testing to be made. Give the PCM adequate notice before proceeding with Work that would interfere with inspections or testing.

9. Cooperate fully with the performance of sampling, inspection, and testing. Provide personnel to assist with sampling or to assist in making inspections and field tests. Obtain and handle Samples for testing at the Site or at the production source of the product to be tested. Provide adequate quantities of representative products to be tested to the laboratory at the designated locations. Handle and protect test specimens of products and construction materials at the Site in accordance with recognized test procedures. Provide facilities for storing, curing, processing test specimens as required by test standard to maintain the integrity of samples.

10. Do not proceed with any Work that would impact the ability to correct defects or Work that would require subsequent removal to correct defects until testing services have been performed and results of tests indicate that the Work is acceptable;

11. Provide safe access for all inspection and testing activities, including those to be conducted as part of the Owner's Quality Management Program.

12. Provide test reports to the OPT through the PMIS.

13. Owner will withhold payment for Defective Work, or Work that has not been tested or inspected in accordance with the Contractor's Quality Control Plan, the Owner's Quality Control Program, or the Contract documents.

B. Owner’s Quality Management Activities

1. Owner will perform its own quality assurance tests independent of the Contractor’s Quality Control Program. Quality assurance testing performed by the Owner will be paid for by the Owner, except for verification testing per Paragraph 1.07 F.

2. Quality assurance activities of the OPT, through their own forces or through contracts with consultants and materials testing laboratories are for the purpose of monitoring the results of the Contractor’s Work to see that it is in compliance with the requirements of the Contract Documents. Quality assurance activities or non-performance of quality assurance activities by the OPT:

   a. Do not relieve the Contractor of its responsibility to provide Work or furnish products that conform with the requirements of the Contract Documents;

   b. Do not relieve the Contractor of its responsibility for providing adequate quality control measures;

c. Do not relieve the Contractor of its responsibility for damage to or loss of Work or products before Owner's acceptance;

d. Do not constitute or imply Owner's acceptance; and

e. Do not affect the continuing rights of the Owner after OPT's acceptance of the completed Work.

3. Work is subject to Owner's quality assurance observations or testing at any time. Products which have been tested or inspected and approved by OPT at a supply source or staging area may be inspected or tested again by the OPT before, during or after incorporation into the Work and rejected if products do not comply with the Contract Documents.

C. Testing Laboratories

1. Provide testing laboratories that comply with the American Council of Independent Laboratories (ACIL) "Recommended Requirements for Independent Laboratory Qualifications."

2. The testing laboratory representatives are limited to providing testing services and interpreting the results of the test performed.

3. The testing laboratory is not authorized to:

a. Alter the requirements of the Contract Documents;

b. Accept or reject any portion of the Work;

c. Perform any of the duties of the Contractor; or

d. Direct or stop the Work.

D. Test Reports

1. Certified test reports are to be prepared for all tests. Tests performed by testing laboratories may be submitted on their standard test report forms if acceptable to the OPT. These reports must include the following:

a. Name of the Owner, project title and number and Contractor;

b. Name of the laboratory, address, and telephone number;

c. Name and signature of the laboratory personnel performing the test;

d. Description of the product being sampled or tested;

e. Date and time of sampling, inspection, and testing;

f. Date the report was issued;

g. Description of the test performed;

h. Weather conditions and temperature at time of test or sampling;

i. Location at the Site or structure where the test was taken;

j. Standard or test procedure used in making the test;

k. A description of the results of the test;

l. Statement of compliance or non-compliance with the Contract Documents; and

m. Interpretations of test results, if appropriate.

2. Submit reports on tests performed by Contractor, Subcontractors or Suppliers on the forms provided by the PCM. OPT will prepare test reports on test performed by the OPT.

3. Upload test reports to the PMIS within 24 hours of completing the test. Flag tests reports with results that do not comply with Contract Documents for immediate attention.

4. Payment for Work may be withheld until test reports indicate that the Work is not Defective.

E. Contractor's Use of Owner's Test Reports

1. Owner has prepared a Quality Management Plan that describes, in general, the Owner's anticipated quality assurance testing program for this Project. This plan outlines only the testing in general terms and may not reflect actual testing. Actual testing will depend on the Contractors means, methods and procedures of construction which will not be known until the Contractor begins Work and submits their own Quality Control Plan for review. There is no guarantee that all testing will be performed.

2. Contractor will receive copies of all test reports documenting Owner's quality assurance activities. Contractor is entitled to rely on the accuracy of these tests results and use these as part of their quality control efforts.

3. Contractor may submit a Change Proposal if Owner's quality assurance testing program deviates significantly from the Owner's Quality Management Plan, and Contractor can demonstrate that additional cost was incurred to implementing the Contractor's Quality Control Plan resulting from these deviations.

F. Defective Work

1. Document Defective Work though certified test reports and Defective Work Notices. Work performed that is connected or adjacent to Defective Work or Work that would have to be removed to correct Defective Work is also considered to be Defective.

2. No payment will be made for Defective Work. Remove Work from the Application for Payment if Work paid for on a previous Application for Payment is found to be Defective.

3. Immediately correct any Defective Work or notify the PCM why the Work is not to be corrected immediately and when corrective action will be completed.

4. Contractor is responsible for all cost with replacing any acceptable Work that must be removed, or might be damaged by corrective actions.

5. 5. Document that corrective actions have been taken to correct any defects and that corrected Work complies with the Contract Documents. Provide verification testing on Work performed to correct Defective Work to demonstrate that the Work complies with the Contract Documents.

a. Pay for verification testing. Owner may perform verification testing as part of their Quality Management Program and impose a Set-off to recover the cost for this testing.

b. Conduct the same tests or inspections used to determine that the original Work was Defective. Different tests or methods may be used if approved by the OPT.

6. Implement countermeasures to prevent future Defective Work.

1.09 EXECUTION AND CLOSEOUT REQUIREMENTS

A. Substantial Completion

1. Work must be fully functional and able to operate in accordance with the Contract Documents without special or extraordinary efforts on the part of the Owner for the Project or a designated portion of the Work to be substantially complete per the General Conditions.

2. Conduct inspections with Superintendent, Subcontractors and Suppliers for the Work or a designated portion of the Work prior to calling for a Substantial Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the project to qualify for Substantial Completion. Review the list with the PCM or the designated member of the OPT. The PCM or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor's responsibility to create and manage this list of deficiencies until corrections are made.

3. Correct the identified deficiencies prior to calling for a Substantial Completion inspection.

4. Notify the PCM that the Work or a designated portion of the Work is substantially complete per the General Conditions. OPT will visit the Site to observe the Work within a reasonable time after the Notification by Contractor is received to determine the status of the Project.

5. PCM will notify the Contractor that additional Work must be performed before the Project will be substantially complete or issue a Certificate of Substantial Completion.

6. PCM will notify the Contractor of items that must be completed before the Project will be considered substantially complete. Review the list and notify the PCM of any objections to items on the list within 10 days after receiving the Certificate of Substantial Completion.

7. Correct the noted deficiencies in the Work. Notify the PCM when the noted deficiencies in the Work have been completed.

8. OPT will visit the Site to observe the Work within a reasonable time after the Notification by Contractor is received to determine that noted deficiencies in the Work have been corrected or completed.

9. PCM will issue a Certificate of Substantial Completion to the Contractor when the OPT considers the Project to be substantially complete.

B. Final Inspection

1. The Project will be ready for Final Completion when the Work has been completed in accordance with the Contract Documents and equipment and systems have been tested per the Contract Documents and are fully operational.

2. Provide the following acceptable Project closeout documentation / items:

a. Product information including Shop Drawings, Product Data, Warranties and other product information required by the Contract Documents.

b. Record Documents.

c. Specified spare parts and special tools.

d. Certificates of Occupancy, operating certificates, or other similar releases required to allow the Owner unrestricted use of the Work and access to services and utilities.

e. Evidence of continuing insurance and bond coverage as required by the Contract Documents.

f. Final documentation that all outstanding Modifications and Claims (other than those listed on the Certificate of Final Completion) have been processed and are ready for incorporation into the final Application for Payment.

3. Conduct inspections with Superintendent, Subcontractors and Suppliers prior to calling for a Final Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the project to qualify for the Final Completion inspection. Review the list with the PCM or the designated member of the OPT. The PCM or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor's responsibility to create and manage this list of deficiencies until corrections are made.

4. Identify, punch list and correct deficiencies prior to calling for a Final Completion inspection. The Project at the call for Final Completion represents the Contractor's interpretation of a project completed in conformance with the Contract Documents and reflects the Contractor's representation of a quality project meeting the Owner's expectations. The project should not include any deficiencies that the Contractor would reject if they were the Project owner.

5. OPT will visit the site to determine if the Project is complete and ready for Final Payment within a reasonable time after Notification by Contractor is received.

6. PCM will notify the Contractor of Defective Work or Issue a Certificate of Final Completion.

7. Take immediate steps to correct Defective Work. Notify the PCM when Defective Work has corrected. OPT will visit the site to determine if the Project is complete and the Work is acceptable. PCM will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.

8. PCM will issue a Certificate of Final Completion to the Contractor when the OPT considers the Project to be finally complete.

9. Submit the request for final payment with closeout submittals described in Paragraph 15.06 of the General Conditions.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

DIVISION 03

CONCRETE

03 41 19 PRECAST REINFORCED CONCRETE VALVE VAULT

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish all labor, materials, equipment, incidentals and transportation necessary for placing precast reinforced concrete valve vault.

1.02 QUALITY ASSURANCE

A. Design Criteria:

1. Precast reinforced concrete valve vault shall conform:

a. To the requirements of ASTM C857 and C858 for underground precast concrete utility structures.

b. Be designed for the specific site conditions and construction document requirements.

c. Be designed to resist buoyant forces due saturated soil.

2. Wall and slab minimum thicknesses shall be as calculated to resist design forces, but shall not be less than that required for: manufacture and handling

B. Test Requirements:

1. For testing of precast (machine-made) valve vaults, a minimum of four test cylinders for design compressive strength shall be made for each day's production run of each size and class of culvert section. Strength tests for each production run will be based on the average strength of two cylinders which may be tested any time after completion of the specified curing period. When design strength is attained on the initial test, further tests on that run will not be required. Should the initial test fail to meet the design strength, subsequent tests shall be made at 28 days unless additional test cylinders were made during production of that run. Failure to attain design compression strength by the 28-day test will result in rejection of the run represented by the test. Equipment required for testing for precast (machine-made) valve vaults shall be furnished by the fabricator. Cylinders for compressive strength tests shall be made in accordance with ASTM C31.

C. Permissible Variations:

1. Tolerances for precast sections shall conform to ASTM C858.

a. Deviations from the above tolerances will be acceptable if the sections can be fitted at the plant or job site and it is determined that an acceptable joint can be made. For this condition an acceptable joint is:

1). When two sections are fitted together on a flat surface, in proper alignment and in the position they will be installed, the longitudinal opening at any point shall not exceed 1 inch. Sections fitted together at the plant and accepted in this manner shall be match-marked for installation.

D. Inspection:

1. The quality of materials, the process of manufacture, and the finished valve vault shall be subject to inspection and approval by the Owner or an authorized representative at the manufacturing plant. In addition, the valve vault shall be subject to further inspection by the Owner at the Project Site prior to and during installation.

E. Cause for Rejection:

1. The valve vault shall be subject to rejection on account of failure to conform to any of the specification requirements. Individual sections of valve vault may be rejected because of the following:

a. Fractures or cracks in the vault.

b. Defects that indicate imperfect proportioning, mixing and molding.

c. Surface defects indicating honeycombed or open texture.

d. Damaged ends, where such damage would prevent making a structurally sound and water tight joint.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 “Contract Administration” and shall include:

1. Manufacturer's product data sheets.

2. Concrete mix and test results.

1.04 STANDARDS

A. The applicable provisions of the following standards shall apply as if written here in their entirety:

1. American Society of Testing and Materials (ASTM) Standards:

ASTM C857	Standard Practice for Minimum Structural Design Loading for Underground Precast Concrete Utility Structures
ASTM C858	Standard Specification for Underground Precast Concrete Utility Structures
ASTM C31	Standard Practice for Making and Curing Concrete Test Specimens in the Field

2. American Association of State Highway and Transportation Officials (AASHTO) Standards:

AASHTO M198-08	Standard Specification for Joints for Concrete Pipe, Manholes, and Precast Box Sections using Preformed Flexible Joint Sealants

3. State Department of Highways and Public Transportation, Austin, Texas.

1.05 DELIVERY AND STORAGE

A. Coordinate delivery with installation where possible to avoid unnecessary handling and equipment movement. When stockpiling is required, storage shall be made as close as possible to the point of installation.

B. Store precast sections on level blocking in a manner acceptable to the Engineer. No load shall be placed upon them until design strength is reached and curing completed. Shipment of sections may be made when the design strength and curing requirements have been met.

C. Store flexible gasket materials not on the box section, and joint lubricating compounds in a cool dry place. Gaskets and preformed plastic materials for pipe joint construction shall be kept clean, away from oil, grease, excessive heat and out of the direct rays of the sun.

2.00 PRODUCTS

2.01 MIXES

A. Concrete: Mixed in a central batch plant or other approved batching facility from which the quality and uniformity of the concrete can be assured. Transit mixed concrete will not be acceptable. Concrete shall be 5000 psi minimum.

2.02 MANUFACTURED PRODUCTS

A. Valve Vault: Materials, manufacture and curing of precast reinforced concrete valve vault shall conform to ASTM C858. Vault shall be a precast concrete structure in accordance with the Drawings and Specifications, and shall be manufactured by Oldcastle Precast, 1100 Heritage Pkwy, Mansfield, TX 76063-2759, or approved equal.

B. Cold Applied Preformed Gaskets:

1. Cold applied preformed gaskets shall be suitable for sealing joints of tongue and groove concrete box sections. The gasket sealing the joint shall be produced from blends of refined hydrocarbon resins and plasticizing compounds reinforced with inert mineral filler and shall contain no solvents, irritating fumes or obnoxious odors. The gasket joint sealer shall not depend on oxidizing, evaporating, or chemical action for its adhesive or cohesive strength, and shall be supplied in extruded rope-form of suitable cross-section. The size of the gasket joint sealer shall be in accordance with the manufacturer's recommendations and sufficient to obtain the squeeze-out as described in Paragraph 3.02.

2. Gasket joint sealer shall be protected by a suitable removable two-piece wrapper. The two-piece wrapper shall be so designed that half may be removed longitudinally without disturbing the other half to facilitate application as noted below.

3. The chemical composition of the gasket joint sealing compound shall conform to the requirements of AASHTO M198-08 1, Type B, Flexible Plastic Gasket (Bitumen).

C. Workmanship and Finish: Valve Vault shall be substantially free from fractures, large or deep cracks and surface roughness. The ends of the valve vault shall be normal to the walls and centerline of the valve vault within the limits of Permissible Variations specified above. The vault exterior shall be coated with a bituminous coating for areas to be install below grade.

D. Markings: The following information shall be clearly marked on each section. Markings shall be indented on the valve vault or painted thereon with waterproof paint.

1. The load rating and ASTM Designation No. of the valve vault.
2. The date of manufacture.
3. The name or trade name of the manufacturer.

3.00 EXECUTION

3.01 EXCAVATION AND EMBEDMENT

A. Excavation and embedment shall conform to the requirements in Section 31 23 10 "Structural Excavation and Backfill."

3.02 INSTALLATION

A. Laying:

1. Valve vault sections shall be installed such that the bottom section(s) shall be full sections. Partial sections, if necessary, shall be utilized for the top most section only. Valve vault cover shall be separate from the vault walls.

B. Jointing:

1. Joints using cold applied preformed plastic gaskets shall be made as follows:

a. A suitable primer of the type recommended by the manufacturer of the gasket joint sealer shall be brush- applied to the tongue and groove joint surfaces and the end surfaces and allowed to dry and harden. No primer shall be applied over mud, sand, dirt or sharp cement protrusions. Clean and dry the surface to the primed when primer is applied.

b. Before laying the valve vault in the trench, attach the plastic gasket sealer around the tapered tongue or tapered groove near the shoulder or hub of each joint. Remove the paper wrapper from one side only of the two-piece wrapper on the gasket and press firmly to the clean, dry valve vault joint surface. Do no remove the outside wrapper until immediately before pushing the valve vault into its final position.

c. When the tongue is correctly aligned with the flare of the groove, remove the outside wrapper on the gasket and pull or push home the valve vault with sufficient force and power (Back Hoe shovel, chain hoist, ratchet hoist or winch) to cause the evidence of squeeze-out of the gasket material on the side of outside around the complex valve vault joint perimeter.

d. When the atmospheric temperature is below 60 F, plastic joint seal gaskets shall either be stored in an area warmed to above 70 F, or artificially warmed to this temperature in a manner satisfactory to the Engineer. Apply gaskets to valve vault joints immediately prior to placing valve vault in trench, followed by connection to previously laid box section.

3.03 BACKFILL

A. After the valve vault has been placed, bedded and jointed as specified and approved by the Owner or his authorized representative, perform backfilling in accordance with Section 31 23 10 “Structural Excavation and Backfill.” Take special precautions in placing and compacting the backfill to avoid any movement of the valve vault or damage to the joints.

END OF SECTION

DIVISION 26

ELECTRICAL

26 05 00 COMMON WORK RESULTS FOR ELECTRICAL

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary for complete and operational electrical systems, as specified herein.

B. This Section, as well as Division 1, concerns all other Sections in Division 26, and shall be considered a part of each of those Sections as if written in their entirety.

1.02 QUALITY ASSURANCE

A. ELECTRICAL CONTRACTORS' QUALIFICATIONS

Use adequate numbers of skilled workmen, trained and experienced in their crafts, and who are familiar with the specifications and methods of performing the work in this Division. A licensed Journeyman shall be on site at all times when electrical work is being performed. Electrical work shall be performed under the direct supervision of a Master Electrician who holds a valid license in the State of Texas.

B. WORKMANSHIP

Work shall be performed in accordance with quality, commercial practices. The appearance of finished work shall be of equal importance with its operation. Materials and equipment shall be installed based upon the actual dimensions and conditions at the project site. Locations for materials or equipment requiring an exact fit shall be field measured.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 33 00, SUBMITTALS and shall include:

1. Component catalog number and manufacturing data sheet, indicating pertinent data and identifying each component by the item number and nomenclature as specified.
2. Component drawings showing dimensions, mounting, and external connection details in AutoCAD format.
3. Complete interconnection and point to point wiring diagrams in AutoCAD format for all field control and instrumentation wiring between instruments, electrical equipment, starters, VFDs, etc.. A hard copy shall be submitted to the Engineer for approval prior to the final AutoCAD files being submitted. Interconnection/wiring diagrams shall include cable numbers, wire tags, actual equipment terminal strip numbers, etc.
4. The Contractor shall provide a monthly report to the Owner/Engineer for review stating that the Master Electrician has been to the job site and thoroughly reviewed the work. The report shall be signed by the Master Electrician and include the data and time the Master Electrician was on site.
5. Operation and maintenance manuals shall contain the shop drawings, submittals, spare part lists, schematics, final wiring diagrams with any changes made during start-up and maintenance procedures.

6. The Contractor shall:
    a. Prepare, and keep up-to-date, the Record Drawings and detailed construction drawings;
    b. Record the exact locations of each of these differences, sizes and details of the Construction Work as executed, with cross-references to and other requirements on the Record Drawings.
    c. Keep the Record Drawings on the Work Site;
    d. Upon completion of the Work, or at such other time as may be determined by the Engineer, submit the Record Drawings and copies to the Owner's Representative in accordance with the Owner's Requirements.
    e. Underground Interference drawing showing all underground duct banks, ground rods, ground conductors, pipes, piers, vaults, manholes, pull boxes, etc. that clearly identifies the location and routing of these systems. All interferences shall be brought to the Engineer's attention.
    f. Provide revised drawings in AutoCAD noting any changes made to equipment during start-up.

1.04 STANDARDS

A. Electrical work shall be executed in accordance with local, State and national codes, ordinances and regulations which have jurisdiction or authority over the work. If the standards and codes conflict with each other, the most stringent shall apply. The applicable provisions of the following standard shall apply as if written here in their entirety:

National Electrical Manufacturer Association (NEMA)

American Society for Testing and Materials (ASTM)

National Fire Protection Association (NFPA)

National Electrical Safety Code (NESC)

Institute of Electrical and Electronic Engineers (IEEE)

National Electrical Code (NEC)

Underwriters' Laboratories (UL)

American National Standards Institute (ANSI)

Uniform Building Code (UBC)

Occupational Safety and Health Administration (OSHA)

Local utility companies

Local Electrical Ordinance

Rural Electrification Association (REA)

Insulated Power Cable Engineers Association (IPCEA)

International Electrical Testing Association (NETA)

National Electrical Contractors Association (NECA)

Association Edison Illuminating Companies (AEIC)

B. Electrical work shall be performed under the direct supervision of a Master Electrician who holds a valid license in the State of Texas.

C. Contractor shall submit the company names of the electrical contractor with the bid documents.

1.05 DELIVERY AND STORAGE

A. Follow the Manufacturer's directions for the delivery, storage and handling of equipment and materials. Tightly cover equipment and materials and protect it from dirt, water, chemical or mechanical injury and theft. Major electrical equipment shall be stored indoors and space heaters energized where applicable. Equipment that will be stored indoors for an extended period of time and that do not have space heaters shall have a 100 watt incandescent light placed in it and energized to eliminate the build-up of condensation in the equipment. Coordinate with equipment manufacturer for storage requirements. Damaged equipment shall not be acceptable. Upon installation, protect the materials until the work is completed and accepted by the Owner.

1.06 JOB CONDITIONS

A. Permits, licenses and inspections shall be secured and paid for as required by law for the completion of the work. Certificates of approval shall be secured, paid for, and delivered to the Owner before receiving the final acceptance of the work.

B. The location of materials, equipment, devices, and appliances indicated are approximate and subject to revisions at the time the work is installed. Final location shall be as proposed by the Contractor and approved by the Engineer.

C. Should project conditions require any rearrangement of work, or if equipment or accessories can be installed to a better advantage than the general arrangement of work on the plans, the Contractor shall before proceeding with the work prepare and submit plans of the proposed rearrangement for the Engineer's review and approval.

D. Motor Horsepower ratings identified are anticipated ratings. If the actual equipment is a different size, the contractor shall provide the appropriate wiring, conduit, over current protection, starters and accessories for a complete and working system at no cost to the owner.

E. All enclosures for equipment unless specifically identified otherwise shall be NEMA 4X, 304 stainless steel for exterior applications and all other locations.

2.00 EXECUTION

2.01 INSTALLATION

A. Maintain the waterproof integrity of conduit penetrations through the roof, exterior walls, and floors.

B. Install stainless steel sleeves for each conduit passing through floors. Extend sleeves 1-1/2" above the floor slab and grout watertight. The sleeve sizes shall permit the subsequent insertion of a properly sized conduit or raceway.

C. Install PVC, pipe sleeves around the conduit and raceway which pass through concrete beams or walls and masonry exterior walls. The inside diameter of the sleeves shall be at least 1/2" greater than the outside of the service pipes. After the pipes are installed into these sleeves, fill the annular space between the pipes and sleeves with mastic. The complete installation shall be watertight and the fire rating of penetrations through walls, floors and ceilings shall be maintained. All below grade penetrations shall utilized Link-Seal.

D. Submit location drawings and obtain Engineer approval prior to installing conduit penetrations through slabs, beams, and walls. Install stainless steel pipe sleeves around the conduit and raceway which pass through concrete beams or walls and masonry exterior walls. The inside diameter of the sleeves shall be at least 1/2" greater than the outside of the service pipes. After the pipes are installed into these sleeves, fill the annular space between the pipes and sleeves with mastic. The complete installation shall be watertight and the fire rating of penetrations through walls, floors and ceilings shall be maintained.

E. Route all conduits parallel to building lines, columns, or steel route conduits near to columns and roof beams.

2.02 CUTTING AND PATCHING

A. Provide adequate support during cutting operations to prevent any damage to the affected masonry. Where openings are cut through masonry walls, provide lintels or structural supports to protect the remaining masonry. The cutting of structural members shall not be permitted without the specific written approval of the Engineer.

2.03 PAINTING

A. Painting shall be in accordance with Division 09. Maintain the original factory finish on material and equipment installed, unless specifically indicated on the plans or specifications. If the finish is marred in transit or during installation, re-finish to a neat, workmanlike appearance. Leave equipment and raceway systems clean and free of grease, dirt, rust, and in a suitable condition for painting.

2.04 EXCAVATION, TRENCHING, BACKFILLING AND GRADING

A. Prior to any excavation or trenching, notify the Owner's representative, utility companies and Owner's facilities department. Allow sufficient time for utilities to be located prior to excavation to avoid disruption of services. Provide a minimum of 72 hours written notice to the Owner prior to trenching or excavation. Do not proceed with trenching or excavation until authorized by the Owner. Utilities or services which are damaged, which are identified prior to excavation or trenching, or where confirmation by utility companies has not been obtained verifying that utilities are marked, shall be repaired to operable condition immediately, at no cost to the Owner.

B. Barricade open trenches and excavations for the entire duration of the project. Barricades for excavations shall have warning lights maintained during hours of darkness. Trenches shall be marked with warning tape, or access to trenches shall be prohibited with readily identifiable sawhorses, warning tape or other acceptable means. Barriers shall be illuminated or recognizable during hours of darkness. Barriers and tape shall be properly maintained at all times.

C. Protect all adjacent work, structures, and properties. Damage to adjacent work, structures or properties shall be repaired, or the cost of repair reimbursed in full.

D. All construction areas shall be finally graded as indicated on the contract documents, or to the conditions of the site prior to construction. Grading shall bring the site back to the existing conditions as close as practical. Turfed areas shall be sodded, or hydro-mulched with matching turf. Landscaping shall be replaced with identical shrubbery, ground cover, or plants as existed. Contractor shall be responsible for maintaining water on new turf and landscaping until established. If new turf and landscaping is impractical due to weather conditions, contractor shall provide satisfactory arrangements to have turf and landscaping furnished and installed at the earliest opportunity thereafter. Provide a 90-day year warranty on new turn and landscaping.

E. Determine if irrigation systems exist prior to trenching and excavation. Obtain record or as-built drawings and locate control wiring and pressure main branches and devices. Determine by actual operation that systems are functional and repair or replace damaged systems to their original condition prior to beginning construction.

2.05 ACCESS DOORS

A. Wherever access is required in walls, ceilings, or soffits to concealed junction boxes, pull boxes or other electrical equipment, provide and install access doors. Install panels in locations approved by the Engineer. Paint as directed.

2.06 CLEAN AND ADJUST

A. Remove shipping labels, dirt, paint, grease, and stains from equipment. Remove debris as it accumulates. Upon completion of work, clean electrical equipment and the entire electrical installation.

END OF SECTION

26 05 19 LOW VOLTAGE ELECTICAL POWER CONDUCTORS & CABLES

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to install and test 600-volt wires and cables. Electrical work shall be in accordance with Section 26 05 00, “Common Work Results for Electrical”.

B. Work shall include building wire, cable, wiring connections and terminations, and modular wiring systems.

1.02 QUALITY ASSURANCE: TESTING

Megger test circuits for continuity and ground. Verify phasing at connection points. Torque test conductor connections and terminations to the Manufacturer's recommended values. Megger tests shall be performed by a testing company with a minimum of 10 years experience.

1.03 SUBMITTALS

Submittals shall be in accordance with Section 01 33 00, SUBMITTAL PROCEDURES, and shall include:

A. Shop Drawings:

1. Low voltage wire
2. Ground wire
3. Shielded cable
4. Terminations and Connections

1.04 STANDARDS

The applicable provisions of the following standards shall apply as if written here in their entirety:

ICEA S-19-81/NEMA WC-3	Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
ICEA S-61-402/NEMA WC-5	Thermoplastic-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
NFPA 70	National Electrical Code
ANSI/TIA/EIA 606A	Standard for Telecommunications Infrastructure
UL 83	Thermoplastic Insulated Wires and Cables

UL 1063	Machine Tool Wires and Cables
ASTM B3	Soft or Annealed Copper Wires
ASTM B8	Concentric-Lay-Stranded Copper Conductors, Hard, Medium, Hard, Soft

1.05 DELIVERY AND STORAGE

A. Deliver cable and wire to the project site in the original packages. Conductors with damaged insulation or exposed nylon jacketing shall not be permitted.

B. Where cut lengths are specified, mark reel footage accordingly. Each reel shall contain one continuous length of cable.

C. Check for reels not completely restrained, reels with interlocking flanges or broken flanges, damaged reel covering or any other indication of damage. Provide impact protection by wood lagging or suitable barrier across the traverse of the reel.

D. Do not drop reels from any height.

E. Unload reels using a sling and spreader bar. Roll reels in the direction of the arrows shown on the reel and on surfaces free of obstructions that could damage the wire and cable.

F. Store cable on a solid, well drained location. Cover cable reels with plastic sheeting or tarpaulin. Do not lay reels flat.

G. Provide moisture protection by using manufacturer's standard procedure or heat shrinkable self-healing end caps applied to both ends of cable. Do not remove end caps until cables are ready to be terminated.

2.00 PRODUCTS

2.01 GENERAL

A. Wires and cables shall be soft-drawn, annealed copper with a conductivity of not less than that of 98% pure copper, UL83 and UL1063 listed, rated 600 volts, and certified for continuous operation at maximum conductor temperature of 90 Celsius in dry locations and 75 Celsius in wet locations.

B. Conductors #8 or larger shall be stranded and conductors #14 shall be stranded. Utilize single conductors.

C. Except for control, signal and instrumentation circuits and as specifically indicated on the plans the minimum conductor permitted is #12.

2.02 WIRE MARKING

1. Wire marking shall be in accordance with the National Electrical Code Article 310 and shall be printed on the wire insulation at 2-foot intervals. The printing method used shall be permanent and the color shall sharply contrast with the jacket color.

2. Wire marking shall include the U.L. label and necessary identification, including the Manufacturer, the number of conductors, size, conductor insulation type, sun-resistance, and other pertinent information.

2.03 CONDUCTORS AND CABLES

A. SINGLE CONDUCTOR CABLES: Conductor with thermoplastic insulation rated at 600 volts and insulated with type XHHW-2 insulation. Wire shall be water tank tested and approved as machine tool wire, in accordance with National Machine Tool Builders Association. Wire in light fixture channels and other special locations shall be as specifically noted for temperature in NEC Article 300. Conductors 38 or larger and conductors #14 shall be stranded. Wire shall be manufactured by Southwire, Okonite, Encore, General Cable, or Houston Wire & Cable.

B. GROUND WIRE: Ground wire shall be Class B stranded tin-plated conductor without insulation in all cases where a single ground wire is indicated to be installed in a conduit with no other conductors in the conduit, or where the ground wire is directly buried in earth or concrete. In all other cases, insulate ground wire with green insulator as specified for low voltage wire.

C. PAIRED SHIELDED CABLE: Individually and overall shielded minimum 18 gauge, 7/28 stranded, tinned copper conductors with .021" extruded PVC; .004" nylon insulation twisted into pairs, stranded into a core and enclosed by a non-hygroscopic core tape, 100% coverage, helically wound, aluminum foil shield, drain wire, and .050" minimum extruded PVC jacket. Pairs shall be black/red or black/white numbered. Cables shall be 600 volts in accordance with NEC-725 and IEEE 383 and shall be suitable for wet location and cable tray rated. Cables shall be manufactured by Alpha, Okonite, General Cable, Southwire, Belden, or Houston Wire & Cable.

2.04 WIRE CONNECTIONS AND DEVICES

A. CONNECTORS, COMPRESSION, COPPER, 600 VOLT: As manufactured by Burndy, Thomas & Betts, or Ideal Industries; of the appropriate hole sizes and spacing which are in accordance with NEMA standards; two (2) holes in the tongue for use on conductor sizes 250 kcmil or larger; not required for connections to the circuit breakers in the lighting and/or receptacle panels. All compression connectors shall be long-barrel type, no exceptions.

B. 600 VOLT PLASTIC TAPE: Minnesota Mining & Manufacturing Company, No. 35.WIRENUTS: Silicone-based pre-filled spring wire connecting devices with plastic covering; UL listed for damp and wet locations. Wirenut shall meet requirements of UL 486D for Sealed Wire Connector Systems and shall be manufactured by Ideal Industries, Inc model 63, or as manufactured by ITT or Panduit. Wirenut shall be spring insulated, properly sized, and resistant to vibration may be used for No.12 through No.10 solid gauge conductor for lighting and branch circuits only.

C. SPLIT BOLTS: Kearney, Burndy, or Ilsco; shall be usable for connecting conductors which are both copper, both aluminum or one copper and one aluminum. Split bolts shall have a spacer between the two conductors, which it connects.

D. MECHANICAL SET SCREW CONNECTOR: Blackburn HPS, ADR-ALCUL, GP or GT, Burndy or Ilsco; consisting of an aluminum body which has openings on opposite ends for insertion of the conductors. Conductors inserted into these holes shall each be clamped by two set screws. Connectors shall be suitable for use with copper conductors.

E. RUBBER TAPE: Scotch 2210.

F. VINYL TAPE: Scotch 88.

G. ARC PROOFING TAPE: 3M “Scotch 77 Fire and Electric Arc Proofing Tape”. Fireproofing shall be done with a half-lapped layer of arc proofing tape, anchored at each end with a double wrap of 3M “Scotch 69 Glass Cloth Electrical Tape”.

H. INSULATING RESIN: Scotch 3576, 3577, or 3578.

I. POWER DISTRIBUTION BLOCKS: Ferraz Shawmut, Ilsco or Allen-Bradley; rated for 600 VAC and termination of copper conductors. Individual poles shall be constructed of tin-plated aluminum and mounted on an insulating base.

3.00 EXECUTION

3.01 PREPARATION

Completely swab raceway system before installing conductors. Do not use cleaning agents and lubricants which have a deleterious effect on the conductors or their insulation.

3.02 INSTALLATION

A. GENERAL

1. Install raceway first as a complete system without conductors. Do not install pull wires and conductors until the raceway system is in place in accordance with the NEC and these specifications. Exception: Only flexible connections to motors shall be permitted to be installed after the installation of the remainder of the raceway system. The installation of these conductors shall be limited to exposure to damage for a maximum of one (1) week prior to installing flexible connection and making final terminations. Any conductors exposed to damage (i.e. not installed in raceway) longer than one (1) week shall be subject to rejection by the Owner and/or Engineer. If rejected, the cables shall be removed, discarded, replaced, reinstalled and retermination at the Contractor's expense.

2. Installed unapproved wire shall be removed and replaced at the Contractor's expense.

3. Grouping conductors together into one conduit shall not be allowed where the plans indicate the conductors to be placed in separate conduits. Each home run shown on the plans shall be in its own conduit.

4. Neatly train wiring inside boxes, equipment, and panelboards. Pull conductors into a raceway at the same time and use U.L. listed, wire pulling lubricant for pulling No. 4 AWG and larger wire.

5. Except for hand-pulled conductors into raceways, all wire and cable installation shall be installed with tension-monitoring equipment. Where conductors are found to have been installed without tension-monitoring, the conductors and cables shall be immediately removed from the raceways, permanently identified as rejected material, and removed from the jobsite. New conductors and cables shall be reinstalled, tagged and raceways resealed, all at the Contractor's expense.

6. Do not exceed cable manufacturer's recommendations for maximum pulling tensions and minimum bending radii. Where pulling compound is used, use only UL listed compound compatible with the cable outer jacket and with the raceway involved.

7. Where single conductors and cables in manholes, hand holes, vaults, cable trays, and other indicated locations are not wrapped together by some other means such as arc and fireproofing tapes, bundle throughout their exposed length all conductors entering from each conduit with nylon, self-locking, releasable, cable ties placed at intervals not exceeding 4 inches on center.

8. Properly support cables in accordance with the NEC and manufacturer's recommendations in all raceways. Provide strain relief as required.

9. Arrange wiring in cabinets and panels neatly cut to proper length, remove surplus wire, and bundle and secure in an acceptable manner. Identify all circuits entering motor control centers or other control cabinets in accordance with the conductor identification system specified herein and in specification section 26 05 53, “Identification for Electrical Systems.”

10. Cap spare conductors and conductors not terminated, with the UL listed end caps.

11. Where conductors pass through holes or over edges in sheet metal, remove all burrs, chamfer all edges, and install bushings and protective strips of insulating material to protect the conductors.

12. For conductors that will be connected by others, provide at least 6 feet spare conductors in free standing panels and at least 2 feet spare in other assemblies. Provide additional spare conductor in any particular assembly where it is obvious that more conductor will be needed to reach the termination point.

B. SPLICES

1. Power Conductors: Splice in junction boxes or at outlets only for lighting and receptacle branch circuits. Splices for all other circuits shall be disallowed. All splices are subject to the Engineer’s approval. Obtain approval from Engineer before installing any splices.

   a. For existing installations, splices of 120V circuits shall use twist-on wire nuts.

2. Control and Instrumentation Conductors: No splicing of control and instrumentation conductors shall be permitted between terminal points except as specifically indicated on the plans.

3. No splicing of conductors shall be performed in any below ground structure.

4. Condulet type fittings shall not contain splices. Under no condition shall conductors of a different color be spliced together.

5. For No. 10 and smaller, connect conductors with a twist-on spring wirenut. If a splice or tap is below 3' above the final grade, fill the spring connectors with an electrical insulating resin so that the resin encapsulates conductor and spring materials. Conductor splices and taps inside the MCC, VFDs, panels, etc. shall be on the terminal strips or power distribution blocks.

6. For No. 8 and larger, connect conductors with a split bolt type of connector or a mechanical, set screw type connector. Wrap splices and taps with a single half-lapped layer or rubber tape followed by successive layers of vinyl tape until a vinyl tape layer thickness of twice the original conductor insulation thickness is achieved. If splice or tap is below 3' above the finished grade, the tape or splice shall have a final outer coating or insulating resin.

C. TERMINATIONS

1. Conductors terminated on a screw termination shall have a crimp on type spade connector applied on the wire end, Panduit PanTerm or approved equal.

2. Furnish and install power distribution blocks as required for tapping conductors at their load connection point with conductors of smaller size. Install power distribution blocks with the number of poles and sizes needed for connecting the phase, neutral, and ground conductors.

3. Tighten all screws and terminal bolts using torque type wrenches and/or drivers to tighten to the inch-pound requirements of the NEC and UL.

4. Use crimp connectors on all stranded conductors.

5. Soldered mechanical joints insulated with tape will not be acceptable.

6. SINGLE CONDUCTORS: Sufficient wire shall be left at outlets to make connections to equipment without straining. Light switches and receptacles shall be connected with pig-tails and crimp-on connectors.

7. PAIRED SHIELDED AND TRIAD SHIELDED CABLE: Ground paired shielded and triad shielded cables at the instrument panel or starter end only and insulate from ground elsewhere. The shield shall be continuous for the entire run. The paired shielded and triad shielded cable shall not be laced with or placed in the same conduit with power cables and digital control cables. Each termination of paired shielded or triad shielded cable shall be coated with silicone jelly after termination. The shield of pair shielded cable and triad shielded cable shall only be broken when the conductors are terminated on terminal strips. Each conductor and shield shall be landed on its own terminal. Sharing of shield shall not be allowed.

D. GROUNDING

1. Conduits and other raceway shall contain an equipment grounding conductor whether the raceway is metallic or not. Conduits, motors, cabinets, outlets, and other equipment shall be properly grounded in accordance with National Electrical Code requirements. Where ground wire is exposed to mechanical damage, install wire in rigid aluminum conduit. Make connections to equipment with solderless connections. All connections to ground rods shall be of the fused type utilizing an exothermic welding process.

2. Ground metallic material, including but not limited to metallic raceway, metallic boxes, and metallic enclosures. Where metallic material is not connected by raceway to a solid ground, connect the metallic material to the largest equipment grounding conductor, which it houses. Clean the metal surface under the grounding lug to bright metal. Grounding connections to motors shall be to the grounding stud, which shall be threaded into the stationary frame; Use Burndy KC Servit, or approved equal. The ground wire shall not be lugged to a mounting bolt.

3. Ground wire shall be uninsulated tin-plated copper sized as shown on the plans in all cases where a single ground wire is indicated to be installed in a conduit with no other conductors in the conduit, or where the ground wire is directly buried in earth or concrete. In all other cases, insulate ground wire with green insulation as specified for low voltage wire. Provide and size bonding conductors in accordance with the National Electrical Code.

E. TESTING

1. Testing: All testing required shall be per Specification Section 01 40 00 “Quality Requirements”.

2. Perform tests and inspections and prepare test reports and submit to the Owner/Engineer prior to final inspection.

3. Tests and Inspections:

   a. After installing conductors and cables and before electrical circuitry has been energized, test for compliance with requirements.

   b. Perform each visual and mechanical inspection and electrical tests stated in NETA Acceptance Testing Specification. Certify compliance with test parameters.

   c. Test Reports: Prepare a written report to record the following:

      1) Test procedures used.

      2) Test results that comply with requirements.

      3) Test results that do not comply with requirements and corrective action taken to achieve compliance with requirements.

   d. Remove and replace malfunctioning units and retest as specified above.

END OF SECTION

26 05 26 GROUNDING & BONDING FOR ELECTRICAL SYSTEMS

1.00 GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment, and incidentals necessary to install a complete grounding system in strict accordance with Article 250 of the National Electrical Code (NEC) as shown on the drawings or as specified herein. Electrical work shall be in accordance with Section 26 05 00 “Common Work Results for Electrical”.

1.02 SUBMITTALS

Submittal shall be in accordance with Section 01 33 00, SUBMITTAL PROCEDURES, and shall include:

A. Grounding materials, equipment, and processes.

B. Product Data: For each type of product supplied.

C. Field quality-control test reports.

1.03 QUALITY ASSURANCE

A. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, Article 100, by a testing agency acceptable to authorities having jurisdiction, and marked for intended use.

B. Comply with UL 467 for grounding and bonding materials and equipment.

1.04 JOB CONDITIONS

Measure the ground grid resistance with the earth test megger and install additional ground rods and conductors as required until the resistance to the ground conforms to National Electrical Code requirements. Ground resistance measurement shall not exceed 5 ohms. Add ground rods as required to bring resistance to 5 ohms and connect to grounding system.

2.00 PRODUCTS

2.01 MATERIALS

A. GROUND CABLES: Stranded, bare tinned copper of 98% conductivity. Ground wire shall be Class B stranded tin-plated conductor without insulation in all cases where a single ground wire is indicated to be installed in a conduit with no other conductors in the conduit, or where the ground wire is directly buried in earth or concrete. In all other cases, insulate ground wire with green insulator as specified for low voltage wire.

B. CONDUIT GROUND FITTINGS: Fittings for bonding ground cable to the conduit shall be FCI Burndy Corp., type NE or Thomas & Betts No. 3951 series.

2.02 PROCESSES

A. All materials involved must be from the same sources to insure compatibility. Connections made from this process shall meet the requirements of IEEE Standards 80 and 837 and as listed in MIL 419 and other standards, National Electrical Code, etc.

3.00 EXECUTION

3.01 INSTALLATION

A. Conductor Terminations and Connections:

1. Pipe and Equipment Grounding Conductor Terminations: Bolted/clamp type connectors.
2. Underground Connections: Exothermically welded connectors, except at test wells and as otherwise indicated.
3. Connections to Structural Steel: Exothermically welded connectors.

B. Ground electrical work in accordance with NEC Article 250 and local codes.

C. Install ground cables in conduits above grade or directly buried in earth to a depth of not less than 30" below grade. Installation to provide sufficient mechanical protection so as not to break ground cables or connections.

D. Install ground cables continuously between connections. Splices shall not be permitted, except where indicated on the plans. Where ground cables pass through floor slabs, buildings, etc., and when not in metallic enclosures, provide a sleeve of approved, non-metallic materials.

E. Install a green-colored, equipment grounding conductor in raceways. Size conductors in accordance with NEC Article 250.

F. Where ground wire is directly buried in earth or concrete, use standard bare tinned copper cable, in all other cases install a green-colored insulation, equipment grounding conductor.

Size conductors in accordance with NEC Article 250. Provide grounding conductors as required per the NEC.

G. Metal conduits stubbed up into switchgear, motor control center or other electrical equipment shall be terminated with insulated grounding bushings and connected to the equipment ground bus. Size the grounding wire in accordance with applicable sections of the National Electrical Code.

H. Provide exothermic weld connection for extension to existing stub-up ground conductors.

I. Liquid tight flexible metal conduit in sizes 1-1/2" or larger shall have bonding jumpers. Bonding jumpers shall be external, run in parallel (not spiraled) and fastened with plastic tie wraps. Contractor shall provide bonding jumpers sized in accordance with the National Electrical Code.

J. All equipment enclosures, motor and transformer frames, conduit systems, cable armor, exposed structural steel and all other equipment and materials required by the NEC to be grounded, shall be grounded and bonded in accordance with the NEC. Provide grounding and bonding jumpers as required per the NEC.

K. Where exothermic bonding is used, molds shall be of the appropriate size for the wire and rod used. All bonds shall remain exposed for inspection of the Owner's Representative.

L. Install #1/0 AWG bare tinned copper ground cable that follows the route of the underground duct banks on top of the duct bank envelop, but in no case is embedded in the concrete. Run ground through the manholes. Tie ground cable to pump station main grounding system at both ends.

M. At each convenience outlet, install a grounding clip attached to the outlet box and leave a sufficient length of #12 wire with green-colored insulation to connect to the grounding terminal at the receptacle.

3.02 INSPECTION

A. Inspect the grounding and bonding system conductors and connections for tightness and proper installation.

B. Use Biddle Direct Reading Earth Resistance Tester or equivalent to measure resistance to ground of the system. Perform testing in accordance with the test instrument manufacturer's recommendation using the fall of potential method.

C. All test equipment shall be provided under this section and approved by the Engineer.

D. Resistance to ground testing shall be performed during dry season. Submit test results in the form of a graph showing the number of points measured (12 minimum) and the numerical resistance to ground.

E. Testing shall be performed before energizing the distribution system.

F. A separate test shall be conducted for each building or system.

G. Notify the Engineer immediately if the resistance to ground for any building or system is greater than five ohms. Provide additional ground rods and conductors as required to bring the resistance to five ohms.

END OF SECTION

26 05 29 HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS

1.00 GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment, and incidentals necessary to install hangers and supports for electrical equipment and systems. Electrical work shall be in accordance with Section 26 05 00, “Common Work Results for Electrical”.

1.02 PERFORMANCE REQUIREMENTS

A. Design supports for multiple raceways capable of supporting combined weight of supported systems and its contents.

B. Design equipment supports capable of supporting combined operating weight of supported equipment and connected systems and components.

1.03 SUBMITTALS

Submittals shall be in accordance with Section 01 33 00, “Submittal Procedures” and shall include Record Data.

1.04 QUALITY ASSURANCE

A. Welding: Qualify procedures and personnel according to AWS D1.1/D1.1M, "Structural Welding Code - Steel."

B. Comply with NFPA 70.

1.05 COORDINATION

A. Coordinate size and location of concrete bases. Cast anchor-bolt inserts into bases. Concrete, reinforcement, and formwork requirements are specified in Division 03.

2.00 PRODUCTS

2.01 SUPPORT, ANCHORAGE, AND ATTACHMENT COMPONENTS

A. Steel Slotted Support Systems: Comply with MFMA-4, factory-fabricated components for field assembly.

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

a. Allied Tube & Conduit.

b. Cooper B-Line, Inc.; a division of Cooper Industries.

c. ERICO International Corporation.

d. GS Metals Corp.

e. Thomas & Betts Corporation.

f. Unistrut; Tyco International, Ltd.

g. Wesanco, Inc.

2. Nonmetallic Coatings: Manufacturer's standard PVC, polyurethane, or polyester coating applied according to MFMA-4.

3. Channel Dimensions: Selected for applicable load criteria.

B. Raceway and Cable Supports: As described in NECA 1 and NECA 101.

C. Conduit and Cable Support Devices: 304 stainless steel hangers, clamps, and associated fittings, designed for types and sizes of raceway or cable to be supported.

D. Structural Steel for Fabricated Supports and Restraints: ASTM A 36/A 36M, 304 stainless steel plates, shapes, and bars; black and galvanized.

E. Mounting, Anchoring, and Attachment Components: Items for fastening electrical items or their supports to building surfaces include the following:

1. Mechanical-Expansion Anchors: Insert-wedge-type, 304 stainless steel, for use in hardened portland cement concrete with tension, shear, and pullout capacities appropriate for supported loads and building materials in which used.

a. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

1) Cooper B-Line, Inc.; a division of Cooper Industries.
2) Empire Tool and Manufacturing Co., Inc.
3) Hilti Inc.
4) ITW Ramset/Red Head; a division of Illinois Tool Works, Inc.
5) MKT Fastening, LLC.

2. Concrete Inserts: 304 Steel, slotted support system units similar to MSS Type 18; complying with MFMA-4 or MSS SP-58.

3. Clamps for Attachment to Steel Structural Elements: 304 stainless steel MSS SP-58, type suitable for attached structural element.

4. Through Bolts: 304 stainless steel Structural type, hex head, and high strength. Comply with ASTM A 325.

5. Toggle Bolts: 304 stainless steel springhead type.

6. Hanger Rods: Threaded 304 stainless steel.

3.00 EXECUTION

3.01 APPLICATION

A. Comply with NECA 1 and NECA 101 for application of hangers and supports for electrical equipment and systems except if requirements in this Section are stricter.

B. Maximum Support Spacing and Minimum Hanger Rod Size for Raceway: Space supports for RIGID METAL CONDUIT as required by NFPA 70. Minimum rod size shall be 1/4 inch in diameter.

C. Multiple Raceways or Cables: Install trapeze-type supports fabricated with stainless steel slotted support system, sized so capacity can be increased by at least 25 percent in future without exceeding specified design load limits.

1. Secure raceways and cables to these supports with single-bolt conduit clamps using spring friction action for retention in support channel.

3.02 SUPPORT INSTALLATION

A. Comply with NECA 1 and NECA 101 for installation requirements except as specified in this Article.

B. Raceway Support Methods: In addition to methods described in NECA 1, RIGID METAL CONDUIT may be supported by openings through structure members, as permitted in NFPA 70.

C. Strength of Support Assemblies: Where not indicated, select sizes of components so strength will be adequate to carry present and future static loads within specified loading limits. Minimum static design load used for strength determination shall be weight of supported components plus 200 lb.

D. Mounting and Anchorage of Surface-Mounted Equipment and Components: Anchor and fasten electrical items and their supports to building structural elements by the following methods unless otherwise indicated by code:

1. To Wood: Fasten with lag screws or through bolts.
2. To New Concrete: Bolt to concrete inserts.
3. To Masonry: Approved toggle-type bolts on hollow masonry units and expansion anchor fasteners on solid masonry units.
4. To Existing Concrete: Expansion anchor fasteners.
5. To Steel: Beam clamps (MSS Type 19, 21, 23, 25, or 27) complying with MSS SP-69.
6. To Light Steel: Sheet metal screws.
7. Items Mounted on Hollow Walls and Nonstructural Building Surfaces: Mount cabinets, panelboards, disconnect switches, control enclosures, pull and junction boxes, transformers, and other devices on slotted-channel racks attached to substrate.

E. Drill holes for expansion anchors in concrete at locations and to depths that avoid reinforcing bars.

3.03 CONCRETE BASES

A. Construct concrete bases of dimensions indicated but not less than 4 inches larger in both directions than supported unit, and so anchors will be a minimum of 10 bolt diameters from edge of the base.

B. Concrete shall be in accordance with Section 03 30 53, “Miscellaneous Cast-In-Place Concrete” for 3000 psi concrete.

C. Anchor equipment to concrete base.

1. Place and secure anchorage devices. Use supported equipment manufacturer's setting drawings, templates, diagrams, instructions, and directions furnished with items to be embedded.
2. Install anchor bolts to elevations required for proper attachment to supported equipment.
3. Install anchor bolts according to anchor-bolt manufacturer's written instructions.

END OF SECTION

26 05 33.01 CONDUITS

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to install a complete conduit system for each type of electrical system. Electrical work shall be in accordance with Section 26 05 00, “Common Work Results for Electrical”.

1.02 SUBMITTALS

A. Submittals shall be in accordance with Section 01 33 00, SUBMITTAL PROCEDURES, and shall include:

1. Shop Drawings to include cut sheets of each material to be used on the project.

1.03 STANDARDS

A. The applicable provisions of the following standards shall apply as if written here in their entirety:

ANSI 80.5	Electrical Rigid Aluminum Conduit
ANSI/NEMA FB 1	Fittings, Cast Metal Boxes, and Conduit Bodies for Conduit and Cable Assemblies
NEMA RN 1	PVC Externally-Coated Galvanized Rigid Steel Conduit and Electrical Metallic Tubing
NEMA TC 2	Electrical Plastic Tubing (EPT) and Conduit (EPC-40 and EPC-80)
NEMA TC 3	PVC Fittings for Use with Rigid PVC Conduit and Tubing

2.00 PRODUCTS

2.01 MANUFACTURED PRODUCTS

A. FLEXIBLE METAL CONDUIT:

1. LIQUID TIGHT FLEXIBLE ALUMINUM CONDUIT: Single strip, helically wound, interlocking, aluminum. Liquid tight conduit shall have an extruded, polyvinyl jacket over the flexible metal. Acceptable product shall be Anaconda Type UA.

B. RIGID ALUMINUM CONDUIT: Heavy wall, aluminum alloy 6063; low temper number, tube, free from defects and manufactured in accordance with ANSI C80.5 standards and U.L. listed. Acceptable Manufacturers shall be Rob Roy Plastibond Red, Ocal and Perma-Cote. Acceptable manufacturers shall be Indalex, Allied and Wheatland.

C. PVC COATED RIGID ALUMINUM: Meeting the requirements of rigid aluminum conduit; 40 mil PVC exterior coating and 2 mil urethane interior coating, U.L. 6A listed. Manufactured in accordance with Fed. Spec. WW-C-581, ANSI C80.5 standards, ETL Verified PVC-001 and U.L. listed. Acceptable Manufacturers shall be Rob Roy Plastibond Red, Ocal and Perma-Cote.

D. RIGID NONMETALLIC CONDUIT: Schedule 40 high impact, polyvinylchloride, in accordance with Fed. Spec. W-C-1094 and U.L. listed. Acceptable manufacturers shall be Carlon, Cantex, and Certainteed.

E. FITTINGS AND CONDUIT BODIES:

1. RIGID METAL CONDUIT: Threaded type material to match the conduit, in accordance with ANSI/NEMA FB1 and as manufactured by Appleton Form 35, Killark "O" Series, Crouse Hinds, OZ Gedney, or RACO.

2. FLEXIBLE AND LIQUID TIGHT FITTINGS: In accordance with ANSI/NEMA FB1; cadmium-plated, malleable aluminum body and nut; aluminum ferrule; insulated throat; integrally-cast, external ground lugs, as manufactured by Appleton "ST" series, Hubbel, OZ Gedney Type 4QL, or RACO.

3. PVC CONDUIT: Solvent-welded, slip-on joints, in accordance with NEMA TC3, as manufactured by Carlon, CertainTeed.

4. CONDUIT SEALS: Explosion-proof, rigid metal conduit fitting as defined by NEC Article 500, and as manufactured by Crouse Hinds fitting with Chico "X" Fiber and Chico "A" compound or Appleton fitting with Apelco fiber and compound. Seal shall be same material as conduit.

F. ELBOW AND BENDS: Rigid, nonmetallic conduit system shall use PVC-coated rigid Aluminum for all bends. Meeting the requirements of rigid steel conduit; 40 mil PVC, exterior coating and 2 mil urethane interior coating. Acceptable Manufacturers shall be Rob Roy Plastibond Red, Ocal and Perma-Cote. Other conduit systems shall use the same material as the conduit with which they are installed.

G. BUSHINGS: High impact, thermosetting, phenolic insulation; 150 degrees C.; as manufactured by Appleton "BBUH", Blackburn, or OZ Gedney type A.

H. GROUNDING BUSHINGS: Conduit grounding bushings shall consist of an aluminum, insulated throat conduit bushing with an attached aluminum set screw lug. Grounding bushing shall comply with Fed. Spec. W-F-408b and W-W-C-581d, UL Standards 514B and 467, and shall be Crouse Hinds Lazy Lug or approved equal.

I. LOCKNUTS: Aluminum as manufactured by Appleton "BL", OZ Gedney, RACO, or Steel City.

J. HUBS:

1. ALUMINUM CONDUIT: Cast aluminum, with broad flat surfaces with gripping teeth on both sides of conduit entry. Hub portion on exterior side of entry shall contain "O" ring for watertight seal of conduit entry. Hubs shall be Meyers Hub, Appleton or Efcor.

K. CONDUIT THROUGH-WALL AND FLOOR SEAL: Malleable iron body with oversized sleeves, sealing ring, pressure clamp and rings and sealing grommet; hex head cap screw, as manufactured by OZ Gedney, type FSK.

L. END BELLS: Threaded aluminum as manufactured by OZ Gedney type TNS.

M. EXPANSION FITTINGS: Aluminum with aluminum bonding jumpers. Linear expansion fittings shall be OZ Gedney Zx for rigid, use with aluminum conduit or Appleton "XJ" series. Combination linear and deflection expansion fittings shall be OZ Gedney type AXDX.

N. THREADED NIPPLES: As manufactured by Allied or Triangle. Aluminum Conduit nipples shall have two (2) independent sets of threads. Running threads shall not be used. Utilize the conduit union when joining two (2) fixed conduits in a continuous run.

O. ACCESSORIES: Reducers, washers, etc., shall be cadmium-plated, malleable iron.

P. CONDUIT DRAINS: Conduit drains shall be 316 stainless steel as manufactured by Crouse Hinds ECD Universal, or approved equal.

Q. DUCT BANK SPACERS: Interlocking module spacers as manufactured by Formex, or approved equal.

R. LINK SEAL: Link seal shall be modular, mechanical type, consisting of inter-locking synthetic rubber links shaped to continuously fill the space between the conduit and the wall opening. Link seal shall be suitable for use in a core-drilled and pre-cast wall openings and shall be manufactured by Pipeline Seal & Insulator, Inc. or approved equal.

3.00 EXECUTION

3.01 CONDUIT INSTALLATION SCHEDULE

A. Conduit types shall be installed in accordance with the following schedule:

1. BURIED CONDUIT: PVC Schedule 40 or PVC coated rigid aluminum unless noted otherwise.

2. ABOVE GRADE CONDUIT: Rigid Aluminum unless noted otherwise.

3. PVC COATED RIGID ALUMINUM CONDUIT: Shall be used for all underground conduit bends where the conduit ultimately terminates to aluminum conduit; and for conduit stub-ups through concrete and concrete wall penetrations.

4. RIGID ALUMINUM CONDUIT: May be used in all locations. PVC coated rigid aluminum conduit shall be used in corrosive environments or where in contact with concrete.

5. RIGID NONMETALLIC CONDUIT: May be used in non-hazardous locations, installed single or grouped either underground or encased in concrete.

6. LIQUID TIGHT FLEXIBLE METALLIC CONDUIT: Shall only be used to equipment in non-hazardous locations not subject to physical damage or excessive temperatures, requiring vibration isolation unless otherwise indicated, 6'-0" maximum length. The bending radius shall be in accordance with Chapter 9, Table 2 of the NEC and shall not deform or alter the flex jacket.

3.02 GENERAL

A. Size conduits as required by the National Electrical Code for the number and sizes of wires to be drawn into the conduit. Above grade conduit less than ¾" shall not be used unless specified otherwise. Below Grade conduit shall not be less than 1".

B. Underground conduit shall be concrete capped. Straight runs of conduit which is below the finished grade shall be rigid PVC. Unless otherwise indicated, all other conduit shall be rigid aluminum.

C. At the transition from underground and or from concrete, protect PVC conduit from mechanical damage by extending PVC coated rigid aluminum conduit a maximum of 12" and a minimum of 4" into the earth or concrete at the transition. For installations where the conduit does not penetrate concrete, provide a 12" wide housekeeping pad around conduit for transitions from underground to exposed conduit.

D. Aluminum conduit, straps, and struts shall not be in direct contact with concrete or CMU walls, painted or not. Provide a rubber washer between the two materials.

E. Aluminum conduit which penetrates into concrete shall be factory-coated with 0.20" of polyvinylchloride, per Spec. MIL-P-15147.

F. Conduit extending into concrete shall not be closer than 3" from adjacent conduit and shall not be closer than 1" from any reinforcement bars.

G. PVC conduit shall not be installed above grade level, above concrete slab level, or for any exposed installations unless specified. Conduit shall not be placed horizontally in a concrete floor slab or a beam without the Engineer's written approval.

H. Flexible metal conduit used for connecting light fixtures, i.e., fixture whips, shall be 1/2" as a minimum. Fixture whips shall contain only three conductors: one hot, one neutral, and one equipment grounding conductor. Other conduit types shall be 3/4" as a minimum. The inside surface of the conduit shall be reamed smooth after it has been cut.

I. Provide conduit sizes as shown on the plans. Where hash marks are used to indicate the number of conductors in a conduit without indicating the conduit size, provide a 3/4" conduit for up to nine #12 conductors, and a 1" conduit for ten to 20 #12 conductors.

J. Where conduits stub up through a floor slab from below finished floor level for multi-level structures, install a threaded fitting with PVC plug so that the top of the fitting is flush with the concrete or finished floor surface.

K. Conduit system shall be swabbed clean prior to installation of conductors.

L. Ground conduits in accordance with the National Electrical Code and Specification 26 05 26, “Grounding & Bonding For Electrical Systems”.

M. Contractor shall properly tape PVC coated aluminum conduit where it transitions to PVC conduit in underground concrete encased duct banks so that no aluminum conduit is in contact with concrete encasement. Tape shall be manufactured by Scotch or approved equal. Coordinate with tape manufacturer for type of tape to use for the installation.

N. Conduit shall not penetrate the top of NEMA 3R and NEMA 4X enclosures.

3.03 UNDERGROUND

A. Underground conduit shall be concrete capped.

B. Bury underground conduit a minimum of 18" deep for low voltage duct banks to the top of the concrete encasement, and as shown on the plans, whichever is greater. Backfill buried conduit banks with material which is free from large rock, paving material, or large angular substance. Install underground conduit with the conduit duct bank dimensions shown on the plans. Adhere to conduit spacing by using spacers at intervals to ensure that proper spacings are maintained. The concrete shall be red in color. Red dye for duct bank shall be mixed with concrete or the top of the duct bank shall be painted red.

C. Grade underground and outdoor conduits to drain free of condensation and moisture. Provide for automatic draining at lowpoints. Install horizontal runs of conduit to provide a natural drain for condensation without pockets or traps where moisture may collect.

D. Underground conduits shall drain to an underground structure with a floor drain, such as a manhole or a building basement.

E. Install conduit drain assemblies in outside or underground conduits to provide for draining.

F. Underground conduit bends shall have a minimum 2' bend radius for conduits 3” and smaller and a minimum 3’ bend radius for conduits 4” or greater in size. Underground conduit bends shall utilize PVC factory-coated rigid steel bends.

G. Minimum size for underground conduits outside the building is 2”.

H. Contractor shall install duct bank spacers a minimum of every 8 feet.

I. Conduit shall slope uniformly at not less than 4” per 100’, or more than 60” per 100’ unless indicated otherwise on the plans or approved by the Engineer. Arrange duct banks to drain into manholes with no low pockets in the duct runs. The electrical contractor shall coordinate with the Contractor and the plans on the proposed grades for the site.

3.04 ROUTING AND SUPPORT

A. Use the conduit route where shown on the plans. Route conduits that do not have a specified route in the most direct path between the two points, i.e. home runs shown with an arrow symbol. Route conduits parallel to building lines. Concealed conduits on the plans shall be below grade, within walls, or above ceilings.

B. Route conduit through roof openings for piping and ductwork where possible. Otherwise, route conduit through the roof with pitch pocket. Conduit shall not penetrate ductwork. Exposed conduit shall not be installed on the roof without the Engineer's prior approval.

C. Install conduit at elevations which maintain headroom, and at locations which avoid interference with other work requiring grading of pipe, the structure, finished walls, etc. Avoid crossing other work. Conduits shall not be placed in close proximity to equipment, systems, and service lines. Maintain a minimum of 3" separation, except in crossing which shall be a minimum of 1". Conduits shall not be installed/concealed in water bearing walls.

D. Conduits in buildings shall be exposed on unfinished ceilings and basements, as shown on the plans. Rigidly support conduits to the building structures using hardware bolted or screwed to the structure. The mounting hardware shall not mount the conduit directly on concrete walls and ceilings, but shall space the conduit away from the surfaces using mineralac-type hardware, strut channel clamps, or one hole straps with clamp backs.

E. Provide expansion fittings at expansion, construction, and seismic joints. Provide combination expansion/deflection fittings where conduits are concealed at these joints.

F. Group conduit in parallel runs where practical. Use a conduit rack constructed of channels with conduit straps or clamps. Provide space for an additional 25% conduit.

G. Parallel runs of conduit shall have bends and offsets made at the same point such that the angle of bend is the same in each conduit and the conduits remain parallel throughout the run. Conduits not installed in this manner shall be removed and reinstalled at the Contractor’s expense. Conductors that are installed shall be removed and replaced at the Contractor’s expense.

H. Conduits installed in parallel shall be arranged such that crossings are eliminated.

I. Rigid aluminum conduit systems shall utilize aluminum straps, clamps, and strut channel. Coated rigid steel conduit shall utilize PVC factory coated or fiberglass straps, clamps, and thread rods, etc. as manufactured by Robroy.

J. Nuts, bolts, concrete anchor bolts and other metallic fasteners shall be stainless steel.

K. Install conduit other than PVC with threaded couplings and other threaded fittings. Threadless, or clamp type fittings shall not be used on metallic conduit. Rigid aluminum conduit shall have each set of threads coated with an oxidation inhibitor, Ilsco, De-Ox, ITT Noalox, Blackburn Contax or approved equal.

L. Use PVC coated, rigid steel, factory elbows for bends in PVC conduit unless indicated otherwise.

M. Use suitable conduit caps to protect installed conduit against entry of dirt and moisture.

N. Use watertight hubs to fasten conduit to metal boxes, etc. in wet or damp locations per the National Electrical Code.

O. Use suitable conduit caps to protect installed conduit against entry of dirt and moisture.

P. Use watertight hubs to fasten conduit to metal boxes, etc. in wet or damp locations per the National Electrical Code.

Q. Install a pulling string in empty (spare) conduit, except sleeves and nipples, and leave for future pulling as applicable.

3.05 TERMINATIONS

A. Use threaded hubs for termination of conduits. Locknut termination of conduits shall not be used on this project.

END OF SECTION

26 05 33.03 OUTLET BOXES

1.00 GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment and incidentals necessary to install outlet boxes. Electrical work shall be in accordance with Section 26 05 00, “Common Work Results for Electrical”.

1.02 QUALITY ASSURANCE - ACCEPTABLE MANUFACTURERS

Crouse-Hinds

Appleton

1.03 SUBMITTALS

Submittals shall be in accordance with Section 01300, “Submittal Procedures” and shall include:

A. Shop Drawings for Outlet Boxes: Cut sheets of all devices indicating model being provided, color, etc.

1.04 STANDARDS

The applicable provisions of the following standards shall apply as if written here in their entirety:

ANSI/NEMA OS 1	Sheet steel outlet boxes, device boxes, covers and box supports.
ANSI/NEMA OS 2	Non-metallic outlet boxes, device boxes, covers and box supports.

2.00 PRODUCTS

2.01 MATERIALS

A. CAST BOXES: Cast feralloy metal, deep type, gasketed cover, threaded hubs. Use cast boxes for damp and outdoor installation. Boxes shall be manufactured by Crouse-Hinds, Appleton or approved equal.

3.00 EXECUTION

3.01 PREPARATION; COORDINATION OF BOX LOCATIONS

A. Provide electrical boxes in the locations shown on the Plans, and as required for splices, taps, wire pulling, equipment connections, and code compliance.

B. Electrical box locations shown on Contract Drawings are approximate unless dimensioned. Verify locations of boxes and outlets prior to rough-in. Outlet locations may be modified to accommodate changes in door swings, space changes or to clear other interferences that arise or from job modifications. Make such modifications at no cost to the Owner as a matter of job coordination. Coordinate job conditions and notify the Engineer of discrepancies before proceeding with the installation of the work. Set wall boxes in advance of wall construction blocked in place, and secured. Set wall boxes flush with the finish. Install extension sleeves as required to extend boxes to finished surfaces.

C. Unless otherwise noted, location of outlet boxes shall be as follows:

Equipment or Outlets	Elevation *(A.F.F.)
Toggle switches	4'0"
Receptacles	1'6"

Equipment or Outlets	Elevation *(A.F.F.)
Flow/Level Transmitters	5'5"
Circular Chart Recorder	5'5"
Motor starters	5'0"
Control stations	4'0"
Manual starters	5'0"
Thermostats	4'0"
Telephone outlets	1'6"
Circuit protective devices	6'6" to top of enclosure

* Above Finished Floor.

D. Locate and install boxes to allow access. Where installation is inaccessible, coordinate locations and sizes of required access doors in accordance with other sections of the specifications.

3.02 INSTALLATION

A. Do not install boxes back-to-back in walls. Provide minimum 6" separation, except provide minimum 24" separation in acoustic-rated walls.

B. Locate boxes in masonry walls to require cutting of masonry unit corner only. Coordinate masonry cutting to achieve neat openings for boxes.

C. Provide knockout closures for unused openings.

D. Use multiple-gang boxes where more than one (1) device is installed together; do not use sectional boxes. Provide barriers to separate wiring of different voltage systems.

E. Install boxes in walls without damaging wall insulation.

F. Provide recessed outlet boxes in finished areas; secure boxes to interior wall and partition studs, position to allow for surface finish thickness. Use stamped steel stud bridges for flush outlets in hollow stud wall, and adjustable steel channel fasteners for flush ceiling outlet boxes.

G. Align wall-mounted outlet boxes for switches, thermostats and similar devices.

H. Aluminum conduit shall use cast aluminum boxes. Cast aluminum boxes shall not be in direct contact with concrete or CMU walls, painted or not.

I. Drilling through the back of the outlet box for mounting purposes is not allowed.

J. Wall mounted outlet boxes shall be installed with an air gap behind the boxes.

END OF SECTION

26 05 33.04 PULL AND JUNCTION BOXES FOR ELECTRICAL SYSTEMS

1.00 GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment and incidentals necessary to install pull and junction boxes. The contractor shall be responsible for sizing all pull boxes and junction boxes per the National Electrical Code (NEC) Article 314 and all other relevant sections of the NEC. Electrical work shall be in accordance with Section 26 05 00, Common Work Results For Electrical.

1.02 QUALITY ASSURANCE - ACCEPTABLE MANUFACTURERS

A. Appleton
B. Bryant
C. Crouse Hinds
D. Hoffman
E. Hubbell
F. O Z Gedney
G. Raco
H. Rob Roy

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 33 00, Submittals and shall include the following shop drawings:

    1. Pull and Junction Boxes

    2. Pull and Junction Boxes Sizing Calculations: Detailed calculations shall be submitted to the Engineer with the pull and junction boxes' initial submittal. Submittals submitted without sizing calculations shall not be accepted.

1.04 STANDARDS

The applicable provisions of the following standards shall apply as if written here in their entirety:

NEMA 250	Enclosure for Electrical Equipment (1000 volts maximum)
ANSI/NEMA OS 1	Sheet steel Outlet Boxes, Device Boxes, Covers and Box Supports
NEC	National Electrical Code

2.00 PRODUCTS

2.01 MATERIALS

A. GENERAL: Exposed wall recessed pull and junction boxes shall be 304 stainless steel. Pull boxes in floors shall be of galvanized malleable cast iron, with gasketed covers. Exposed pull boxes or junction boxes installed outdoors, per NEMA 250 shall be weatherproof and shall be provided with watertight gasketed covers fastened with stainless steel screws.

B. NEMA 4X, 304 stainless steel for all locations.

C. PULL AND JUNCTION BOXES: Metal construction conforming to National Electrical Code and ANSI/NEMA OS 1. Provide hinge type for sheet metal boxes of 12" or larger in any dimension.

D. FLUSH-MOUNTED PULL BOXES: Provide overlapping covers with flush-head cover retaining screws.

3.00 EXECUTION

3.01 INSTALLATION

A. Use separate pull boxes and junction boxes for electric power, control and communication systems.

B. Install pull boxes and junction boxes where required by the National Electrical Code and wherever required to overcome mechanical difficulties.

C. Install pull boxes in interior conduit at not more than 100' apart when conduit runs are not broken by junction or outlet boxes.

D. Pull and junction boxes shall be accessible and not buried.

E. Do not install boxes back to back in walls and provide a minimum of 6" separation, except in acoustic-rated walls, provide 24" separation.

F. Support boxes independently of conduit except for cast boxes that is connected to two rigid metal conduits, both supported within 12" of box.

G. Junction boxes shall have terminal strips/distribution blocks for splicing conductors where approved by the Engineer or as shown/specified on the plans. Terminal strips shall be 600V, NEMA rated manufactured by Allen-Bradley, Phoenix Contact or approved equal. Distribution blocks shall be per Section 26 27 26, Wiring Devices.

END OF SECTION

26 05 50 ELECTRICAL EQUIPMENT

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment and incidentals necessary to complete the work in this section. Electrical work shall be in accordance with Section 26 05 00, COMMON WORK RESULTS FOR ELECTRICAL.

1.02 SUBMITTALS

A. Submittals shall be in accordance with Section 01 33 00, SUBMITTALS and shall include:

1. Shop Drawings:

a. Heat Trace

1). Installation information

2). Bill of Material

3). Weight of Enclosure

4). Product data sheets

5). Overall outline dimensions, both plan and elevations.

6). Project specific heat trace calculations.

7). Project specific interconnection/wiring diagram for heat trace system.

2. OPERATION AND MAINTENANCE MANUALS:

a. Operation and maintenance manuals shall contain the shop drawings, submittals, spare parts lists, schematics, and maintenance procedures.

b. Manuals shall be prepared by the Equipment Manufacturer and shall also incorporate appropriate final certified shop drawings and test data. Any changes made during startup and testing in the field shall be included in the final O&M manuals. Manuals may be manufacturer's standard instructions, but shall be supplemented as necessary to cover any special feature not included in standard material.

c. Heat Tracing O&M shall include all field modifications and routing information for all heat trace systems.

2.00 PRODUCTS

2.01 MANUFACTURED PRODUCTS

A. HEAT TRACE SYSTEM

1. Heat Trace System: Automatic self-regulating, UL listed, with tinned copper braid, able to crossover itself without overheating, parallel circuit design, able to be cut to length at job site, flat and flexible for easy installation, corrosion and chemical resistant, complete with power connection kits, splice kits, end seal kits and necessary accessories for a complete operating installation. Chromalox and Nelson are approved heat trace manufacturers.

    a. Heat Tracing Integrated Temperature Controls: Chromalox Ambient Sensing Integrated Temperature Controls Type RTAS-EP, NEMA 4X. Power connection box 3W/ft SRL self-regulating heat trace shall operate on 120 VAC.

    b. Heating cable: Self-Regulating Freeze Protection, Industrial Grade, 16 AWG Buss Wire. Chromalox Type SRL3-1C.

2. Heat trace shall be installed using Fiberglas Tape with pressure sensitive thermosetting silicone adhesive ¾: wide. Strap heat trace at no more than 1’ intervals. Pipe shall be clean of all dirt and debris prior to installing Fiberglass Tape. Tape shall be wrapped completely around the pipe (one piece) and overlap at least 1”.

3. Weather resistant “Caution Electrical Heat Trace” labels shall be placed on the outside of the insulation protection

4. Insulation shall completely cover the pipe and heat trace.

5. Heat trace shall be installed per manufacturers recommendations

6. All outside exposed air release valves, instrumentation piping, chlorine dioxide piping, drain line, pressure indicators, and sample taps shall be heat traced and insulated

7. Piping with taps for instrumentation shall be lined with 3W/ft SRL heat trace and wrapped with insulation to the instrument.

3.00 EXECUTION

3.01 INSTALLATION

A. Make all electrical connections to all equipment specified. Install equipment in accordance with the Manufacturer's recommendations and the plans. If neither is available, install the equipment using recognized practices of the electrical industry and trade.

3.02 FIELD QUALITY CONTROL

A. Upon completion of the installation, perform continuity tests and functional checkout to assure the proper operation of all equipment.

END OF SECTION

26 05 53 IDENTIFICATION FOR ELECTRICAL SYSTEMS

1.00 GENERAL

1.01 WORK INCLUDED

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

B. Section Includes:

1. Identification for raceways.
2. Identification of power and control cables.
3. Identification for conductors.
4. Underground-line warning tape.
5. Warning labels and signs.
6. Instruction signs.
7. Equipment identification labels.
8. Miscellaneous identification products.

1.02 SUBMITTALS

A. Product Data: For each electrical identification product indicated.

B. Identification Schedule: An index of nomenclature of electrical equipment and system components used in identification signs and labels.

1.03 QUALITY ASSURANCE

A. Comply with ANSI A13.1.

B. Comply with NFPA 70.

C. Comply with 29 CFR 1910.144 and 29 CFR 1910.145.

D. Comply with ANSI Z535.4 for safety signs and labels.

E. Adhesive-attached labeling materials, including label stocks, laminating adhesives, and inks used by label printers, shall comply with UL 969.

2.00 PRODUCTS

2.01 POWER RACEWAY IDENTIFICATION MATERIALS

A. Self-Adhesive Vinyl Labels for Raceways Carrying Circuits at 600 V or Less: Preprinted, flexible label laminated with a clear, weather- and chemical-resistant coating and matching wraparound adhesive tape for securing ends of legend label.

2.02 POWER AND CONTROL CABLE IDENTIFICATION MATERIALS

A. Self-Adhesive Vinyl Labels: Preprinted, flexible label laminated with a clear, weather- and chemical-resistant coating and matching wraparound adhesive tape for securing ends of legend label.

B. Circuits shall be tagged at terminations (both ends), in pull boxes, cabinets, and enclosures as follows:

1. Tags relying on adhesives or tapes-on markers are not acceptable.
2. Provide conductor tags for conductors No. 10 AWG and below with legible permanent sleeve of yellow or white PVC with machine printed black marking, Raychem TMS sleeves or approved equal.
3. Provide tags for cables and for conductors No. 8 AVWG and larger consisting of permanent nylon marker plates with legible designations hot stamped on the plate. Attach these marker plates to conductors and cables with plastic wire wraps. Tags shall be Raychem TMS-CM cable markers or approved equal.
4. Tags shall be imprinted with panelboard and panelboard position number (e.g. LA3-23) for conductors fed from panelboards. Other conductors shall have tags imprinted with the MCC which feeds the conductors (e.g. MCC 1).
5. Switchlegs shall have the designation described above on their tags, plus an “S” suffix. Travelers shall have the designation described above on their tags, plus a “T” suffix.
6. Where more than one neutral is present with a group of conductors, a tag shall be applied to each neutral indicating which phase conductors are served by each neutral (e.g. HA-2, 4, 6).

2.03 CONDUCTOR IDENTIFICATION MATERIALS

A. Color-Coding Conductor Tape: Colored, self-adhesive vinyl tape not less than 3 mils thick by 1 to 2 inches wide.

2.04 UNDERGROUND-LINE WARNING TAPE

A. Tape:

1. Recommended by manufacturer for the method of installation and suitable to identify and locate underground electrical and communications utility lines.
2. Printing on tape shall be permanent and shall not be damaged by burial operations.
3. Tape material and ink shall be chemically inert, and not subject to degrading when exposed to acids, alkalis, and other destructive substances commonly found in soils.

B. Color and Printing:

1. Comply with ANSI Z535.1 through ANSI Z535.5.
2. Inscriptions for Red-Colored Tapes: ELECTRIC LINE, HIGH VOLTAGE.
3. Inscriptions for Orange-Colored Tapes: TELEPHONE CABLE, CATV CABLE, COMMUNICATIONS CABLE, OPTICAL FIBER CABLE.

C. Comply with NFPA 70 and 29 CFR 1910.145.

D. Self-Adhesive Warning Labels: Factory-printed, multicolor, pressure-sensitive adhesive labels, configured for display on front cover, door, or other access to equipment unless otherwise indicated.

E. Warning label and sign shall include, but are not limited to, the following legends:

1. Multiple Power Source Warning: "DANGER - ELECTRICAL SHOCK HAZARD - EQUIPMENT HAS MULTIPLE POWER SOURCES."
2. Workspace Clearance Warning: "WARNING - OSHA REGULATION - AREA IN FRONT OF ELECTRICAL EQUIPMENT MUST BE KEPT CLEAR FOR 36 INCHES."

2.05 INSTRUCTION SIGNS

A. Engraved, laminated acrylic or melamine plastic, minimum 1/16 inch thick for signs up to 20 sq. inches and 1/8 inch thick for larger sizes.

1. Engraved legend with black letters on white face.
2. Punched or drilled for mechanical fasteners.
3. Framed with mitered acrylic molding and arranged for attachment at applicable equipment.

2.06 EQUIPMENT IDENTIFICATION LABELS

A. Engraved, Laminated Acrylic or Melamine Label: Punched or drilled for screw mounting. White letters on a dark-gray background. Minimum letter height shall be 3/8 inch.

3.00 EXECUTION

3.01 INSTALLATION

A. Verify identity of each item before installing identification products.

B. Location: Install identification materials and devices at locations for most convenient viewing without interference with operation and maintenance of equipment.

C. Apply identification devices to surfaces that require finish after completing finish work.

D. Self-Adhesive Identification Products: Clean surfaces before application, using materials and methods recommended by manufacturer of identification device.

E. Attach signs and plastic labels that are not self-adhesive type with stainless steel mechanical fasteners appropriate to the location and substrate.

F. System Identification Color-Coding Bands for Raceways and Cables: Each color-coding band shall completely encircle cable or conduit. Place adjacent bands of two-color markings in contact, side by side. Locate bands at changes in direction, at penetrations of walls and floors, at 50-foot maximum intervals in straight runs, and at 25-foot maximum intervals in congested areas.

G. Aluminum Wraparound Marker Labels and Metal Tags: Secure tight to surface of conductor or cable at a location with high visibility and accessibility.

H. Underground-Line Warning Tape: During backfilling of trenches install continuous underground-line warning tape directly above line at 6 to 8 inches below finished grade. Use multiple tapes where width of multiple lines installed in a common trench or concrete envelope exceeds 16 inches overall.

I. Painted Identification: Comply with requirements in Division 09 painting Sections for surface preparation and paint application.

3.02 IDENTIFICATION SCHEDULE

A. Accessible Raceways and Cables within Buildings: Identify the covers of each junction and pull box of the following systems with self-adhesive vinyl labels with the wiring system legend and system voltage. System legends shall be as follows:

1. Emergency Power.
2. Power.
3. UPS.

B. Power-Circuit Conductor Identification, 600 V or Less: For conductors in vaults, pull and junction boxes, manholes, and handholes, use color-coding conductor tape to identify the phase.

1. Color-Coding for Phase and Voltage Level Identification, 600 V or Less: Use colors listed below for ungrounded, service and branch-circuit conductors.
    a. Color shall be factory applied.
    b. Colors for 120/240V Circuits:
        1) Phase A: Black
        2) Phase B: Red
        3) Neutral: White
        4) Equipment Grounding Conductor: Green

C. Install instructional sign including the color-code for grounded and ungrounded conductors using adhesive-film-type labels.

D. Auxiliary Electrical Systems Conductor Identification: Identify field-installed alarm, control, and signal connections.

1. Identify conductors, cables, and terminals in enclosures and at junctions, terminals, and pull points. Identify by system and circuit designation.
2. Use system of marker tape designations that is uniform and consistent with system used by manufacturer for factory-installed connections.
3. Coordinate identification with Project Drawings, manufacturer's wiring diagrams, and the Operation and Maintenance Manual.
4. Locations of Underground Lines: Identify with underground-line warning tape for power, lighting, communication, and control wiring and optical fiber cable.
5. Limit use of underground-line warning tape to direct-buried cables.
6. Install underground-line warning tape for both direct-buried cables and cables in raceway.

E. Workspace Indication: Install floor marking tape to show working clearances in the direction of access to live parts. Workspace shall be as required by NFPA 70 and 29 CFR 1926.403 unless otherwise indicated. Do not install at flush-mounted panelboards and similar equipment in finished spaces.

F. Warning Labels for Indoor Cabinets, Boxes, and Enclosures for Power and Lighting: Self-adhesive warning labels.

1. Comply with 29 CFR 1910.145.
2. Identify system voltage with black letters on an orange background.
3. Apply to exterior of door, cover, or other access.
4. For equipment with multiple power or control sources, apply to door or cover of equipment including, but not limited to, the following:
    a. Power transfer switches.
    b. Controls with external control power connections.

G. Operating Instruction Signs: Install instruction signs to facilitate proper operation and maintenance of electrical systems and items to which they connect. Install instruction signs with approved legend where instructions are needed for system or equipment operation.

H. Equipment Identification Labels: On each unit of equipment, install unique designation label that is consistent with wiring diagrams, schedules, and the Operation and Maintenance Manual. Apply labels to disconnect switches and protection equipment, central or master units, control panels, control stations, terminal cabinets, and racks of each system. Systems include power, lighting, control, communication, signal, monitoring, and alarm systems unless equipment is provided with its own identification.

1. Labeling Instructions:
    a. Indoor Equipment: Self-adhesive, engraved, laminated acrylic or melamine label. Unless otherwise indicated, provide a single line of text with 1/2-inch high letters on 1-1/2-inch high label; where two lines of text are required, use labels 2 inches high.
    b. Outdoor Equipment: Engraved, laminated acrylic or melamine label.

c. Elevated Components: Increase sizes of labels and letters to those appropriate for viewing from the floor.

d. Unless provided with self-adhesive means of attachment, fasten labels with appropriate mechanical fasteners that do not change the NEMA or NRTL rating of the enclosure.

2. Equipment to Be Labeled:

a. Panelboards: Typewritten directory of circuits in the location provided by panelboard manufacturer. Panelboard identification shall be self-adhesive, engraved, laminated acrylic or melamine label.

b. Enclosures and electrical cabinets.

c. Access doors and panels for concealed electrical items.

d. Transformers: Label that includes tag designation shown on Drawings for the transformer, feeder, and panelboards or equipment supplied by the secondary.

e. Emergency system boxes and enclosures.

f. Enclosed switches.

g. Enclosed circuit breakers.

h. Enclosed controllers.

i. Push-button stations.

j. Power transfer equipment.

k. Contactors.

l. Remote-controlled switches, dimmer modules, and control devices.

m. Battery-inverter units.

n. Battery racks.

o. Power-generating units.

p. Monitoring and control equipment.

q. UPS equipment.

END OF SECTION

26 27 26 WIRING DEVICES

1.00 GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment, and incidentals necessary to install wiring devices. Electrical work shall be in accordance with Section 26 05 00, “Common Work Results for Electrical”.

1.02 QUALITY ASSURANCE - ACCEPTABLE MANUFACTURERS

A. Source Limitations: Obtain each type of wiring device and associated wall plate through one source from a single manufacturer. Insofar as they are available, obtain all wiring devices and associated wall plates from a single manufacturer and one source.

B. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, Article 100, by a testing agency acceptable to authorities having jurisdiction, and marked for intended use.

C. Comply with NFPA 70.

D. Products shall comply with the specifications and shall be by the following Manufacturers:

1. Hubbell

2. Leviton

3. Pass & Seymour

1.03 SUBMITTALS

Submittals shall be in accordance with Section 01 33 00, SUBMITTAL PROCEDURES, and shall include:

A. Shop Drawings for Wiring Devices: Cut sheets of all devices indicating model being provided, NEMA configuration, rating, color, etc.

1.04 STANDARDS

The applicable provisions of the following standard shall apply as if written here in its entirety:

NEMA WD-1	General Color Requirements for Wiring Devices
NEMA WD-6	Wiring Devices – Dimensional Requirements
UL 943	Ground-Fault Circuit-Interrupters
NFPA 70	National Electrical Code

2.00 PRODUCTS

2.01 MANUFACTURED PRODUCTS

A. WALL SWITCHES: For general use, totally enclosed industrial type, specification grade, rated for 120/277 VAC and 20 amps. Approved wire connection to switches shall consist of inserting wire into back wiring hole and tightening terminal screw until wire is tightly griped by clamping mechanism inside switch body. Side wiring shall not be allowed. Switches installed in hazardous areas shall be explosion proof type in accordance with the NEC.

B. WEATHERPROOF SWITCHES: Fitted with a single switch as specified, and weatherproof cover with spring door cover; gray in color for all areas.

C. RECEPTACLES: For general use shall be U.L. approved, hospital grade heavy duty duplex grounding type 20 ampere 125 volt heavy duty phosphor bronze contacts. Terminal screws shall be large head, deep slotted #8-32 brass, backed out, color coded for polarity identification, and shall accept up to 10 AWG wire. Side wiring shall not be allowed.

1. GROUND FAULT CIRCUIT INTERRUPTING, INDOOR: GFCI receptacle shall include visible indication of ground fault condition. Feed-through feature shall not be used. Install GFCI device at each location indicated. GFCI circuit breaker shall not be permitted.

2. WEATHER RESISTANT RECEPTACLES: Weather resistant receptacles shall be listed as weather resistant type in accordance with the National Electrical Code.

3. WEATHERPROOF RECEPTACLES:

a. Weatherproof receptacles shall be hospital grade, 20 ampere, 125 volt and shall be listed as weather resistant type in accordance with the National Electrical Code and shall include a weatherproof device cover.

1) Weatherproof Duplex Receptacle: Provide GFCI duplex receptacle with weatherproof cover.
2) Weatherproof Single Receptacle: Provide a cast box fitted with a single receptacle and threaded cap with a weatherproof cover.

b. Weatherproof device covers shall be heavy duty and have a NEMA 3R rating while receptacle is in use with die cast aluminum construction as manufactured by Thomas & Betts Model No. CKMUV or approved equal.

D. SWITCH AND RECEPTACLE COVER PLATES: The cover plate color shall be 302/304 stainless steel for all areas, unless otherwise indicated or required by the NEC. Screw heads shall have color to match plate. Provide telephone cover plates which are the same as above, except with a single bushed pole for the telephone cable.

1. Mark power/receptacle outlets with voltage, phase, panel name and circuit number.

2. Identify all wall switches, disconnect switches, etc. with nametags, circuit served and panel origin, nametags shall be approved by the ENGINEER/OWNER'S REPRESENTATIVE.

Receptacle and light switch cover plates shall be Pass & Seymour, or approved equal, custom laser engraved plates.

3.00 EXECUTION

3.01 INSTALLATION

A. Comply with NECA 1, including the mounting heights listed in that standard, unless otherwise noted.

B. Coordination with Other Trades:

1. Take steps to insure that devices and their boxes are protected. Do not place wall finish materials over device boxes and do not cut holes for boxes with routers that are guided by riding against outside of the boxes.

2. Keep outlet boxes free of plaster, drywall joint compound, mortar, cement, concrete, dust, paint, and other material that may contaminate the raceway system, conductors, and cables.

3. Install device boxes in brick or block walls so that the cover plate does not cross a joint unless the joint is troweled flush with the face of the wall.

4. Install wiring devices after all wall preparation, including painting, is complete.

C. Conductors:

1. Do not strip insulation from conductors until just before they are spliced or terminated on devices.

2. Strip insulation evenly around the conductor using tools designed for the purpose. Avoid scoring or nicking of solid wire or cutting strands from stranded wire.

3. The length of free conductors at outlets for devices shall meet provisions of NFPA 70, Article 300, without pigtails.

D. Install receptacles and switches only in electrical boxes which are clean, free from excess building materials, dirt and debris.

E. Install switches, wall-mounted duplex receptacles and telephone outlets at the heights specified in Section 26 05 33.03, “Outlet Boxes”, unless indicated otherwise on the plans.

F. Switches installed at one (1) location shall be ganged together under one (1) cover plate.

3.02 FIELD QUALITY CONTROL

A. Test wiring devices to insure electrical continuity of grounding. Energize the circuit to demonstrate compliance with the requirements.

B. Tests for Convenience Receptacles:

1. Line Voltage: Acceptable range is 108 to 132 V.

2. Percent Voltage Drop under 15-A Load: A value of 6 percent or higher is not acceptable.

3. Ground Impedance: Values of up to 2 ohms are acceptable.

4. GFCI Trip: Test for tripping values specified in UL 1436 and UL 943.

5. Using the test plug, verify that the device and its outlet box are securely mounted.

6. The tests shall be diagnostic, indicating damaged conductors, high resistance at the circuit breaker, poor connections, inadequate fault current path, defective devices, or similar problems. Correct circuit conditions, remove malfunctioning units and replace with new ones, and retest as specified above.

END OF SECTION

26 42 13 PASSIVE CATHODIC PROTECTION FOR UNDERGROUND AND SUBMERGED PIPING

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment and incidentals necessary to install corrosion protection and monitoring system as shown on the Drawings including electrical isolation, continuity bonding (where indicated), test stations, cathodic protection devices and all electrical connections and wiring required for a complete and workable system.

B. The Contractor shall provide insulated connections using dielectric insulated gaskets, sleeves, and washers if a connection is made to any pipe of dissimilar material.

C. Bar-wrapped concrete cylinder pipe and polyurethane coated steel pipe are to have bonded joints.

D. Polyurethane coated steel pipe shall have 48-pound magnesium anode installed on every third pipe joint or on intervals not exceeding 150 feet.

E. The following shall be installed at each air valve and blowoff valve:

1. Test station.
2. Insulated gaskets.
3. Nine-pound magnesium anode.

F. All metal surfaces, flanges, outlets, connections, etc., are to be coated as indicated on the Drawings.

1.02 QUALITY ASSURANCE

A. All equipment and materials shall be new and of the highest quality.

B. All Work shall be accomplished by qualified, experienced personnel working under continuous, competent supervision.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 33 00 “Submittal Procedures” and shall include:

1. Shop Drawings: Contractor shall submit drawings and catalog data for flanged gaskets, insulating sleeves and washers, anodes, test stations, etc.
2. Record Drawings: Record drawings for the system shall be maintained by the Contractor during installation and construction. Exact locations of all test boxes, insulated pipe flange kits, anodes, and buried wires shall be indicated on the record drawings. All items of equipment and material shall be properly identified on the record drawings.
3. Certified Test Reports: Certified Test Reports shall be submitted for all corrosion protection and monitoring devices installed on the Project.

1.04 STANDARDS

A. The applicable provisions of the following standards shall apply as if written here in their entirety:

1. American National Standards Institute (ANSI).
2. Institute of Electrical and Electronic Engineers (IEEE).
3. National Electrical Manufacturers Association (NEMA).
4. Underwriter's Laboratory (UL).

2.00 ELECTRICAL ISOLATION

2.01 INSULATING FLANGES

A. Complete assembly shall have an ANSI rating of 150 pounds, minimum, or equal to or higher than that of the joint and pipeline.

B. Gasket materials shall be resistant to intended chemical exposure, operating temperatures, and pressures in the pipeline.

C. Gaskets: Full-face Type E with O ring seal.

D. Insulating Sleeves: Full-length Mylar or fiberglass reinforced epoxy (NEMA G 10 grade).

E. Insulating Washers: Fiberglass reinforced epoxy (NEMA G 10 grade).

F. Steel Washers: Plated, hot-rolled steel, 1/8 inch thick.

G. Manufacturers:

1. Pacific Seal, Inc., Burbank, CA.
2. Central Plastics Co., Shawnee, OK.

2.02 INSULATING FLANGE RESISTANCE

A. After installation, the Contractor shall measure the electrical resistance across the flange with an ohmmeter. The minimum acceptable resistance shall be 50,000 ohms. The pipe shall be empty at the time of test. This test shall be made with at least one side of the flanged joint ungrounded, or if both sides of the flange joint are grounded, a test voltage of 20 millivolts shall be used.

2.03 BYPASSING INSULATING FLANGES

A. Care shall be exercised to avoid bypassing (shorting) the insulating flanges with small diameter piping, instrumentation lines, miscellaneous cable, wire rope, or other metallic objects and electrical "grounds". Where such metallic piping or conduits are required, they shall be electrically insulated by use of nonmetallic conduits or with approved insulating flanges or bushings. In no case shall an electrical jumper be used across the insulating flange or joint.

2.04 FOREIGN LINES

A. The Contractor shall maintain electrical isolation along the right-of-way between the carrier pipe and all foreign metallic structures including but not limited to metallic pipelines, cables, and conduits.

2.05 STEEL CASED CROSSINGS

A. Electrical isolation shall be maintained between carrier pipe and steel casing pipe for all cased crossings. The Contractor shall inform the Owner's representative upon completion of each cased crossing. Testing to verify electrical isolation will be performed and paid for by the Contractor. If the test shows a "shorted" condition, the Contractor shall, at his expense, clear the "short". The Contractor shall pay for any retesting of "shorted" casings required.

3.00 MONITORING

3.01 TEST STATIONS

A. Contractor shall provide test stations as shown on the Drawings.

3.02 TEST STATION TERMINAL BOARD

A. Monitoring station terminal boards shall be provided at each test station as shown on the Drawings. Each terminal board shall be designed for a specific monitoring function.

B. Terminal boards for terminating test leads for test stations shall be made of high dielectric strength polycarbonate resin, such as Lexan. All terminal hardware shall be nickel or cadmium plated. The terminal boards shall be as manufactured by Cott Manufacturing Company of Gardena, California, or approved equal.

C. The terminal board shall be identified by permanent marking equivalent to Dymo tape writer. Permanent marking labels shall state type of test station, size of carrier pipe, and survey station.

D. When test station is connecting to foreign lines, labels shall state foreign pipeline size, product, and Owner.

4.00 ELECTRICAL CONTINUITY BONDS

A. All rubber-gasketed pipe joints, except field welded and insulating joints, shall be continuity bonded. Three steel bonding clips shall be used per joint as shown on the Drawings.

B. The bonded joints shall be inspected and approved by the Owner's representative before coating of the bond area. The bonds shall be covered completely with a proper coating material as shown in the on the Drawings.

5.00 WIRE AND CABLE FOR TEST STATIONS

5.01 WIRE CONSTRUCTION

A. All wire and cables shall be single conductor copper, stranded or welding cable for sizes No. 6 and larger, and solid or stranded for sizes No. 8 and smaller.

5.02 WIRE INSULATION

A. All wire and cables shall be insulated with 600-volt class insulation with moisture and rot resistant characteristics equivalent to polyvinyl chloride or polyethylene. All wire and cables shall be suitable for direct burial.

5.03 WIRE SPLICING

A. Wires and cables shall not be spliced.

5.04 WIRE AND CABLE TO CARRIER PIPE CONNECTION

A. Cable to carrier pipe connections shall be installed in the manner and at locations shown on the Drawings. The cable shall be clean and dry. Any mechanically deformed or out-of-round cable shall be repaired by cutting off the defective end. The carrier pipe surface shall be cleaned to white metal by blasting, grinding, or filing prior to welding the copper conductor and shall be dry at the time of welding. Notification shall be given to the Owner's representative so that the Owner's representative may witness the welding. The copper wire shall be welded to the carrier pipe by the thermite welding process unless otherwise noted. Only sufficient insulation shall be removed from the conductor to allow placement in the welding mold. In thermite welding, the cartridge size shall be kept to the minimum size required to complete the weld. After the weld is cooled, all slag shall be removed and the weld shall be tested with a sharp blow from a 2-pound hammer to ensure proper weld. All defective welds shall be removed and replaced at no cost to the Owner.

5.05 WIRE AND CABLE INSULATION WITH A FLEXIBLE DIELECTRIC

A. A bitumastic coating, or approved equal, shall be applied over the thermite weld and extend up 1 inch on the insulation of the AWG cables. All exposed copper wire or cables for direct burial shall be fully insulated with a flexible dielectric material.

5.06 WIRE AND CABLE MECHANICAL BARRIER

A. Flexible dielectric wire and cable insulation shall be covered with a suitable mechanical barrier covering. Cables and wires shall be circumferentially wrapped with 2 layers, 50 percent overlap each, of 3M Scotch 33 electrical tape or equal. The mechanical barrier covering shall extend up on the cable 1 inch beyond the 3M Scotch putty. Carrier aqueduct shall be repaired with equal coating over the 3M Scotch putty.

6.00 ANODES

A. Anodes shall be prepackaged, high potential magnesium anodes of sizes shown on the Drawings and shall be buried at the depths shown in approved conductive backfill material as recommended by the manufacturer.

7.00 INSPECTION AND TESTING

A. After the pipe has been laid and backfilled, the Contractor shall conduct an inspection of the corrosion monitoring system, including the proper installation of anodes, insulating flanges, electrical isolation, electrical continuity of the carrier pipe and test stations. If any

deficiencies of the corrosion protection and monitoring system are noted, the Contractor, at his sole expense, shall locate deficiencies and make the necessary corrections. The system shall be retested at no additional expense to the Owner.

END OF SECTION

DIVISION 31

EARTHWORK

31 05 13 SOILS FOR EARTHWORK

1.00 GENERAL

1.01 WORK INCLUDED

A. This Section of the specifications describes the various classes of Earth Fill. Not all classes of Earth Fill contained in this specification may be used on this project. The classes of Earth Fill used on this project are shown on the drawings or specified in other sections of the specifications. This Section does not include specifications for placement and compaction of Earth Fill. Specifications for placement and compaction of Earth Fill are included in other sections of the specifications and/or shown on the drawings.

1.02 STANDARDS

A. Soil materials shall be classified into the appropriate class of Earth Fill shown below according to ASTM D2487 "Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System)" or other appropriate methods as designated by the Engineer.

2.00 PRODUCTS

2.01 MATERIALS; CLASSIFICATIONS

A. Class 1 Earth Fill: Limited to clays and sandy clays classified as CH material with a liquid limit greater than or equal to 50, a plasticity index greater than or equal to 25, and a minimum of 60 percent passing the No. 200 sieve, which are free of organic materials.

B. Class 2 Earth Fill: Limited to clays and sandy clays classified as CH and CL materials with a coefficient of permeability less than or equal to 1.0×10^{-7} cm/sec, a liquid limit greater than or equal to 30, a plasticity index greater than or equal to 15, and more than 50 percent passing the No. 200 sieve, which are free of organic materials.

C. Class 3 Earth Fill: Consist of any materials classified as CH, CL, SM, SP, SP-SM, SC, and GC, which have a minimum plasticity index of 4, which are free of organic materials.

D. Class 4 Earth Fill: Consist of materials which are classified as SP, SM, SC, CL, or dual classifications thereof, which have a liquid limit less than or equal to 35 and a plasticity index of a minimum of 4 and a maximum of 15, which are free of organic materials.

E. Class 5 Earth Fill: Consist of materials classified as SP or SP-SM which have a plasticity index less than or equal to 4 and a maximum of 12 percent passing the No. 200 sieve, which are free of organic materials.

F. Class 12 Earth Fill: Consist of soils suitable for topsoil which are relatively free of stones or other objectionable debris, which have sufficient humus content to readily support vegetative growth. The suitability of soils for topsoil shall be subject to the approval of the Engineer.

3.00 EXECUTION (NOT APPLICABLE)

END OF SECTION

31 05 16 AGGREGATES FOR EARTHWORK

1.00 GENERAL

1.01 WORK INCLUDED

A. This Section of the specifications describes the various classes of Aggregate Fill. All of the classes of Aggregate Fill contained in this specification may not be used on this project. The classes of Aggregate Fill used on this project are shown on the drawings or specified in other sections of the specifications. This Section does not include installation. Installation of Aggregate Fill is included in other sections of the specifications and/or on the drawings.

1.02 QUALITY ASSURANCE

A. Classification Testing:

1. Contractor Testing:

a. Arrange and pay for the services of an independent testing laboratory to sample and test proposed Aggregate Fill materials.

b. Submit the test results to the Engineer, and obtain approval prior to providing Aggregate Fill.

2. Owner Testing: The Owner shall arrange and pay for additional testing on the Aggregate Fill after delivery to the project site as determined necessary by the Engineer.

B. Contamination Certification:

1. Obtain a written, notarized certification from the Supplier of each proposed Aggregate Fill source stating that to the best of the Supplier's knowledge and belief there has never been contamination of the source with hazardous or toxic materials.

2. Submit these certifications to the Engineer prior to proceeding to furnish Aggregate Fill to the site. The lack of such certification on a potential Aggregate Fill source shall be cause for rejection of that source.

1.03 STANDARDS

A. Aggregate Fill shall be classified into the appropriate class listed below according to ASTM testing procedures as specified for the various classes.

1. American Society for Testing and Materials (ASTM) Standards:

ASTM C33	Specification for Concrete Aggregates
ASTM C88	Test Method for Soundness of Aggregates by Use of Sodium Sulfate or Magnesium sulfate
ASTM C125	Terminology Relating to Concrete and Concrete Aggregates
ASTM C131	Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine
ASTM C535	Test Method for Resistance to Degradation of Large-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine
ASTM D448	Classification for Sizes of Aggregate for Road and Bridge Construction

2.00 PRODUCTS

2.01 MATERIALS; CLASSIFICATIONS

A. Class 1 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 57:

Sieve Size Square Opening	Percent Passing
1-1/2”	100
1”	95-100
1/2”	25-60
No. 4	0-10
No. 8	0-5

B. Class 2 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 67:

Sieve Size Square Opening	Percent Passing
1”	100
3/4”	90-100
3/8”	20-55
No. 4	0-10
No. 8	0-5

C. Class 3 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 7:

Sieve Size Square Opening	Percent Passing
3/4”	100

1/2”	90-100
3/8”	40-70
No. 4	0-15
No. 8	0-5

D. Class 4 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 467:

Sieve Size Square Opening	Percent Passing
2”	100
1-1/2”	95-100
3/4”	35-70
3/8”	10-30
No. 4	0-5

E. Class 5 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 357:

Sieve Size Square Opening	Percent Passing
2-1/2”	100
2”	95-100
1”	35-70
1/2”	10-30
No. 4	0-5

F. Class 6 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 1:

Sieve Size Square Opening	Percent Passing
4”	100
3-1/2”	90-100
2-1/2”	25-60
1-1/2”	0-15
3/4”	0-5

G. Class 7 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and shall have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 6:

Sieve Size Square Opening	Percent Passing
1”	100
3/4”	90-100
1/2”	20-55
3/8”	0-15
No. 4	0-5

H. Class 8 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable materials and shall have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 56:

Sieve Size Square Opening	Percent Passing
1-1/2”	100
1”	90-100
3/4”	40-85

1/2”	10-40
3/8”	0-15
No. 4	0-5

I. Class 9 Aggregate Fill:

1. Consist of washed and screened gravel and natural sands or sands manufactured by crushing stones complying with the requirements of ASTM C33, except that the gradation shall be as follows:

Sieve Size Square Opening	Percent Passing
1/2”	100
3/8”	95-100
No. 4	80-95
No. 8	65-85
No. 16	50-75
No. 30	25-60
No. 50	10-30
No. 100	0-10

2. Class 9 Aggregate Fill shall have not more than 45 percent passing any sieve and retained on the next consecutive sieve of those shown above, and its fineness modulus, as defined in ASTM C125, shall be not less than 2.3 nor more than 3.1.

J. Class 10 Aggregate Fill:

1. Consist of washed and screened natural sands or sands manufactured by crushing stones complying with the requirements and tests of ASTM C33. The gradation as included in ASTM C33 is as follows:

Sieve Size Square Opening	Percent Passing
3/8”	100
No. 4	95-100
No. 8	80-100
No. 16	50-85
No. 30	25-60
No. 50	10-30
No. 100	0-10

2. Class 10 Aggregate Fill shall have not more than 45 percent passing any sieve and retained on the next consecutive sieve of those shown above, and its fineness modulus, as defined in ASTM C125, shall be not less than 2.3 nor more than 3.1.

K. Class 11 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable material and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation:

Sieve Size Square Opening	Percent Passing
1-3/4”	100
7/8”	65-90
3/8”	50-70
No. 4	35-55
No. 40	15-30
No. 100	0-12 (Wet Sieve Method)

L. Class 12 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable material and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation:

Sieve Size Square Opening	Percent Passing
1-1/2”	100
1”	85-100
3/4”	60-95
3/8”	50-80
No. 4	40-65
No. 16	20-40
No. 100	0-12 (Wet Sieve Method)

M. Class 13 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable material and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and shall meet the following gradation:

Sieve Size Square Opening	Percent Passing
1-3/4”	100
7/8”	65-90

3/8”	50-70
No. 4	35-55
No. 40	15-30
No. 100	0-3 (Wet Sieve Method)

N. Class 14 Aggregate Fill: Consist of durable particles of crushed stone free of silt, clay, or other unsuitable material and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation:

Sieve Size Square Opening	Percent Passing
1-1/2”	100
1”	85-100
3/4”	60-95
3/8”	50-80
No. 4	40-65
No. 16	20-40
No. 100	0-3 (Wet Sieve Method)

O. Class 15 Aggregate Fill: Consist of durable particles of silica sand, washed clean, chemically inert, and packaged by the Supplier. The material shall meet applicable regulatory requirements for monitor well filter pack. The source of the material shall be approved by the Engineer and shall meet the following gradation requirements:

Sieve Size Square Opening	Percent Passing
No. 20	98-100
No. 40	0-2

3.00 EXECUTION (NOT APPLICABLE)

END OF SECTION

31 11 00 CLEARING AND GRUBBING

1.00 GENERAL

1.01 WORK INCLUDED

A. Provide labor, materials, equipment, and incidentals necessary to perform operations in connection with clearing, grubbing, and disposal of cleared and grubbed materials.

1.02 QUALITY ASSURANCE; DEFINITIONS

A. Clearing: Clearing is defined as the removal of trees, shrubs, bushes, and other organic matter at or above original ground level.

B. Grubbing: Grubbing is defined as the removal of stumps, roots, boards, logs, and other organic matter found at or below ground level.

2.00 PRODUCTS (NOT APPLICABLE)

3.00 EXECUTION

3.01 PREPARATION

A. Mark areas to be cleared and grubbed prior to commencing clearing operations. The Owner's Representative shall approve clearing and grubbing limits prior to commencement of clearing operations.

B. Trees and shrubs outside of the clearing limits, which are within 10 feet of the clearing limits, shall be clearly marked to avoid damage during clearing and grubbing operations.

C. Remove trees and brush outside the clearing limits, but within the immediate vicinity of the work, upon receipt of approval by the Owner's Representative, when the trees or brush interfere with the progress of construction operations.

D. Clearly mark trees and shrubs within the clearing limits, which are to remain, and protect the trees and shrubs from damage during the clearing and grubbing operations.

E. The clearing limits shall not extend beyond the project limits.

F. Establish the clearing limits as follows:

1. Embankments plus 10 feet beyond the toe of the embankment.
2. Excavations plus 5 feet beyond the top of the excavation.
3. Concrete structures plus 10 feet beyond the edge of the footing.
4. Roadways and parking areas plus 5 feet beyond the edge of pavement or R.O.W. limits.
5. Underground utility trench top width plus 4 feet on either side of trench.

G. Establish the grubbing limits as follows:

1. Embankments plus 2 feet beyond the toe of the embankment.
2. Concrete structures plus 2 feet beyond the edge of the footing.
3. Roadways and parking areas plus 1 foot beyond the edge of pavement.

3.02 INSTALLATION

A. Clearing: Clearing shall consist of the felling, cutting up, and the satisfactory disposal of trees and other vegetation, together with the down timber, snags, brush, rubbish, fences, and debris occurring within the area to be cleared.

B. Grubbing:

1. Grubbing shall consist of the removal and disposal of stumps and roots larger than 1 inch in diameter.

2. Extend grubbing to the depth indicated below: In the case of multiple construction items, the greater depth shall apply.

a. Footings: 18 inches below the bottom of the footing.

b. Walks: 12 inches below the bottom of the walk.

c. Roads and Taxiways: 18 inches below the bottom of the subgrade.

d. Parking Areas: 12 inches below the bottom of the subgrade.

e. Embankments: 24 inches below existing ground.

f. Concrete Structures: 18 inches below the bottom of the concrete.

3.03 FIELD QUALITY CONTROL

A. Completely remove timber, logs, roots, brush, rotten wood, and other refuse from the Owner's property. Disposal of materials in streams shall not be permitted and no materials shall be piled in stream channels or in areas where it might be washed away by floods. Timber within the area to be cleared shall become the property of the Contractor, and the Contractor may cut, trim, hew, saw, or otherwise dress felled timber within the limits of the Owner's property, provided timber and waste material is disposed of in a satisfactory manner. Materials shall be removed from the site daily unless permission is granted by the Engineer to store the materials for longer periods.

END OF SECTION

31 23 10 STRUCTURAL EXCAVATION AND BACKFILL

1.00 GENERAL

1.01 SUMMARY

A. This Section specifies excavation, backfill materials, backfill placement and compaction procedures, and other construction activities incidental to project structures.

B. The Specification does not include excavation and backfilling for utility lines, manholes, valve boxes, and other minor structures related to utility lines. Refer to Section 31 23 33 "Trenching and Backfill [Utilities]" for utility line related excavation and backfill.

1.02 QUALIFICATION ASSURANCE

A. Testing Agency: An independent testing agency that is AASHTO accredited.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 "Contract Administration" and shall include:

1. Qualification Data: For testing agency.
2. Provide list of compaction equipment to be used.
3. Backfill material classifications: For each soil or aggregate backfill material provide a certification by the testing agency.
4. Compaction Test Results: Submit test results within 24 hours of successful testing.

1.04 STANDARDS

A. Material classification, placing, and testing shall be in compliance with the latest revisions of the following standards, unless otherwise noted in the Contract Documents.

1. ASTM International (ASTM) Standards:

ASTM D698	Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft^3 (600 kN-m/m^3))
ASTM D1556	Standard Test Method for Density and Unit Weight of Soil in Place by Sand-Cone Method
ASTM D2487	Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)
ASTM D4253	Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table
ASTM D6938	Standard Test Methods for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)

B. Any other testing required by these specifications and not specifically referenced to a standard shall be performed under ASTM or other appropriate standards as designated by the Engineer.

1.05 DELIVERY AND STORAGE

A. Deposit material to be used for backfill in storage piles at points convenient for handling of the material during the backfilling operations and as required to prevent contamination with other materials.

1.06 JOB CONDITIONS

A. Review the Site and determine the conditions which may affect the structural excavation, prior to the commencement of the excavation.

2.00 PRODUCTS

2.01 BACKFILL MATERIALS

A. Structural Earth Backfill: shall be Class 4 Earth Fill as specified in Section 31 05 13 “Soils for Earthwork.”

B. Structural Aggregate Backfill: Structural aggregate backfill shall be Class 1 Aggregate Fill as specified in Section 31 05 16 “Aggregates for Earthwork.”

C. Flowable Fill: Flowable fill shall be in accordance with Section 31 23 23.34 “Flowable Fill.”

D. Topsoil: Topsoil shall be Class 12 Earth Fill as specified in Section 31 05 13 “Soils for Earthwork.”

E. Fine-Graded Granular Material: Clean mixture of crushed stone, crushed gravel, and manufactured or natural sand, or recycled, crushed concrete (in accordance with TxDOT Item 247, Type D); ASTM D448, Size 10, with 100 percent passing a 3/8-inch sieve, 10 to 30 percent passing a No. 100 sieve, and 5 to 15 percent passing No. 200 sieve; maximum plasticity index of 7; complying with deleterious substance limits of ASTM C33 for fine aggregates.

1. Provide a 3-inch layer of compacted Fine-Graded Granular Material.

2.02 COMPACTION EQUIPMENT

A. Compaction equipment shall conform to the following requirements.

1. Heavy Compaction Equipment:

a. Tamping Compactor: Steel wheels with rectangular face, tapered pads that prevent fluffing the soil. Compactor shall be equipped with cleaning fingers to remove soil accumulation from between pads.

1). Operating Weight, Minimum: 30,000 pounds.

2). Wheels or Drum Size, Minimum: 4 feet diameter.

3). Travel Speed, Maximum: 10 mph.

b. Pneumatic Rollers: Minimum eight-tire, pneumatic roller with a modular ballast system and flexible operating weight, and which will equally distribute load between tires to provide compaction uniformity.

1). Operating Weight Range: As required for specified compaction, 36,000 to 50,000 pounds.

2). Tire Pressure Range: 80 psi to 100 psi.

3). Travel Speed, Maximum: 10 mph.

4). Distance Between Edges of Adjacent Tires: Less than 50 percent of tire width.

c. Vibratory Rollers: Smooth drum roller with 90 percent of the static weight transmitted through a single drum.

1). Static Weight, Minimum: 20,000 pounds

2). Centrifugal Force Per Drum, Minimum: 40,000 pounds

3). Frequency: 1400 v/min

4). Drum Size: Diameter 5 feet, +/- 1 foot; width between 6 and 9 feet.

5). Travel Speed: 5 mph for self-propelled; 2 mph for towed.

6). No backing up of the vibratory roller will be allowed on an embankment unless the vibrating mechanism is capable of being reversed.

2. Hand-Directed Compaction Equipment: Use power tampers and vibratory plate compactors in areas where it is impracticable or unacceptable to use heavy compaction equipment.

3.00 EXECUTION

3.01 PREPARATION

A. Clear and grub the area to be excavated prior to the start of excavation in accordance with Section 31 11 00 “Clearing and Grubbing.”

3.02 EXCAVATION FOR FOUNDATIONS

A. General: Excavate subgrade to the depth indicated on Drawings, +/- 0.1 feet tolerance. Extend limits of the excavation beyond the perimeter of the foundations.

1. Exposed subgrade surfaces shall be level and of sound, stable material; free of mud, frost, snow, or ice. Testing agency or Owner’s representative shall confirm exposed subgrade is a suitable bearing material based on the Construction Documents.

2. Proof roll the exposed subgrade in accordance with TxDOT Item 216. Do not proof roll wet or saturated subgrades.

3. Where unsound or unstable material is uncovered, notify Owner’s representative. Remove objectionable material and replace after approval is received from Owner’s representative. Replacement material shall be as indicated here unless otherwise indicated on Drawings:

a. Rock subgrade replacement material: Flowable fill.

b. Soil subgrade replacement material: Flowable fill

B. Excavation Safety: All excavations shall be in accordance with OSHA requirements.

3.03 WATER IN FOUNDATION EXCAVATIONS

A. General:

1. Prevent water infiltration into foundation excavations. Remove standing water from excavation prior to placing concrete. If removal of standing water is not possible due to continuous water infiltration, then contact Owner's representative for additional direction regarding placing concrete underwater.

2. Do not dewater a foundation excavation while placing concrete or for a period of at least 24 hours after concrete placement.

B. Rock Foundation Subgrade: If rock material becomes weathered due to water infiltration, then remove weathered material and provide rock replacement material to restore foundation subgrade elevation.

C. Soil Foundation Subgrade: If foundation subgrade becomes saturated do not disturb the subgrade. Wait for water to evacuate the subgrade and subgrade surface to adequately stiffen prior to placing concrete. If subgrade is disturbed, then wait until subgrade has dried out, excavate disturbed subgrade, and provide replacement material as indicated above.

3.04 COMPACTED BACKFILL

A. General: Backfill excavated spaces and areas not occupied by the permanent structure.

1. Backfill behind a retaining wall or basement-type wall shall not be placed until the concrete has reached its 28-day compressive strength or 7 days, whichever is longer.

2. Unless otherwise indicated on Drawings, structures with a top slab shall not backfilled until the top slab has been in place at least 4 days.

3. Structures with soil on opposing (opposite) sides shall be backfilled to prevent uneven loading of the structure – evenly raise backfill on opposing sides of the structure. The maximum differential backfill height between opposing sides is 1 foot.

4. Do not permit rollers to operate within 3 feet of structures.

5. Maximum Loose Lift Height:

a. Heavy Compaction Equipment: 8 inches.

b. Hand-Directed Compaction Equipment: 4 inches.

6. Previous Compacted Layer: If backfill placement occurs over a period of time greater than 24 hours, then scarify and recompact the previous day's final compacted layer.

a. Scarify and Recompact: 6-inch depth; adjust the moisture content; recompact.

b. Saturated subgrades shall not be worked on until sufficiently dry and harden so as not to be rutted with compaction equipment. Scarify and recompact layers damaged by weather or construction equipment.

B. Moisture: Prior to compacting backfill, mix and aerate or water the loose lift backfill material as necessary to adjust the moisture content and evenly distribute throughout. The material shall contain moisture within the limits specified below.

1. In accordance with ASTM D6938, determine the optimum moisture content for the maximum dry density.
2. Backfill moisture content shall be as indicated in Table 1, "Compacted Fill."
3. Aggregate fill: Completely cohesionless materials, shall be at a moisture content which will allow use of the specified compaction equipment and consistent achievement of the specified density.

C. Compaction: As required to achieve the specified density, increase the number of passes above the minimum specified and/or modify the weight of the equipment.

1. Determine the maximum dry density in accordance with ASTM D698 for cohesive soils and ASTM D4253 for cohesionless soils.
2. Minimum number of passes for all compacted fill types: 8.
3. Cohesive Soils: A tamping compactor or tamping compactor followed by a pneumatic roller shall be used.
4. Cohesionless or low cohesive soils: A vibratory roller or vibratory plate compactors shall be required if the material is cohesionless or with less than 15 percent passing the No. 200 sieve. Confirm applicability of vibratory compaction equipment in the field.
5. Overlap passes a minimum of 1 feet for heavy compaction equipment and 50 percent of the baseplate width for hand-directed equipment.
6. Backfill density shall be as indicated in Table 1, "Compacted Fill."

Table 1: Compacted Fill

Backfill Type	Density[1,2]	Moisture Content[3, 4]	Comments
Classes 1 & 2	95%	-0% to +5%	N/A
Classes 3 & 4 & 5	95%	-2% to +5%	N/A
Fine Graded Granular Material	98%	See Note 4	N/A

[1] The percentage indicated is the minimum required percentage of the maximum dry density as determined by the applicable ASTM.
[2] Below Vehicular Pavement: Scarify to a depth of 8, moisture condition, and recompact to not less than 100 percent of the maximum dry density.
[3] Range indicated is the acceptable tolerance with respect to the optimum moisture content.
[4] Completely cohesionless materials, shall be at a moisture content which will allow use of the specified compaction equipment and result in consistent achievement of the specified density.

3.05 FIELD QUALITY CONTROL

A. The Owner is responsible for the costs involved in providing an approved testing agency to perform quality control testing of backfill operations and verification of subgrade bearing material. The testing laboratory shall make tests of in-place density and moisture in accordance with ASTM Standards previously mentioned in this Section. The testing agency shall monitor backfill operations continuously or at intervals acceptable to the Owner's

representative. It shall be the responsibility of the Contractor to notify the testing agency a minimum of two business days before backfill operations begin.

1. Unless noted otherwise, in-place density tests shall be conducted at a rate of one test per 3000 square feet for every lift.

END OF SECTION

31 23 23.34 FLOWABLE FILL

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to mix and place flowable fill, consisting of Portland cement, fine aggregate, fly ash, and water in the proper proportions as specified hereinafter. Flowable fill (Controlled Low-Strength Material, CLSM) shall be used to bed and backfill around piping, utilities, and structures where indicated.

1.02 QUALITY ASSURANCE

A. Design Criteria – Flowable Fill Proportions and Consistency: Flowable fill shall be proportioned to give the necessary workability, strength, and consistency, and shall conform to the following governing requirements:

1. Permeability: Maximum permeability limit of $1x10^{-6}$ cm/sec. This limit shall apply at all locations where flowable fill is used as a utility trench plug (dam) within trench backfill materials.

1. Subsidence: Evaporation of bleed water shall not result in shrinkage of more than 10.4 mm per m (1/8 inch per ft.) of flowable fill depth. Measurement of a Final Bleeding shall be as measured in Section 10 of ASTM C940.

2. Strength for Non-Excavatable Flowable Fill: Unconfined compressive strength at 28-days when tested in accordance with ASTM D4832: 150 psi minimum.

    a. Where indicated provide Non-Excavatable Flowable Fill below structures and/or around structures, unless noted otherwise.

3. Fluidity: Flowable fill shall be self-consolidating and non-segregating in accordance with ASTM C1611:

    a. Slump Flow Test: Minimum 20-inch mean spread.

    b. Visual Stability Index (VSI) Test: Less than or equal to 1.

4. Density, minimum: 100 pcf

B. Factory Testing: The Contractor shall be responsible for the design of the material. A trial mix shall be designed by an independent testing laboratory, retained by the Contractor. The testing laboratory shall submit verification that the materials and proportions of the trial mix design meets the requirement of the Specifications. In lieu of trial mix design, Contractor may submit historical data for a mix design used successfully in previous similar work. The Contractor shall not make changes in materials, either in gradation, source, or brand, or proportions of the mixture after having been approved, except by specific approval of the Engineer.

C. Owner Testing: It is the responsibility of the Contractor to achieve and maintain the quality of material required by this Section. However, the Owner may secure the services of an independent testing laboratory to verify the quality of the flowable fill. The Owner shall have the right to require additional testing, strengthening, or replacement of flowable fill which has failed to meet the minimum requirements of this Section.

1.03 SUBMITTALS

A. Submit mix design on each material required. Provide backup data as required below.

B. Submit historical or trial mix data and test results as a basis for mix design approval. Required data shall include:

1. Permeability test results if plugs are required on Project.

2. Subsidence test results.

3. Strength test results for Excavatable and Non-Excavatable Flowable Fill if used on Project.

4. Fluidity test results.

1.04 STANDARDS AND REFERENCES

A. Materials shall meet recommendation for mix design and placement, as published by National Ready Mixed Concrete Association.

B. The applicable provisions of the following references and standards shall apply to this Section as if written herein in their entirety.

1. American Society for Testing and Materials (ASTM) Standards:

ASTM C33	Specification for Concrete Aggregates
ASTM C40	Test Method for Organic Impurities in Fine Aggregates for Concrete
ASTM C150	Specification for Portland Cement
ASTM C618	Specification for Fly Ash and Raw or Calcined Natural Pozzolan for Use as Mineral Admixture in Portland Cement Concrete
ASTM C 940	Standard Test Method for Expansion and Bleeding of Freshly Mixed Grouts for Preplaced-Aggregate Concrete in the Laboratory
ASTM C 1611	Standard Test Method for Slump flow of Self Consolidating Concrete
ASTM D 4832	Standard Test Method for Preparation and Testing of Controlled Low Strength Material (CLSM) Test Cylinders

2.00 PRODUCTS

2.01 MATERIALS

A. Cement: ASTM C150, Type I or II.

B. Fly Ash/Pozzolans: ASTM C618, Class C.

C. Fine Aggregate: ASTM C33, fine aggregate.

1. ASTM C40: Aggregate shall not contain strong alkali, or organic material which gives a color darker than the standard color.

D. Water: Potable and in conformance with ASTM C1602 and ASTM C1602, Table 2.

E. Performance Additive: As required to meet specification requirements:

1. DaraFill by GCP Applied Technologies.

2. MasterCell 25 by BASF The Chemical Company.

3. Sika Lightcrete Powder by Sika Corporation.

4. Approved equal.

F. Chemical Admixtures for Concrete per ASTM C 494, as required by performance requirements.

2.02 MIXES

A. In the determination of the amount of water required for mix, consideration shall be given to the moisture content of the aggregate. The net amount of water in the mix will be the amount added at the mixer; plus the free water in the aggregate; and minus the absorption of the aggregate, based on a 30 minute absorption period. No water allowance shall be made for evaporation after batching.

B. The methods of measurement of materials shall be such that the proportions of water to cement are closely controlled during the progress of the Work and easily checked at any time by the Owner's representative. To avoid unnecessary or haphazard changes in consistency, the aggregate shall be obtained from sources which will insure a uniform quality and grading during any single day's operation and they shall be delivered to the Work and handled in such a manner that the variation in moisture content will not interfere with the steady production of flowable fill of reasonable degree of uniformity. Sources of supply shall be approved by the Owner's representative.

C. All material shall be separately and accurately measured. All equipment for measurement of materials shall be subject to approval by the Owner's representative.

3.00 EXECUTION

3.01 INSTALLATION

A. Contractor shall give the Owner's representative sufficient advance notice before starting to place material in any area, to permit inspection of the area, and preparation for pouring.

B. Conduct the operation of depositing the material so as to form a well consolidated mass and so as not to develop air pockets in confined spaces.

C. Unless specified otherwise, flowable fill shall be uniformly placed to the depth shown on the Drawings. The fill shall be brought up uniformly to the top of excavation elevation or as otherwise indicated on the Drawings. Placement of flowable fill shall then cease and the fill protected from traffic for a period of not less than 72 hours.

1. To prevent pipe flotation place material in lifts or provide alternate means.

2. Around structures, material shall be placed in lifts. Lift depth shall not exceed one-tenth of total structure embedment into subgrade nor 5 feet, whichever is less.

3. When multiple lifts are required, material shall be allowed to harden before placing next lift. Hardening time varies with each mix. Verify flowable fill has reached a penetration number of 1500, in accordance with ASTM C 403, but not less than 5 hours.

D. The material shall be placed against undisturbed trench walls, and shall not be placed on or against frozen ground.

E. At time of placement the ambient temperature shall be 35 F and rising.

3.02 FIELD QUALITY CONTROL

A. An approved testing laboratory shall perform the quality control testing of backfill operations. The testing laboratory shall sample material in accordance with ASTM D5971. The testing laboratory shall monitor backfill operation continuously or at intervals acceptable to the Owner and Engineer at structures. It shall be the responsibility of the Contractor to provide sufficient advance notification to the testing laboratory before backfill operations begin.

1. Strength: A strength test is the average of two cylinders per ASTM D4832.
2. Fluidity: A fluidity test is a Slump Flow Test and a VSI Test per ASTM C1611.
3. For all tests required, at a minimum perform one test per day, but not less than one per 150 cubic yards.

END OF SECTION

31 23 33 TRENCHING AND BACKFILL

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to perform operations in trenching, pipe bedding, backfilling, clearing, grubbing and site preparation; handling, storage, transportation, and disposal of excavated material; pumping and dewatering; preparation of subgrades; protection of adjacent property; fills, grading; and other appurtenant work. Trenching, backfilling, and pipe embedment procedures shall be in full compliance with Section 31 23 33.14 "Trench Safety." Earth removed from excavations and which is not required for backfill shall be removed from the Site by the Contractor at his own expense, unless arrangements are made with the Owner through his representative to allow disposal on Site. If permitted, the Contractor shall dump and spread excess earth in a manner agreed upon by the Contractor and the Owner. Excavations, other than trench excavation, are not part of this Section.

1.02 QUALITY ASSURANCE

A. Classification:

1. Excavations shall include material of whatever nature encountered, including but not limited to clays, sands, gravels, conglomeritic boulders, weathered clay shales, rock, debris and abandoned existing structures. Excavation and trenching shall include the removal and subsequent handling of materials excavated or otherwise handled in the performance of the Work.

2. Bidders must satisfy themselves as to the actual existing subsurface conditions prior to the submittal of a proposal to complete the proposed Work.

3. Trench excavation shall consist of excavation to the lines and grades indicated, required for installation of the pipe, pipe bedding, backfill, and to accommodate trench safety systems.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 "Contract Administration" and shall include:

1. Sieve analysis on embedment materials.

2. Test results indicating soil resistivity for embedment material used on metal pipe.

3. Record Data: Certified test reports for compaction tests.

1.04 REFERENCE SPECIFICATIONS

A. Section 01 30 00 "Contract Administration."

B. Section 31 23 23.34 "Flowable Fill."

C. Section 31 23 33.14 "Trench Safety."

1.05 STANDARDS

A. The following publications, referred to hereafter by basic designation only, form a part of this Section to the extent indicated by the references thereto:

1. American Society for Testing and Materials (ASTM) Standards:

ASTM C33	Standard Specification for Concrete Aggregates
ASTM C88	Standard Test Method for Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate
ASTM C125	Standard Terminology Relating to Concrete and Concrete Aggregates
ASTM C131	Standard Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine
ASTM C535	Standard Test Method for Resistance to Degradation of Large-Size Coarse Aggregate by Abrasion and Impact in the Lost Angeles Machine
ASTM D448	Standard Classification for Size of Aggregate for Road Bridge Construction
ASTM D698	Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lb/ft^3 (600 kN-m/m^3)
ASTM D1556	Standard Test Method for Density and Unit Weight of Soil in Place by the Sand-Cone Method
ASTM D2487	Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)
ASTM D4253	Standard Test Methods for Maximum Index Density and Unit Weight of Soils Using a Vibratory Table
ASTM D4254	Standard Test Methods for Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density
ASTM D6938	Standard Test Method for In-Place Density and Water Content of Soil and Soil-aggregate by Nuclear Methods (Shallow Depth)
ASTM G57	Standard Test Method for Field Measurement of Soil Resistivity Using the Wenner Four-Electrode Method

B. Any other testing required by these specifications and not specifically referenced to a standard shall be performed under ASTM or other appropriate standards as designated by the Engineer.

C. Reference herein or on the Drawings to soil classifications shall be understood to be according to ASTM D2487, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System).

1.06 DELIVERY AND STORAGE

A. Excavated materials to be used for backfill may be deposited in stockpiles at points convenient for rehandling the material during the backfilling process. The location of stockpiles shall be within the limits of construction easements or public right-of-way. The location of stockpiles is subject to the approval of the Owner or the Owner's representative. Keep drainage channels clear of stockpiled materials.

1.07 JOB CONDITIONS

A. Place no embedment or backfill material during freezing weather or upon frozen subgrades or previously placed frozen embedment or backfill materials.

2.00 PRODUCTS

2.01 MATERIALS

A. Concrete for Backfill, Blocking, Cradling and Encasement: Unless other strength requirements are designated, concrete used shall be 1500 psi as specified in Section 03 30 53 “Miscellaneous Cast-In-Place Concrete.”

B. Class 1 Earth Fill: Limited to clays and sandy clays classified as CH material with a liquid limit greater than or equal to 50, a plasticity index greater than or equal to 25, and a minimum of 60 percent passing the No. 200 sieve, which are free of organic materials.

C. Class 3 Earth Fill: Consist of any materials classified as CH, CL, SM, SP, SP-SM, SC, and GC, which have a minimum plasticity index of 4, which are free of organic materials.

D. Class 12 Earth Fill: Consist of soils suitable for topsoil which are relatively free of stones or other objectionable debris, which have sufficient humus content to readily support vegetative growth. The suitability of soils for topsoil shall be subject to the approval of the Engineer.

E. Class 3 Aggregate Fill: Composed of durable particles of crushed stone, angular, tough durable particles, free from thin, flat and elongated pieces of silt, clay, or other unsuitable materials and have a percentage of wear of not more than 40 percent when tested in accordance with ASTM C131 or C535. When material is subjected to five cycles of the sodium sulfate soundness test in accordance with ASTM C88, Sodium Sulfate Solution, the weighted percentage of loss shall not exceed 12 percent. The source of the material shall be approved by the Engineer and meet the following gradation in accordance with ASTM D448, size number 7:

Sieve Size Square Opening	Percent Passing
3/4”	100
1/2”	90-100
3/8”	40-70
No. 4	0-15
No. 8	0-5

F. Class 10 Aggregate Fill: Consists of washed and screened natural sands or sands manufactured by crushing stones complying with the requirements and tests of “Standard Specifications for Concrete Aggregates”, ASTM C33. The gradation as included in ASTM C33 is as follows:

Sieve Size Square Opening	Percent Passing
3/8”	100

Sieve Size Square Opening	Percent Passing
No. 4	95-100
No. 8	80-100
No. 16	50-85
No. 30	25-60
No. 50	10-30
No. 100	2-10

1. Class 10 Aggregate Fill shall have not more than 45 percent passing any sieve and retained on the next consecutive sieve of those shown above, and its fineness modulus, as defined in ASTM C125, shall be not less than 2.3 nor more than 3.1.

G. Cement: Type I Portland Cement.

H. Flowable Fill: Flowable fill shall be in accordance with Section 31 23 23.34 "Flowable Fill."

I. Modified Flowable Fill: Modified flowable backfill in areas of possible future excavation shall consist of a mixture of native soils or manufactured materials, cement and/or fly ash, air entraining material and water which produces a material with unconfined compressive strength of between 250 and 450 psi after 28 days. Any materials used shall be primarily granular, with a plasticity index less than 12 and with 100 percent passing a 3/4-inch sieve. The flowable mixture shall be mixed in a pub mill, concrete mixer, or transit mixer and shall have a minimum slump of 5 inches. The flowable mixture must be allowed to set prior to the placement of any overlying materials. Modified flowable backfill in permanent areas such as abandoned pipe closures shall contain the same materials and have an unconfined compressive strength greater than 250 psi after 28 days.

J. Utility Detection Tape: Utility pipe detection tape, green in color for sewer, blue in color for water, with black non-degradable printing reading "CAUTION SANITARY SEWER LINE BURIED BELOW" or "CAUTION WATER LINE BURIED BELOW" shall be installed over all PVC, HDPE, or fiberglass pipelines 8 inches and larger. The tape shall be bright-colored, continuous-printed plasticized aluminum tape, intended for direct-burial service; not less than 6 inches wide by 5 mils thick. Detection tape must be installed above the pipe zone, 12 inches above pipe.

K. Tracer Wire: All piping shall be installed with a continuous, insulated TW, THW, THWN or HMWPE insulated copper, 10 gauge or thicker wire for pipeline location purposes by means of an electronic line tracer. The wire shall be installed along the entire length of pipe. The insulation color shall match the color of the pipe being installed. Sections of wire shall be spliced together using approved splice caps and waterproof seals. Twisting the wires together is not acceptable.

2.02 MIXES; SAND-CEMENT BACKFILL

A. A minimum sand and cement mixture of 25 parts sand and 2 parts cement will be required.

1. Fine Sand: 25 Cubic Feet.

2. Cement: 2 Bags (minimum).

3. Water: Optimum moisture.

B. Sand shall be free of any cohesive material and shall meet the following gradation and plasticity index requirements:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 40	80-100

C. PI and LL Amounts:

1. Plasticity Index: 10 Maximum.
2. Liquid Limit: 25 or less.

3.00 EXECUTION

3.01 PREPARATION

A. Site:

1. Clear sites of logs, trees, roots, brush, tree trimmings and other objectionable materials and debris which are to be occupied by pipe trenches, and grub stumps. Designate material not salvaged for reuse as surface material as spoiled and dispose of material in accordance with Paragraph 3.01.E, Disposal of Spoil Material.
2. Do not remove trees outside of the required working area unless their removal is authorized in writing by the Engineer and with the approval of the local governing authority. Adequately protect the trees left standing from permanent damage by construction operations. Standing trees may be trimmed where necessary to facilitate construction, but only with written authorization from the Engineer.

B. Dewatering:

1. Provide and maintain adequate dewatering equipment to remove and dispose of surface and ground water entering the excavations, trenches, or other parts of the Work. Keep each excavation dry during subgrade preparation and continually thereafter until the proposed pipe is installed. Maintain the proper procedures necessary to protect against damage to the proposed Work from hydrostatic pressure, flotation, or other water related causes.
2. Dewater excavations which extend down to or below ground water elevation by lowering and keeping the ground water level a minimum of 2 feet below the bottom of the excavation.
3. Divert surface water or otherwise prevent water from entering excavated areas to the fullest extent possible without causing damage to adjacent property.
4. Provide and maintain any piping or conduit necessary to facilitate drainage. Do not alter area drainage patterns to the extent that adjacent property and landowners become threatened with localized flooding and/or water damage. Should such a situation occur, the Contractor shall be responsible for repairing the damage at no additional cost to the Owner.

C. Protection of Existing Structures and Utilities:

1. Prior to the start of construction, communicate with the representatives of the local utility companies, including the oil, gas, telephone and communications companies, and local water and sewer utilities operating in the location of the proposed construction area. Seek the utility companies' assistance in locating existing facilities to avoid conflicts during construction. The location, number, depth, and owner of utilities indicated are for information purposes only, and all utilities and structures may not be shown or may not be in the location shown.

2. Where construction endangers adjacent structures, utilities, embankments and/or roadways, the Contractor shall, at his own expense, carefully support and protect such structures so that no damage occurs throughout the construction process. In case damage should occur, the Contractor shall be responsible for restoring the damaged structure to a condition acceptable to the Owner of that structure and shall bear all cost of such reparations.

3. Repair or replace damaged street surfaces, driveways, sidewalks, curbs, gutters, fences, drainage structures, or other such facilities to the satisfaction of the Owner. Structures shall be returned to a condition equal to or better than the original condition and of same or better material and quality.

D. Blasting: Blasting shall not be allowed in any instance.

E. Disposal of Spoil Material:

1. Suitable material from excavations which meets the requirements for pipe backfill material as indicated, except stripping excavation, may be reused. Designate the remaining excavated materials as spoiled material and dispose of material off the Site in accordance with all applicable laws, ordinances, and codes. Contractor shall be responsible for the storage, transportation, and deposition of spoiled material and shall be responsible for acquiring the necessary permits, and the payment of fees and duties at no additional cost to the Owner.

2. No burning of materials shall be permitted on the Site.

3.02 TRENCH EXCAVATION

A. General: The trenches shall be excavated to the alignment and depth indicated or as necessary for the proper installation of the pipe and appurtenances. Brace and dewater the trench if necessary so that the workmen may work therein safely and efficiently. Any specific requirement listed in Paragraph 3.00, Execution, may be modified as necessary to meet OSHA requirements. However, if trench widths are wider than indicated, the Contractor shall be responsible for determining and furnishing the proper class of embedment and piping for the installation with no additional compensation to the Contractor.

B. Trench Width: The trench widths shall be as shown on the Drawings.

C. Pipe Foundation Subgrade:

1. Excavate the trench to an even grade to permit the installation of the pipe so that the full length of the pipe barrel is supported on the proper depth of bedding material. The entire foundation subgrade area in the bottom of the excavations shall be firm, stable

material, and the material shall not be disturbed below required grade except as described in this Section. Where the character of the subgrade material is such that proper subgrade cannot be obtained at the elevation indicated, deepen the excavation to a satisfactory subgrade material.

2. Remove the material until a firm, stable, and uniform bearing is reached and the subgrade brought back to the required grade with the specified bedding material compacted in place or with lean concrete material. The expense of replacing any unsatisfactory subgrade shall be borne by the Contractor.

D. Correcting Faulty Grade: Should any part of the trench be excavated below required grade, correct the trench with bedding material, thoroughly compacted, or with lean concrete, at no additional compensation to the Contractor.

E. Care of Surface Material for Reuse: If local conditions permit reuse, keep surface material suitable for reuse separate from the general excavation material.

F. Trenching Methods: The use of any suitable trench digging machinery is permitted except in places where such operations may cause damage, above or below ground, in which case, employ hand methods.

G. Pipe Clearance in Rock: Remove ledge rock, rock fragments, shale, or other rock to provide proper clearance for bedding materials. Provide adequate clearance for properly jointing pipe laid in rock trenches at bell holes.

3.03 BACKFILL

A. Bedding within Pipe Zone:

1. Concrete Cradle, Encasement or Concrete Arch: Where indicated, install the pipe in concrete cradle, encasement, or concrete arch. Take precautions to prevent pipe movement or deflection during construction. Where pipes are placed below structures, completely encase pipes in 1500 psi concrete, and extend up to bottom of structure.

2. Concrete Blocking: Place blocking to rest against firm undisturbed trench walls. The supporting area for each block shall be at least as great as that indicated and shall be sufficient to withstand the thrust, including water hammer, which may develop. Each block shall rest on a firm undisturbed foundation of trench sides and bottom.

B. Aggregate Fill Bedding:

1. After the trench has been cut to the depths indicated, bring up the bedding layer to a point slightly above grade in maximum 4-inch lifts and uniformly compact to the density indicated. Form bell holes and scoop out a trough to grade so that the pipe is uniformly supported by the embedment material. Lay and joint the pipe. Bring up the embedment material in maximum 4-inch lifts on either side of the pipe to the elevation above the pipe shown on the Drawings. Uniformly compact the pipe as indicated.

2. After moisture is gone from the embedment material, place utility detection tape and backfill and compact the remaining backfill by tamping or other appropriate methods. Water jetting shall not be permitted.

3. Install utility detection tape and tracer wire.

C. Compaction Requirements:

1. Compact earth fill and cohesive aggregate fill in maximum 4-inch lifts with pneumatic rollers or power hand tampers and make a minimum of eight passes.

2. Compact cohesionless aggregate fill in maximum 4-inch lifts with vibratory rollers or vibratory plate power hand compactors and make a minimum of eight passes.

3. The acceptability of the compaction equipment shall be based upon the results of a test section. Compact earth fill and cohesive aggregate fill to a minimum of 97 percent of maximum dry density as determined by ASTM D698, Standard Proctor.

4. Compact Class 1 and 2 earth fill at a moisture content within minus 0 to plus 5 percentage points of the optimum moisture content. Compact the remaining classes of earth fill and cohesive aggregate fill at a moisture content within minus 2 to plus 5 percentage points of optimum moisture content. The moisture ranges listed above are minimum and maximum limits. A tighter moisture range within these limits may be required to consistently achieve the specified density.

5. Compact cohesionless aggregate fill on which it is not practical to control the density by "Proctor" methods to a minimum of 75 percent relative density as determined by ASTM D4253 and D 4254, or at the discretion of the Engineer, by a field compaction mold method correlated to ASTM D4253 and D 4254.

6. Compact cohesionless aggregate fill at a moisture content within a range that accommodates consistent placement and compaction to the minimum relative density specified above.

7. The Owner will arrange and pay for initial density and moisture testing. Additional testing will be paid for the by Contractor. The testing frequency and methods shall be as requested by the Engineer. The Engineer may waive testing requirements on cohesionless bedding where testing is not practical because of limited space between the pipe and trench walls, however, the minimum number of passes of the compaction equipment specified above shall be achieved.

3.04 FINISHING

A. Grade and rake areas smooth and even which do not receive any type of paved surface, to allow drainage to drain away from the structures and toward the roads and streets or the natural drainage course. Break up large clods of earth and remove rocks, trash or debris near the surface.

B. Finish the top portion of backfill beneath established sodded (lawn) areas with not less than 6 inches of topsoil corresponding to, or better than, that underlying adjoining sodded areas.

3.05 FIELD QUALITY CONTROL

A. Compact backfill and appropriate embedment material to a minimum of 95 percent of maximum density at a moisture content of 0 to plus 5 percent of optimum for backfill and at optimum for sand-cement embedment as determined by ASTM D698, Standard Proctor.

B. Make periodic tests of compaction for conformance with this Section by an approved testing laboratory selected and paid for by the Owner. Contractor shall pay for re-testing until acceptable test results are obtained.

3.06 CLEAN AND ADJUST

A. Remove surplus pipeline materials, tools, rubbish, and temporary structures and leave the construction site clean, to the satisfaction of the Engineer.

END OF SECTION

31 23 33.14 TRENCH SAFETY

1.00 GENERAL

1.01 WORK INCLUDED

A. This specification consists of the basic requirements which the Contractor must comply with in order to provide for the safety and health of workers in a trench. This specification is for the purpose of providing minimum performance specifications, and the Contractor shall develop, design, and implement the trench safety system. The Contractor shall bear the sole responsibility for the adequacy of the trench safety system and providing "a safe place to work" for the workman.

B. Should the trench safety protection system require wider trenches than specified elsewhere, the Contractor shall be responsible for the costs associated with determining adequacy of pipe bedding and class, as well as, purchase and installation of alternate materials.

1.02 STANDARDS

A. The following standard shall be the minimum governing requirement of this specification and is hereby made a part of this specification as if written in its entirety.

1. Occupational Safety and Health Standards - Excavations (29CFR Part 1926), U.S. Department of Labor, latest edition.

B. Comply with the applicable federal, state, and local rules, regulations, and ordinances.

2.00 PRODUCTS (NOT APPLICABLE)

3.00 EXECUTION (NOT APPLICABLE)

END OF SECTION

DIVISION 32

EXTERIOR IMPROVEMENTS

32 92 13 HYDRO-MULCHING

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, material, equipment, and incidentals necessary to prepare the ground, furnish and install fertilizer and hydro-mulching seed or a mixture of seed of the kind specified in areas disturbed by the construction operations.

1.02 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 “Contract Administration” and shall include:

1. Texas Testing Seed Label.
2. Specification of fertilizer to be used.

1.03 STANDARDS

A. The applicable provision of the following standard shall apply as if written here in its entirety:

1. Texas Seed Law.

1.04 GUARANTEES

A. The Contractor shall fertilize and reseed any area which fails to survive for a period of 1 year from the date the project is accepted by the Owner.

2.00 PRODUCTS

2.01 MATERIALS

A. General: Seed used must carry a Texas Testing Seed label showing purity and germination, name, type of seed, and that the seed meets all requirements of the Texas Seed Law. Seed furnished shall be of the previous season’s crop and the date of analysis shown on each tag shall be within 9 months of the time of delivery to the project. Each variety of seed shall be furnished and delivered in separate bags or containers.

B. Seed: The specified seed shall equal or exceed the following percentages of purity and germination:

Common Name	Purity	Germination
Common Bermuda Grass	95%	90%
Gulf Coast Annual Rye	95%	90%

C. Mulch: The mulch shall be natural cellulose fiber mulch produced from grinding clean, whole wood chips, or fiber produced from ground newsprint with a labeled ash content not to exceed 7 percent. The mulch shall be designed for use in conventional mechanical

planting, hydraulic planting of seed or hydraulic mulching of grass seed, either alone or with fertilizers and other additives. The mulch shall be such that, when applied, the material shall form a strong, moisture-retaining mat without the need of an asphalt binder.

D. Fertilizer: Pelleted or granulated type fertilizer of the composition for the season of the year at which applied shall be used:

1. Early season (April 1-June 1) 21-0-0.
2. Normal season (June 1-Sept 1) 10-10-5.
3. Late season (Sept 1-Nov 1) 6-12-12.

3.00 EXECUTION

3.01 PREPARATION

A. After the areas disturbed by construction operations have been backfilled and completed to the original pre-construction lines and grades shown on the plans and as provided for in other items of this contract, perform hydro-mulch seeding in accordance with the requirements hereinafter described.

3.02 INSTALLATION

A. Cultivation: Cultivate areas to be seeded to a depth of at least 4 inches. Cultivate the seedbed sufficiently to reduce the soil to a state of good tilth when the soil particles on the surface are small enough and lie closely enough together to prevent the seed from being covered too deep for optimum germination. Cultivation of seedbed will not be required in loose sand where depth of sand is 4 inches or more. Maintain the cross-section previously established throughout the process of cultivation and any necessary reshaping shall be done prior to any planting of seed.

B. Planting Season and Application Rates: Perform planting between the dates specified for each type except when specifically authorized in writing. The seeds planted per acre shall be of the type specified with the mixture, rate, and planting dates as follows:

1. Common Bermuda Grass - hulled, 20 pounds per acre - February through August or a combination of.
2. Common Bermuda Grass - unhulled, 15 pounds per acre and Gulf Coast Annual Rye - unhulled, 15 pounds per acre - August through February.
3. Apply fertilizer uniformly at the average rate of 400 pounds per acre.

C. Hydro-Mulch (Cellulose Fiber) Seeding: Uniformly distribute the fertilizer, seed or seed mixture, in the quantity specified over the areas to be seeded. Mechanical equipment shall be such that all varieties of seed as well as fertilizer may be distributed at the same time, provided that each component is uniformly applied at the specified rate. When seed and fertilizer are to be distributed as a water-slurry, apply the mixture to that area to be seeded within 30 minutes after all components are placed in the equipment. Upon completion of planting the seed, spread cellulose fiber mulch uniformly over the area at the following rates:

1. Sandy soils with 3:1 slope or less: min. 2000 lb./acre.

2. Sandy soils with greater than 3:1 slope: min. 2300 lb./acre.
3. Clay soils with 3:1 slope or less: min. 2500 lb./acre.
4. Clay soils with greater than 3:1 slope: min. 3000 lb./acre.
5. The rates are given in dry weight of mulch per acre. A mulching machine, approved by the Owner's Representative, shall be equipped to eject the thoroughly wet mulch material at a uniform rate to provide the mulch coverage specified.

D. Maintenance: Water the planted area at such times as necessary for a period of 1 year after final acceptance of the project by the Owner. Fertilize and reseed any area which fails to survive for a period of 1 year from the date the project is accepted by the Owner.

END OF SECTION

32 91 13 SOIL PREPARATION

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment and incidentals necessary to place topsoil, free from rock and foreign material in areas designated to receive sodding or seeding.

2.00 PRODUCTS

2.01 TOPSOIL

A. General: The topsoil shall be fertile loam, easily cultivated and free from objectionable material, and shall have a relatively high erosion resistance and be readily able to support the growth of the planting, seeding, or sodding specified on the plans.

B. Sources:

1. The topsoil may be obtained from the right-of-way at sites of proposed excavation, or it may be obtained from sources outside the right-of-way, secured by the Contractor, and meeting the approval of the Engineer.

2. Topsoil required in addition to salvaged topsoil from the project shall be secured from approved off-site borrow sources. Excavated material from construction which is suitable for topsoil shall be salvaged and used before any topsoil is obtained from borrow source.

3.00 EXECUTION

3.01 INSTALLATION

A. Stockpile topsoil material at locations approved by the Owner's Representative. Remove any trash, wood, brush, stumps, or other objectionable materials prior to placement. The source and stockpile areas shall be kept drained and in a neat and presentable condition. Place and spread topsoil to a uniform depth to provide 6-inch compacted depth, while maintaining drainage in areas to be seeded or sodded.

END OF SECTION

DIVISION 33

UTILITIES

33 05 01.02 DUCTILE IRON PIPE & FITTINGS

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to install ductile iron pipe and fittings, including taps, connections, and appurtenances as required for a functional system as indicated herein. Unless otherwise noted, all above grade exposed pipe, fittings, and appurtenances shall be flanged while below grade piping, fittings and appurtenances shall be mechanical joint or push on joints. Trenching, backfilling, and pipe embedment shall be as shown on the Drawings and in accordance with Section 31 23 33 Trenching and Backfill."

1.02 QUALITY ASSURANCE

A. Factory Testing: The manufacturer shall perform all tests as required by AWWA C151. Welded outlets shall be hydrostatically tested at a pressure of 250 psi for a period of 1 hour. No leakage shall be allowed.

B. Experience Requirements: Pipe shall be the product of a manufacturer who has a minimum of 10 years' successful experience manufacturing pipe of the particular type specified and the total pipeline shall be the product of one pipe manufacturer. The manufacturer shall have a minimum of 10 years' successful experience in the design and manufacturing of pipe joints of similar design, working pressure, pipe diameter and wall thickness as specified.

C. Owner Testing and Inspection:

1. Pipe may be subject to inspection by an independent testing laboratory, which laboratory will be selected and retained by the Owner. Representatives of the laboratory or the Engineer shall have access to the Work whenever it is in preparation or progress, and the pipe manufacturer shall provide proper facilities for access and for inspection. The pipe manufacturer shall notify the Owner in writing, at least 2 weeks prior to the pipe manufacture so that the Owner may advise the manufacturer as to the Owner's decision regarding tests to be performed. Material and pipe which are discovered to be defective, or which do not conform to the requirements of this Section shall be subject to rejection at any time prior to final acceptance of the pipe. After final acceptance, each joint of pipe shall be stamped as approved by the laboratory.

2. It is anticipated that production of pipe shall be done over a normal period of time and without "slow-downs" or other abnormal delays. In the event that an abnormal production time is required, and the Owner is required to pay excessive costs for inspection, then the Contractor shall be required to reimburse the Owner for such laboratory costs over and above those which would have been incurred under a normal schedule of production.

D. Pipe Classification: Pipe manufacturer shall manufacture the pipe to meet the installation conditions, cover depth, and bedding and backfill requirements as shown on the Drawings or specified and furnish the correct class of pipe to meet these conditions. If additional requirements are required, pipe manufacturer shall coordinate their requirements with the Contractor.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 “Contract Administration” and shall include:

1. Record Data: Catalog data, including dimensions of new pipe and fittings and recommendations for handling and storage; details of lining and coating; thrust restraint provisions; hydrostatic pressure test plan and results; affidavit stating the pipe furnished complies with AWWA C151, AWWA C104, AWWA C110, AWWA C111, and these specifications; mill certificates, including chemical and physical test results for each heat of metal, if requested during pipe manufacturing operations; record drawings, including a schematic location-profile and a tabulated layout schedule, referenced to the pipeline stationing.

2. Shop Drawings: Mechanical joint connections; connections to differing pipe materials.

3. Certified Test Data: Certified Test Reports from the manufacturer’s testing facility or an Owner approved testing laboratory; results of factory hydrostatic tests; pipe and fitting certification for conformance to ANSI/NSF 61.

1.04 REFERENCE SPECIFICATIONS

A. Section 31 23 33 “Trenching and Backfill.”

B. Section 33 05 05.31 “Hydrostatic Testing.”

C. Section 33 10 13 "Disinfecting of Water Utility Distribution.”

1.05 STANDARDS

A. Except as modified herein, the applicable provisions of the following standards shall apply as if written here in their entirety:

1. American Water Works Association (AWWA) Standards:

AWWA C104	Standard for Cement Mortar Lining for Ductile Iron Pipe and Fittings
AWWA C105	Standard for Polyethylene Encasement for Ductile Iron Piping
AWWA C110	Standard for Ductile Iron and Gray Iron Fittings
AWWA C111	Standard for Rubber Gasket Joints for Ductile Iron Pipe and Fittings
AWWA C150	Standard for Thickness Design of Ductile Iron Pipe
AWWA C151	Standard for Ductile Iron Pipe
AWWA C153	Standard for Ductile-Iron Compact Fittings for Water Service
AWWA C600	Standard for Installation of Ductile Iron Water Mains and Appurtenances
AWWA C606	Grooved and Shouldered Joints

2. Steel Structures Painting Council (SSPC) Standard: SSPC SP6, Commercial Blast Cleaning.

3. All ductile iron pipe and fittings for potable water systems shall conform to American National Standards/National Science Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

1.06 DELIVERY AND STORAGE

A. Handling and storage of pipe and fittings shall comply with AWWA C600 and the manufacturer's recommendations. It is desired that the pipe be hauled direct from the pipe plant to the right-of-way and strung along the pipeline route, thus avoiding rehandling of the pipe and the possibility of damage thereto. Where fully loaded truck and trailer cannot operate along the pipeline route, pipe may be unloaded at access points along the route and brought to the trench side by approved methods; however, the Contractor shall be responsible to ensure that the pipe is undamaged at the time of laying.

1.07 GUARANTEES

A. The product shall be warranted and guaranteed per the General Conditions of the Specifications.

2.00 PRODUCTS

2.01 MATERIALS

A. Ductile Iron Pipe:

1. Ductile iron pipe shall be made of ductile iron in accordance with AWWA C151. All ductile iron pipe shall have a minimum working pressure as indicated on the Drawings. Pipe shall be rated for pressure in accordance with AWWA C151 for pressure class of pipe as indicated. Standard joint length shall be 18 to 20 feet. Flanged ductile iron pipe shall be in accordance with AWWA C115.

2. Pipe manufacturer shall manufacture the pipe to meet the installation conditions, cover depth, and bedding and backfill requirements as shown on the Drawings or specified and furnish the correct class of pipe to meet these conditions.

B. Fittings: Fittings shall be ASTM A536 ductile iron or ASTM A48 cast iron in accordance with AWWA C110 or AWWA C153. Fittings shall be rated for a minimum working pressure of 250 psi, unless specified otherwise. Factory welded outlets may be used in lieu of tee fittings for 18-inch and larger tee fittings. Factory welded outlets shall have a minimum pressure rating of 250 psi. Factory welded outlets may not be used near sources of vibration, such as pump stations or roads.

C. Joints for Pipe and Fittings:

1. Joints shall be in accordance with AWWA C110, AWWA C111, and AWWA C151. Standard joints for ductile iron pipe and fittings shall be push-on. Where indicated, joints shall be mechanical joint, flanged, or grooved.

2. Flanged joints shall have pressure ratings equal to or greater than adjacent pipe. Flange pattern shall match pattern of valve, fitting, or appurtenance to be attached. Flanges on ductile iron pipe shall be ductile iron.

D. Provisions for Thrust:

1. Thrust at bends, tees, plugs, or other fittings shall be resisted by restrained joints. If thrust cannot be accommodated using restrained joints, thrust blocking or concrete anchors to restrain thrust may be used on a case-by-case basis when approved by the Engineer.

2. Restrained joints shall be used for a sufficient distance from each bend, tee, plug, or other fitting to resist thrust which will be developed at the design pressure of the pipe. For the purpose of thrust restraint, design pressure shall be 1.5 times the design working pressure class indicated.

3. The length of pipe with restrained joints to resist thrust forces shall be determined by the pipe manufacturer in accordance with Thrust Restraint Design for Ductile Iron Pipe, Ductile Iron Pipe Research Association using the following parameters:

   a. Laying condition equal AWWA C600 Type 4 bedding.

   b. If polyethylene encasement is used, restrained length shall be doubled to account for reduced soil to pipe friction resistance.

E. Coating:

1. Coat the exterior of the pipe and fittings with a 1 mil bituminous coating in accordance with AWWA C110 and AWWA C151, unless specified otherwise.

2. In addition to the factory applied asphaltic coating, all buried ductile iron pipe and fittings shall have a tube-type polyethylene encasement in accordance with AWWA C105. Polyethylene encasement shall be 8 mils thick. Both ends of the pipe shall be thoroughly sealed with adhesive tape or plastic tie straps at the joint overlap. Place circumferential wraps of tape at 2-foot intervals along the barrel of the pipe to minimize the space between the encasement and the pipe.

F. Lining: Ductile iron pipe and fittings shall have a cement mortar lining in accordance with AWWA C104 and bituminous seal coat. Thickness of lining shall be as specified in AWWA C104. Air piping shall not be lined.

G. Flexible Joint Couplings:

1. Flexible joint couplings shall be Dresser Style 38, Rockwell Style 411, Victaulic Depend-O-Lok - E x E, Type II or approved equal, unless otherwise shown.

2. Provide restrained flexible joint couplings or restrained flexible joints on all pipes connecting to concrete structures and at other locations shown on the Drawings. Restrained flexible couplings shall be Victaulic Depend-O-Lok F x F Type II or approved equal. Restrained flexible joints shall be U.S. Pipe "TR Flex", American Ductile Iron Pipe "Flex Ring", Clow Corporation "Super-Lock", or approved equal.

H. Insulated Connections: Where insulated connections are indicated, the pipe manufacturer shall furnish dielectric insulation gaskets, sleeves, and two plastic washers for each bolt. Insulating kits shall be Insulket or approved equal.

3.00 EXECUTION

3.01 INSTALLATION

A. General: Install ductile iron pipe, fittings, specials, valves, and hydrants in accordance with AWWA C600 and the Specifications. Trenching and backfilling shall be in accordance with Section 31 23 33 “Trenching and Backfill.” Before lowering into the trench, inspect each joint of pipe. Pipe will then be accepted, rejected, or repaired.

B. Pipe Laying: Lower pipe, fittings, and special castings into trench by crane or other suitable method. Do not roll in or "dump" into the trench. Handle pipe and fittings with belts, slings, or other equipment designed to prevent damage to the pipe and coating. Remove dirt and trash that may be in the barrel of the pipe, on the spigot or in the bell while the pipe is suspended. Keep the pipe clean during the laying operation and free of sticks, dirt, and trash, and at the close of each operating day seal the open end of the pipe with a gasketed night cap. Do not lay pipe in water.

C. Pipe Alignment: Install pipe and fittings to the line and grade indicated. In areas where the line and grade indicated cannot be achieved using standard manufactured bends and fittings, make slight adjustments by deflecting joints. Joint deflections may not exceed the lesser of the maximum deflections stipulated in AWWA C600 or 75 percent of the manufacturer’s maximum recommended deflection. Resolve any conflicts with existing utilities and structures.

D. Joint Making:

1. Jointing Mechanical Joint Pipe:

    a. Joint this type of pipe in accordance with the manufacturer's recommendations, with uniform torque on bolts.

    b. After carefully cleaning both spigot and bell and after slipping the follower ring and gasket over the spigot end, slip the spigot into the bell. Apply a lubricant to the spigot to assist in assembly.

    c. Carefully seat the gaskets by hand to be even in the bell at all points.

    d. After drawing up the follower ring to uniform bearing against the gasket, insert the bolts and tighten by hand in pairs using bolts opposite each other.

    e. Tighten the nuts to hold the required pressure. Extension wrenches or pipes over wrench handles shall not be permitted. Use 10-inch ratchet wrenches to tighten the nuts to a uniform torque.

    f. The finished joint shall be watertight.

2. Making Flanged Joints: Erect flanged pipe in accordance with the controlling dimension as specified. Thoroughly clean each piece of flanged pipe to remove dirt, rust, grease, and other foreign matter. Thoroughly wire brush flanged faces to ensure even bearing for gaskets and mating flanges. Place full face gasket, use drift pins to align holes, and tighten flange bolts, each in turn, at a uniform torque around the joint. Finished joints shall be watertight.

3. Making Push-On Joints:

    a. The jointing of this type of joint shall be as recommended by the manufacturer. The procedure for jointing shall be generally as follows:

        1). Thoroughly clean and dry the spigot and bell before starting the assembly of the joint. Wipe the gasket clean with a cloth.

2). Place the gasket into the gasket seat in the bell.

3). Apply a thin film of lubricant to the surface of the gasket that will come in contact with the entering pipe spigot. If necessary, also apply lubricant to the spigot.

4). Make the joint by exerting sufficient force on the entering pipe so that its plain end will move past the gasket to the seat of the bell.

5). If restrained joints are used, orient pipe to permit ease of assembly. Place locking device after installation of spigot into bell.

E. Polyethylene Encasement: Wrap bituminous coated ductile iron pipe in polyethylene encasement in accordance with AWWA C105. Repair or replace encasements which have tears, rips, or punctures in the polyethylene wrap.

F. Painting: Paint piping which is submerged or exposed to the atmosphere in accordance with the following:

1. Prepare surfaces in accordance with the following requirements:

a. NAPF 500-03-01 — Solvent Cleaning.

b. NAPF 500-03-02 — Hand Tool Cleaning.

c. NAPF 500-03-03 — Power Tool Cleaning.

d. NAPF 500-03-04 — Abrasive Blast Cleaning for Ductile Iron Pipe.

e. NAPF 500-03-05 — Abrasive Blast Cleaning for Cast Ductile Iron Fittings.

2. "Solvent Cleaning" must be performed prior to subsequent surface preparation as specified in NAPF 500-03.

3. Install one to two coats of Type H – Epoxy-Polyamide at a DFT of 4.0 mils.

4. Color shall be light blue for potable water. Provide samples for Owner selection and in accordance with TCEQ requirements.

3.02 FIELD QUALITY CONTROL

A. Perform a hydrostatic test as specified in Section 33 05 05.31 "Hydrostatic Testing."

B. Disinfect the piping system as specified in Section 33 10 13 "Disinfecting of Water Utility Distribution."

END OF SECTION

33 05 01.09 POLYVINYL CHLORIDE (PVC) PRESSURE PIPE AND FITTINGS

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to install polyvinyl chloride (PVC) pressure pipe, appurtenances, and fittings to the diameters indicated for water supply and wastewater pressure piping. Trenching, backfilling, and pipe embedment shall be in accordance with Section 31 23 33 “Trenching and Backfill.”

1.02 QUALITY ASSURANCE

A. Certification: Domestic water piping shall be approved by the Underwriters Laboratory and shall be accepted by the State Fire Insurance Commission for use in water distribution systems. PVC water pipe shall bear the seal of approval (or “NSF” mark) of the National Sanitation Foundation Testing Laboratory for potable water pipe.

B. Design Criteria: The maximum allowable load for PVC pipe installations shall produce a maximum deflection of 4 percent.

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 “Contract Administration” and shall include:

1. Certified Test Reports from the Manufacturer’s testing facility or an approved testing laboratory.

2. Shop Drawing including the following information:

a. Manufacturer.

b. Dimension ratio.

c. Joint types.

d. Gaskets material.

e. Means of restraint.

f. Manufacturer’s recommendation for maximum deflected joint angle and minimum longitudinal bending radius

g. Thrust restraint lengths and lay schedule as Shop Drawing. Lay schedule shall include the following:

1). Pipe class.

2). Joint type.

3). Fittings.

4). Stationing.

5). Transitions.

6). Joint deflection.

3. Shop Drawing of Detectable Warning Tape.

1.04 REFERENCE SPECIFICATIONS

A. Section 01 30 00 “Contract Administration”

B. Section 31 23 33 “Trenching and Backfill.”

C. Section 33 10 13 “Disinfecting of Water Utility Distribution.”

1.05 STANDARDS

A. The applicable provisions of the following standards shall apply as if written here in their entirety. PVC piping and fittings shall be in full compliance with the applicable standards and specifications for each type of plastic pipe involved. Pipe may be rejected for failure to comply with any requirement of this Section.

1. American Society for Testing and Materials (ASTM) Standards:

ASTM D1784	Standard Specification for Rigid Poly(Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds
ASTM D1785	Specification for Poly(Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120
ASTM D2241	Standard Specification for Poly(Vinyl Chloride) (PVC) Pressure-Rated PVC Pipe (SDR) Series
ASTM D2464	Standard Specification for Threaded Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80
ASTM D2466	Standard Specification for Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings Schedule 40
ASTM D2467	Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80
ASTM D2855	Standard Practice for the Two-Step (Primer and Solvent Cement) Method of Joining Poly (Vinyl Chloride) (PVC) or Chlorinated Poly (Vinyl Chloride) (CPVC) Pipe and Piping Components with Tapered Sockets
ASTM D3139	Standard Specification for Joints for Plastic Pressure Pipes Using Flexible Elastomeric Seals
ASTM F1674	Standard Test Method for Joint Restraint Products for Use with PVC Pipe

2. American Water Works Association (AWWA) Standards:

AWWA C104	Cement-Mortar Lining for Ductile Iron Pipe and Fittings
AWWA C105	Polyethylene Encasement for Ductile-Iron Pipe Systems
AWWA C110	Ductile-Iron and Gray-Iron Fittings
AWWA C153	Ductile-Iron Compact Fittings
AWWA C605	Underground Installation of Polyvinyl Chloride (PVC) and Molecularly Oriented Polyvinyl Chloride (PVCO) Pressure Pipe and Fittings

AWWA C900	Poly Vinyl Chloride (PVC) Pressure Pipe and Fabricated Fittings, 4 through 60 Inches (100 mm Through 1,500 mm)
AWWA M23	PVC Pipe – Design and Installation.
AWWA M41	Ductile – Iron Pipe and Fittings

3. NSF International (NSF):

NSF 61	Drinking Water System Components – Health Effects

4. Underwriters Laboratories, Inc. (UL).

1.06 DELIVERY AND STORAGE

A. Store PVC material so that there is no exposure to sunlight.

2.00 PRODUCTS

2.01 MATERIALS

A. Pipe:

1. Four to 60 inches:

Class 235 (DR18) C900 with cast iron outside dimensions	Potable water lines, non-potable plant and reverse osmosis reuse lines, 235 psi rating

B. PVC Pressure Piping:

1. Smaller than 4 inches in size shall be Type 1, Grade 1, Polyvinyl Chloride, Schedule 40 pipe conforming to ASTM D1785.
2. For pipe 2 inches in diameter and smaller, joints shall be glued.
3. For pipe larger than 2 inches in diameter, joints shall be bell and spigot push-on type as specified in ASTM D3139.
4. PVC Pressure Pipe for potable water shall meet the requirements of NSF 61.
5. PVC Pressure Pipe for Sanitary Sewer shall conform to either C900 or ASTM D2241.

C. Fittings: 3- through 24-inch ductile iron and conforming to AWWA C110 or AWWA C153. Fittings for piping smaller than 3 inches shall be in accordance with ASTM D2466.

D. Thrust Restraint: Thrust restraint devices shall be Mega-lug or approved equal and shall be factory tested and pressure rated in accordance with ASTM F1674.

1. Joint restraint devices shall be designed specifically for use with PVC pipe of the joint type and pressure rating specified.
2. Restrained joints shall be used for a sufficient distance from each bend, tee, plug, valve or other fitting to resist thrust which will be developed at the design pressure of the pipe. For the purposes of thrust restraint, working pressure shall be 150 psi, design pressure shall be 1.5 times the design working pressure of 150 psi or the pipe pressure class indicated.

3. The length of pipe with restrained joints to resist thrust forces shall be the sole responsibility of and determined by the Pipe Manufacturer using the following parameters:
    a. Laying condition equal to AWWA C605 Type 3 bedding.
    b. No thrust restraint contribution shall be allowed for pipe in casing**.**
    c. Soil density = 100 pcf.
    d. Concrete thrust blocking shall not be accounted for in joint restraint calculations. All concrete thrust blocking shall be Class "A" concrete, 3000 psi and be placed at bends, tees, and valves according to City of Midland Standards. Rest blocking against firm undisturbed trench walls.

E. Detectable Warning Tape:
1. Provide detectable warning tape as follows:
    a. Thickness: 5.0 mil overall thickness.
    b. Width: 3 inch minimum.
    c. Weight: 27.5 pounds per inch per 1000 square feet.
    d. Triple layer with:
        1). Minimum thickness 0.35 mils solid aluminum foil encased in a protective inert plastic jacket.
        2). 100 percent virgin low density polyethylene.
        3). Impervious to all known alkalis, acids, chemical reagents, and solvents within soil.
        4). Aluminum foil visible to both sides.
    e. Locatable by conductive and inductive methods.
    f. Printing encased to avoid ink rub-off.
    g. Color and Legends:
        1). Potable Water Lines:
            a). Color: Blue (in accordance with APWA Uniform Color Code).
            b). Legend: Caution Potable Water Line Below (repeated every 24 inches).
        2). Reclaimed Water Lines:
            a). Color: Purple (in accordance with APWA Uniform Color Code).
            b). Legend: Caution Reclaimed Water Line Below (repeated every 24 inches).
        3). Sewer Line:
            a). Color: Green (in accordance with APWA Uniform Color Code).
            b). Legend: Caution Sewer Line Below (repeated every 24 inches).

2.02 MARKINGS

A. The Pipe Manufacturer shall mark the piping with the size and appropriate AWWA/ASTM Standard designations as applicable.

3.00 EXECUTION

3.01 INSTALLATION

A. Install pipe, fittings, and specials to the lines and grades indicated. Begin installation at the main supply line valve and make connections where indicated.

B. Excavate trenches where required to alignment and depth specified or as required for proper installation of pipe. Carefully lower pipe, fittings, and specials into the trench to avoid damage to the pipe and/or fittings. Take necessary precautions to protect pipe during backfilling operations. Replace any damaged pipe before it is buried. Keep the pipe clean during laying operations and seal the pipe against the entrance of objects at the close of each operating day.

C. Place thrust restraint fittings at bends, tees, crosses, valves, and plugs in the pipe line in accordance with approved Shop Drawing lay schedule and Paragraph 2.01.D.

D. Buried ductile iron fittings shall be double wrapped in 8mm high density polyethylene encasement in accordance with AWWA C105, repair or replace encasements which have tears, rips or punctures in the polyethylene wrap.

E. The minimum cover for 1- to 4-inch PVC piping shall be 36 inches. For 6-inch PVC piping and larger, the minimum cover shall be 42 inches.

F. Solvent weld joints shall be in accordance with ASTM D2855, and shall be made generally as follows: cut square and smooth the ends of the plastic pipe and wipe clean. Apply primer and solvent cement to the outside of the pipe and the inside of the fitting socket with a small brush. Immediately push the coated surfaces snugly together and rotate the pipe approximately one-half turn to insure uniform distribution of the cement. Remove the excess cement by wiping. Cement shall be of type which welds plastic surfaces together. Cement shall be as recommended by the Pipe Manufacturer and shall be compatible with the chemical conveyed.

G. Push-on joints shall be in accordance with the manufacturer's instructions.

H. Use of deflected joints shall be at 50 percent of the manufacturer recommendation or longitudinal deflection shall be 133 percent of the manufacturer's minimum radius.

I. Joint lubricant shall be as recommended by the pipe manufacturer.

3.02 FIELD CONTROL HYDROSTATIC TESTING

A. Test PVC pressure piping for leakage by a hydrostatic pressure test in accordance with Section 33 05 05.31 "Hydrostatic Testing."

3.03 PURGING OF WATER LINES

A. Purge, sterilize, and test the constructed water lines in accordance with Section 33 10 13 "Disinfecting of Water Utility Distribution."

1. During construction operations, maintain the installed surfaces of the system, which come in contact with the City's water supply, in a sanitary condition.
2. Every effort must be made to keep the inside of the pipe, fittings, and valves free of loose foreign matter.
3. Should the Contractor's carrier be required to transport potable water to the job site for main testing, sterilize tankage and piping, including pumps used to transport or transfer potable water into the main.

B. When the entire pipeline or selected sections have been completed and are ready for use, disinfect the line or section according to the following procedures:

1. Flush piping sections which were not swabbed by the pig.
2. Flush back flow water from the system that has inadvertently entered the pipe.
3. After purging and flushing, sterilize the system in accordance with procedures in Section 33 10 13 "Disinfecting of Water Utility Distribution."

3.04 SERVICE CONNECTIONS

A. Make service connections in accordance with AWWA Manual M23 "PVC Pipe - Design and Installation" and the instructions from the Manufacturer. Use a service clamp or saddle to connect 2-inch and smaller services to PVC pipe sizes 4 to 12 inches. Use a ductile iron tapped tee to connect 3-inch service connections.

3.05 FIELD QUALITY CONTROL

A. Do not enclose or cover any Work until inspected.

END OF SECTION

33 10 13 DISINFECTING OF WATER UTILITY DISTRIBUTION

1.00 GENERAL

1.01 WORK INCLUDED

A. Disinfect the facilities for pumping, storing, or conveying potable water to comply with the standards for potable water of the regulatory agency of jurisdiction. Potable water is defined as any water that has been filtered, disinfected, or otherwise treated to the meet regulatory standards (in the water treatment plant this includes the inside surfaces of the filters).

B. Disinfect piping systems that are used to convey water, solutions, or chemicals to the potable water facilities.

C. Test water from the disinfected system per regulatory standards to verify that water is acceptable. Repeat procedure if tests do not meet standards.

D. For critical operations the Contractor shall plan and perform the repairs/work in a manner to allow the Bac-T samples to be taken by noon. In accordance with Texas Commission on Environmental Quality (TCEQ) Chapter 290 regulations, disinfection must be performed when repairs are made to existing facilities and before new facilities are placed into service. When it is necessary to return the facility back to service as rapidly as possible, it is acceptable to increase the doses to 500 mg/l and the contact time reduced to 30 minutes. This Project will require the critical operations to be disinfected by 500 mg/l for 30 minutes followed by flushing prior to the sample being taken. The Owner will take the sample and have it tested. Contractor may also take a sample to be tested. Cost for failed tests and all associated re-disinfection, flushing shall be borne by the Contractor. Prior to the 30 minute test time, all new valves shall be fully closed and opened.

2.00 PRODUCTS

2.01 MATERIALS

A. Liquid Chlorine: Meeting the requirements of AWWA B301 - Liquid Chlorine.

B. Calcium Hypochlorite: Meeting the requirements of AWWA B300 - Hypochlorites.

3.00 EXECUTION

3.01 NEW FACILITIES

A. New facilities shall be thoroughly disinfected in accordance with AWWA C651 - Disinfecting Water Mains, AWWA C652 - Disinfection of Storage Facilities, and AWWA C653 - Disinfection of Water Treatment Plants, and then flushed and sampled before being placed in service. Samples shall be collected and tested in accordance with the TCEQ Rules and Regulations, Chapter 290.

B. During construction keep basins, pipe, fittings, equipment, and appurtenances free from dirt and debris.

1. Clean basins thoroughly before disinfection.

2. Seal the open ends of pipe with water-tight plugs when pipe is not being laid.

3. Pump water from trenches before removing the plug when water accumulates in the trench.

C. Complete hydrostatic test of the line prior to disinfection.

D. Wash the surfaces to be disinfected.

1. Flush pipelines. The minimum quantity of water used for flushing must exceed the capacity of the line to ensure that clean water has traversed the entire length of pipe.

2. Power wash the surfaces of basins and reservoirs using high pressure wash systems.

E. Disinfect facilities per the following procedures of AWWA:

1. Water Mains: AWWA C651 - latest revision.

2. Water Storage Facilities: AWWA C652 - latest revision.

3. Water Treatment Plants: AWWA C653 - latest revision.

F. Fill the system with potable water. Test the water to see that it meets the requirements of the regulatory agency of jurisdiction for potable water. Monitor the system for 2 days. If water test fails to meet the prescribed standards, repeat the disinfection process until water meets quality standards for disinfection.

3.02 REPAIRS OR CONNECTIONS TO EXISTING LINES

A. Clean and sterilize the interior surfaces of new piping, fittings, equipment, and appurtenances to be installed in an existing potable water system or connected to an existing system.

B. Clean and sterilize the existing pipe or facilities for a minimum distance of 3 pipe diameters back from the ends of the pipe. Plug the ends of the line when work is not being performed on the pipe.

C. Perform sterilization by swabbing each item with a concentrated chlorine solution.

1. Each piece is to be disinfected prior to being assembled for installation in the existing pipe.

2. Disinfect each piece just prior to assembly to help prevent re contamination.

3. Plug the ends of the assembly until a new item is to be added to the assembly.

4. Store disinfected materials on blocks to prevent contact with the ground.

3.03 DISPOSAL OF FLUSHING AND DISINFECTION WATER

A. Chlorinated water used in flushing and disinfecting pipelines, storage tanks, or vessels prior to connection to the distribution system shall be disposed of by the Contractor in an acceptable manner. Chlorinated water must be “de-chlorinated” prior to disposal to eliminate adverse impacts to the surrounding environment. Water released to the environment shall meet all AWWA, EPA, and TCEQ regulatory requirements.

1. The Contractor is responsible for complying with all of the applicable requirements of the TPDES General Permit TXG670000, issued by the TCEQ, regarding the discharge of

hydrostatic test water. Maximum discharge chlorine concentration for compliance is 0.10 mg/l. Discharges within the Edwards Aquifer recharge area must meet special requirements under the terms of the General Permit. Contractor compliance is required.

2. Residual chlorine concentrations may be reduced using sulfur dioxide, sodium bisulfite, sodium sulfite, sodium thiosulfate, or ascorbic acid.
3. The discharge must be to a splash pad or paved area, and may not be located within 300 feet of the intake for a domestic drinking water supply or 500 feet of any public or private water well.
4. An effluent water sample must be taken during the first hour of discharge at a location immediately near the point of discharge, and collected prior to commingling with storm water, wastewater, or other flows.
5. For discharges that extend beyond an hour in duration, a second sample must be taken of the last 10 percent of the effluent.
6. Sampling protocol, sample containers, holding times, preservation methods, and analytical methods must follow the requirements set forth in the general permit.
7. The effluent grab sample(s) must be analyzed for total residual chlorine by an accredited and certified laboratory.
8. Any noncompliance that endangers human health or safety, or the environment must be reported to the TCEQ in accordance with the general permit.
9. Any effluent violation which deviates from the permitted effluent limitation by more than 40 percent must be reported to the TCEQ in accordance with the general permit.
10. The Contractor must record all hydrostatic test water sample results on an approved DMR (EPA Form 3320-1). These monitoring records shall be retained for a period of 3 years from the date of the record and be readily available for review by the TCEQ upon request. See attached form

B. With the written permission of the Owner of the system, chlorinated water may be disposed of in a sanitary sewer system if one is available. In the case of larger pipelines and the larger volumes of water involved, the Contractor will not be permitted to use the sanitary sewer system for disposal even if one is available.

END OF SECTION

PERMITTEE NAME/ADDRESS (Include Facility Name/Location if Different)
NAME
ADDRESS
FACILITY
LOCATION
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
DISCHARGE MONITORING REPORT (DMR)
PERMIT NUMBER
DISCHARGE NUMBER
MONITORING PERIOD
FROM YEAR MO DAY TO YEAR MO DAY
Check here if No Discharge
NOTE: Read instructions before completing this form
Form Approved.
OMB No. 2040-0004
PARAMETER
QUANTITY OR LOADING
QUALITY OR CONCENTRATION
NO. EX
FREQUENCY OF ANALYSIS
SAMPLE TYPE
VALUE
UNITS
SAMPLE MEASUREMENT
PERMIT REQUIREMENT
NAME/TITLE PRINCIPAL EXECUTIVE OFFICER
TELEPHONE
AREA CODE
NUMBER
YEAR
MO
DAY
DATE
TYPED OR PRINTED
SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT
COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)
EPA Form 3320-1
PAGE
OF

33 12 16.21 PRESSURE REDUCING VALVES

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and appurtenances necessary to install and test the pressure reducing valves. The pressure reducing valve shall be a hydraulically operated, single pilot, globe pattern valve. The pressure reducing valve shall have an initial setting of 30 psi drop and be able adjusted.

1.02 QUALITY ASSURANCE

A. Experience Requirements: Valves shall be the product of a manufacturer who has a least 10 years' experience of successful experience in the design, manufacture, and application of hydraulically controlled (pilot piping and valve arrangement) valves based on water system pressure used in water service and have controls to close the valve.

B. Assembly: The valve, pilot piping, opening and closing control valves, and other appurtenances shall be completely assembled and tested at the factory. The valve seats shall be adjusted at the factory for correct seating.

C. Manufacturer's Representative: The valve manufacturer shall furnish the services of a competent service technician for the duration of time necessary to assist in the installation, adjustment and start-up operation, and field acceptance testing. The technician shall instruct the Owner's personnel in the proper care, maintenance, adjustment, and operation of the equipment and shall issue a written certification that the equipment has been properly installed. The technician shall available within two weeks of notification.

1. Manufacturer's representative shall devote a minimum of one (1) hour to instruction and training on operation of the valve with the Owner's personnel. Written materials specific to the training shall be provided.

D. All pressure reducing valves and associated appurtenances for potable water systems shall conform to NSF Standard 61 and must be certified by an organization accredited by ANSI.

E. Acceptable Manufacturers: Acceptable valve manufacturers include the following:

1. Cla-Val – Model 392-20BPSYKCKD Pressure Reducing and Sustaining Valve
2. Singer

1.03 SUBMITTALS

A. Submittals shall be provided in accordance with Section CIP10 - Submittals and shall include:

1. Shop Drawings **to be submitted with bid submittal**
2. Anti-Cavitation Calculations from the valve manufacturer.
3. Operation and Maintenance Manuals.

1.04 STANDARDS

A. Except as modified herein, the applicable provisions of the following standards shall apply as if written here in their entirety:

1. American National Standards Institute (ANSI) standards:

ANSI B16.1	Cast Iron Pipe Flanges and Flanged Fittings, Class 25, 125, 250, and 800
ANSI B16.5	Pipe Flanges and Flanged Fittings: NPS 1/2 through 24-Inch Standard
ANSI B16.21	Nonmetallic Flat Gaskets for Pipe Flanges

2. American Society for Testing and Materials (ASTM) standards:

ASTM B62	Standard Specification for Composition Bronze or Ounce Metal Castings
ASTM A536	Standard Specification for Ductile Iron Castings

3. American Water Works Association (AWWA) Standards:

AWWA C111	Standard for Rubber-Gasket Joints for Ductile-Iron Pressure Pipe and Fittings
AWWA C550	Standard Specification for Protective Interior Coatings for Valves and Hydrants
AWWA C651	Disinfecting Water Mains

B. All Pressure Sustaining Valves and associated appurtenances for potable water systems shall conform to American National Standards/National Science Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

1.05 JOB CONDITIONS

A. The equipment furnished under this Section shall be suitable for use in a potable municipal water system. The equipment will be installed outdoors in a below ground concrete vault. The pressure reducing valve shall be capable of dropping the pressure from ranging between 100 psi to 120 psi to a pressure range of 60 psi to 80 psi. The pressure reducing valve shall be capable to handle small flows of 0.5 gpm and fire flow of 1,500 gpm.

1.06 GUARANTEES

A. Manufacturer shall warrant the equipment furnished under this specification for a period of 2 years of service against defects in materials and workmanship and operational failure.

B. In the event of failure of any part or parts of the equipment during the first two years of service and provided that the equipment has been operated and maintained in accordance with good practice, the manufacturer shall furnish, deliver, and install the defective part or parts at his own expense.

C. The first two years of service shall be interpreted as the 24-month period following the installation, adjusting and acceptance testing, and the start of actual operation of the equipment.

2.00 PRODUCTS

2.01 MANUFACTURED PRODUCTS

A. Function: The pressure reducing valve shall maintain a minimum preset upstream pressure regardless of changing flow rates and/or downstream pressure.

B. The pressure reducing valve shall be suitable for 150 psi working pressure, 250 psi surge pressure, and shall be capable of reducing a maximum 120 psi inlet pressure to a discharge pressure of 60 to 80 psi. The diaphragm operated pilot valve shall be easily adjustable providing a minimum discharge pressure of 50 psi.

C. Valve shall come complete with two glycerin filled pressure gauges with snubber fittings, one to monitor upstream pressure in psi, and one to monitor downstream pressure in psi. The gauges shall be the Manufacturer's standard commercial product. The gauges shall be new and shall embody the design characteristics stated for the respective class, size, type, etc. Gauge shall be Class 1 with 3-1/2” case. Gauge cases shall be type 304 stainless steel. Inlet shall be 1/4" size with bottom connections.

D. Main Valve: The valve shall be hydraulically operated, single diaphragm-actuated, globe pattern. The valve shall consist of three major components: the body, with seat installed; the cover, with bearings installed; and the diaphragm assembly. The diaphragm assembly shall be the only moving part and shall form a sealed chamber in the upper portion of the valve, separating operating pressure from line pressure. Packing glands and/or stuffing boxes are not permitted and there shall be no pistons operating the main valve or pilot controls.

E. Main Valve Body:

1. No separate chambers shall be allowed between the main valve cover and body. Valve body and cover shall be of cast Ductile Iron with epoxy coated interior/exterior per AWWA C550.

2. The main valve seat and the stem bearing in the valve cover shall be removable. The cover bearing shall be threaded into the cover. The main valve seat shall be held in with machine screws. To ensure proper alignment of the valve stem, the valve body and cover shall be machined with a locating lip. No “pinned” covers to the valve body shall be permitted.

3. Cover bearing, disc retainer, and seat shall be made of the same material. All necessary repairs and/or modifications other than replacement of the main valve body shall be possible without removing the valve from the water line.

F. Additional Components:

1. Pressure Reducing Pilot Control, Cla-Val model CRA-34 (or approved equal).

2. Valve Position Transmitter, Cla-Val model X117D (or approved equal).

3. Upstream and downstream Pressure Transmitter, Cla-Val model X141-PT (or approved equal).

4. Electronic Valve Controller with Electronic Power Converter, Cla-Val model VC-22D (or approved equal).

G. Pressure Sustaining Valve Materials:

Description	Specification
Pressure Rating	150 psi maximum
Main Valve Size	12-inch
Main Valve Body & Cover	Ductile Iron (ASTM A536)
Main Valve Trim	316 Stainless Steel
End Detail	Flanged
Rubber Material	EPDM
Coating	Interior/Exterior Epoxy Coating (AWWA C550)

H. Pilot Control Materials:

Description	Specification
Body & Cover	Bronze (ASTM B62)
Trim	316 Stainless Steel
Tubing and Fittings	Stainless steel
Operating Fluids	Potable Water
Gaskets	EPDM

3.00 EXECUTION

3.01 INSTALLATION

A. Install the valve in the valve vault. Make all connections between the valve and the valve pilot. Installation of the valve shall be in accordance with the valve manufacturer's recommendations.

3.02 FIELD QUALITY CONTROL

A. Upon completion of the installation of the equipment, an acceptance test to verify the satisfactory operation of the valve shall be performed. The test shall be conducted in a manner, approved by and in the presence of the Engineer. The valve manufacturer's representative shall be present during the valve acceptance test. The unit must perform in a manner acceptable to the Engineer before final acceptance will be made by the Owner.

3.03 CLEAN AND ADJUST

A. All adjustments will be performed in accordance with the valve manufacturer's instructions.

3.04 SCHEDULES

A. The control valve furnished under this specification shall meet the following requirements:

Number Required	Size (in.)	Pressure Class	Location

Number Required	Size (in.)	Pressure Class	Location
1	6	150	West PS and GST Connection

END OF SECTION

DIVISION 40

PROCESS INTEGRATION

40 05 61 GATE VALVES

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment and incidentals necessary to install gate valves and appurtenances, including valve boxes, operators, bolts, nuts and gaskets.

1.02 QUALITY ASSURANCE

A. Acceptable Manufacturers:

1. American-Flow Control.
2. M&H.
3. Mueller.
4. Clow.
5. U.S. Pipe

1.03 SUBMITTALS

A. Submittals shall be in accordance with Section 01 30 00 “Contract Administration” and shall include:

1. Operation and Maintenance Manuals.
2. Shop Drawing: Mechanical joint connections; connections to differing pipe materials.
3. Certified Test Data: Certified Test Reports from the manufacturer’s testing facility or an Owner approved testing laboratory; results of factory hydrostatic tests; pipe and fitting certification for conformance to ANSI/NSF 61.

1.04 STANDARDS

A. The applicable provisions of the following standards shall apply as if written here in their entirety:

1. American National Standards Institute (ANSI) Standards:

ANSI B16.1	Cast Iron Pipe Flanges and Flanged Fittings

2. American Society for Testing and Materials (ASTM) Standards:

ASTM A126	Standard Specification for Gray Iron Castings for Valves, Flanges, and Pipe Fittings
ASTM A536	Standard Specification for Ductile Iron Castings

3. American Water Works Association (AWWA) Standards:

AWWA C111	Rubber-Gasket Joints
AWWA C500	Gate Valves for Water and Sewage Systems
AWWA C509	Resilient Seated Gate Valves for Water and Sewage Systems

2.00 PRODUCTS

2.01 GATE VALVES

A. General:

1. Unless otherwise specified, gate valves 3 through 24 inches in size shall be in accordance with AWWA C509, Resilient Wedge. Valves 16 inches and larger shall be provided with gearing to reduce the maximum required opening and closing torque to 80 ft-lb. Flanges shall conform to ANSI, Class 125 or 250.

B. Gate: Gate for double disc valves shall be cast iron with bronze mounted wedges and seats. Gate for resilient seated valves shall be cast iron with rubber-seat compound bonded to the valve gate.

C. Operators: Operators shall turn counterclockwise to open the valve. Exposed valves shall have handwheel operators unless otherwise designated. A directional arrow and the word "open" shall be cast on the handwheel. Valves for buried service shall have a 2-inch square nut operator and shall be installed with extension stems where required to extend operating nut to within 12 inches of the finished grade. Provide a cast iron valve box to enclose the operating stem. Valve box shall be three-piece extension type equal to Mueller No. 10380 or Clow F2450.

D. Stem and Seal: The non-rising stem shall be bronze with inside screw. Shaft seal shall employ O-rings or V-type packing.

E. Bell Ends: Where designated, valves shall be mechanical joint or rubber gasketed push on joints in accordance with the applicable requirements of AWWA C111.

3.00 EXECUTION

3.01 INSTALLATION

A. Carefully handle and lower buried valves into position to prevent damage to any part of the valves. Place the valve in the proper position with stem truly vertical and securely hold until connections have been made. Furnish bolts, nuts, and gaskets. The Contractor shall be responsible for adjusting the valve boxes to the proper length to conform with the ground surface.

3.02 BLOCKING UNDER GATE VALVE

A. Gate valves 18 inches and larger which are buried shall rest on a concrete pad. Pad shall extend for the full width of the trench and from back of hub to back of hub (or flange). Care shall be taken to not interfere with the jointing. Concrete shall be minimum 1500-psi compressive strength.

3.03 FIELD QUALITY CONTROL

A. Upon completion of installation of the equipment, an acceptance test to verify the satisfactory operation of each unit shall be conducted. The test shall be conducted in a manner approved by and in the presence of the Engineer. The unit shall be checked for general operation and leakage. The unit must perform in a manner acceptable to the Engineer before final acceptance will be made by the Owner.

END OF SECTION

40 05 73.13 ALTITUDE VALVES

1.00 GENERAL

1.01 WORK INCLUDED

A. Furnish labor, materials, equipment, and incidentals necessary to install and test with all appurtenances and accessories to install control valves as indicated.

B. The equipment furnished under this specification shall be suitable for use in a potable municipal water system.

C. The arrangement shown on the plans is based upon the best information available to the Consultant at the time of design and is not intended to show exact dimensions to any specific equipment unless otherwise shown or specified. Therefore, it may be anticipated that the structural supports, foundations, and connected piping shown, in part or in whole, may have to be changed in order to accommodate the equipment furnished. No additional payment will be made for such changes. All necessary calculations and drawings for any related redesign shall be submitted to the Consultant for his approval prior to beginning the work.

1.02 SUBMITTALS

Submittals shall be provided in accordance with Section 01 30 00 “Contract Administration” and shall include:

A. Shop Drawings showing standard cut sheets, valve orientation, limit switches, solenoids, and materials of construction.

B. Hydraulic calculations and characteristics certifying the valve can meet all the design conditions.

C. Weight of valves and appurtenances.

D. Description of valve with appropriate ASTM, AWWA, or ANSI material specification.

E. Valve flange pressure rating, flange bolt diameter, and flange bolt orientation.

F. A description of the components that will be shipped separately, thus requiring field assembly.

G. Project specific control schematic / wiring diagrams.

H. Electronic operator data sheet showing voltage horsepower, full load amps, locked rotor amps, etc.

I. Operation and Maintenance Manuals: Manuals shall be prepared by the equipment manufacturer and shall also incorporate appropriate final certified Shop Drawings and final wiring diagrams. Manuals may be the manufacturer’s standard instructions but shall be supplemented as necessary to cover any special feature not included in standard material. O&M manuals shall include storage instructions, valve installation and adjustment procedures and troubleshooting procedures.

J. Certified Test Reports indicating compliance with factory hydrostatic tests, operational tests.

K. Equipment Installation Report for all valves.

1.03 QUALITY ASSURANCE

A. EXPERIENCE REQUIREMENTS

Valves shall be the product of a manufacturer who has a least 10 years' experience of successful experience in the design, manufacture and application of pilot operated solenoid control valves used in water service and pump control.

B. ASSEMBLY

The valve, strainers, piping, opening and closing speed control valves and other appurtenances shall be completely assembled, wired and tested at the factory. The valve seats shall be adjusted at the factory for correct seating.

C. MANUFACTURER'S REPRESENTATIVE

The valve manufacturer shall furnish the services of a competent service technician for the duration of time necessary to assist in the installation, adjustment and start-up operation, and field acceptance testing. The technician shall instruct the Owner's personnel in the proper care, maintenance, adjustment, and operation of the equipment and shall issue a written certification that the equipment has been properly installed. Manufacturer's representative shall devote a minimum of one (1) hour to instruction and training on operation of the valve with the Owner's personnel. Written materials specific to the training shall be provided.

D. UNIT RESPONSIBILITY AND COORDINATION

The Contractor shall cause all equipment specified under this section to be furnished by the valve manufacturer who shall be responsible for the adequacy and compatibility of all unit components including but not limited to the valve, actuator, and extension stems. Any component of each complete unit not provide by the valve manufacturer shall be designed, fabricated, tested, and installed by factory authorized representatives experienced in the design and manufacture of the equipment. This requirement, however, shall not be construed as relieving the Contractor of the overall responsibility for this portion of the work.

E. ACCEPTABLE MANUFACTURERS

Acceptable valve manufacturers include the following:

1. CLA-VAL Company - Model 136-03BCEPSYKCKD Solenoid Control Valve
2. GA Industries
3. Watts
4. Singer

1.04 STANDARDS

The applicable provisions of the following standards shall apply as if written here in their entirety:

A. American Society for Testing and Materials (ASTM) Standards:

ASTM A48	Standard Specification for Gray Iron Castings
ASTM A536	Standard Specification for Ductile Iron Castings
ASTM B61	Standard Specification for Steam or Valve Bronze Castings
ASTM B62	Standard Specification for Composition Bronze or Ounce Metal Castings

B. American Water Works Association (AWWA) Standards:

AWWA C-116	Protective Fusion-Bonded Epoxy Coatings for the Interior and Exterior Surfaces of Ductile-Iron and Gray-Iron Fittings
AWWA C-550	Standard Specification for Protective Interior Coatings for Valves and Hydrants

C. Other Standards:

NEMA	National Electric Manufacturers Association

1.05 GUARANTEES

A. Vendor shall warrant the equipment furnished under this specification for a period of three years against defects in materials, workmanship, and operational failure.

B. In the event of failure of any part or parts of the equipment during the first year of operation, the Vendor shall furnish, deliver, and install the defective part or parts at no additional expense to the Owner.

C. The three years of service shall be interpreted as the 36-month period following installation, adjusting, acceptance testing and start of actual operation of the equipment, or 30 months following delivery of the equipment, whichever comes first.

2.00 PRODUCTS

2.01 MANUFACTURED PRODUCTS

A. GENERAL

1. The valves shall meet NSF and AWWA requirements for potable water service.

2. The valve body shall be a globe pattern valve. No separate chambers shall be allowed between the main valve cover and body.

3. Valves shall be on-off solenoid control valve single diaphragm-actuated type. The diaphragm assembly shall be the only moving part and shall be fully guided by bearings in the valve cover and lower operating unit.

4. Valves shall be tight closing, with BUNA-N-Synthetic rubber discs. The discs shall be field replaceable, and the valves shall be serviceable inline by removing the cover. Valves shall be drip tight at rated pressures with two-way flow and shall be satisfactory for applications involving valve operation after long periods of inactivity.

5. Valve body interior and exterior surfaces shall be epoxy resin coated (AWWA C550) and shall be suitable for high velocity service. The coating shall be applied by the fusion bond

method and will be a minimum thickness of 8 mils when complete. All coatings in contact with potable water shall be NSF 61 approved.

6. Provide copper piping to convey water expelled from the valve to the floor drain. Support piping horizontally and vertically with stainless steel uni-strut.
7. All hardware shall be stainless steel. Flange gaskets shall be cloth reinforced.
8. All piping, including piping associated with control valve operations smaller than 2-inches in diameter shall be insulated.

B. ALTITUDE VALVE

1. Operation
   a. Provide a solenoid operated valve.
   b. Valve may be hydraulically operated in addition to solenoid shut-off.
   c. Valve must be allowed to open and close based on level readings within the tank from SCADA.
   d. Closed position indication must be able to be remotely monitored by SCADA.
   e. Valve shall have adjustable opening and closing speed controls.
2. Valve Materials

Valve Body and Cover	
Material	ASTM A536 Ductile Iron
Pressure Class	Flanged - 150 Class
Pattern	Globe
Disc Retainer & Diaphragm Washer	Cast Iron
Trim: Disc Guide, Seat & Cover Bearing	Stainless Steel
Disc	Buna-N Rubber
Diaphragm	Nylon Reinforced Buna-N Rubber
Stem, Nut & Spring	Stainless Steel
Flanges	ANSI 150

3. Required Features
   a. Valve body must be full internal port type.
   b. Valve position indicator
   c. Flow stabilizer (if required by the valve manufacturer)
   d. NSF 61 epoxy lined valve
   e. Epoxy coated valve
   f. Drain to atmosphere
   g. Supplemental Manual Operator
   h. Downstream pressure transmitter, Cla-Val model X141-PT (or approved equal).
   i. Valve Position Transmitter, Cla-Val model X117D (or approved equal).

j. Electronic Valve Controller with Electronic Power Converter, Cla-Val model VC-22D (or approved equal).

4. Materials:

Pilot Control System	
Body and Cover	Cast Bronze ASTM B62
Pilot Trim	Brass and 303 Stainless Steel
Seals and Disc	Buna N
Core and Plugnut	430F Stainless Steel
Pressure Rating	400 PSI Max.
Adjustment Range	0-100 PSI
Power Supply	120VAC / 60 Hz
Solenoid Enclosure	NEMA 4 Stainless Steel
High-Capacity Three-Way Valve	
Control Tubing	Stainless Steel
Control Fittings	Stainless Steel

3.00 EXECUTION

3.01 INSTALLATION

Install the valve diaphragm shaft in the vertical position. Make all connections between the valve and the valve pilot. Installation of the valve shall be in accordance with the valve manufacturer's recommendations.

3.02 FIELD QUALITY CONTROL

Upon completion of the installation of the equipment, an acceptance test to verify the satisfactory operation of the valve shall be performed. The test shall be conducted in a manner, approved by and in the presence of the Engineer. The valve manufacturer's representative shall be present during the valve acceptance test. The unit must perform in a manner acceptable to the Engineer before final acceptance will be made by the Owner.

3.03 CLEAN AND ADJUST

All adjustments will be performed in accordance with the valve manufacturer's instructions.

3.04 SCHEDULES

The control valve furnished under this specification shall meet the following requirements:

Location	Number Req'd	Size	Valve Type	Maximum Operating Pressure Differential
Tank Inlet/Outlet Piping	1	12"	Solenoid Control	100 PSI

END OF SECTION

40 90 00 INSTRUMENTATION AND CONTROL FOR PROCESS SYSTEMS

1.00 GENERAL

1.01 SCOPE

A. General Requirements for Instrumentation and Control.

1. There are two areas of work in the Instrumentation Work in this project as described below:
   a. The Instrumentation System Integrator Contractor shall provide all hardware, software, and configuration and integration associated with the PLC based Instrumentation and Process Control system. Provide a complete and operational system in accordance with these Contract Documents:
      1) Provide instrumentation, hardware, conductors and raceway required for a complete and operable system that is above that specified in the Contract Documents. Provide all labor and materials specified in the Contract Documents.
   b. Provide all required labor, materials and PLC programming and system configuration and integration to interconnect the I/O as required per the project to the RTUs (provided under this contract) at the:
      1) Airport Elevated Storage Tank
      2) West Ground Storage Tank and Pump Station
      3) For the locations listed above:
         a) Provide all required software and programming in each of the PLCs and existing computer system for a complete and operational system in accordance with these Contract Documents.
         b) Coordinate and fully cooperate with the Owner to provide all required hardware and PLC hardware and PLC programming necessary to interface with the existing system.
         c) Provide personnel to check out, test and commission the system.
         d) Provide factory trained personnel to train the Owner's staff as specified.
         e) Provide software programming to create new screens on the Graphic User Interface located at each RTU Panel as specified.
         f) Provide the required drivers, if required, to receive and transmit data over the specified fiber system to fully communicate with the PLC systems.

1.02 QUALITY ASSURANCE

A. GENERAL: Should there be a conflict between various standards, codes, specifications, and contract drawings, bring the matter immediately to the attention of the Owner's Representative.

B. REFERENCE STANDARDS:

1. American Society of Testing Materials:

A269	Seamless and Welded Austenitic Stainless Steel Tubing for General Service
B 68	Seamless Copper Tube
D 1047	Polyvinyl Chloride Jacket for Wire and Cable
A 36	Specification for Structural Steel
Zinc Coating (Hot-Dip) on Iron and Steel Hardware	

2. Research Council on Riveted and Bolted Structural Joints (RCRBSJ).
3. American Institute of Steel Construction (AISC).
4. Steel Structures Painting Council (SSPC): Painting Specifications for weather exposure.
5. American Welding Society (AWS): Welding Code D 1.1-75.
6. Federal Specifications: Primer, Paint Zinc, Chromate, Alkyd Type, Fed. Spec. TT-P-645a.
7. National Electrical Manufacturers Association (NEMA).
8. National Fire Protection Association (NFPA): National Electrical Code (NEC), 1990 edition.
9. Instrument Society of America (ISA):

RP 3.1-1960	Flow Meter Installations, Seal and Condensate Chambers
S5.1-1973	Instrumentation Symbols and Identification
RP7.1-1956	Pneumatic Control Circuit Pressure Test
S7.3-1975	Quality Standard for Instrument Air
RP18.1-1965	Specifications and Guides for the Use of General Purpose Annunciators
S5.4-1976	Instrument Loop Diagrams
S8.1-1968	Instrument Enclosures for Industrial Environments
RP12.1-1960	Electrical Instruments in Hazardous Atmospheres
RP20.1, 20.2	Specification Forms for Instruments
S39.1-1972	Control Valve Sizing Equations
S39.2-1972	Control Valve Capacity Test Procedures
S51.1	Process Instrumentation Terminology

10. American Petroleum Institute (API):

API RP 550	Manual on Installation of Refinery Instruments and Control Systems
API RP 520	Recommended Practice for the Design and Installation of Pressure-Relieving Systems in Refineries

11. Scientific Apparatus Makers Association (SAMA):

PM 20.1-1973	Process Measurement and Control Terminology
RC5-10-1963	Resistance Thermometers

12. Underwriters' Laboratory (UL): Subject 13, Subject 1227.
13. Factory Mutual (FM).
14. American National Standard Institute (ANSI):
15. Supplement to C37.90-1971, Relays and Relay Systems Associated with Electric Power Apparatus (IEEE Std. 313-1971), C37.90a-1974.
16. National Bureau of Standards (NBS).

17. Institute of Electrical and Electronics Engineers (IEEE): Tray Fire Tests, IEEE 383.

1.03 GUARANTEE

A. GUARANTEE PERIOD: The Contractor shall provide guarantees as defined hereunder for a period of one year after final acceptance by the Owner.

B. GUARANTEE REQUIREMENTS FOR ANALOG DEVICES: Each device shall perform its intended function within the specified operating accuracy and repeatability without more than 12 adjustments for any consecutive period of 12 months. The availability of each device shall be not less than 98.0 percent for any consecutive period of six months. Downtime of analog devices affecting more than 8 loops shall be considered a system failure.

1.04 CONTRACTOR'S QUALIFICATIONS

A. The Instrumentation System Integrator Contractor's personnel shall have a minimum of ten years of prior experience in furnishing, installation, testing, programming, debugging, start-up, and training for systems at least as large and similar to the one in this Contract. The system installer shall have employees who are qualified technicians for the duration of the contract located in the project area. The Contractor shall submit for evaluation within one week of Notice to Proceed, his instrumentation systems installer's company resumes complete with company history, project lists, locations, Owner, costs, type of system installed, and references with phone numbers. Installers not meeting these qualifications shall not be accepted. As a part of this contract, the instrumentation system installers shall assume complete system responsibility, including coordination and interfacing with all subsystems and equipment suppliers and manufacturers. The Contractor shall actively be involved in control system integration industry for the last five years. The Contractor shall not act as a broker for the project; he shall provide and be responsible for all hardware, interfacing software, training, testing, and extended warranties.

1.05 DEFINITIONS

A. The terms used in this specification conform to definitions in ISA S51.1, SAMA PMC 20.1-1973 and RC 5-10-1963, except as modified below.

1. Device: An electronic or mechanical apparatus designed to perform a specific measurement or control function.
2. Equipment: The machinery used in a process, e.g., pumps, fans, etc.
3. Interchangeability error: The algebraic difference between the indication and true value of the measured variable as a result of exchanging a device with a replacement.
4. Loop: Any combination of interconnected transmitters, receivers, switches, alarms, indicators, controllers, computers, or final control elements.
5. Operating accuracy: Conformity of indicated value to accepted standard value or true value throughout specified operating conditions with a confidence level of 95 percent includes, but is not limited to, hysteresis, linearity, and operating influence of temperature, pressure, supply voltage, and transmitter power supply. Operating accuracy for loop is defined as root-mean-square (RMS) of individual device operation accuracies.
6. Process: A progressively continuing operation that consists of a series of controlled actions systemically directed toward a particular result, e.g., a process to mix, filter, heat, and/or cool air to a particular condition.

7. Response: The results of the act, or process of measuring the time difference between the time of a change in an input signal or a measured variable, and the time when the output, display, and final control element in the loop has changed to at least 60 percent of the change which should result from the input change.
8. Subsystem: A discrete subdivision of a system and an assemblage of parts, devices, or software modules designed to perform one or more of the specific tasks required for the system to accomplish its functions.
9. System: An assemblage of sometimes diverse parts, devices, or software modules serving a common set of measurement or control functions.
10. Time resolution: The result of the act or process of rendering distinguishable events occurring at nearly the same time. Expressed as a measurement of time in seconds.
11. Unit: Any combination of equipment items interconnected in a predetermined manner, performing one or more controlled actions toward a particular result. A discrete subdivision of a process.
12. Concealed - Accessible: Out of general sight, but can be easily reached by removing panels or access doors.
13. Concealed - Inaccessible: Out of general sight and cannot be easily reached except by removing a permanent part of the building or using special tools.
14. Exposed: Open to general view without removing panels, access doors, or a permanent part of the building.
15. Field termination point: Termination of a run of raceway from an instrument panel to the vicinity of a field instrument. Field termination point is usually within five horizontal feet from the field instrument.
16. Analog device: Any sensor, transmitter, indicator, recorder, controller, computing relay, or control valve which transmits or receives an analog signal. Excludes the analog portion of a digital system or I/O subsystems.

1.06 SUBMITTALS

A. SHOP DRAWINGS AND PRODUCT DATA:

1. Detail: Give sufficient detail to permit system configuration, installation, and wiring without reference to design drawings. Refer to Division 1 - General Requirements.
2. As a minimum, shop drawings shall include a bill of materials with original manufacturer's name and catalog number (re-labeled component information is not acceptable), original manufacturer's catalog cut sheets, front views, assembly drawings, nameplate schedules, electrical schematics, and electrical connections diagrams.
3. Electrical and interconnection diagrams shall show all terminations of equipment, complete with conduit, cable, and equipment designations, and shall include terminal identification information.
4. Include size of all conduits, pipe, cables, and conductors.
5. Physical arrangement drawings shall include operating and servicing clearance requirements, cooling requirements, electrical power requirements, and cabling information.
6. Logic drawer drawings shall show used space and expansion space.
7. Show appropriate tag numbers on all product data.
8. Software specifications for all software provided in addition to existing standard software.
   a. Include fully annotated source listings, input-output requirements, memory requirements, timing and sequencing requirements, flow chart showing functions

performed, operating sequences and decision points, required system configuration, list of known or anticipated limitations of software modules, list of malfunction procedures to be followed for recovering from operator error or other malfunction, and description of how each module interfaces with calling and called programs.

b. Provide proposed screen layouts showing modifications to existing screens, and new screens: Show all displays, inputs, outputs, recorders, alarms and indications along with the associated signal tag number. Owner shall review and approve screen layouts.

B. TECHNICAL MANUALS:

1. Supply six (6) sets of technical manuals with software specifications to Owner's Representative no later than the equipment shipment date. Each set shall be bound in a standard size, three-ring, loose-leaf, vinyl plastic, hard-cover binder suitable for bookshelf storage. Binder ring size shall not exceed 2.5 inches.
2. Each set of technical manuals shall include a general and detailed description, a theory of operation description, detailed schematic drawings, specifications, and installation, connection, calibration, operating, troubleshooting, preventive maintenance, and overhaul instructions in complete detail with a clear and specific description of the steps the operators must take to perform each of the tasks and modes of operating specified. These manuals shall provide the Owner with comprehensive information on all systems and components to enable operation, service, maintenance and repair. Exploded or other detailed views of all instruments, assemblies, and accessory components shall be included together with complete parts lists and ordering instructions. These manuals are in addition to all applicable requirements of Division 01 - General Requirements.

2.00 PRODUCTS

2.01 INFORMATION ON DRAWINGS

A. The following information is indicated on the drawings:

1. Loop diagram on flow sheet for each control loop. Diagrams are schematic in nature and intended only as a guide to work to be performed.
2. Approximate location of primary elements, instrument panels, and final control elements.
3. Location of electrical distribution panel boards for instrument electrical power.
4. Location of equipment having alarms and equipment status contacts.
5. Location of equipment being controlled by system.

B. The following information is not shown on drawings, but shall be the responsibility of the Contractor to determine, furnish, and coordinate with other divisions based upon systems specified. Show this information on project record drawings.

1. Instrument loop drawings per ISA S5.4 minimum, desired and optional items.
2. Location of electrical distribution panel boards supplying power to any device supplied under this Contract.
3. Detailed enclosure and instrument panel layouts, PLC enclosure layouts, fabrication details, and wiring diagrams.
4. Detailed system configuration.
5. Raceway and cable routing for instrumentation wiring.

2.02 OPERATING CONDITIONS

A. AMBIENT CONDITIONS: Provide equipment suitable for ambient conditions specified. Provide system elements to operate properly in the presence of radio frequency fields produced by portable RF transmitters with output of five watts operated at 24 inches from instruments in the presence of plant telephone lines, power lines, and electrical equipment, and in the presence of digital data transmission systems.

B. FIELD LOCATIONS: Field equipment may be subjected to ambient temperatures from -5 to 50°C with direct radiation and relative humidity from 45 to 95 percent with condensation.

C. POWER SUPPLY: Power supply will be 117 volts a-c, single-phase, 60-hertz commercial power. Voltage variations will be at least plus or minus 8 percent. Certain loops shall have integral power supply as specified in the Contract Documents. Power supplies shall be provided in the panels as specified in the Contract Documents or required for a complete system, plus one spare.

2.03 MATERIALS AND EQUIPMENT

A. Provide equipment of solid-state construction utilizing second source semiconductors, unless otherwise specified. Derate components to assure dependability and long-term stability. Provide printed or etched circuit boards of glass epoxy, hand or wave soldered, of sufficient thickness to prevent warping. Coat printed circuit boards in field-mounted equipment with two mils of solderable conformal coating complying with MIL-I-46058B. Alignment and adjustments shall be noncritical, stable with temperature changes or aging, and accomplished with premium grade potentiometers. Do not insert components of specially selected values into standard electronic assemblies to meet performance requirements. Use parts indicated in instruction manuals, replaceable with standard commercial components of the same description without degrading performance of completed assembly.

B. Use test equipment and instruments to simulate inputs and read outputs suitable for purpose intended and rated to an accuracy of at least five times greater than the required accuracy of device being calibrated. Such test equipment shall have accuracies traceable to the National Bureau of Standards as applicable.

2.04 SPECIAL PROJECT REQUIREMENTS

A. As a part of this Contract, the instrumentation systems Contractor shall coordinate with the Owner and with all the sub-systems suppliers and manufacturers, during bidding, construction, testing, installation and start-up phases of the project. The coordination is to assure that the instruments and sub-systems are in compliance with the Contract Documents and that the necessary tie-ins and interface signals with the existing system are provided as specified or required.

B. The instrumentation system Contractor shall provide the Owner's staff with all required training and operating procedures, at no extra cost to the Owner, in addition to the SCADA training specified in Section 40 90 02, “Supervisory Control and Data Acquisition (SCADA) System”. The training schedule shall be coordinated with the Owner's Representative. Training shall include operating, testing, calibration and programming of the system, and simple troubleshooting of the system. The training shall include manuals which are specifically written for the system provided as described in Division 1 - General Requirements of these Specifications.

C. The calibration, testing, and start-up of all the instruments whether existing or provided new, shall be done by the manufacturer's field technician/Engineer in the presence of the Owner. The Contractor shall provide a list of all manufacturers whose technicians will perform this work. The Contractor shall also provide a certified calibration report stating that each instrument shown or specified in the Contract Documents has been installed, tested and calibrated per manufacturer's recommendations and per these Contract Documents.

D. Follow-up Services: After the acceptance of the system, the Contractor shall make two (2) trips to the project site for calibration and adjustment of all the instruments and devices, including the SCADA system. The first trip shall be three months after acceptance of the complete system, and thereafter every three months for a total of two trips. These trips are in addition to all warranty items, and shall be at no extra cost to the Owner. The Contractor shall provide the services of a trained technician for each trip with appropriate calibration and testing instruments. All defects shall be immediately remedied. The trips shall be coordinated with the Owner.

E. All control software developed for this contract shall be delivered to the Owner stored on electronic media in a format suitable for installing on the existing equipment and new equipment installed under this contract. This includes all source code, complied code, link libraries, run-time libraries or other modules necessary to recreate an operational system in the event of a catastrophic failure or cessation of business by any of the Contractors. In addition, copies of all data bases and necessary associated files as configured after the final test shall be supplied on the same medium.

END OF SECTION

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RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE ELEVATED STORAGE TANK VALVE AND T-BAR CONNECTION PROJECT TO TEXAS WATER AND SOIL CO., INC., FOR AN AMOUNT OF $616,160.00; APPROVING $124,432.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the Elevated Storage Tank Valve and T-Bar Connection Project; and

WHEREAS, the bid was opened on May 25, 2022, with the lowest bid being submitted by Texas Water and Soil Co., Inc., as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Texas Water and Soil Co., Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Texas Water and Soil Co., Inc., for the Elevated Storage Tank Valve and T-Bar Connection Project;

WHEREAS, the City Council finds it to be in the public interest to approve $124,432.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Texas Water and Soil Co., Inc., for the Elevated Storage Tank Valve and T-Bar Connection Project for an amount of $616,160.00. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $124,432.00 for contingencies is hereby approved for said agreement.

SECTION THREE. That funds are available in the FY22 Utilities Fund operating budget and will be transferred and appropriated to a project for said purpose.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Texas Water and Soil Co., Inc., pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 9

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF BLEACHERS AND SHADE STRUCTURES AT THE FOOTBALL AND SOCCER FIELDS AT REYES-MASHBURN-NELMS PARK FOR A TOTAL COST OF $140,325.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

Purpose:

Resolution executing a contract with 4B Recreation Group, LLC dba Playgrounds Etc. through Buyboard contract 592-19 for the purchase and installation of bleachers and shade structures for football and soccer fields at Reyes, Mashburn, Nelms Park.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding in the amount of $575,322.00 is available in the Parks Bond Projects Fund (126), and will be appropriated to a project for the purpose of purchasing bleachers, shades, fencing, scoreboards, and a new restroom building at Reyes Mashburn Nelms Park.

Discussion:

Staff recommends executing a contract for the purchase and installation of bleachers and shade structures for football and soccer fields at Reyes, Mashburn, Nelms Park through Buyboard contract 597-19. 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 Cristina Burns, Community Services Director, for more information.

Therefore, please consider a resolution executing a contract for the purchase and installation of bleachers and shade structures for football and soccer fields at Reyes, Mashburn, Nelms Park to 4B Recreation Group, LLC dba Playgrounds Etc. of Midland, Texas through Buyboard contract 597-19 for a total cost of $140,325.00.

Tina Daugherty

City Manager's Office

Parks Division
Interoffice Memorandum

Date: June 14, 2022

To: Morris Williams Jr., Deputy City Manager

From: Cristina Burns, Community Services Director

Subject: Purchase and Installation of bleachers and shade structures at Reyes-Mashburn-Nelms Football/Soccer Fields

The Community Services Department recommends the BuyBoard purchase of bleachers and shade structures to be installed at the football/soccer fields at Reyes, Mashburn, Nelms Park.

Playgrounds Etc. has quoted $140,325.00 to furnish and install 5 sets of bleachers with shades over each. This work will include all materials, the engineered sealed drawings, freight, and installation.

Council approved $25 million in Certificate of Obligation funds for Parks, with $2 million ear-marked for Reyes Mashburn Nelms. In addition to the $140,325 that is available in the Parks Bond Projects Fund, it is requested that the balance of the $2 million be appropriated for additional improvements at Reyes Mashburn Nelms. These funds will be used to install new fencing, scoreboards, and a proposed restroom building.

Funding in the amount of $575,322.00 is available in the Parks Bond Projects Fund (126), and will be appropriated to a project for the purpose of purchasing bleachers, shades, fencing, scoreboards, and a new restroom building at Reyes Mashburn Nelms Park.

RESOLUTION NO. _____

RESOLUTION APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF BLEACHERS AND SHADE STRUCTURES AT THE FOOTBALL AND SOCCER FIELDS AT REYES-MASHBURN-NELMS PARK FOR A TOTAL COST OF $140,325.00; AND APPROPRIATING FUNDS FOR SAID PROJECT

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

WHEREAS, 4B Recreation Group, LLC dba Playgrounds Etc., has submitted a total proposed cost to the City of $140,325.00 for the purchase and installation of bleachers and shade structures at the football and soccer fields at Reyes-Mashburn-Nelms Park through Buyboard; and

WHEREAS, the Council finds the price proposed by 4B Recreation Group, LLC dba Playgrounds Etc., through Buyboard for the purchase and installation of said bleachers and shade structures to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with 4B Recreation Group, LLC dba Playgrounds Etc., for the purchase and installation of bleachers and shade structures at the football and soccer fields at Reyes-Mashburn-Nelms Park through Buyboard;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with 4B Recreation Group, LLC dba Playgrounds Etc., for the purchase and installation of bleachers and shade structures at the football and soccer fields at Reyes-Mashburn-Nelms Park, through Buyboard, for a total cost of $140,325.00. Said contract being in a form

substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of $575,322.00 is hereby appropriated from the Parks Bond Projects Fund (126) to a project established by the City of Midland Finance Department.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay 4B Recreation Group, LLC dba Playgrounds Etc., in accordance with the provisions of the above-referenced contract 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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 22003599

THIS CONTRACT, effective the 29 day of June, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and 4B Recreation Group, LLC dba Playgrounds Etc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 140,325.00 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the buyboard purchase of bleachers and shade structures to be installed at the football/soccer fields at Reyes Mashburn Nelms Park. in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

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

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

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

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

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

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

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

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

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 70 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

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

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

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

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

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

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

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

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

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

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

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

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

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

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

21. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

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

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

COMPANY shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

26. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

27. **Termination At Will:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

28. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

29. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

31. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

32. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

33. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022 personally appeared, _____, an officer of 4B Recreation Group, LLC dba Playgrounds Etc., 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 _____, 2022.

_____
Notary Public, State of _____

Playgrounds Etc.
1410 W Texas Ave.
Midland, TX 79701
432-687-6388

Bid

Date	Bid #
6/16/2022	17191

Name / Address	Ship To
City of Midland 300 N. Loraine Ave. Midland, TX 79701	

Rep	P.O. No.	Project Location	Project
JB		Reyes Park	Bleachers and Shade Option2 R1

Item	Description	Qt	Rate	Total
SRP - Shade	30' X 12' T Cantilever Shade with 9' Eave. In ground with glides	3	6,454.00	19,362.00T
SRP - Shade	30' X 20' T Cantilever Shade with 16' Eave. In ground with glides	2	12,387.00	24,774.00T
NB-0327ASTD	27' Three (3) Row bleachers - Non Elevated	3	2,532.00	7,596.00T
NA-0827STD_CL	27' Eight (8) Row Bleachers - Non Elevated	2	13,826.00	27,652.00T
Engineered Drawings	Engineered Sealed Drawings	2	1,100.00	2,200.00T
Freight	Freight	1	17,671.00	17,671.00T
Installation	Installation of equipment listed above at your location	1	40,850.00	40,850.00T
Surcharge	Material Surcharge	1	5,716.00	5,716.00T
BuyBoard Discount	Buy Board Discount Vendor #592-19		-8,000.00	-8,000.00
Bonds	Pay & Performance Bond		2,504.00	2,504.00T

This bid is good for 30 days

Subtotal	$140,325.00
Sales Tax (0.0%)	$0.00
Total	$140,325.00

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED further that if any legal action be filed upon this Bond venue shall lie in Midland County, State of Texas.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

THE CITY OF MIDLAND

CONTRACT

Contract No. 22003599

THIS CONTRACT, effective the 29 day of June, 2022, by and between the City of Midland, hereinafter referred to as "CITY", and 4B Recreation Group, LLC dba Playgrounds Etc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 140,325.00 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the buyboard purchase of bleachers and shade structures to be installed at the football/soccer fields at Reyes Mashburn Nelms Park. in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B.....Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of $50,000 and more
EXHIBIT D..... Wage Scale

3. **City:** The words "CITY's Representative" or "representative" shall mean Cristina Burns or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

4. **City's Representative:** CITY's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. CITY's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. CITY's representative will not be responsible for COMPANY's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, COMPANY shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. COMPANY shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. COMPANY shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing COMPANY's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. COMPANY will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by CITY to be done by COMPANY to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. COMPANY shall perform all extra work under the direction of CITY's Representative when presented with a written work order signed by CITY's Representative, subject, however, to the right of the COMPANY to require written confirmation of such extra work order by CITY. Payment for extra work shall be as agreed in the work order.

7. **Safety:** COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR**

PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.1. **COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 70 calendar days after release to proceed.

10. **Clean Up:** COMPANY shall promptly remove from CITY's premises all materials condemned by CITY's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and COMPANY shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If COMPANY does not remove and replace any such condemned materials within a reasonable time after a written notice by CITY, CITY may remove and replace such at COMPANY's expense.

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve COMPANY of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. CITY shall give notice of observed defects with reasonable promptness.

12. **Remedy:** CITY may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or COMPANY provides a surety bond satisfactory to CITY, which will protect CITY in the amount withheld, payment may be released.

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

15. **Prompt Pay Act:** CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

16. **Payment:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of said contract are completed, and CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, CITY shall thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. CITY shall be the final judge of when the work is completed by COMPANY. CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to CITY's requirements. CITY may make periodic payments to COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by COMPANY and approved by CITY. For contracts exceeding $25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

18. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. **Governmental Immunity:** By executing this contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

COMPANY shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Contract, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of CITY. CITY shall not be required to provide any insurance whatsoever pursuant to this Contract.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

21. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

22. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

23. **Governing Law and Venue:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

COMPANY shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

26. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

27. **Termination At Will:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

28. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

29. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

31. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

32. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

33. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022 personally appeared, _____, an officer of 4B Recreation Group, LLC dba Playgrounds Etc., 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 _____, 2022.

_____
Notary Public, State of _____

Playgrounds Etc.
1410 W Texas Ave.
Midland, TX 79701
432-687-6388

Bid

Date	Bid #
6/16/2022	17191

Name / Address	Ship To
City of Midland 300 N. Loraine Ave. Midland, TX 79701	

Rep	P.O. No.	Project Location	Project
JB		Reyes Park	Bleachers and Shade Option2 R1

Item	Description	Qt	Rate	Total
SRP - Shade	30' X 12' T Cantilever Shade with 9' Eave. In ground with glides	3	6,454.00	19,362.00T
SRP - Shade	30' X 20' T Cantilever Shade with 16' Eave. In ground with glides	2	12,387.00	24,774.00T
NB-0327ASTD	27' Three (3) Row bleachers - Non Elevated	3	2,532.00	7,596.00T
NA-0827STD_CL	27' Eight (8) Row Bleachers - Non Elevated	2	13,826.00	27,652.00T
Engineered Drawings	Engineered Sealed Drawings	2	1,100.00	2,200.00T
Freight	Freight	1	17,671.00	17,671.00T
Installation	Installation of equipment listed above at your location	1	40,850.00	40,850.00T
Surcharge	Material Surcharge	1	5,716.00	5,716.00T
BuyBoard Discount	Buy Board Discount Vendor #592-19		-8,000.00	-8,000.00
Bonds	Pay & Performance Bond		2,504.00	2,504.00T

This bid is good for 30 days

Subtotal	$140,325.00
Sales Tax (0.0%)	$0.00
Total	$140,325.00

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED further that if any legal action be filed upon this Bond venue shall lie in Midland County, State of Texas.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

City Council Meeting

Item Number: 10

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Justine Ruff, Director

Subject: **MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 4 TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED MARCH 23, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING FOR (I) THE RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A PROJECT, (II) THE RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD PROJECT, AND (III) THE AIRPARK NORTH FENCE REPLACEMENT PROJECT; AND APPROPRIATING $970,176.00 FOR SAID PROJECTS (DISTRICT 4) (AIRPORTS)**

Purpose:

MOTION AUTHORIZING THE EXECUTION OF AMENDMENT NO. 4 TO THAT CERTAIN PROFESSIONAL SERVICES AGREEMENT DATED MARCH 23, 2021, BETWEEN THE CITY OF MIDLAND, TEXAS, AND PARKHILL, SMITH & COOPER, INC., DBA PARKHILL; SAID AMENDMENT PROVIDING FOR (I) RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A (II) RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD (III) AIRPARK NORTH FENCE REPLACEMENT AND APPROPRIATE FUNDS.

Recommended City Council Action:

Approve

Fiscal Impact:

RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A

Airport/City Share 100%	$ 337,399.00

Breakout of Costs:

Design Phase Administrative Costs – Airport	$ 10,000.00
Preliminary Engineering Report Phase Fee	$ 28,790.00
Preliminary Design Phase Fee	$ 90,587.00
Final Design Phase Fee	$ 117,968.00
Bidding Phase Fee	$ 20,054.00
Design Phase Geotechnical Testing	$ 25,000.00
Design Phase Surveying	$ 25,000.00
Design Phase Hourly and Reimbursable Costs	$ 20,000.00
Total Recommended Design/Bidding Phase Appropriation	$ 337,399.00

Initially, the funding of the above costs will be 100% City, however, the design costs of this project are scheduled to be funded at 90% using upcoming FAA FY2022 Airport Improvement Program (AIP) funds.

Appropriation Language:
Funding is available in the Airport Fund Unappropriated Fund Balance and is hereby appropriated and will be transferred to a Project in Fund 505.

RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD

Financial Impact:

Airport/City Share 100%	$ 282,777.00

Breakout of Costs:

Design Phase Administrative Costs – Airport	$ 10,000.00
Preliminary Engineering Report Phase Fee	$ 27,603.00
Preliminary Design Phase Fee	$ 76,031.00
Final Design Phase Fee	$ 94,089.00
Bidding Phase Fee	$ 20,054.00
Design Phase Geotechnical Testing	$ 15,000.00
Design Phase Surveying	$ 20,000.00
Design Phase Hourly and Reimbursable Costs	$ 20,000.00
Total Recommended Design/Bidding Phase Appropriation	$ 282,777.00

Initially, the funding of the above costs will be 100% City; however, the design costs of this project are scheduled to be funded at 90% using upcoming FAA FY2022 Airport Improvement Program (AIP) funds.

Appropriation Language:
Funding is available in the Airport Fund Unappropriated Fund Balance and is hereby appropriated and will be transferred to a Project in Fund 505.

AIRPARK NORTH FENCE REPLACEMENT
Airport/City Share 100% - Not to Exceed $ 350,000.00

Appropriation Language:
Funding is available in the Airport Fund Unappropriated Fund Balance and is hereby appropriated and will be transferred to a Project in Fund 505.

Discussion:

The City of Midland, Texas and Parkhill entered into an Agreement for Professional Services dated March 23, 2021, for improvements contained in the Airport's 5-year Airport Capital Improvement Program (ACIP). This is the fourth amendment to that agreement and adds the following:

Reconstruct Taxiway E, West of Taxiway A:

The section of Taxiway E that connects Taxiway A with the Executive Apron has not been rehabilitated since 1993 and the cracks in the existing pavement surface have caused an increase of Foreign Object Debris (FOD) on the pavement. This project will design, bid and construct improvements to reconstruct Taxiway E, West of Taxiway A full depth with new subgrade course, base course and asphalt surface. This project includes the design, bidding and construction phase professional services costs.

Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pad:
The existing asphalt blast pad for Runway 16R is over 35 years old with large cracks that are creating FOD. This project will reconstruct the blast pad full depth and include the required asphalt shoulders for a blast pad in accordance with the current FAA regulations. The reconstructed blast pad will provide the erosion control from jet blast and provide pavement that is designed to meet the life expectancy of asphalt pavement of 20 years. The concrete blast pad for Runway 34L that was utilized prior to the threshold being displaced is well over 40 years old. The concrete is deteriorating and maintaining this concrete is no longer feasible. This blast pad is no longer necessary for Runway 34L since the threshold was displaced. This project will remove the concrete and seed the area to provide erosion control. The blast pad for Runway 10 does not have paved shoulders, current FAA regulations require paved shoulders. This project will add asphalt shoulders to the existing blast pad to match the width of Runway 10/28.

Airpark North Fence Replacement:
The existing chain link fence located along the north side of Midland Airpark adjacent to Loop 250 and adjacent to Garfield Street will be replaced. The existing fence alignment will be evaluated to determine if the fence can be shifted toward Runway 7/25 and remain under the aircraft height hazard surfaces. The anticipated fence material is a coated woven wire fabric

which provides an enhanced visual appearance to the view from Loop 250 and from Garfield Street. The length of fence is approximately 8,000 linear feet. A concrete mow strip will be placed beneath the fence line to reduce vegetation growth within the fence fabric. As part of the preliminary engineering report phase, Parkhill will evaluate the location for the new fence to provide as much additional area between the existing TxDOT drainage ditch along Loop 250 and the new fence.

Tina Gaug

City Manager's Office

AMENDMENT NO. 4
TO
AGREEMENT

BETWEEN THE CITY OF MIDLAND, TEXAS
AND
PARKHILL
FOR
PROFESSIONAL SERVICES

WHEREAS, the City of Midland, Texas and Parkhill have entered into an Agreement for professional services dated March 23, 2021, for improvements contained in the Airport Capital Improvement Program; as amended April 13, 2021 (Amendment 1), February 8, 2022 (Amendment 2) and April 12, 2022 (Amendment 3);

AND WHEREAS, the City of Midland, Texas desires to perform the improvements listed in the Recitals of the Agreement as Item 1 Reconstruct Taxiway E, West of Taxiway A, Item 15 Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pad and Item 16 Airpark North Fence Replacement:

THIS AGREEMENT WITNESSETH:

A. The Recitals of the Agreement shall be amended to include the following items:

15. Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pad
16. Airpark North Fence Replacement

B. Exhibit B, Article 4 – PAYMENTS TO THE ENGINEER, the following shall be added to paragraph B 4.01:

"Item 1 Reconstruct Taxiway E, West of Taxiway A

A Lump Sum amount of $378,138 based on the following distribution of compensation:

a. Preliminary Engineering Report Phase	$ 28,790
b. Preliminary Design Phase	$ 90,587
c. Final Design Phase	$117,968
d. Bidding Phase	$ 20,054
e. Construction Phase	$120,739

* Scope of Project and Work Attached"

"Item 15 Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pad

A Lump Sum amount of $336,699 based on the following distribution of compensation:

a. Preliminary Engineering Report Phase	$ 27,603
b. Preliminary Design Phase	$ 76,031
c. Final Design Phase	$ 94,089
d. Bidding Phase	$ 20,054

e. Construction Phase $118,922

* Scope of Project and Work Attached"

C. Exhibit B, Article 4 – PAYMENTS TO THE ENGINEER, the following shall be added to paragraph B 4.02:

"Item 1 Reconstruct Taxiway E, West of Taxiway A

Additional Services under Item 1 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment plus Direct Expenses and Engineer's Consultant's charges on the basis of cost times a factor of 1.15.

a. Design Phase Reimbursable $20,000
b. Design Surveying & Testing $50,000"

"Item 15 Reconstruct Runway 16R Blast Pad, Remove Runway 34L Concrete Blast Pad and Add Asphalt Shoulders to Runway 10 Blast Pad

Additional Services under Item 15 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment plus Direct Expenses and Engineer's Consultant's charges on the basis of cost times a factor of 1.15.

a. Design Phase Reimbursable $20,000
b. Design Surveying & Testing $35,000"

D. Exhibit B, Article 4 – PAYMENTS TO THE ENGINEER, the following shall be added to paragraph B 4.03:

"Item 16 Airpark North Fence Replacement

The total compensation for Professional Services under Item 16 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment plus Direct Expenses and Engineer's Consultant's charges on the basis of cost times a factor of 1.15.

Total compensation for Item 16 under this Amendment for the Design and Bidding Phases shall not exceed $350,000 without written authorization from the Owner.

* Scope of Project and Work Attached."

IN WITNESS WHEREOF, the City of Midland, Texas and Parkhill have hereto set their hands this 28th day of June, 2022.

OWNER:	ENGINEER:
CITY OF MIDLAND, TEXAS	PARKHILL
By: _____	By: _____
Patrick Payton	Danny G. Winchester
Title: Mayor	Title: Principal
Date Signed: _____	Date Signed: June 28, 2022
Address for giving notices:	Address for giving notices:
P.O. Box 1152 Midland, Texas 79702 Phone: (432) 685-7357	1700 W. Wall Midland, Texas 79701 Phone: (432) 697-1447

IN DUPLICATE

MIDLAND INTERNATIONAL AIR & SPACE PORT
ITEM 1 RECONSTRUCT TAXIWAY E, WEST OF TAXIWAY A

SCOPE OF PROJECT IMPROVEMENTS AND SCOPE OF PROFESSIONAL SERVICES

1. Project history and objective - This section of Taxiway E connects Taxiway A with the Executive Apron. This Taxiway was rehabilitated in 1993 with a Mill and Inlay project to replace the upper 2-1/2" of asphalt surfacing. In 2013, a P-608 surface seal was applied, and the cracks sealed to extend the life of the pavement. The cracks in the existing pavement surface have continued to increase in width and are more extensive. Block cracking is occurring in several areas of the pavement section. These cracks appear to penetrate into the base section below the asphalt surface. Foreign Object Debris (FOD) has become an issue from the deteriorating asphalt surface breaking off at the edges of the cracks.

   The FAA P-608 surface seal is intended to extend the life of the pavement, typically in the range of 3-5 years. This is to reduce the oxidation of the asphalt surface and seal small cracks in the asphalt surface. The asphalt surface continues to oxidize as the surface seal applied in 2013 deteriorates.

   With the extent of the cracks, the depth of the cracks and the age of the pavement structure being over 28 years, a full depth reconstruction is planned. By performing a full depth reconstruction, Taxiway E will provide safe access by aircraft to the Executive Apron, eliminating the current issue with FOD from the deteriorating asphalt pavement and a provide an expected useful pavement life with routine maintenance of over 20 years.

2. Anticipated Scope of Improvements - This project will design, bid and construct improvements to reconstruct Taxiway E, West of Taxiway A full depth with new subgrade course, base course, and asphalt surface.

   The project will include the design, bidding and construction phase professional services costs.

3. PSC will prepare bid documents for use in bidding the construction of the improvements.

4. Assist in the Bidding process of the project.

5. Provide Construction Phase Administration and Resident Project Representative (RPR).

MIDLAND INTERNATIONAL AIR & SPACE PORT
ITEM 15 RECONSTRUCT RUNWAY 16R BLAST PAD, REMOVE RUNWAY 34L CONCRETE BLAST PAD AND ADD ASPHALT SHOULDERS TO RUNWAY 10 BLAST PAD

SCOPE OF PROJECT IMPROVEMENTS AND SCOPE OF PROFESSIONAL SERVICES

1. Project history and objective - The existing asphalt blast pad for Runway 16R is over 35 years old. The asphalt surface has large, random cracks that penetrate into the base layer. The airport has continued to seal the cracks, but their size and depth has made sealing these cracks almost impossible. Due to the age of the asphalt surface, the asphalt at the cracks continues to break off both creating larger cracks and also foreign object debris (FOD). This project will reconstruct the blast pad full depth and include the required asphalt shoulders for a blast pad in accordance with the current FAA Advisory Circular 5300-13 Airport Design. The reconstructed blast pad will provide the erosion control from jet blast and provide pavement that is designed to meet the life expectancy of asphalt pavement of 20 years.

   The concrete blast pad for Runway 34L that was utilized prior to the threshold being displaced is well over 40 years old. The concrete is deteriorating and the sealant in the joints is coming loose or has already come out of the joint. The ability of the airport to repair or maintain this concrete is no longer feasible. This blast pad is no longer necessary for Runway 34L since the threshold was displaced. This project will remove the concrete and seed the area to provide erosion control. This will eliminate the potential for FOD from the deteriorating concrete reaching the existing airfield pavement and becoming a hazard to aircraft.

   The blast pad for Runway 10 does not have paved shoulders. In accordance with the current FAA Advisory Circular 5300-13 Airport Design, the blast pad is required to include paved shoulders. This project will add asphalt shoulders to the existing blast pad to match the width of Runway 10/28 along with its paved shoulders.

2. Anticipated Scope of Improvements - This project will design, bid and construct improvements to Runway 16R blast pad, Runway 34L blast pad and Runway 10 blast pad. Runway 16R blast pad and Runway 10 blast pad shoulders pavements will be constructed with new subgrade course, base course, and asphalt surface. Runway 34L concrete blast pad will be removed, and the site seeded to reduce erosion.

   The project will include the design, bidding and construction phase professional services costs.

3. PSC will prepare bid documents for use in bidding the construction of the improvements.

4. Assist in the Bidding process of the project.

5. Provide Construction Phase Administration and Resident Project Representative (RPR).

MIDLAND AIRPARK
ITEM 16 AIRPARK NORTH FENCE REPLACEMENT

SCOPE OF PROJECT IMPROVEMENTS AND SCOPE OF PROFESSIONAL SERVICES

1. Project objective – The existing chain link fence located along the north side of Midland Airpark adjacent to Loop 250 and adjacent to Garfield Street will be replaced. The existing fence alignment will be evaluated to determine if the fence can be shifted toward Runway 7/25 and remain under the aircraft height hazard surfaces. The anticipated fence material is a coated woven wire fabric which provides an enhanced visual appearance to the view from Loop 250 and from Garfield Street. The length of fence is approximately 8,000 linear feet.

   A concrete mow strip will be placed beneath the fence line to reduce vegetation growth within the fence fabric.

2. Anticipated Scope of Professional Services – The initial scope of professional services for this project will include the preliminary engineering report, design, and bidding phases services for the improvements to replace the existing fence along the north side of Midland Airpark. As part of the preliminary engineering report phase, Parkhill will evaluate the location of the new fence to provide as much additional area between the existing TxDOT drainage ditch along Loop 250 and the new fence. Parkhill will provide the design phase services for Surveying and Geotechnical Testing.

3. Parkhill will prepare bid documents for use in bidding the construction of the improvements.

4. Parkhill will assist in the Bidding process of the project.

City Council Meeting

Item Number: 11

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Seth Herman, Police Chief

Subject: **RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $20,000.00 FROM THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY AUXILIARY GRANT PROGRAM; SAID FUNDS SHALL BE USED TO PURCHASE AN AUTOMATIC LICENSE PLATE READER SYSTEM (DISTRICT: ALL) (POLICE)**

Purpose:

RESOLUTION ACCEPTING THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY AUXILIARY GRANT (MAG) IN THE AMOUNT OF $20,000 TO BE USED IN THE PURCHASE OF AN AUTOMATIC LICENSE PLATE READER SYSTEM (ALPR).

Recommended City Council Action:

Approve

Fiscal Impact:

The City of Midland is responsible for a cash match of 20% - estimated at $4000. These funds are available from existing accounts relegated to such expenditures.

Discussion:

RESOLUTION ACCEPTING THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY AUXILIARY GRANT (MAG) IN THE AMOUNT OF $20,000 TO BE USED IN THE PURCHASE OF AN AUTOMATIC LICENSE PLATE READER SYSTEM (ALPR). THIS EQUIPMENT AND ACCOMPANYING SOFTWARE WILL BE UTILIZED BY MPD OFFICIALS TO IDENTIFY, LOCATE AND RECOVER STOLEN VEHICLES, AS WELL AS THOSE MOTOR VEHICLES SOUGHT BY MPD AND OUTSIDE LAW ENFORCEMENT AGENCIES FOR THEIR INVOLVEMENT IN CRIMINAL ACTIVITY, MISSING PERSONS INVESTIGATIONS AND WELFARE ALERTS.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $20,000.00 FROM THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY AUXILIARY GRANT PROGRAM; SAID FUNDS SHALL BE USED TO PURCHASE AN AUTOMATIC LICENSE PLATE READER SYSTEM

WHEREAS, the City of Midland Police Department has received notice that it has been awarded $20,000.00 through the Motor Vehicle Crime Prevention Authority Auxiliary Grant Program for the purchase an automatic license plate reader system for the Police Department; and

WHEREAS, the award of said grant funds is contingent upon the City of Midland's match of $4,000.00 for the purchase of the automatic license plate reader system; and

WHEREAS, the City Council finds it to be in the public interest to accept said grant funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City of Midland hereby accepts grant funds of $20,000.00 awarded by the Motor Vehicle Crime Prevention Authority Auxiliary Grant Program. Said grant funds shall be used to purchase an automatic license plate reader system for the Police Department.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant funds.

SECTION THREE. That the Motor Vehicle Crime Prevention Authority Auxiliary Grant Program grant in the amount of $20,000.00 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and that the sum of $24,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (35650) to a project established by the City of Midland Finance Department.

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., 2022, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Seth Herman, Police Chief

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 12

Meeting Date: June 28, 2022

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (22-329-020) with NuStar Permian Transportation and Storage, LLC regarding City-owned property described as Section 19, Block 36, Township 3 South and Section 24, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way for NuStar Permian Transportation & Storage, L.LC., to build an 8,018.68 foot, steel construction, common carrier, six and a half inch (6.6") crude oil pipeline. ROW will include a 10,001 square foot surface area for the valve tie in into the Endeavor Energy production facility in the Southwest Quarter of Section 24 at Sprayberry Farms.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate - pipeline (485.99 rods x $130/rod): $63,178.70 per year – first 5 years paid in advance: $315,893.50

Annual Lease Rate - surface (10,001 sq. ft. x $0.12 per sq. ft.): $1,200.12 per year – first five years paid in advance $6,000.00

Surface Damages: included in new annual rate

Total Collected: $322,894.10

Discussion:

This is a common carrier crude oil pipeline that ties in Endeavor's ongoing production operations in the area. ROW will include a temporary construction width of an additional 40’ which will void at end of construction. Pipeline will be buried a minimum 36” deep.

Certificates of Insurance are on file

City Secretary to record all documents

Morris William Jr.

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND	§	

Date:	June 28, 2022
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	NuStar Permian Transportation and Storage, LLC
Licensee's Representative:	**R. Heath Reininger**
Licensee's Mailing Address:	Real Estate Department 19003 IH 20 West San Antonio, Texas 78257
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	22-329-020

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

WITNESSETH:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term") unless terminated earlier as provided hereafter. The Initial Term shall commence on the date of this License (the "Commencement Date").

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of THREE HUNDRED TWENTY-ONE THOUSAND EIGHT HUNDRED NINETY-FOUR and 10/100 Dollars ($321,894.10) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Purposefully omitted.

C. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being seventy (70) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel construction pipeline, not to exceed six and six tenths (6.6) inches in diameter, for the transportation of crude oil and to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to thirty (30) feet after the pipeline is laid. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to

the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor workday. If not on a workday, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all

times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS'

NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be

construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration,

the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

[Signature Pages Follow]

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
NUSTAR PERMIAN TRANSPORTATION AND STORAGE, LLC

By: _____
Printed Name: R. Heath Reininger
Title: Executive Director of Real Estate

THE STATE OF Texas §
§
COUNTY OF Bexar §

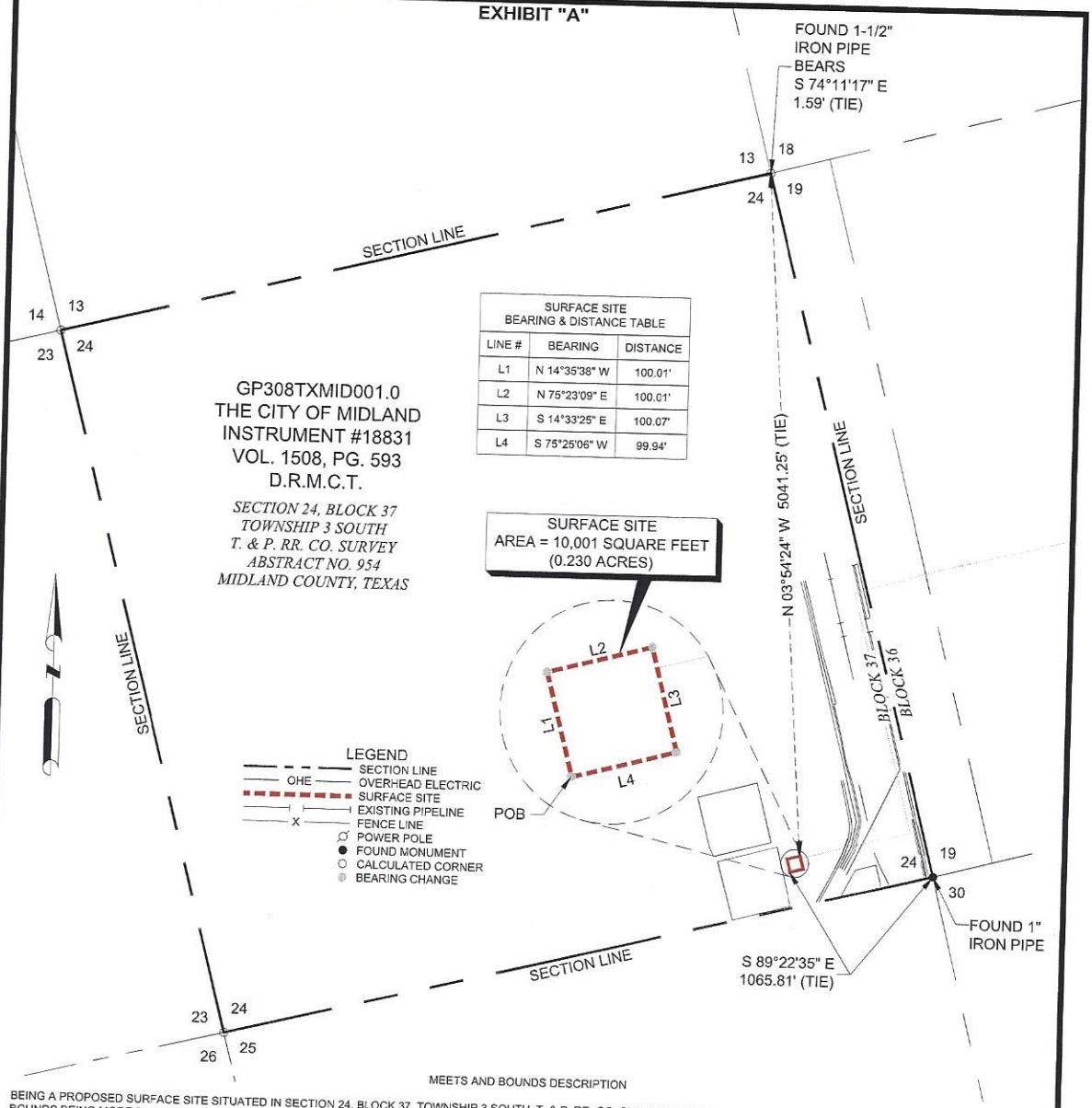
BEFORE ME, the undersigned authority, on this 2nd day of June, 2022 personally appeared R. Heath Reininger an officer of NuStar Permian Transportation and Storage, LLC known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2nd day of June, 2022.

_____
Notary Public, State of Texas

JUSTINA CORTES
Notary ID #131630591
My Commission Expires
July 3, 2022

EXHIBIT "A"



SURFACE SITE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 14°35'38" W	100.01'
L2	N 75°23'09" E	100.01'
L3	S 14°33'25" E	100.07'
L4	S 75°25'06" W	99.94'

MEETS AND BOUNDS DESCRIPTION

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 954, MIDLAND COUNTY, TEXAS. SAID MEETS AND BOUNDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N: 10646736.10, E: 1842533.74) IN SAID SECTION 24, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 24 BEARS S 89°22'35" E, A DISTANCE OF 1065.81 FEET (TIE);

THENCE N 14°35'38" W, A DISTANCE OF 100.01 FEET TO A POINT;
THENCE N 75°23'09" E, A DISTANCE OF 100.01 FEET TO A POINT, FROM THE CALCULATED NORTHEAST CORNER OF SAID SECTION 24 BEARS N 03°54'24" W, A DISTANCE OF 5041.25 FEET (TIE), FROM WHICH A FOUND 1-1/2" IRON PIPE BEARS S 74°11'17" E, A DISTANCE OF 1.59 FEET (TIE).
THENCE S 14°33'25" E, A DISTANCE OF 100.07 FEET TO A POINT;

THENCE S 75°25'06" W, A DISTANCE OF 99.94 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 10,001 SQUARE FEET OR 0.230 ACRES IN SAID SECTION 24.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
19 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'
Scale: 1" = 1000'

STATE OF TEXAS
REGISTERED
JAMES CURTIS YARGER
5854
PROFESSIONAL
LAND SURVEYOR

I HEREBY STATE THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION.

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 DATE 04-20-2022

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 10026

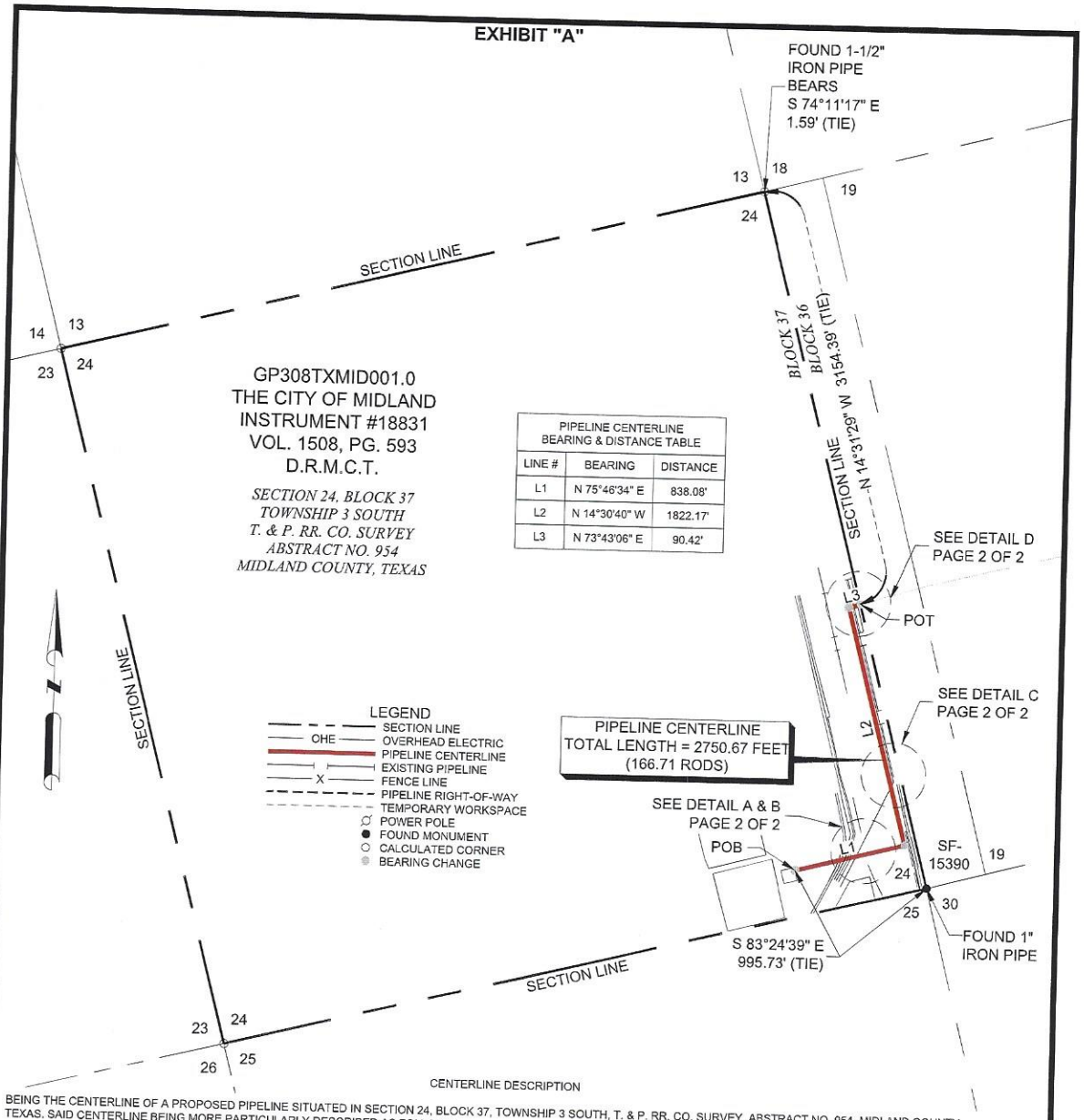
TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181

NuStar

END WTH 24-13
THE CITY OF MIDLAND
PROPOSED SURFACE SITE
SITUATED IN
SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

DRAWN BY: JMJ	DATE: 04/19/22	DWG. NO. 10026_SEC 24 BLK 37 SS	REV. 0
CHECKED BY: JCY	DATE: 04/20/22		
SCALE: 1"=1000'	PAGE 1 OF 1		

EXHIBIT "A"



PIPELINE CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 75°46'34" E	838.08'
L2	N 14°30'40" W	1822.17'
L3	N 73°43'06" E	90.42'

CENTERLINE DESCRIPTION

BEING THE CENTERLINE OF A PROPOSED PIPELINE SITUATED IN SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 954, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10646838.76, E:1842610.34) IN SAID SECTION 24, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 24 BEARS S 83°24'39" E, A DISTANCE OF 995.73 FEET (TIE);

THENCE N 75°46'34" E, A DISTANCE OF 838.08 FEET TO A POINT;
THENCE N 14°30'40" W, A DISTANCE OF 1822.17 FEET TO A POINT;

THENCE N 73°43'06" E, A DISTANCE OF 90.42 FEET TO THE POINT OF TERMINATION (N:10648834.08, E:18433052.95) OF SAID CENTERLINE, AT A POINT IN THE EAST BOUNDARY LINE OF SAID SECTION 24, FROM THE CALCULATED NORTHEAST CORNER OF SECTION 24 BEARS N 14°31'29" W, A DISTANCE OF 3154.39 FEET (TIE), FROM WHICH A FOUND 1-1/2" IRON PIPE BEARS S 74°11'17" E, A DISTANCE OF 1.59 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 2,750.67 FEET OR 166.71 RODS IN SAID SECTION 24.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
19 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'

Scale: 1" = 1000'

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 DATE

#	DATE	BY:	DESCRIPTION	CHK

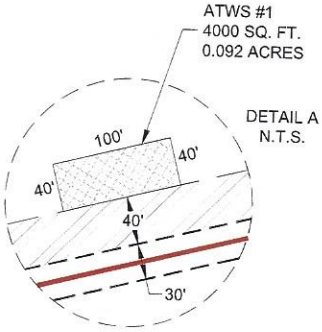
PROJECT NO. 10026

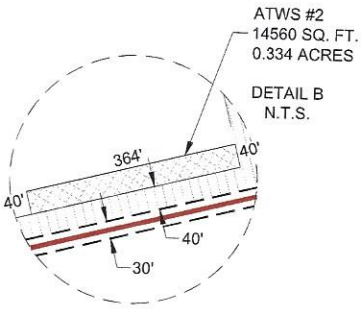
TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181

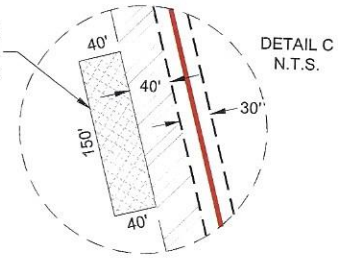
NuStar

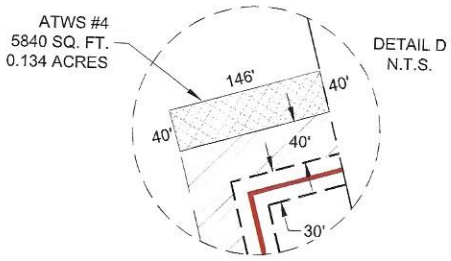
END WTH 24-13
THE CITY OF MIDLAND
PROPOSED PIPELINE CENTERLINE
SITUATED IN
SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

DRAWN BY: JMJ	DATE: 04/19/22	DWG. NO. 10026_SEC 24 BLK 37	REV. 0
CHECKED BY: JCY	DATE: 04/19/22		
SCALE: 1"=1000'	PAGE 1 OF 2		









NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 10026

TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181

NuStar

END WTH 24-13

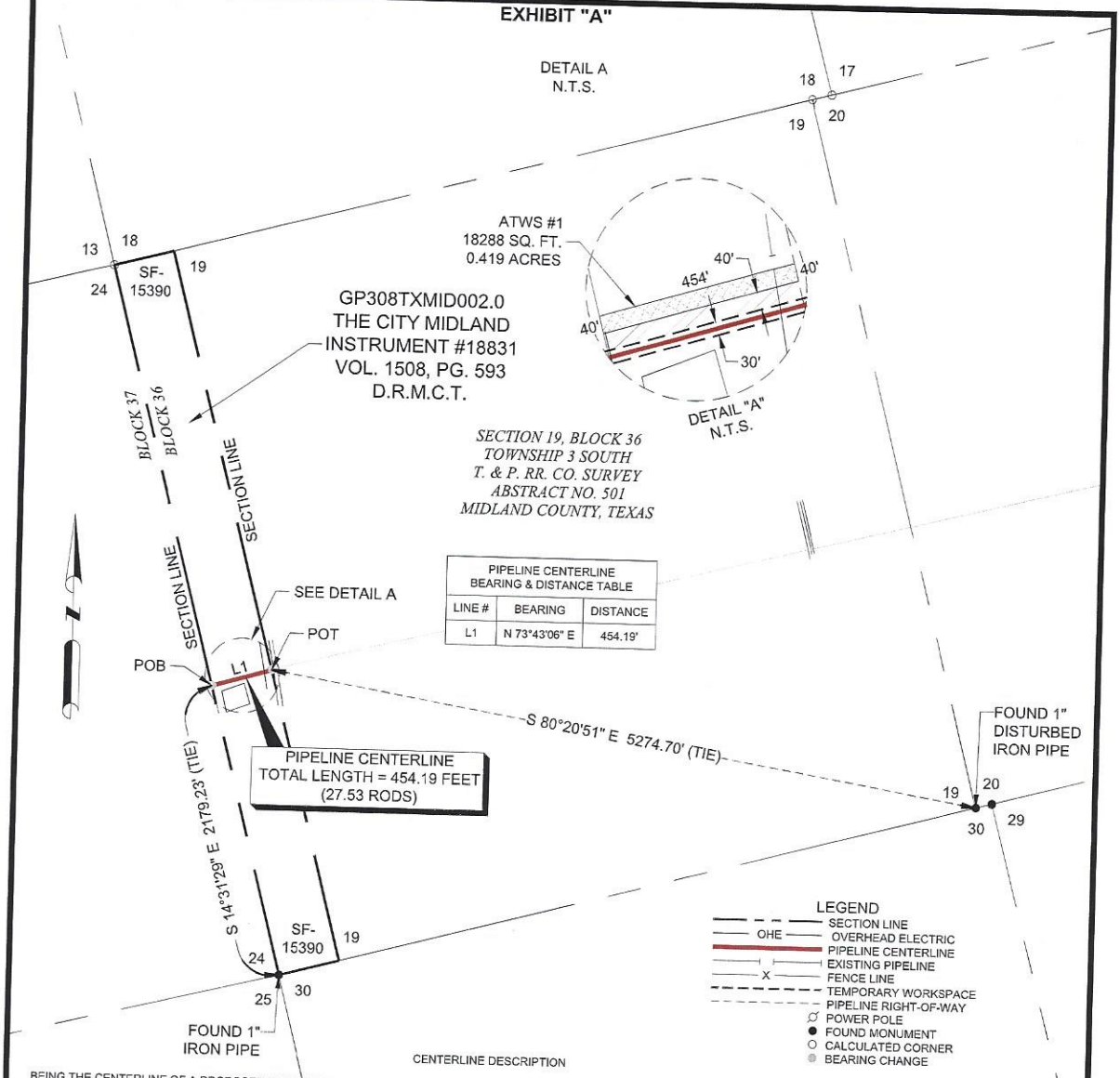
THE CITY OF MIDLAND

PROPOSED PIPELINE CENTERLINE

SITUATED IN
SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

DRAWN BY: JMJ	DATE: 04/19/22	DWG. NO. 10026_SEC 24 BLK 37	REV. 0
CHECKED BY: JCY	DATE: 04/20/22		
SCALE: 1"=1000'	PAGE 2 OF 2		

EXHIBIT "A"



PIPELINE CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 73°43'06" E	454.19'

LEGEND

- SECTION LINE
- OHE — OVERHEAD ELECTRIC
- PIPELINE CENTERLINE
- EXISTING PIPELINE
- X — FENCE LINE
- TEMPORARY WORKSPACE
- PIPELINE RIGHT-OF-WAY
- POWER POLE
- FOUND MONUMENT
- CALCULATED CORNER
- BEARING CHANGE

CENTERLINE DESCRIPTION

BEING THE CENTERLINE OF A PROPOSED PIPELINE SITUATED IN SCRAP FILE-15390, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10648834.08, E:1843052.95) IN THE WEST BOUNDARY LINE OF SCRAP FILE-15390, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHWEST CORNER OF SCRAP FILE-15390 19 BEARS S 14°31'29" E, A DISTANCE OF 2179.23 FEET (TIE);

THENCE S 73°43'06" W, A DISTANCE OF 454.19 FEET TO THE POINT OF TERMINATION (N:10648961.42, E:1843488.92) OF SAID CENTERLINE, AT A POINT IN THE EAST BOUNDARY LINE OF SCRAP FILE-15390, FROM WHICH A 1" DISTURBED IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SECTION 19 BEARS S 80°20'51" E, A DISTANCE OF 5274.70 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF **454.19 FEET OR 27.53 RODS IN SCRAP FILE-15390.**

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
19 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'

Scale: 1" = 1000'

STATE OF TEXAS
REGISTERED
JAMES CURTIS YARGER
5854
PROFESSIONAL
LAND SURVEYOR

I HEREBYB STATE THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION,

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 DATE 04-20-2022

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 10026

TRANSGLOBAL SERVICES LLC
TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181

NuStar

END WTH 24-13

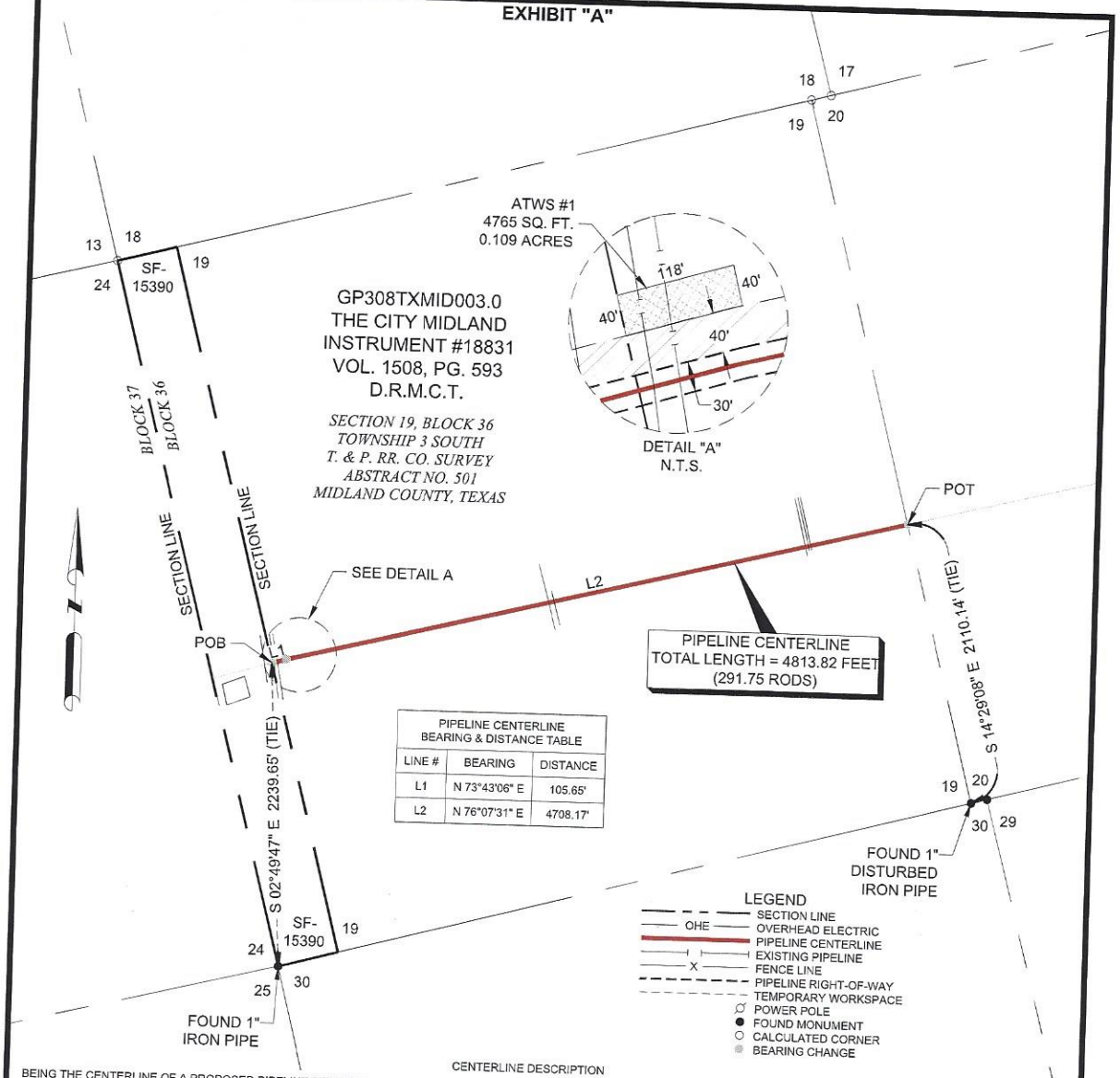
THE CITY OF MIDLAND

PROPOSED PIPELINE CENTERLINE

SITUATED IN
SECTION 19, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 501
MIDLAND COUNTY, TEXAS

DRAWN BY: JMJ	DATE: 04/20/22	DWG. NO. 10026_SEC 19 BLK 36 1.00	REV. 0
CHECKED BY: DDH	DATE: 04/20/22		
SCALE: 1"=1000'	PAGE 1 OF 1		

EXHIBIT "A"



PIPELINE CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 73°43'06" E	105.65'
L2	N 76°07'31" E	4708.17'

CENTERLINE DESCRIPTION

BEING THE CENTERLINE OF A PROPOSED PIPELINE SITUATED IN SECTION 19, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 501, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10648961.42, E:1843488.92) IN THE WEST BOUNDARY LINE OF SAID SECTION 19, FROM WHICH A 1" DISTURBED IRON PIPE FOUND FOR THE SOUTHWEST CORNER OF SCRAP FILE-15390 BEARS S 02°49'47" E, A DISTANCE OF 2239.65 FEET (TIE);

THENCE N 73°43'06" E, A DISTANCE OF 105.65 FEET TO A POINT;

THENCE N 76°07'31" E, A DISTANCE OF 4708.17 FEET TO THE POINT OF TERMINATION (N:10650120.05, E:1848161.12) OF SAID CENTERLINE, AT A POINT IN THE EAST BOUNDARY LINE OF SAID SECTION 19, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 19 BEARS S 14°29'08" E, A DISTANCE OF 2110.14 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 4813.82 FEET OR 291.75 RODS IN SAID SECTION 19.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
19 MILES SOUTHEAST OF MIDLAND, TEXAS

1000' 0' 1000'

Scale: 1" = 1000'

STATE OF TEXAS
REGISTERED
JAMES CURTIS YARGER
5854
PROFESSIONAL
LAND SURVEYOR

I HERERBY STATE THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION.

JAMES C. YARGER TEXAS R.P.L.S. NO. 5854 04-20-2022 DATE

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
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#	DATE	BY:	DESCRIPTION	CHK

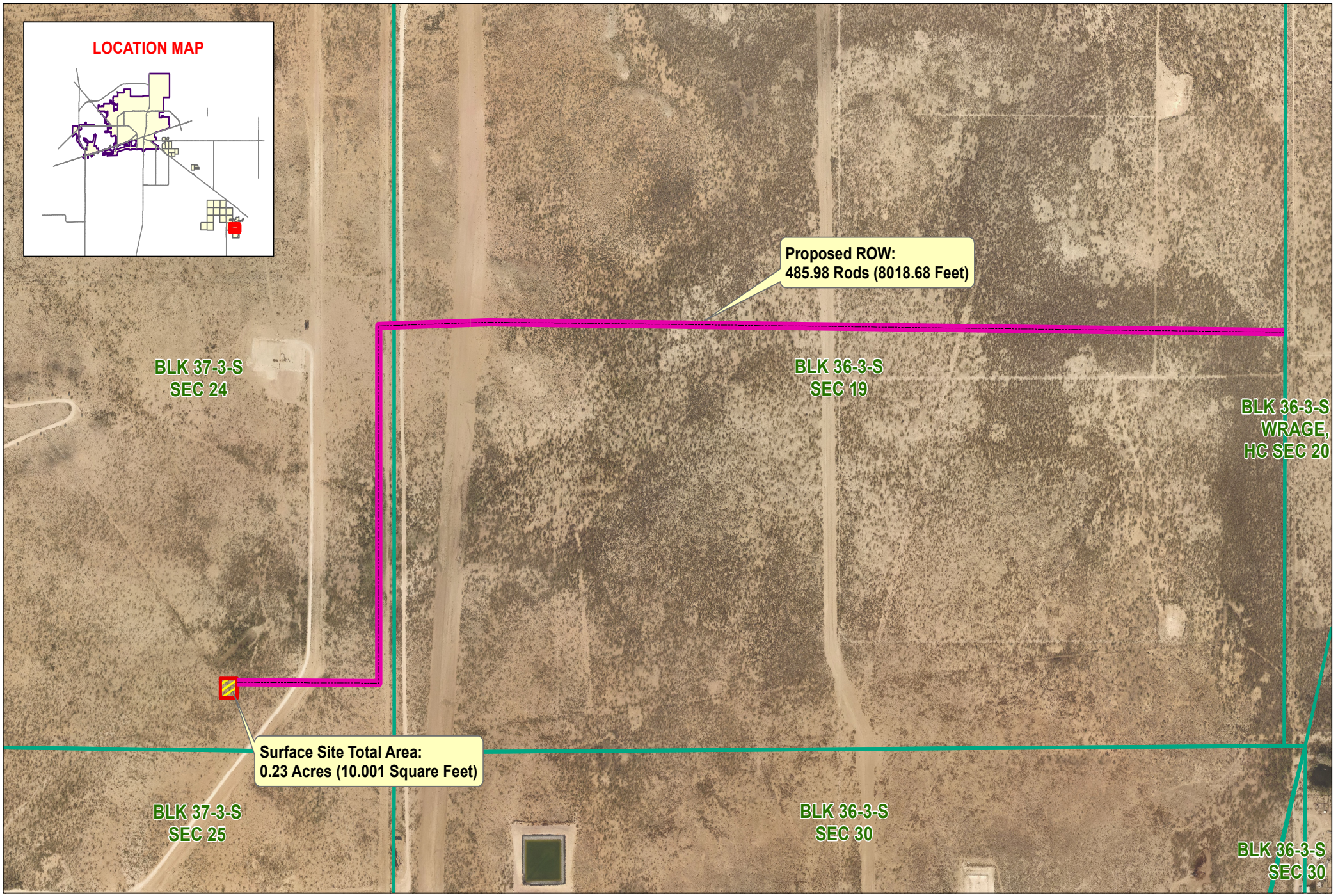
PROJECT NO. 10026

TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181

NuStar

END WTH 24-13
THE CITY OF MIDLAND
PROPOSED PIPELINE CENTERLINE
SITUATED IN
SECTION 19, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 501
MIDLAND COUNTY, TEXAS

DRAWN BY: JMJ	DATE: 04/20/22	DWG. NO. 10026_SEC 19 BLK 36 2.00	REV. 0
CHECKED BY: JCY	DATE: 04/20/22		
SCALE: 1"=1000'	PAGE 1 OF 1		



Date: 5/16/2022

Proposed ROW
Surface Site
Survey Section

PACKET 12.21

NuStar Proposed Pipeline ROW & Surface Site

June 28, 2022

0 250 500 Feet

©THE CITY OF MIDLAND - 2022
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/28/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh USA Inc.
2929 Allen Parkway, Suite 2500
Houston, TX 77019

CN101857056--+XS-21-22 10M

CONTACT NAME:
PHONE (A/C, No, Ext): **FAX (A/C, No):**
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Insurance Co	16535
INSURER B : American Guarantee & Liability Ins Co	26247
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
NuStar Permian Transportation and Storage, LLC
19003 IH 10 West
San Antonio, TX 78257

COVERAGES **CERTIFICATE NUMBER:** HOU-003765286-10 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X Marine Terminal Operators Liab GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			GLO 6724286-11	11/01/2021	09/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $	5,000,000 100,000 EXCLUDED 5,000,000 6,000,000 6,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BAP 6724287-11	11/01/2021	09/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	5,000,000
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			AUC 6724325-11	11/01/2021	09/01/2022	EACH OCCURRENCE AGGREGATE	$ $	10,000,000 10,000,000
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC 6724283-12	11/01/2021	09/01/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $	2,000,000 2,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Right of Way License
City of Midland is included as additional insured where required by written contract and allowed by law. Waiver of Subrogation is applicable where required by written contract and allowed by law.

CERTIFICATE HOLDER
City of Midland
300 N. Loraine
Midland, TX 79701

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Marsh USA Inc.

PACKET 12.22 June 28, 2022

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SECURITYMARK ON BACK OF DOCUMENT. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

NuStar Permian Transportation & Storage,

P.O. Box 781609
San Antonio, TX 78278-1609

JPMorgan Chase Bank, N.A.
Syracuse, NY

60468713

50-937/213

Date
05/05/2022

*********1,000 DOLLARS AND 00 CENTS

$**1,000.00**

PAY TO THE ORDER OF
CITY OF MIDLAND
PO BOX 1152
MIDLAND TX 79702-1152

NUSTAR A/P DISBURSEMENTS

VOID AFTER SIX MONTHS
Authorized Signature

Security Features Included Details on back

⑈60468713⑈ ⑆021309379⑆ 601859739⑈

"PAYMENT SUBJECT TO VERIFICATION AND RIGHT TO RECOVER IMPROPER CHARGES"	THE ATTACHED CHECK IS IN FULLPAYMENT OF ITEMS STATED. ENDORSEMENT MUST BE IDENTICAL WITH THE PAYEE DESIGNATED.	DETACH AT PERFORATION BEFORE DEPOSITING AND RETAIN FOR YOUR FILES

2028886
VENDOR NUMBER

NuStar Permian Transportation & Storage,
P.O. Box 781609 San Antonio TX 78278-1609

Invoice Date	Invoice Number	Voucher Document	Deductions	Gross amount
05/03/2022	CR20220503134344	1900004791	0.00	1,000.00
SEC-19,24 B-36,37, TS-3-S T&P RR A-501,954				
Sum total			0.00	1,000.00

Payment Document	Check Number	Check Date	Currency	Payment Amount
2000841735	60468713	05/05/2022	USD	*********1,000.00*

QR

SECURITYMARK ON BACK OF DOCUMENT. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

NuStar Permian Transportation & Storage,
P.O. Box 781609
San Antonio, TX 78278-1609

JPMorgan Chase Bank, N.A.
Syracuse, NY

60469012
50-937/213

Security Features Included Details on back

*******321,894 DOLLARS 10 CENTS
AND

Date
06/03/2022

$**321,894.10**

PAY TO THE ORDER OF
CITY OF MIDLAND
PO BOX 1152
MIDLAND TX 79702-1152

NUSTAR A/P DISBURSEMENTS

VOID AFTER SIX MONTHS
Authorized Signature

⑈60469012⑈ ⑆021309379⑆ 601859739⑈

"PAYMENT SUBJECT TO VERIFICATION AND RIGHT TO RECOVER IMPROPER CHARGES"

THE ATTACHED CHECK IS IN FULLPAYMENT OF ITEMS STATED. ENDORSEMENT MUST BE IDENTICAL WITH THE PAYEE DESIGNATED.

DETACH AT PERFORATION BEFORE DEPOSITING AND RETAIN FOR YOUR FILES

2028886
VENDOR NUMBER

NuStar Permian Transportation & Storage,
P.O. Box 781609 San Antonio TX 78278-1609

Invoice Date	Invoice Number	Voucher Document	Deductions	Gross amount
06/02/2022	CR20220602125010	1900004830	0.00	321,894.10
SEC-24, B-37, TS3-S T&P. RR SUR A-954				
Sum total			0.00	321,894.10

Payment Document	Check Number	Check Date	Currency	Payment Amount
2000844094	60469012	06/03/2022	USD	*******321,894.10*

QR

City Council Meeting

Item Number: 13

Meeting Date: June 14, 2022, June 28, 2022

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,399-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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)

Purpose:

The applicant, Joshua Hernandez, is requesting a Specific Use Designation (SUD) for the sale of all alcoholic beverages, for on-premises consumption, in a bar, located at 4610 N. Garfield Street, Suite C3.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

PD, Planned Development District for a Shopping Center (Ordinance No. 7771)

Surrounding Zoning and Land Use:

The properties to north are zoned O-1, Office District, and PD, Planned District for a Housing Development, and are the locations of Quality Suites and Polo Park Retirement Center. The properties to the east are zoned SF-2, Single- Family Dwelling District, and PD, Planned District for a Shopping Center, and the location of single-family houses and Extra Space Storage. The property to the south is zoned SF-1, Single Family Dwelling District, and the location of the Midland Airpark. The properties to the west across Garfield Street are zoned LR, Local Retail District and PD, Planned District for a Shopping Center, and the locations of Fairfield Inn & Suites by Marriot Midland and Talbots.

Discussion:

The property is located at 4610 N. Garfield Street, Suite C3, in a PD, Planned District for a Shopping Center, which is regulated by Ordinance No. 7771. This zoning district permits the sale of all alcoholic beverages, for on-premises consumption, in a bar with the approval of a Specific Use Designation with Term.

The bar is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as “Exhibit A” illustrates that the establishment, will have a total square footage of 4,399 square feet, with an alcohol serviceable area of 3,200 square feet. The site currently has adequate parking, access and internal circulation.

The proposed days and hours of operation and alcohol sales are the following:

Monday through Sunday from 11:00 a.m. to 2:00 a.m. (the following day)

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

The SUD for Element 14 is acceptable. The property must adhere to the maximum occupant load of 78 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) Element 14 is an establishment that will provide Midland residents with a unique social gathering experience.

This request is set to be heard at the June 6, 2022, Planning and Zoning Commission meeting.

Staff recommends approval of this Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, subject to conditions A through G.

Conditions:

A. That the alcohol serviceable area of the Bar shall be limited to approximately 3,200 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday from 11:00 a.m. to 2:00 a.m. (the following day)

C. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

D. That the establishment shall meet all requirements of the Fire Department and Code Administration.

E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the zoning ordinance, the bar shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of June 1, 2022, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps
Ordinance No. 7771

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,399-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 4,399-square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, 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 bar (the "Establishment") for on-premises consumption, together with the uses permitted in the present PD, Planned Development District for a Shopping

Center.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 3,200 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 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

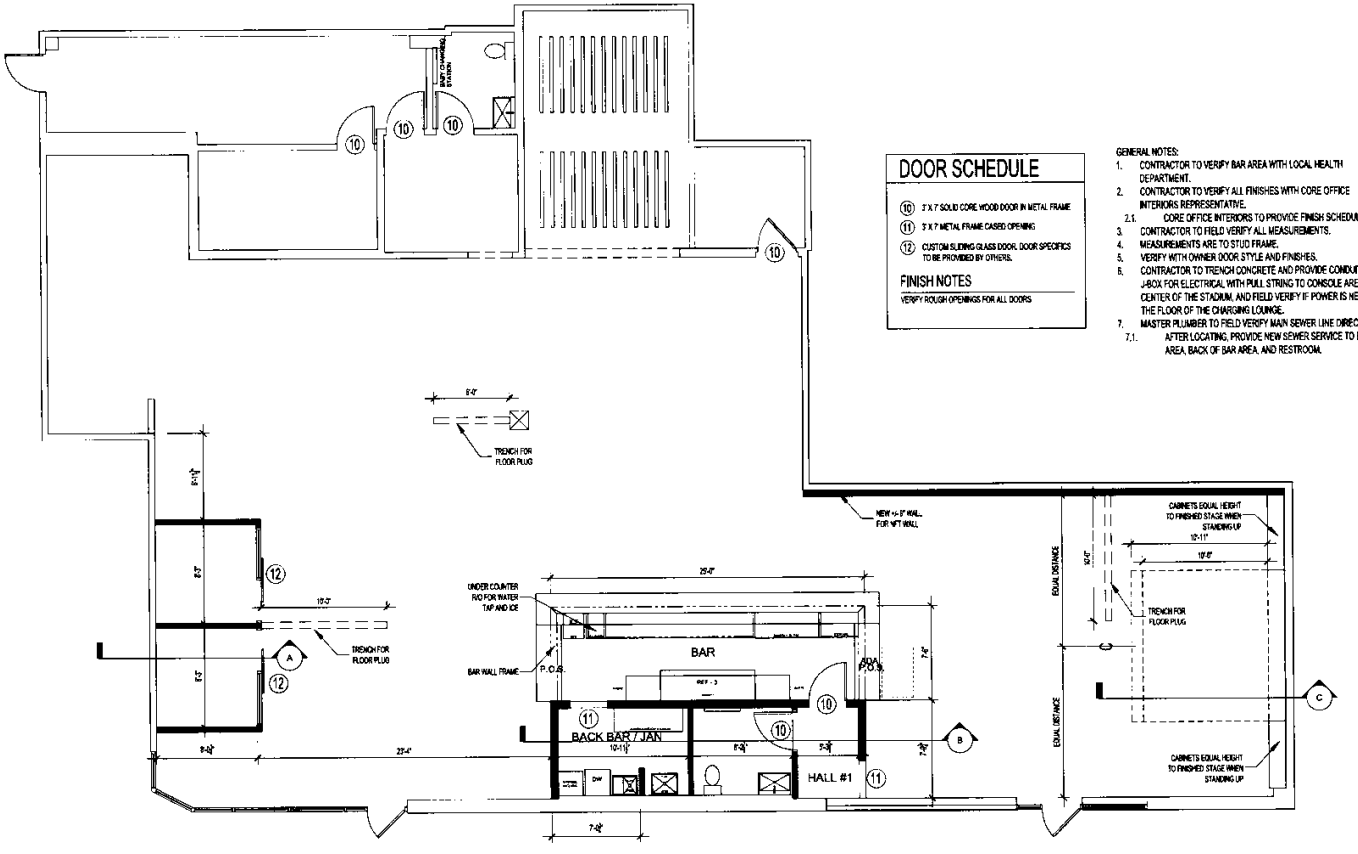
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



A FLOOR PLAN
A-1.0 SCALE: 1/4" = 1'-0"

PRELIMINARY PLAN
THESE DOCUMENTS ARE INTERIM REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION AND/OR PERMIT PURPOSES.

ELEMENT 14
MIDLAND, TEXAS

1	PRELIMINARY PLANS	03/28/22

DCI
CHAD WALTERS
432-352-0788
CHAD@MIDLAND-DCI.COM
WWW.MIDLAND-DCI.COM

PROJECT NUMBER: 2022028	
DRAWN BY:	CDW
CHECKED BY:	CDW

A-1.0

© 2022 MIDLAND DCI, INC.

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-22-0131

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Joshua Hernandez		Phone (~~432~~) 528-9692 Email clt.josh@gmail.com	
Address: 1412 Mockingbird Lane	City: Midland	State: TX	Zip: 79705
Property Owner Printed Name: See Attached	Colonnade at Polo Park Woodcrest LP	Phone ( ) Email 817 927-0050	
Address: 3113 S University Drive	City: Fort Worth	State: TX	Zip: 76109
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4610 N. Garfield Street #C3

Business Name: Element 14

Legal Description Lot: 10 Block: 8 Subdivision: Polo Park Sec. 3

Current Zoning:

Reason for Request: Applying for a Mixed Beverage Permit

Type of Business *(restaurant, bar, lounge, nightclub, etc.):* ~~Restaurant~~ BAR

Proposed/Current Days and Hours of Operation: Monday - Sunday

Proposed Days and Hours of Alcohol Service: 11:00 AM - ~~12:00 Midnite~~ 2 AM

Total Square Footage of Business: 4,399

Square Footage of Alcohol Serviceable Area: ~~4,399~~ 3,200

Restroom Fixtures:	*Men*	**Toilets/Urinals:** 1 / 1 /	**Bathroom Sinks:** /
	Women	**Toilets:** /	**Bathroom Sinks:** /

RECEIVED
APR 13 2022
BY: DR

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing: *Parking *Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature): _____ Date: 4-12-22

Applicant (printed): Josh Hernandez

Property Owner (signature): _____ Date: 4.14.22

Property Owner (printed): James A Ruffel

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials submitted in support of an application or displayed during a public hearing shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute application on behalf of property owner, agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Josh Hernandez who, being by me duly sworn, upon oath says: That (s)he is authorized by James A Ruffel the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this 13th day of April 2022, to certify which witness my hand and seal of office.

Dalia Salinas
Notary Public

DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

FOR OFFICE USE ONLY

- ☒ Property Owner Authorization
- ☒ Application Fee
- Check # 1154
- ☒ Dimensioned Floor Plan
- ☐ Site Plan
- ☒ Plans in Digital Format (PDF/JPEG)

Received By: _____ Date: _____

****Application will not be considered for scheduling until reviewed by a planner.****


Quality Suites
4.2 (256)
3-star hotel
4706
2100
Castleford Rd
4707
4703
4701
Midland Yoga Works
Magic Massage
Boren Orthodontics
Tuesday Morning
Home goods store
Farmers Insurance - Richard King
The Ox Nightclub and Dance Bar
Sapporo Ramen & Grill
Japanese · $$
Jason's Deli
A Kayser Christmas Experience
I Love Nails and Spa
Colonnade At Polo Park
Shopping mall
Foresight Sport
Sporting goods store
The Blue Door
Tkilaz Mexican
Mexican · $$
The Fire Place
Fireplace store
Carolina Skin Centre
Librado
Brew St. Brew and Food
Vegan · $$
Torrid
Plus size clothing store
Chili's Grill & Bar
Tex Mex · $$
N Garfield St
W Loop 250 N
Loop 250 Frontage Rd

ORDINANCE NO. 7771

AN ORDINANCE AMENDING ORDINANCE NO. 7324, WHICH ADOPTED A SITE PLAN FOR A "PLANNED DISTRICT" FOR A SHOPPING CENTER SO AS TO ADOPT AN AMENDED SITE PLAN; 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 and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, 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 amending the site plan for a "Planned District" for a Shopping Center by amending Ordinance No. 7324; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to amend the site plan adopted by Ordinance No. 7324;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the "Planned District" site plan adopted for the property described in Section One of

Ordinance No. 7324, specifically Lot 1, Block 8, Polo Park, Section III, City and County of Midland, Texas, shall be amended in its entirety as set forth in Exhibit "A", attached hereto and incorporated herein by reference subject to the following conditions:

A. That the maximum sign area for all free standing signs for this development not exceed 640 square feet.

B. That no future free standing sign associated with this development be allowed on the Loop 250 frontage.

C. That the Site Plan (Exhibits A & B) be adhered to in regard to the locations and types of signs proposed for this development.

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 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 8th day of September, A.D., 1998; and passed to second reading on motion of Council member Brooks, seconded by Council member Cuevas, by the following vote:

Council members voting "AYE": Brooks, Cuevas, Wood, Brown, Burns, Simpson and Washburn

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 Brooks, seconded by Council member Cuevas, on the 22nd day of September, A.D., 1998, at a regular meeting of the City Council:

Council members voting "AYE": Brooks, Cuevas, Wood, Brown, Burns, Simpson and Washburn

Council members voting "NAY": None

PASSED AND APPROVED THIS 22nd **day of** September **,**

A.D., 1998.

Robt. E. Burns, Mayor

ATTEST:

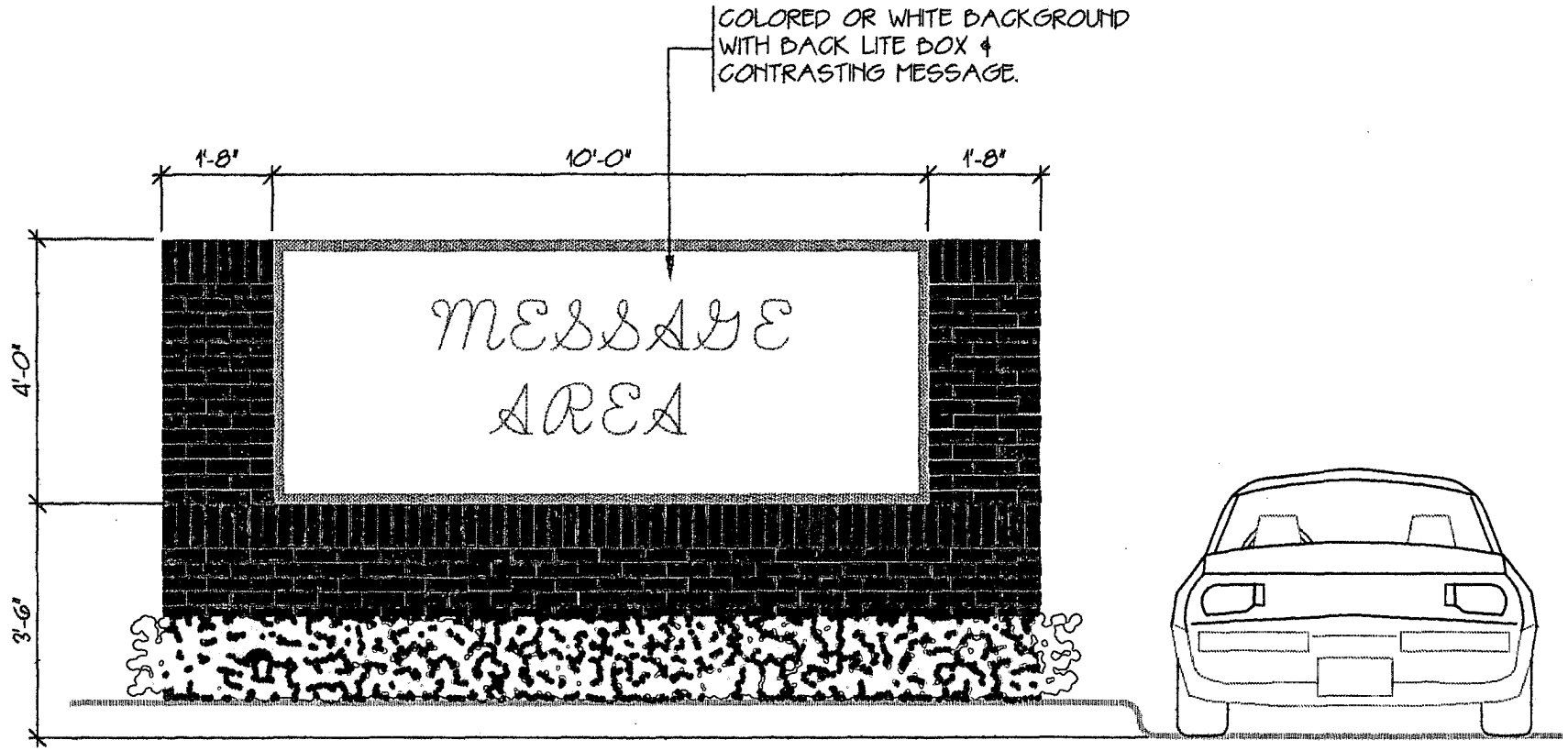
Kaylah J. McCord

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

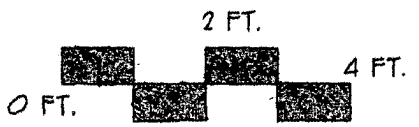
Keith Stretcher, City Attorney

ord\planning\plndist\Z-98-022 Red Oak



MONUMENT SIGN PROPOSAL

COLONADE SHOPPING CENTER
MIDLAND, TEXAS



RECEIVED
AUG 25 1998
PLANNING & DEVELOPMENT
CITY OF MIDLAND

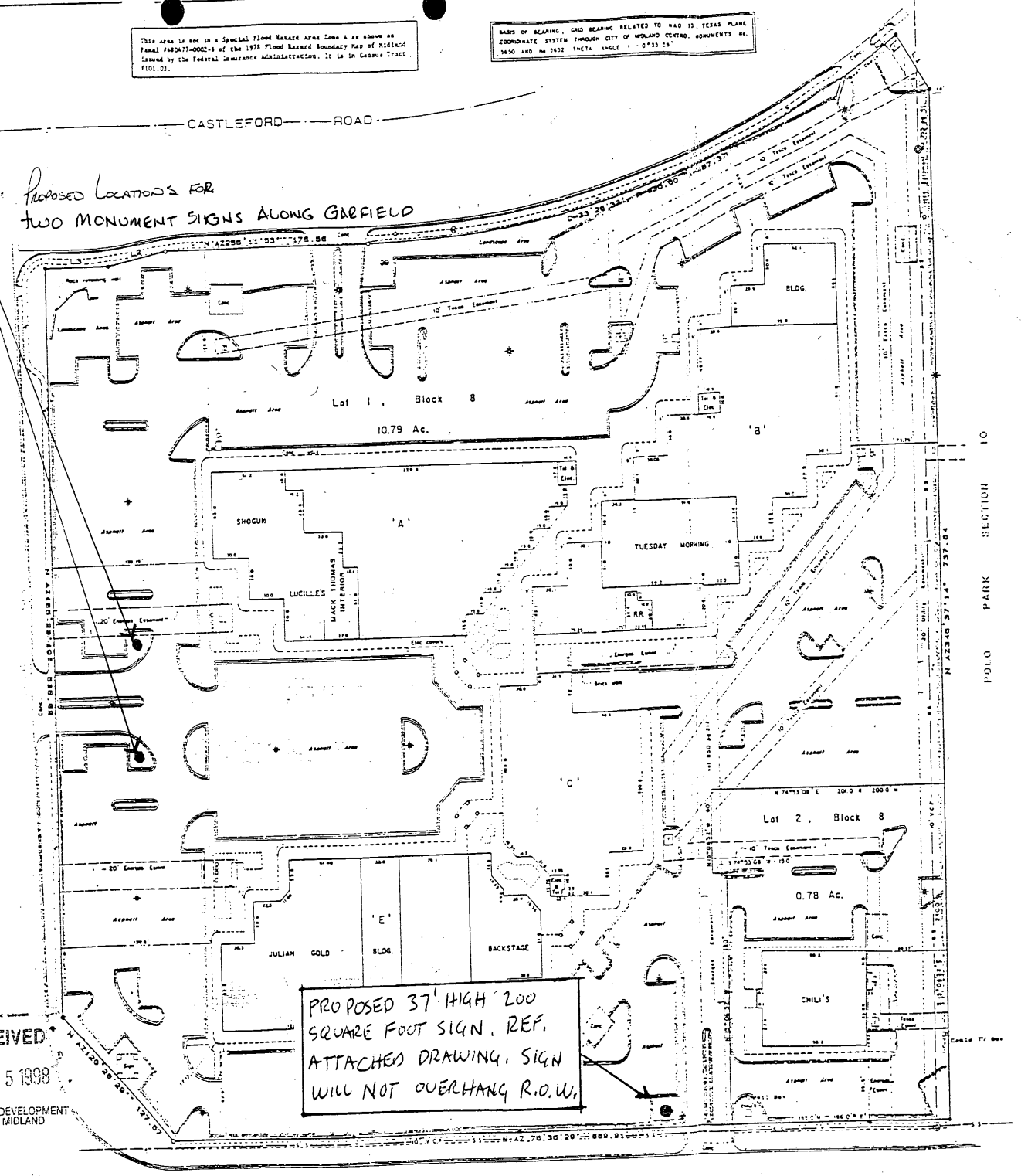
VANDERGRIFF GROUP
ARCHITECTS • PLANNERS
312 N. BIG SPRING, SUITE 100 (915) 687-0781 MIDLAND, TEXAS
MEMBER AMERICAN INSTITUTE OF ARCHITECTS

8-11-98

EXHIBIT B CASE NO. Z-98-022

This Area is not in a Special Flood Hazard Area Zone A as shown on Panel #480477-0002-8 of the 1978 Flood Hazard Boundary Map of Midland issued by the Federal Insurance Administration. It is in Census Tract #101.03.

BASIS OF BEARING, GRID BEARING RELATED TO NAD 83, TEXAS PLANE COORDINATE SYSTEM THROUGH CITY OF MIDLAND CONTROL MONUMENTS No. 3650 AND No 3652 THETA ANGLE = -0°33'29"



No.	Direction	Length
1	N AZ310°48'02"	47.87
2	N AZ244°19'33"	50.95
3	N AZ255°11'53"	49.98

LEGEND

- Fed. 1/2" iron rod.
- Set 1/2" iron rod.
- SWBT / Tel. vault
- SWBT Manhole
- Sanitary Sewer Manhole
- Hydrocarbon rope
- Concrete curb
- Concrete walk / width
- Texas Transformer box
- Gas Meters
- SWBT Telephone pedestal
- Texas Electric meters
- Cable T.V. pedestal
- Texas Pedestal
- Power pole w/ guy wire
- Light pole
- Water meter
- Traffic sign

SURVEYOR'S CERTIFICATE

The undersigned Registered Professional Land Surveyor (the "Surveyor") hereby certifies that (a) this plat of survey and the property description set forth hereon are true and correct and were prepared from an actual on-the-ground survey of the real property (the "Property") shown hereon; (b) such survey was conducted by the Surveyor or under his supervision; (c) all monuments shown hereon actually exist and the location, size and type of material thereof are correctly shown; (d) except as shown hereon, there are no encroachments onto the Property or protusion therefrom, there are no improvements on the Property, there are no visible easements or right-of-way on the Property, and there are no visible discrepancies, conflicts, shortages in area, or boundary line conflicts; (e) the size, location and type of improvements are as shown hereon, and all are located within the boundaries of the Property and set back from the Property lines the distance indicated; (f) the distance from the nearest intersecting street or road is shown; (g) the Property has access to and from a public roadway; (h) all recorded easements have been correctly platted hereon; and (i) the boundaries, dimensions and other details shown hereon are true and correct.

The Surveyor expressly understands and agrees that (a) this certificate is made for the benefit of Federal Deposit Insurance Corporation as _____ ("FDIC") and for the benefit of Chicago Title Insurance Company ("Title Company") to issue a policy of title insurance insuring the validity and priority of such deed of trust lien; (b) both FDIC and Title Company are entitled to rely on this plat of survey as being true and accurate in all respects and upon this certificate as being true and accurate.

Executed this 21st day of March, 1991.

John Wallis

Registered Professional Land Surveyor No. 2522

STATE OF TEXAS REGISTERED JOHN WALLIS 2522 PROFESSIONAL LAND SURVEYOR

CASE NO. Z-98-022

Receivership Name: First Gibralter
Asset Number: 7602-003008-00-1
Asset Name: Colonnade @ Polo Park
Property Description: NEC Garfield & Loop 250
John Wallis Tax ID#: 75-1928020

Survey Plat of Lots 1 and 2, Block 8, POLO PARK - SECTION III, an addition to the City of Midland, Midland County, Texas; Plat Cab. C, Pg 170

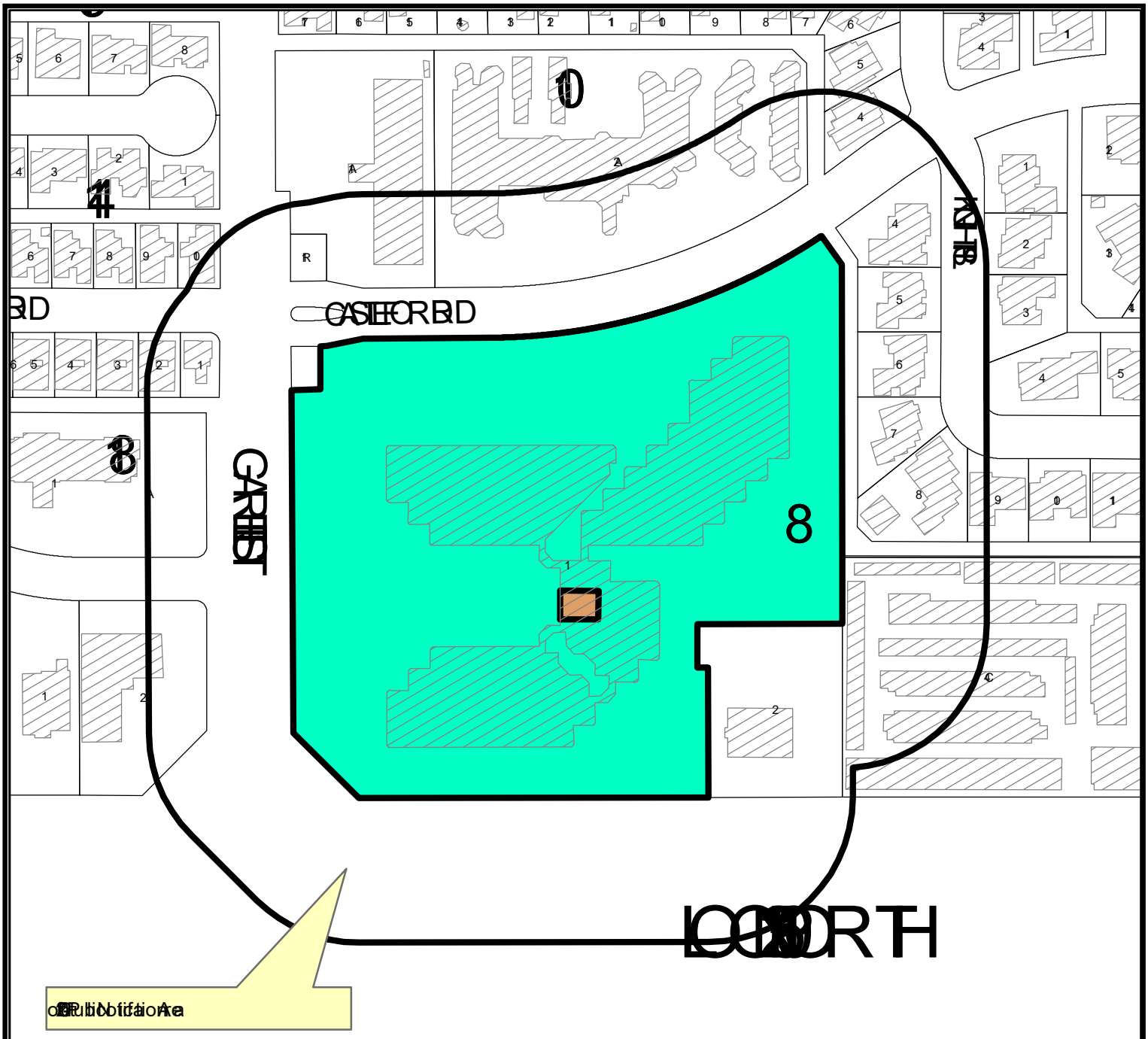
WALLIS LAND SURVEYORS
P.O. Box 4111
Midland, Texas 79704-4111

Scale: 1"=40'
Date: 3-20-91
Drawing Number: D-03-20-91

PACKET 13.18 June 28, 2022

RECEIVED
AUG 25 1998
PLANNING & DEVELOPMENT
CITY OF MIDLAND

EXHIBIT A



LOCATION MAP

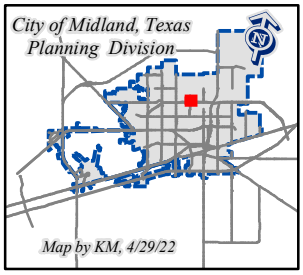
SUD-22-0131 **Scale: 1" = 200'**

Consider a request by Joshua Hernandez, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a bar, on a 4,399 square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of N. Garfield Street and W. Loop 250 North. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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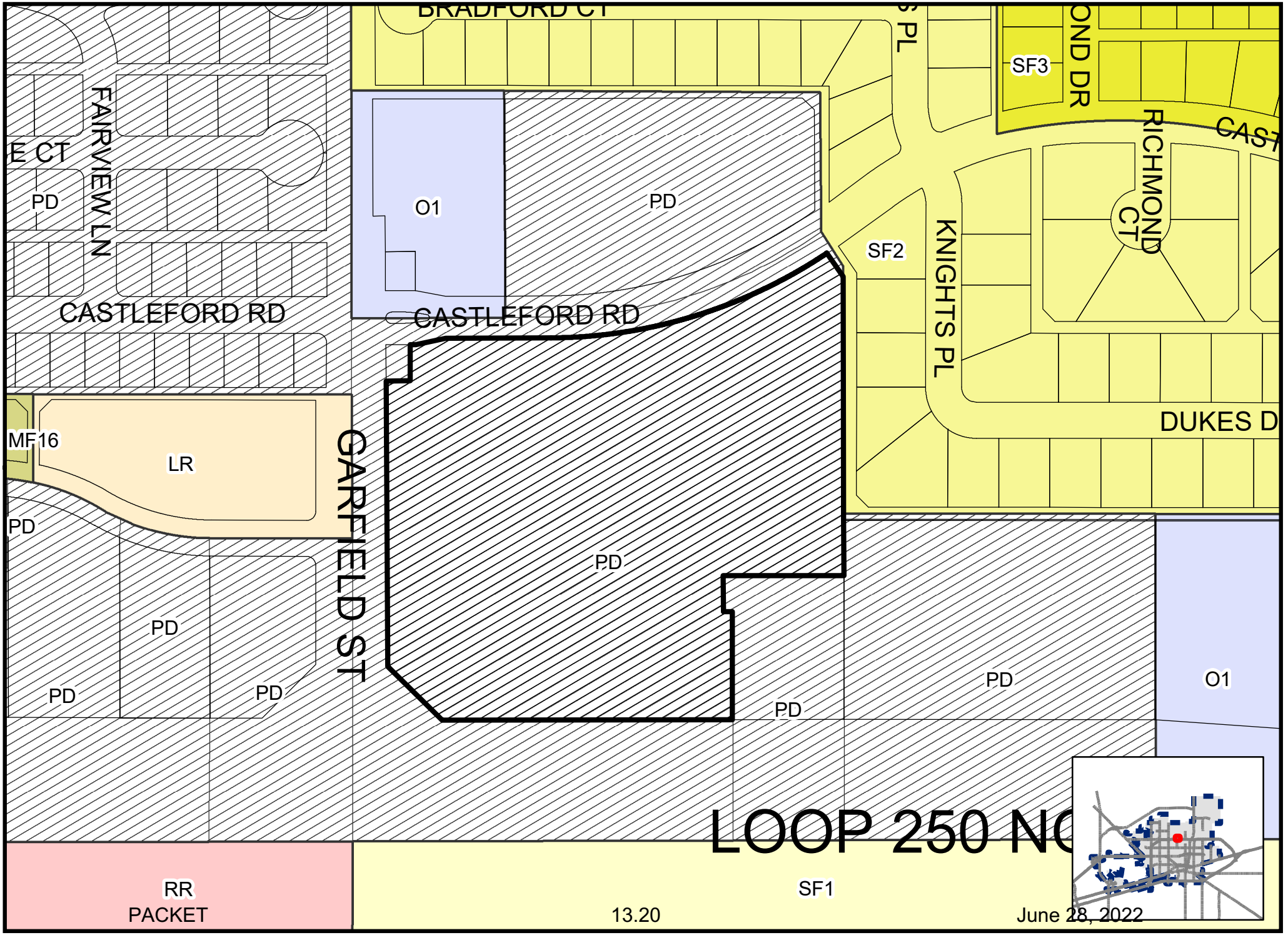
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 4/29/22

SUD-22-0131

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.


Cindie's your romance store!
GOLF HEADQUARTERS


GOLF HEADQUARTERS
CLUB FITTING USING
FORESIGHT


LIBRADO


THE BLUE DOOR

City Council Meeting

Item Number: 14

Meeting Date: June 14, 2022, June 28, 2022

To: City Council / City Manager

From: Kelly Martinez, Kelly Martinez

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,210-SQUARE FOOT PORTION OF LOT 33C, BLOCK 3, BRIARWOOD ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 428 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB 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)

Purpose:

The applicant, Julio Lozoya, is requesting a Specific Use Designation (SUD) for the sale of all alcoholic beverages, for on-premises consumption, in a nightclub, located at 4416 Briarwood Avenue, Suite #108.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Surrounding Zoning and Land Use:

The properties to the north, east, and south are zoned PD, Planned Development District and the locations of vacant land, a gas station, and Walmart. The property to the west is zoned RR, Regional Retail District, and the location of Family Care Clinic.

Discussion:

The property is located at 4416 Briarwood Avenue, in a PD, Planned District for a Shopping Center, which is regulated by Ordinance No. 6332. This zoning district permits the sale of all alcoholic beverages, for on-premises consumption, in a nightclub with the approval of a Specific Use Designation with Term. This property was previously occupied by Mr. Vapes, an E-Cig and Hookah Lounge, which had a Specific Use Designation (SUD) for on premises consumption in a lounge. However, the SUD expired back in January 2022. Thus, requiring Y Knot to apply for a new SUD.

Y Knot is currently in operation. The floor plan attached hereto as “Exhibit A” illustrates that the establishment, has a total square footage of 3,210 square feet, with an alcohol serviceable area of 2,587 square feet. The site currently has adequate parking, access, and internal circulation.

The proposed days and hours of operation including alcohol sales are the following:

Tuesday through Saturday from 6:00 p.m. to 2:00 a.m. (the following day)

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300 feet of the property.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections to zone change request.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

The SUD for Y Knot is acceptable. The property must adhere to the maximum occupant load of 253 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to* "Encourage the development of places where Midland residents can gather and socialize to build connections." (Tall City Tomorrow page 137) Y knot offers a new concept to the nightlife in the city. This modern space provides Midland residents with a unique social gathering experience.

This request is set to be heard at the June 6, 2022, Planning and Zoning Commission meeting.

Staff recommends approval of this Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a nightclub, subject to conditions A through G.

Conditions:

A. That the alcohol serviceable area of the nightclub shall be limited to approximately 2,587 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Tuesday through Saturday from 6:00 p.m. to 2:00 a.m. (the following day)

C. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

D. That the establishment shall meet all requirements of the Fire Department and Code Administration.

E. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the zoning ordinance, the nightclub shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of June 8, 2022, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps
Ordinance No. 6332

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 3,210-SQUARE FOOT PORTION OF LOT 33C, BLOCK 3, BRIARWOOD ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 428 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A NIGHTCLUB 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 3,210-square foot portion of Lot 33C, Block 3, Briarwood Addition, Section 16, 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 nightclub (the "Establishment") for on-premises consumption, together with the uses permitted in the present PD, Planned Development District for a

Shopping Center.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 2,587 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 Tuesday through Saturday from 6:00 p.m. to 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

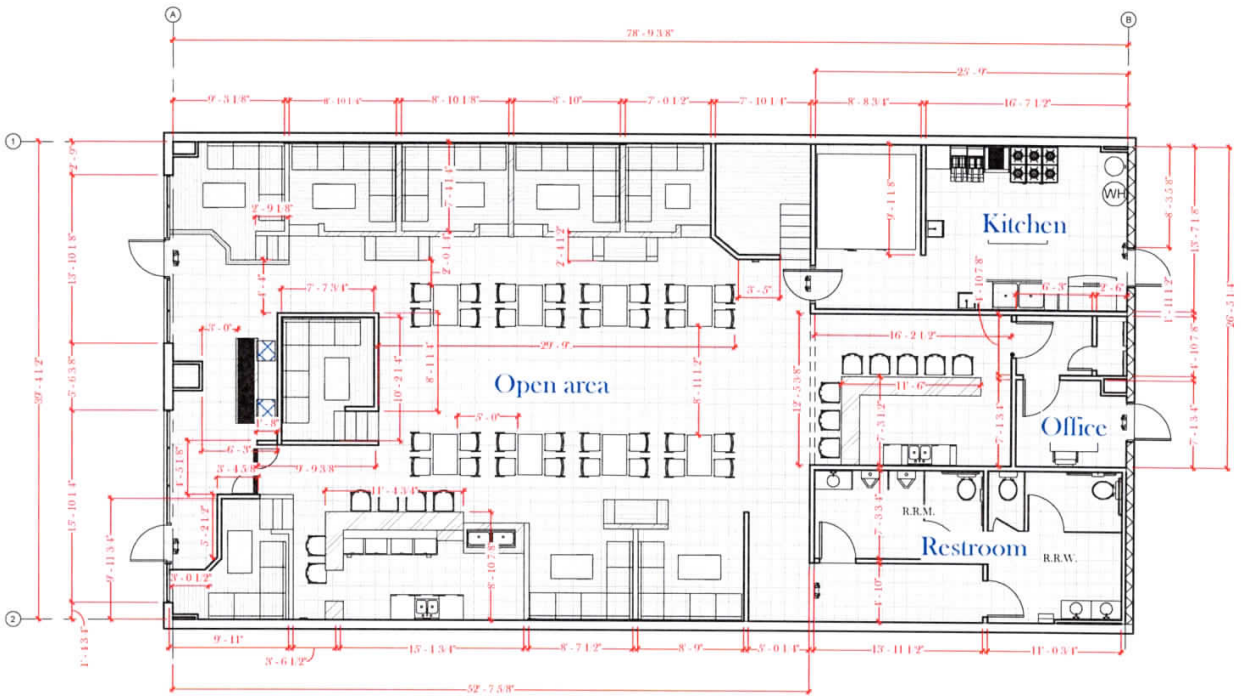
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



① Floor plan
1/8" = 1'-0"

Total Sqft:	**3210 sf**
Restroom -	241.5 sf
Office -	110 sf
Kitchen -	271.5 sf
Serviceable Area:	**2587 sf**

LOZOYA GENERAL CONTRACTORS

Notes:

No.	Description	Date

G.F. Elite
Y Knot Bar&Grill

Floor plan

Project number	-
Date	Jun-10-21
Drawn by	Ezequiel R. Garza L.
Checked by	Fily Lozoya Sr.

A102.1

Scale 1/8" = 1'-0"

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUB-22-0132

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Julio Lozoya		Phone (432) 770-3038 Email	
Address: 4416 N Briarwood	City: Midland	State: Texas	Zip: 79707

Property Owner Printed Name: The shops at Briarwood, LLC		Phone (432) 682-4081 Email	
Address: 4416 Briarwood	City: Midland	State: Texas	Zip: 79707

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4416 N Briarwood

Business Name: Y Knot Entertainment

Legal Description
Lot: 33C Block: C03 Subdivision: Briarwood Section 1b

Current Zoning:

Reason for Request: to sell alcohol

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*:

Proposed/Current Days and Hours of Operation: Tuesday - Saturday 6pm - 2AM

Proposed Days and Hours of Alcohol Service: Tuesday - Saturday 6pm - 2AM

Total Square Footage of Business: ~~3,000~~ Sq/Ft 3210

Square Footage of Alcohol Serviceable Area: ~~2,600~~ Sq/Ft 2587

Restroom Fixtures:			
Men	**Toilets/Urinals:** 1 / 2	**Bathroom Sinks:** 1
Women	**Toilets:** 2	**Bathroom Sinks:** 2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing: *Parking *Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 5/5/2022
Applicant (printed): Julio Lozoya	
Property Owner (signature):	Date:
Property Owner (printed) :	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute application on behalf of property owner, agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Julio Lozoya who, being by me duly sworn, upon oath says: That (s)he is authorized by Richard Samuel Hillman, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this 5th day of May, 2022, to certify which witness my hand and seal of office.

DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

Notary Public

FOR OFFICE USE ONLY

☒ Property Owner Authorization	☒ Dimensioned Floor Plan
☒ Application Fee	☐ Site Plan
Check # 323	☒ Plans in Digital Format (PDF/JPEG)
Received By: KM	Date: 5/5/22

MAY 05 2022

****Application will not be considered for scheduling until reviewed by a planner.****

Parking Lot:
53,130 sqft





Address:

Yknot Entertainment, LLC
4416 Briarwood Ave.
Local # 108
Midland, TX
79707

LOZOYA GENERAL CONTRACTORS

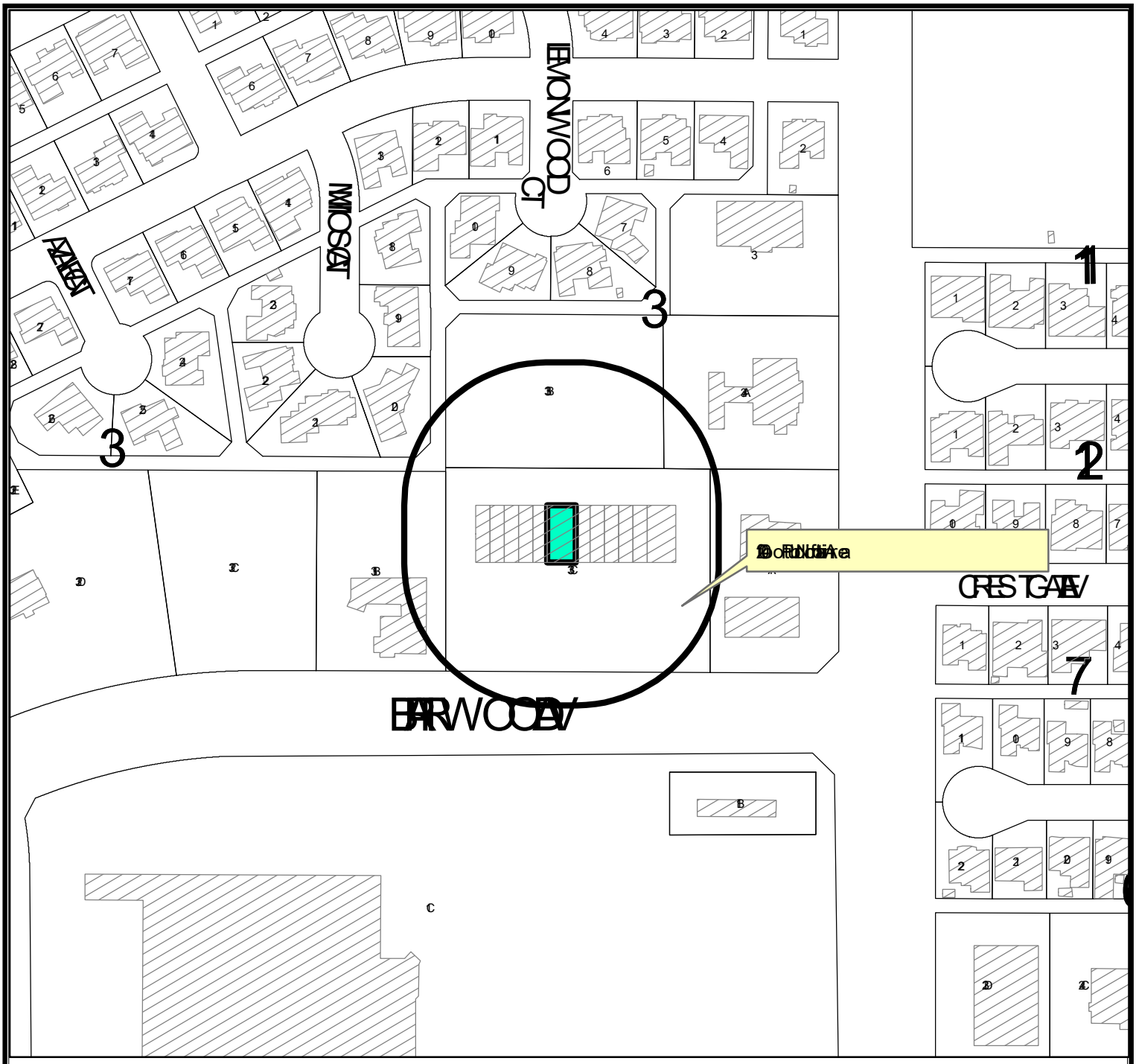
No.	Description	Date

G.F. Elite
Y Knot Bar&Grill
Localization

Project number -
Date Jun-10-21
Drawn by Fernando Leal M.
Checked by Fily

A101

Scale



LOCATION MAP

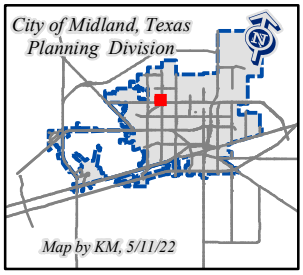
SUD-22-0132 **Scale: 1" = 200'**

Consider a request by Julio Lozoya, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a nightclub, on a 3,210 square foot portion of Lot 33C, Block 3, Briarwood Addition, Section 16, City and County of Midland, Texas.

Generally located on the north side of Briarwood Avenue, approximately 428-feet west of N. Midland Drive. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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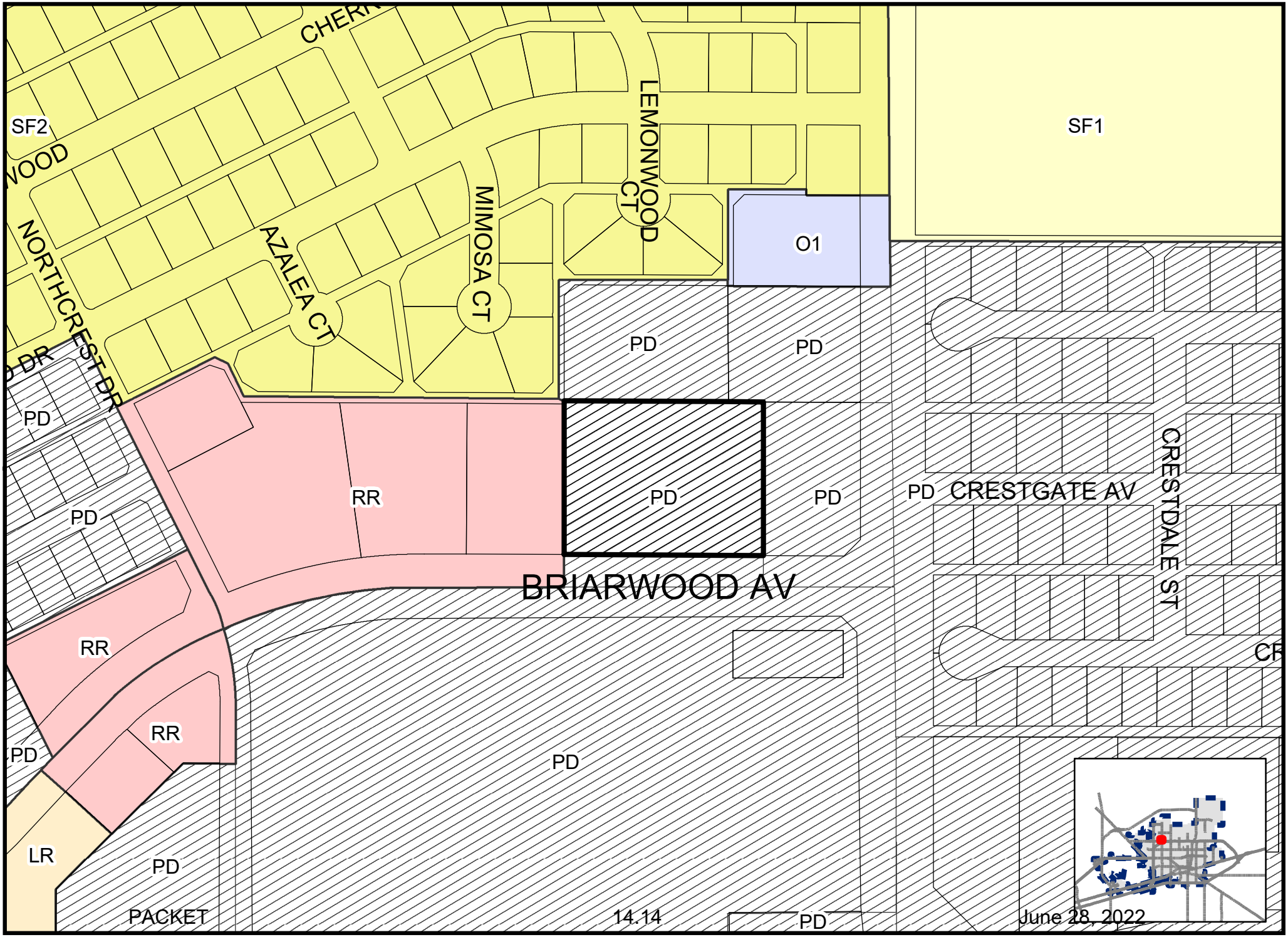
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY DOCUMENT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 5/11/22

SUD-22-0132

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.


NAILS
stripes
GameStop


SKY
MAZDA
TEXAS
NCW-8971




Y Knot
Express
Package+
DHL
FedEx

pr

ORDINANCE NO. 6332

AN ORDINANCE AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING THE PROPERTY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED "PLANNED DISTRICT" FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED "PLANNED DISTRICT" FOR A SHOPPING CENTER; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; PROVIDING THAT THE PROPERTY SHALL BE IMPROVED ACCORDING TO THE ORDINANCES AND OTHER SPECIFICATIONS SET OUT AND REFERRED TO HEREIN; ADDING THE PROPERTY DESCRIBED IN SECTION ONE HEREOF TO THE FIRE DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF ONE THOUSAND DOLLARS ($1,000.00); 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 and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map 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 the creation of the "Planned District" set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter One, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned "Planned District" for a Shopping Center, and it shall be used as an Amended "Planned District" for a Shopping Center, subject to the special conditions and restrictions hereinafter set out.

Said property is described as follows:

A 28.08 acre tract of land in Section 6, Block X, H. P. Hilliard Survey, Midland County, Texas, being more fully described by metes and bounds as follows:

Beginning at a point in said Section 6, for the most southerly SE corner of this tract, from which the SE corner of said Section 6 bears S. 15° 04' 13" E., 35.00 feet and N. 74° 55' 47" E., 95.23 feet;

Thence N. 29° 49' 07" E., 49.54 feet to a point for the most easterly SE corner of this tract;

Thence N. 15° 17' 34" W., 24.90 feet to a point for an interior corner of this tract;

Thence N. 29° 49' 07° E., 21.17 feet to a point in the western boundary of Midland Drive, for an exterior corner of this tract;

Thence N. 15° 17' 34" W., 935.00 feet along the western boundary of Midland Drive, to a point for the NE corner of this tract;

Thence S. 74° 55' 47" W., 1,195.00 feet to a point for the most northerly NW corner of this tract;

Thence S. 30° 15' 16" W., 254.01 feet to a point for the most westerly NW corner of this tract;

Thence S. 59° 44' 44" E., 114.31 feet to a point of curvature of this tract;

Thence along the curved boundary of this tract, Delta Angle = 44° 40' 31" right, Radius = 462.40 feet, Tangent Length = 190.00 feet, and an Arc Length of 360.55 feet to a point of tangency this tract;

Thence S. 15° 04' 13" E., 425.00 feet to a point for the SW corner of this tract;

Thence N. 74° 55' 47" E., 1,115.50 feet to the place of beginning and containing 28.08 acres of land.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

1. That the use and development of the property shall conform to all regulations applicable to an "LR-2", Local Retail District.

2. That the maximum floor area ratio applicable to all buildings and portions of buildings except those used for vehicle parking shall be .25:1.

SECTION THREE. That the Fire District be amended so as to add thereto the premises described in Section One hereof and the Building Inspector is authorized and directed to add to the Fire District Map said premises.

SECTION FOUR. That definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding one thousand dollars ($1,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 13th day of December, A.D., 1983; and passed to second reading on motion of Councilman Sloan, seconded by Councilman Godfrey, by the following vote:

Councilmen voting "AYE": Sloan, Godfrey, Hatfield, Davidson, Marcum and Akins

Councilmen voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Councilman Godfrey, seconded by Councilman Sloan, on the 10th day of January, A.D., 1984, at a regular meeting of the City Council:

Councilmen voting "AYE": Godfrey, Sloan, Marcum, Hatfield, Akins and Davidson

Councilmen voting "NAY": None

PASSED AND APPROVED THIS 10th day of January, A.D., 1984.

G. Thane Akins, Mayor

ATTEST:

J. W. McCullough, City Secretary

APPROVED AS TO FORM:

J. M. Nuessle, City Attorney

City Council Meeting

Item Number: 15

Meeting Date: June 14, 2022, June 28, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.570-ACRE TRACT OF LAND OUT OF SECTION 9, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COUNTY ROAD 110, APPROXIMATELY 150 FEET EAST OF SOUTH COUNTY ROAD 1205); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Frank Mendoza, is requesting a Zone Change from SF-1, Single Family Dwelling District to BP, Business Park District at 2605 W. County Rd. 110, to allow for a truck yard and facility.

Recommended City Council Action:

Deny

Fiscal Impact:

This request does not require any City funds.

Discussion:

Analysis:

The applicant is requesting this zone change for the purposes creating a truck yard and facility.

This proposed zone change has been circulated to the respective City departments for internal

review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For the Applicant's information only] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Oil & Gas Review: (Approved)

No Oil and Gas Issues. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

GIS: (Approved)

No comments.

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 (Denied):

The proposed development falls under a mix of circumstances surrounding the comprehensive plan. In some regards, the proposed development will propagate the goals and ideas of the

plan, but in others, it stands in stark opposition. This request is a mixed bag when it comes to compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision.

The Tall City of Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, “Development Policy Areas” labels this area as part of the ‘Southside’. In where it is defined as a scattered development area that represents a mixture of residential and light industrial. Its goal is to represent a well-established long-term plan, minimum building standards that assist improving life safety in the area and create a more consistent land use pattern. This development will not be consistent to the established neighborhood pattern.

This proposed development fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3, An Integrated Land Use Vision, Future Land Use Map as this area calls for Business Park I-20. This designation calls for development area along the I-20 corridor where special consideration should be given to the image travelers have as they pass through Midland. This area would include sites suitable for industrial and business development adjacent to railroad and interstate access, important to the economic development of the region. However, by allowing this proposed development of a Truck Yard and Facility, it would represent a misfit of its already existing housing development and it would not represent that holistic development that incorporates retail and office uses that our travelers on I-20 would be able to benefit from.

The Planning & Zoning Commission recommended denial at the June 6th Planning Zoning Commission meeting.

Therefore, staff recommends denial of this zone change from SF-1, Single-Family Dwelling District to BP, Business Park District, however if approved; staff recommends that it should be subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the BP, Business Park District.

Letters of Objection:

Staff has received one letter of objection as of June 10, 2022.

Attachments:

Application
Maps
Plat

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.570-ACRE TRACT OF LAND OUT OF SECTION 9, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO BP, I-20 BUSINESS PARK DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST COUNTY ROAD 110, APPROXIMATELY 150 FEET EAST OF SOUTH COUNTY ROAD 1205); 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 3.570-acre tract of land out of Section 9, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property") to BP, I-20 Business Park District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from SF-1, Single-Family Dwelling District to BP, I-20 Business Park District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

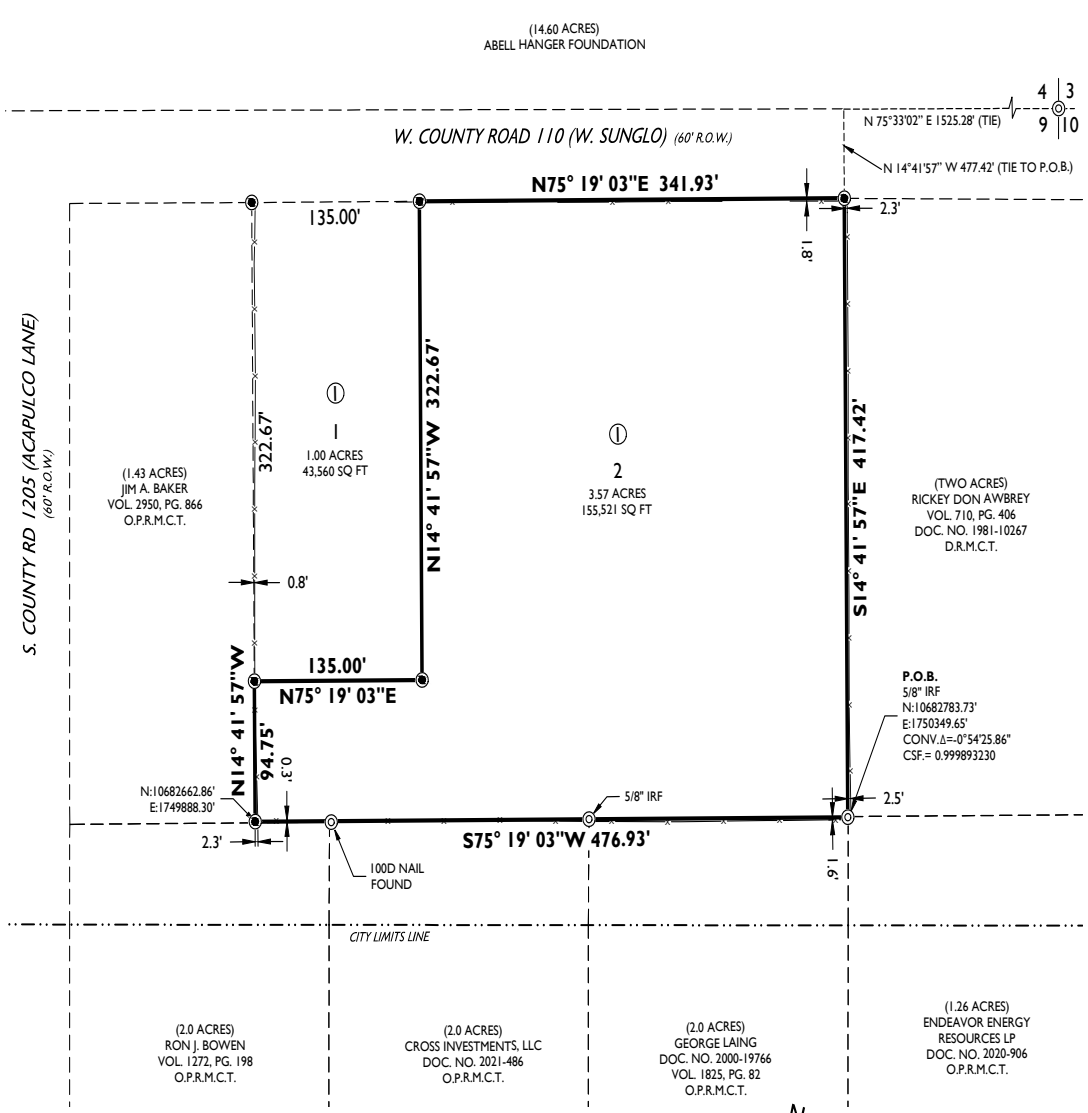
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



FIELD NOTE DESCRIPTION OF A 3.57 ACRE TRACT OF LAND, BEING FULLY AND COMPLETELY DESCRIBED AS LOT 2, BLOCK 1, STALLION PARK ADDITION, BEING A PROPOSED SUBDIVISION SITUATED IN SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND BEING PORTIONS OF THE THREE TRACTS OF LAND AS DESCRIBED IN DOCUMENT NUMBER 24248, IN VOLUME 2764 ON PAGE 575, OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y):10682783.73, E.(x):1750349.65, A FIVE EIGHTHS INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF A CALLED 2.0 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 19766 IN VOLUME 1825 ON PAGE 82 OF SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) FOUND FOR THE NORTHEAST CORNER OF SAID SECTION 9 BEARS N.14°41'57"W., 477.42 FEET AND N.75°33'02"E., 1525.28 FEET AND BEING THE SOUTHEAST CORNER HEREOF;

THENCE S.75°19'03"W., ALONG THE NORTH LINE OF SAID CALLED 2.0 ACRE TRACT, AT 208.23 FEET, PASSING A FIVE EIGHTHS INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 2.0 ACRE TRACT, AT 415.66 FEET PASSING A CALLED 100d NAIL FOR THE NORTHWEST CORNER OF A CALLED 2.0 ACRE TRACT DESCRIBED IN DOCUMENT NUMBER 2021-486 OF SAID "OPR", IN ALL 476.93 FEET TO AN "RPC SET FOR THE SOUTHEAST CORNER OF A CALLED 1.43 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 25531 IN VOLUME 2950 ON PAGE 866, OF SAID "OPR" FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°41'57"W., ALONG THE EAST LINE OF SAID CALLED 1.43 ACRE TRACT, 94.75 FEET TO AN "RPC" SET FOR THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, THIS SUBDIVISION FOR THE WEST NORTHWEST CORNER HEREOF;

THENCE N.75°19'03"E., ALONG THE SOUTH LINE OF SAID LOT 1, 135.00 FEET TO AN "RPC" SET FOR THE SOUTHEAST CORNER OF SAID LOT 1 AND BEING AN INTERIOR CORNER HEREOF;

THENCE N.14°41'57"W., ALONG THE EAST LINE OF SAID CALLED LOT 1, 322.67 FEET TO AN "RPC" SET IN THE SOUTH RIGHT-OF-WAY LINE OF A CALLED 60 FOOT WIDE STREET (SUNGLO) FOR THE NORTH NORTHWEST CORNER HEREOF;

THENCE N.75°19'03"E., ALONG SAID SOUTH RIGHT-OF-WAY LINE, 341.93 FEET TO AN "RPC" SET FOR THE NORTHWEST CORNER OF A CALLED TWO ACRE TRACT OF LAND, DESCRIBED IN DOCUMENT NUMBER 10267 IN VOLUME 710 ON PAGE 406 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°41'57"E., ALONG THE WEST LINE OF SAID CALLED TWO ACRE TRACT, 417.42 FEET TO THE **POINT OF BEGINNING**, CONTAINING 3.57 ACRES OF LAND.

LEGEND

◉	DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
◎	DENOTES FOUND MONUMENT AS NOTED
———	DENOTES BOUNDARY LINE
- - - - -	DENOTES EXISTING LOTS
———X———	DENOTES EXISTING FENCE
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
D.R.M.C.T.	DEED RECORDS, MIDLAND CO., TX
P.R.M.C.T.	PLAT RECORDS, MIDLAND CO., TX

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

GREGORY W. SHOULTS R.P.L.S.#5356

REVISED: MARCH 29, 2022
FEBRUARY 2, 2022
DATE

STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com



0' 100' 200' 300'

SCALE 1" = 100'

BEARING BASIS

BASIS OF BEARING, COORDINATES, DISTANCE AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NAD 83 WITH A CONVERGENCE ANGLE (theta) OF -0°54'25.86" WITH A CSF OF 0.999893230 AT THE POINT OF BEGINNING.

BOUNDARY SURVEY

A 3.57 ACRE TRACT OF LAND, BEING FULLY AND COMPLETELY DESCRIBED AS LOT 2, BLOCK 1, STALLION PARK ADDITION, BEING A PROPOSED SUBDIVISION SITUATED IN SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

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Drawing : F:\2021\210208-RAUL DOMINGUEZ-SUNGLO TRACT\DRAWINGS\BOUNDARY SURVEY\210208 - BOUNDARY SURVEY.DWG Last Saved By: ADevine on 3/29/22

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-22-0292

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Frank H Mendoza		Phone ( ) Email	
Address 4606 W Illinois Ave	City Midland	State TX	Zip 79703

Property Owner Printed Name: see applicant		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Paladin Huckaba		Phone (432) 262.0999 Email phuckaba@maverick-eng.com	
Address 1909 W wall st ste k	City midland	State tx	Zip 79701

Street Address: 2605 W CR 110

Legal Description
Lot: 2 Block: 1 Subdivision: (Proposed) Stallion Park Addition

Current Zoning: SF1

Proposed Zone: BP
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Change zoning to conform with adjacent BP zoning and proposed use for a trucking yard.

Present Use of Property: Vacant

Proposed Use of Property: Trucking yard and facility

How would this zone change affect the public health, safety and welfare?
Advance development of currently vacant property within the City of Midland

Describe how conditions affecting the property have changed since present zoning designation: Increased industrial and commercial development adjacent'/proximate this location.

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)

RECEIVED
APR 08 2022
BY: CF

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): [signature]	Date: 04/07/22
Applicant (printed): FRANK MENDOZA	
Property Owner (signature): [signature]	Date: 04/07/22
Property Owner (printed) :	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Frank H Mendoza, 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 April, 2022, to certify which witness my hand and seal of office.

[signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Kelsey Ann Lewis
My Commission Expires
2/19/2026
Notary ID
131456388

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 3710	
Received By: [signature]	Date: 4-8-22

****Application will not be considered for scheduling until reviewed by a planner.****

MAVERICK
ENGINEERING • SURVEY • WATER RESOURCES
1909 West Wall Street, Suite K • Midland, TX 79701
Tel: 432.262.0999 • Fax: 432.262.0989 • maverick-eng.com
ENGINEER FIRM #: F-15089 | SURVEY FIRM #:10194514

FIELD NOTE DESCRIPTION OF A 3.57 ACRE TRACT OF LAND

FIELD NOTE DESCRIPTION OF A 3.57 ACRE TRACT OF LAND, BEING FULLY AND COMPLETELY DESCRIBED AS LOT 2, BLOCK 1, STALLION PARK ADDITION, BEING A PROPOSED SUBDIVISION SITUATED IN SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND BEING PORTIONS OF THE THREE TRACTS OF LAND AS DESCRIBED IN DOCUMENT NUMBER 24248, IN VOLUME 2764 ON PAGE 575, OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y):10682783.73, E.(x):1750349.65, A FIVE EIGHTHS INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF A CALLED 2.0 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 19766 IN VOLUME 1825 ON PAGE 82 OF SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) FOUND FOR THE NORTHEAST CORNER OF SAID SECTION 9 BEARS N.14°41'57"W., 477.42 FEET AND N.75°33'02"E., 1525.28 FEET AND BEING THE SOUTHEAST CORNER HEREOF;

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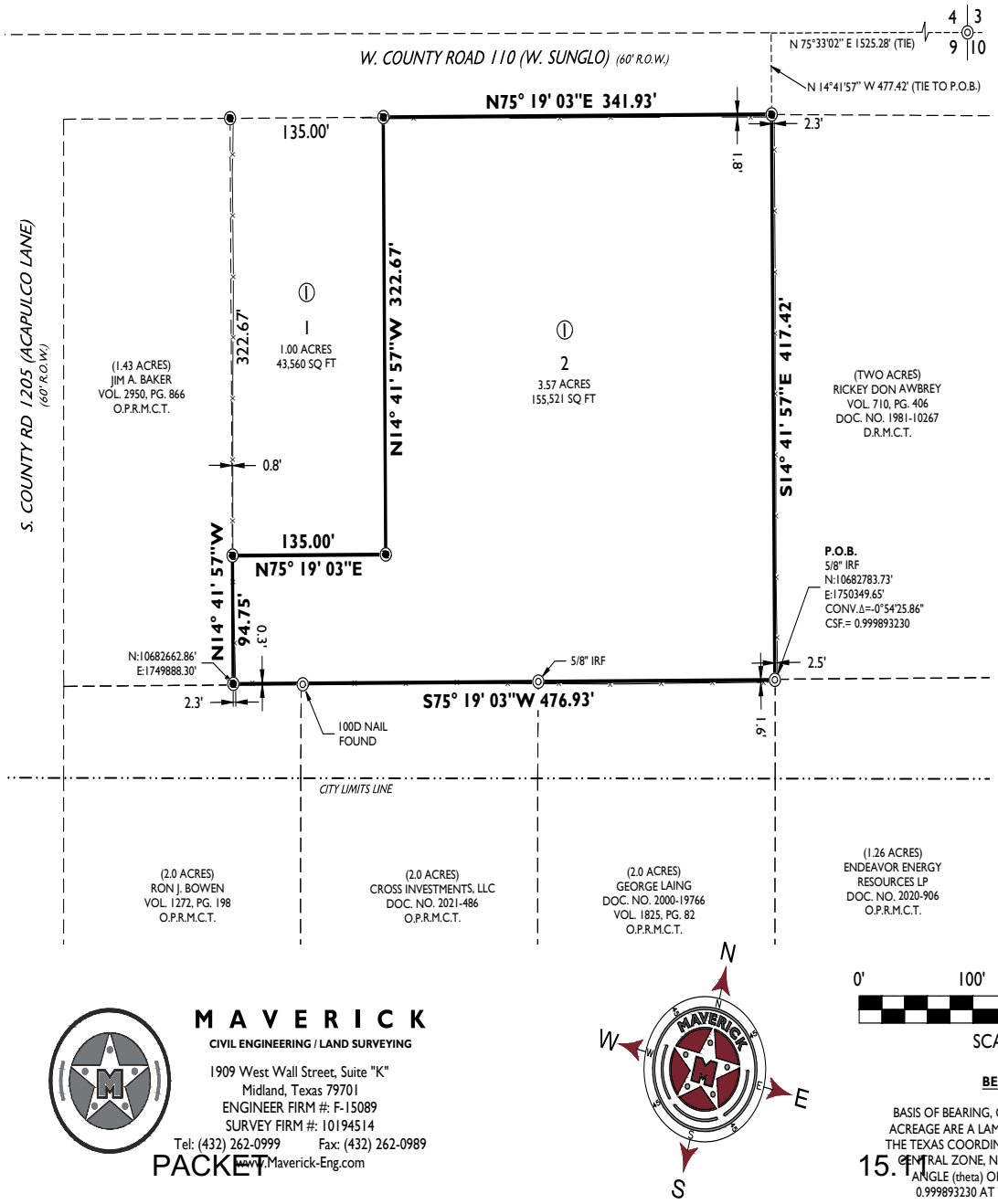
March 29, 2022

Gregory W. Shoults
www.maverick-eng.com
Texas RPLS - No. 5356
Maverick Engineering (FIRM – No. 10194514)



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REVISED: MARCH 29, 2022
FEBRUARY 2, 2022

GREGORY W. SHOULTS R.P.L.S.#5356 — DATE

STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
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0' 100' 200' 300'

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June 28, 2022

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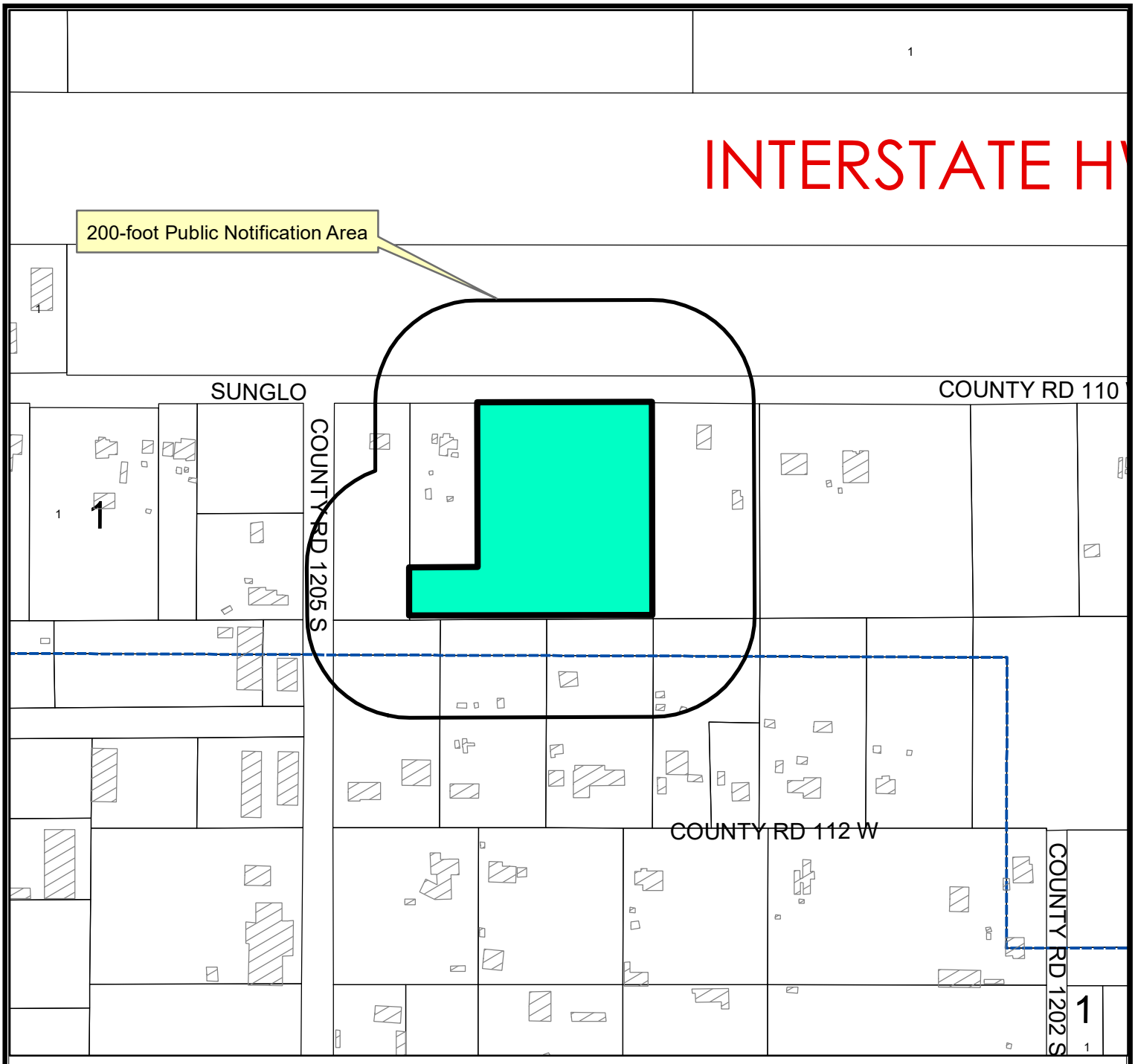
Drawing : F:\2021\210208-RAUL DOMINGUEZ-SUNGLO TRACT\DRAWINGS\BOUNDARY SURVEY\210208 - BOUNDARY SURVEY.DWG Last Saved By: ADevine on 3/29/22

PACKET



LOCATION MAP

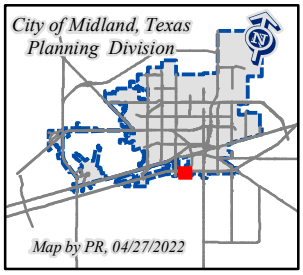
Z-22-0292 **Scale: 1" = 200'**

Consider a request by Frank Mendoza for a zone change from SF-1, Single-Family Dwelling District to BP, Business Park District on a 3.570 -acres tract of land out of Section 9, Block 39, T-2-S, RR. Co. Survey, Midland County, Texas.

Generally located on the south side of West County Road 110, approximately 150-ft east of South County Road 1205. (Council District 2)

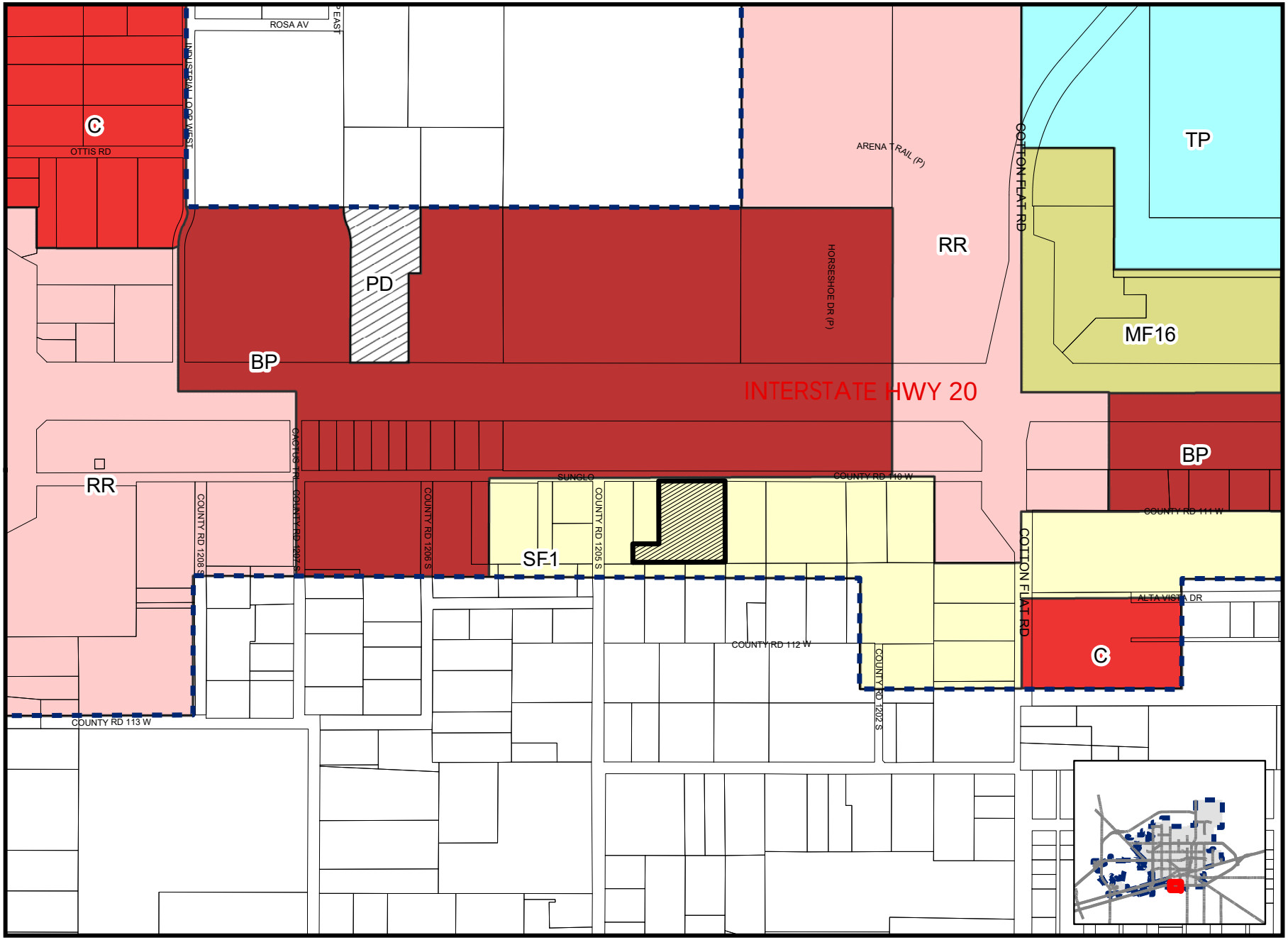
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR PLAT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

June 28, 2022



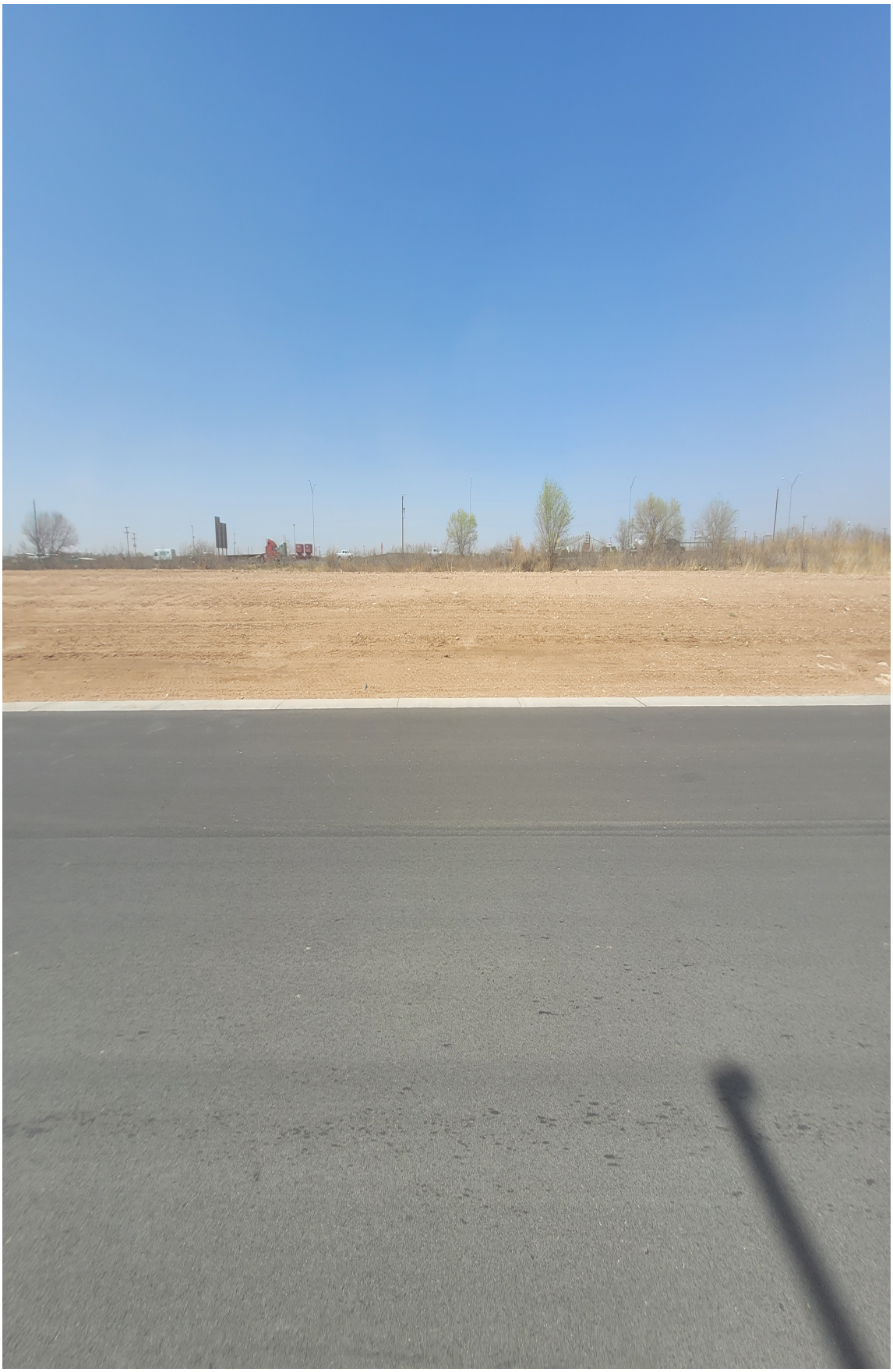
Map By ES, 5/12/2022

Z-22-0292

Scale: 1" = 4,000'

ZONING MAP

NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.









MIDLAND
Planning Division

BAKER JIM A
2609 W COUNTY ROAD 110
MIDLAND TX 79706-3701

BY: .....

RECEIVED MAY 12 2021

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, May 16, 2022**, in the Council Chambers, City Hall, 300 N. Loraine, Midland, Texas 79701 and via videoconference, on a request by **Frank Mendoza** for approval of a **Zone Change** on the following described property:

LEGAL DESCRIPTION: A 3.570 -acres tract of land out of Section 9, Block 39, T-2-S, RR. Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the south side of W Sunglo, approximately 150-ft east of South County Road 1205. (Council District 2)

PROPOSED ZONING: **From:** SF-1, Single Family Dwelling District

To: BP, Business Park District

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: Noise, to many people, dirt

Required Information:

Property Owner's Signature: [signature] | Printed Name: JIM BAKER | Property Address (**No P. O. Boxes**): 2609 C.R. W. 110

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 8
Date Mailed: May 6, 2022
Case Number: Z-22-0292
Case Name: 2605 Sunglo Street
PR Planner's Initials

[signature]
Elizabeth Shaughnessy
Planning Division 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.
Videoconference information will be available by accessing the meeting agenda at https://www.midlandtexas.gov/967/primegov-meeting

City Council Meeting

Item Number: 19

Meeting Date: June 14, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: AN ORDINANCE VACATING AND ABANDONING A 0.871-ACRE PORTION OF WEST INDIANA AVENUE AND SOUTH K STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCKS 93, 94, 96, 104, AND 105, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH L STREET AND WEST INDIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $75,881.52; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, LCA, is requesting a vacation 0.871-acre portion of the street right-of-way of W. Indiana Avenue and S. "K" Street adjacent to Blocks 93, 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas for the purpose of a future development of the Museum of the Southwest and Haley Memorial Library.

Recommended City Council Action:

Approve

Fiscal Impact:

The appraised value of the alley right-of-way is $2.00 per square feet or $75,881.52.

Surrounding Zoning and Land Use:

The applicant, LCA, is requesting a vacation the 0.871-acre portion of the street right-of-way of W. Indiana Avenue and S. "K" Street adjacent to Blocks 93, 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas for the purpose of a future development of the

Museum of the Southwest and Haley Memorial Library.

The Midland Central's Appraisal District's appraisal of the land is $2.00 per square foot, for a total value of $75,881.52.
The applicants will need to retain an easement for all affected utilities.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Code Compliance: (Approved)

No Oil and Gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved)

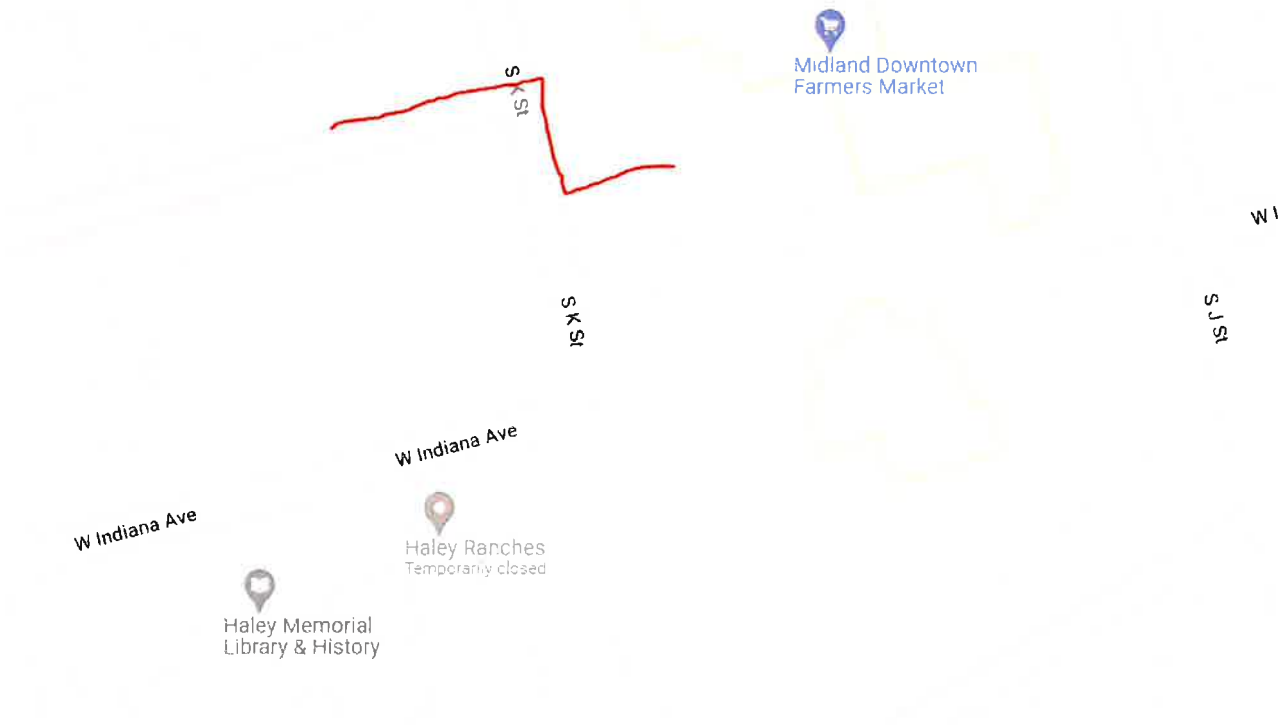
No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Fire: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances. No objection to vacation request.

AT&T: (Approved)

We have a fiber going south on K street from the alley between Missouri and W. Indiana Ave on the east side of K street and going into the Museum.



Atmos: (Approved with conditions)

Atmos Energy currently has facilities located within the above-described Right of Way of W. Indiana and S. K Street. We have an existing gas main that extends along both streets. Atmos could vacate the referenced portion however since we are currently serving customers off this line on Indiana & further west of L Street, we would need to either relocate our facilities or maintain a utility easement. Any relocation costs would be passed on to individual or entity requesting the vacation.

Grande: (Approved)

From looking at our maps it does not show we have any kind of network in that section of Midland.

Oncor: (Approved)

Oncor does not have any facilities in or around the proposed street closure.

Suddenlink: (Approved)



I have attached a Google earth picture of out aerial plant. Our coax plant dead ends on the 3rd pole east off of, L Street.
And goes north & south on L street.

Midland Central Appraisal District:

The vacation area indicated has a current value of $2.00 per square foot or $75,881.52.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved it with the condition that a utility easement is retained.

Therefore, staff recommends approval of the vacation of a 0.871-acre portion of the street right-of-way, located on a portion of W. Indiana Avenue and S. "K" Street between S. "L" Street and W. Missouri Ave. between Lots 7-12, Blocks 93, and Block 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas, subject to conditions A through C.

Conditions:

A. **That the City of Midland has received from the property owner the sum of $75,881.52.**

B. **That an accessible nonexclusive utility easement is retained.**

C. **That a replat of the subject property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County.**

Letters of Objection:

As of June 6, 2022, staff has not received any letters of objection to this request.

Attachments:

Application
Maps
Vacation Survey (Exhibit A)
Responses from Franchise Utility Companies and Midland Central Appraisal District

Morris Williams Jr
City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.871-ACRE PORTION OF WEST INDIANA AVENUE AND SOUTH K STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCKS 93, 94, 96, 104, AND 105, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH L STREET AND WEST INDIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $75,881.52; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.871-acre portion of West Indiana Avenue and South K Street right-of-way located adjacent to Blocks 93, 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the Property at $75,881.52, as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Property is hereby vacated and abandoned for all public

purposes. Provided, however, that the City is hereby abandoning only the public interest in the Property, and this ordinance in no way affects any private easement or access easement which abutting property owners may have in the Property.

SECTION TWO. That this ordinance shall not be effective until:

A. the City of Midland has received from the abutting property owner(s) the sum of $75,881.52; and

B. a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

SECTION THREE. That the City herein retains an accessible nonexclusive utility easement across, through, over, under, on and along the Property until all entities that were using the Property for utility purposes as of the date of approval of this ordinance have abandoned their uses of the Property.

SECTION FOUR. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LCA

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

EXHIBIT "A"
METES AND BOUNDS DESCRIPTION
0.871-ACRE STREET CLOSURES OF
A PORTION OF W. INDIANA AVENUE AND S. K STREET
LOCATED IN THE WEST END ADDITION
AN ADDITION TO THE CITY OF MIDLAND,
VOLUME 17 PAGES 614-615
DEED RECORDS OF MIDLAND COUNTY, TEXAS

BEING AN 0.871-ACRE STREET CLOSURE AND BEING A PORTION OF W. INDIANA AVENUE AND S. K STREET LOCATED IN THE WEST END ADDITION AS DESCRIBED IN VOLUME 17, PAGE 614-615 OF THE MIDLAND COUNTY PLAT RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT (Y=10,692,770.55' & X= 1,750,743.17) AT 3/8" SPIKE NAIL IN 2" IRON PIPE (CONTROL MONUMENT) FOUND ON THE EAST RIGHT-OF-WAY OF S. L STREET, AN 60-FOOT PUBLIC RIGHT-OF-WAY, AND THE SOUTHWEST CORNER OF LOT 7, BLOCK 93 OF SAID WEST END ADDITION ON THE NORTH RIGHT-OF-WAY OF W. INDIANA AVENUE, A 80-FOOT PUBLIC RIGHT-OFF-WAY, WHENCE A ½" IRON ROD (CONTROL MONUMENT) FOUND AT THE NORTHWEST CORNER OF LOT 7 OF SAID BLOCK 93, BEARS NORTH 14°36'57" WEST A DISTANCE OF 140.00 FEET, AND A 3/8" SPIKE IN A 2" IRON PIPE (CONTROL MONUMENT) FOUND AT THE NORTHWEST CORNER OF LOT 6 OF SAID BLOCK 93 BEARS NORTH 14°36'57" WEST, A DISTANCE OF 299.50 FEET;

THENCE NORTH 75° 22' 02" EAST ALONG THE NORTH RIGHT-OF-WAY OF SAID W. INDIANA AVENUE AND THE SOUTH LINE OF SAID BLOCK 93, PASS A ½" IRON ROD WITH CAP MARKED "RPLS 4170" (CONTROL MONUMENT) AT 150.14 FEET FOUND AT THE COMMON CORNER OF LOTS 9 & 10 OF SAID BLOCK 93, FOR A TOTAL DISTANCE OF 300.15 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TEXAS" SET AT THE SOUTHEAST CORNER OF LOT 12 OF SAID BLOCK 93 AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF SAID W. INDIANA AVENUE AND THE WEST RIGHT-OF-WAY SAID S. K STREET;

THENCE NORTH 14° 40' 35" WEST ALONG THE EAST LINE OF SAID LOT 12 AND THE WEST RIGHT-OF-WAY OF SAID S. K STREET, A DISTANCE OF 139.72 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE NORTHEAST CORNER OF SAID LOT 12 AT THE INTERSECTION OF A 20-FOOT ALLEY;

THENCE NORTH 75° 25' 12" EAST ACROSS SAID S. K STREET, A DISTACE OF 60.00 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET ON THE EAST RIGHT-OF-WAY LINE OF SAID S. K STREET, AND BEING THE NORTHWEST CORNER LOT 7 BLOCK 94 OF SAID WEST END ADDITION;

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BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "E89-6405" (Y=10,695,261.89' AND X=1,754,276.95', ELEVATION = 2782.04 NAVD 29) WITH A THETA ANGLE OF -00°54'55" WITH A COMBINED GRID FACTOR OF 0.999900197 AS PUBLISHED IN US SURVEY FEET.

LCA

JOHN F. LANDGRAF, RPLS
3 MAY, 2022

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA PROJECT NO. 2020-029

EXHIBIT "B" SURVEY OF

0.871-ACRE STREET CLOSURES

OF A PORTION OF W. INDIANA AVENUE AND S. K STREET LOCATED IN THE WEST END ADDITION
AN ADDITION TO THE CITY OF MIDLAND,
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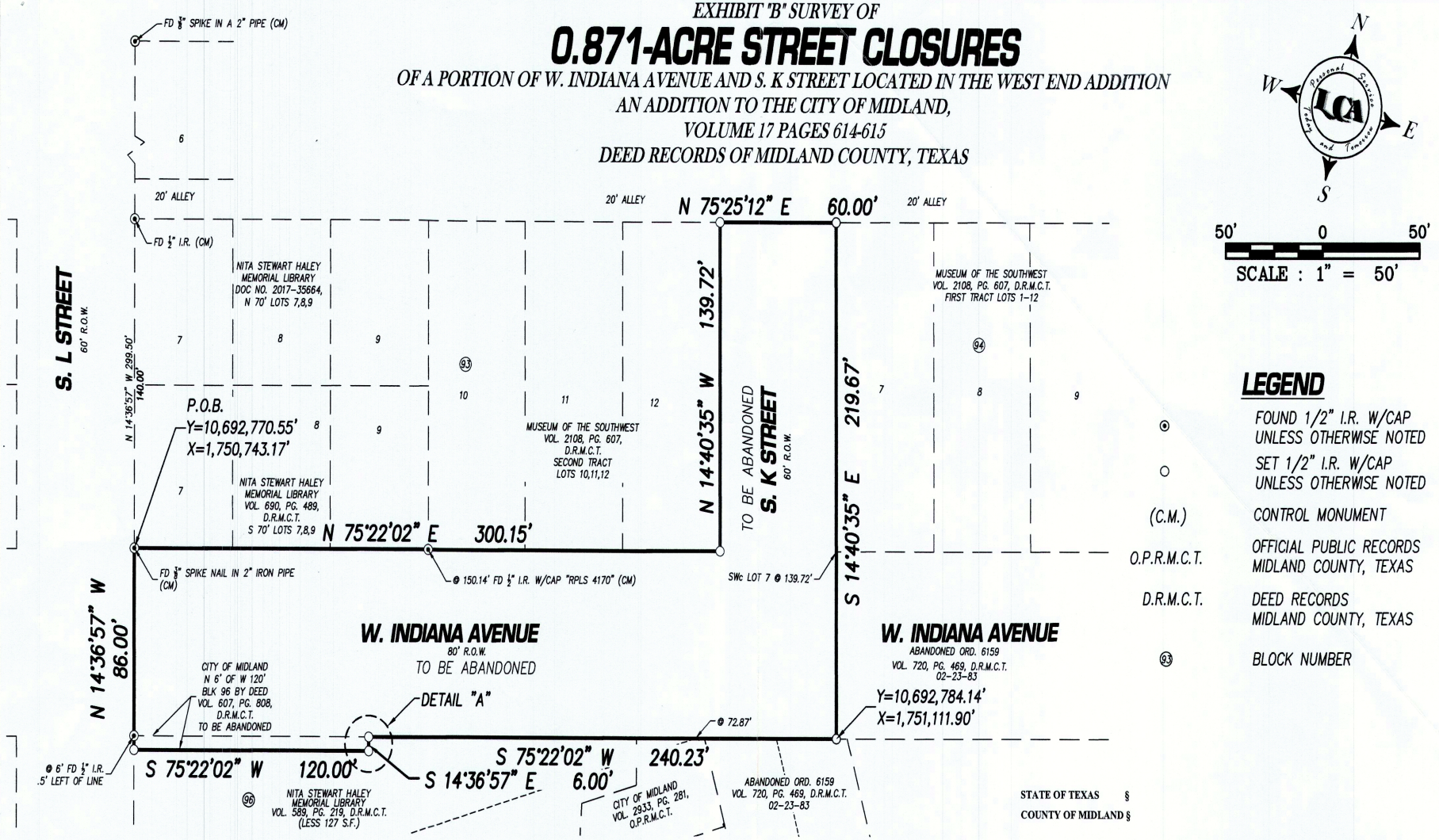


50' 0 50'

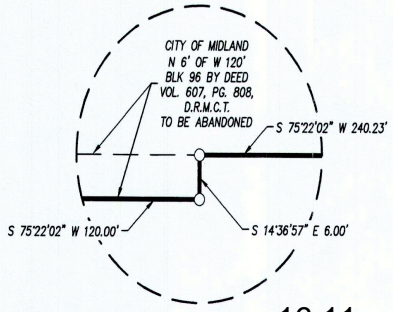
SCALE : 1" = 50'

LEGEND

⊙	FOUND 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
(C.M.)	CONTROL MONUMENT
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY, TEXAS
D.R.M.C.T.	DEED RECORDS MIDLAND COUNTY, TEXAS
(93)	BLOCK NUMBER

NOTES:

1. BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "E89-6405" (Y=10,695,261.89' AND X=1,754,276.95', ELEVATION = 2782.04 NAVD 29) WITH A THETA ANGLE OF -00°54'55" WITH A COMBINED GRID FACTOR OF 0.999900197 AS PUBLISHED IN US SURVEY FEET.
2. THIS SURVEY EXHIBIT DOES NOT SHOW ANY OF THE IMROVEMENTS.
3. A METES & BOUNDS DESCRIPTION, EXHIBIT "B", ACCOMPANIES THIS SURVEY EXHIBIT.



DETAIL "A"

STATE OF TEXAS §
COUNTY OF MIDLAND §

I, JOHN F. LANDGRAF, TEXAS REGISTERED PROFESSIONAL SURVEYOR NO. 2410, DO HEREBY CERTIFY THAT THE ABOVE SURVEY WAS MADEACTUALLY MADE ON-THE-GROUND BY ME OR UNDER MY DIRECT SUPERVISION.



JOHN F. LANDGRAF, R.P.L.S. NO. 2410
3 MAY, 2022

ENG._____ E.T. PACKET
SVY._____ DFT._____

LCA JOB No. 2020-027

16.11

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com
Personal Service, Today and Tomorrow

June 28, 2022

MIDLAND
Feel the Energy!

Office of the City Manager

June 3, 2022

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.871-acre portion of West Indiana Avenue and South K Street right-of-way located adjacent to Blocks 93, 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is $75,881.52. Upon the City's receipt of this sum from the adjoining property owner, the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Robert Patrick
City Manager

EXHIBIT "C"

300 N. Loraine Midland TX 79701 * 432-685-7208 * Fax 432-686-1600

LCA Job No.: 20-029

MIDLAND Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: V-22-0040

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: LCA (agent)		Phone (432) 332-5058 Email mbo@lcaodessa.com	
Address 521 N. Texas Avenue	City Odessa	State TX	Zip 79761

Application is hereby made to the City Council to vacate the following:

- ■ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ■ Street

Description of Address: A portion of W. Indiana Avenue & S. K Street between S. L Street & W. Missouri Avenue.

Reason for Request: Future development of the Museum of the Southwest & Memorial Library

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:

The street vacation will be similar to the surround closed streets to help provide growing room for the Museum of the Southwest as well as the Memorial Library.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Survey (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- AT&T
- Atmos Energy
- Suddenlink Cable TV Co.
- Oncor Electric
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

   a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Planning Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

   c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures LCA- Agent		
Applicant (signature):		Date: 5/5/22
Affected Property Owners:		
Signature:	Print:	Date:
Signature:	Print:	Date
Signature:	Print:	Date
Signature:	Print:	Date

The Vacation of right-of-way/public utility easement/land/street shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

FOR OFFICE USE ONLY

☐ 1 FOLDED Copy of Survey ☐ Survey in Digital Format (PDF/JPEG)

☐ Application Fee

Check #_____

Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

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JOHN F. LANDGRAF, RPLS
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THENCE SOUTH 75° 22' 02" WEST ALONG THE SOUTH RIGHT-OF-WAY OF W. INDIANA AVENUE, PASS THE EAST CORNER OF BLOCK 96 OF SAID WEST END SUBDIVISION AT 72.87 FEET, CONTINUING ALONG THE NORTH LINE OF SAID BLOCK 96 AND THE SOUTH RIGHT-OF-WAY OF SAID W. INDIANA AVENUE, A TOTAL DISTANCE OF 240.23 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE NORTHEAST CORNER OF THAT CERTAIN CITY OF MIDLAND TRACT AS DESCRIBED IN VOLUME 607 PAGE 808 OF SAID DEED RECORDS OF MIDLAND COUNTY, TEXAS;

THENCE SOUTH 14°36'57" EAST WITH THE EAST LINE OF SAID CITY OF MIDLAND TRACT, A DISTANCE OF 6.00 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHEAST CORNER OF SAID CITY OF MIDLAND TRACT;

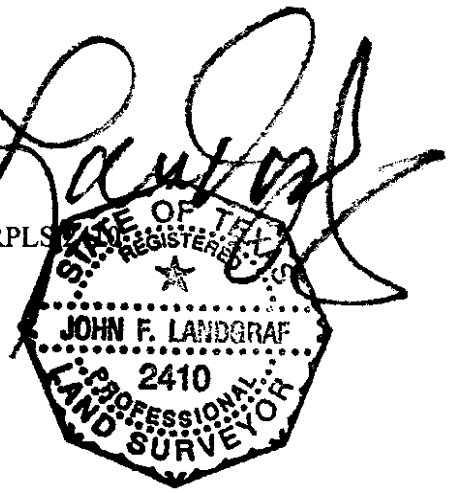
THENCE SOUTH 75°22'02" WEST WITH THE SOUTH LINE OF SAID CITY OF MIDLAND TRACT, A DISTANCE OF 120.00 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE SOUTHWEST CORNER OF SAID CITY OF MIDLAND TRACT ON THE EAST RIGHT-OF-WAY OF SAID S. L STREET;

THENCE NORTH 14° 36' 57" WEST ALONG EAST RIGHT-OF-WAY OF SAID S. L STREET, PASS A ½" IRON ROD FOUND 0.5 FEET WEST OF THE NORTHWEST CORNER OF SAID CITY OF MIDLAND TRACT AT 6.00 FEET, CONTINUING WITH SAID RIGHT-OF-WAY FOR A TOTAL DISTANCE OF 86.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.871-SURFACE ACRES AS DEPICTED ON THE ATTACHED EXHIBIT "B".

BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "E89-6405" (Y=10,695,261.89' AND X=1,754,276.95', ELEVATION = 2782.04 NAVD 29) WITH A THETA ANGLE OF -00°54'55" WITH A COMBINED GRID FACTOR OF 0.999900197 AS PUBLISHED IN US SURVEY FEET.

LCA

JOHN F. LANDGRAF, RPLS
3 MAY, 2022



LCA PROJECT NO. 2020-029

LCA

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

EXHIBIT "A"
METES AND BOUNDS DESCRIPTION
0.871-ACRE STREET CLOSURES OF
A PORTION OF W. INDIANA AVENUE AND S. K STREET
LOCATED IN THE WEST END ADDITION
AN ADDITION TO THE CITY OF MIDLAND,
VOLUME 17 PAGES 614-615
DEED RECORDS OF MIDLAND COUNTY, TEXAS

BEING AN 0.871-ACRE STREET CLOSURE AND BEING A PORTION OF W. INDIANA AVENUE AND S. K STREET LOCATED IN THE WEST END ADDITION AS DESCRIBED IN VOLUME 17, PAGE 614-615 OF THE MIDLAND COUNTY PLAT RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT (Y=10,692,770.55' & X= 1,750,743.17) AT 3/8" SPIKE NAIL IN 2" IRON PIPE (CONTROL MONUMENT) FOUND ON THE EAST RIGHT-OF-WAY OF S. L STREET, AN 60-FOOT PUBLIC RIGHT-OF-WAY, AND THE SOUTHWEST CORNER OF LOT 7, BLOCK 93 OF SAID WEST END ADDITION ON THE NORTH RIGHT-OF-WAY OF W. INDIANA AVENUE, A 80-FOOT PUBLIC RIGHT-OFF-WAY, WHENCE A ½" IRON ROD (CONTROL MONUMENT) FOUND AT THE NORTHWEST CORNER OF LOT 7 OF SAID BLOCK 93, BEARS NORTH 14°36'57" WEST A DISTANCE OF 140.00 FEET, AND A 3/8" SPIKE IN A 2" IRON PIPE (CONTROL MONUMENT) FOUND AT THE NORTHWEST CORNER OF LOT 6 OF SAID BLOCK 93 BEARS NORTH 14°36'57" WEST, A DISTANCE OF 299.50 FEET;

THENCE NORTH 75° 22' 02" EAST ALONG THE NORTH RIGHT-OF-WAY OF SAID W. INDIANA AVENUE AND THE SOUTH LINE OF SAID BLOCK 93, PASS A ½" IRON ROD WITH CAP MARKED "RPLS 4170" (CONTROL MONUMENT) AT 150.14 FEET FOUND AT THE COMMON CORNER OF LOTS 9 & 10 OF SAID BLOCK 93, FOR A TOTAL DISTANCE OF 300.15 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TEXAS" SET AT THE SOUTHEAST CORNER OF LOT 12 OF SAID BLOCK 93 AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF SAID W. INDIANA AVENUE AND THE WEST RIGHT-OF-WAY SAID S. K STREET;

THENCE NORTH 14° 40' 35" WEST ALONG THE EAST LINE OF SAID LOT 12 AND THE WEST RIGHT-OF-WAY OF SAID S. K STREET, A DISTANCE OF 139.72 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET AT THE NORTHEAST CORNER OF SAID LOT 12 AT THE INTERSECTION OF A 20-FOOT ALLEY;

THENCE NORTH 75° 25' 12" EAST ACROSS SAID S. K STREET, A DISTACE OF 60.00 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET ON THE EAST RIGHT-OF-WAY LINE OF SAID S. K STREET, AND BEING THE NORTHWEST CORNER LOT 7 BLOCK 94 OF SAID WEST END ADDITION;

THENCE SOUTH 14° 40' 35" EAST ALONG THE WEST LINE OF SAID LOT 7, PASS THE SOUTHWEST CORNER OF SAID LOT 7 ON THE NORTH RIGHT-OF-WAY LINE OF SAID W.

INDIANA AVENUE AT 139.72 FEET CONTINUING ACROSS SAID W. INDIANA AVENUE, A TOTAL DISTANCE OF 219.67 FEET TO A ½" IRON ROD WITH CAP MARKED "LCA ODESSA TX" SET ON THE SOUTH RIGHT-OF-WAY LINE OF SAID W. INDIANA AVE, AND BEING THE SOUTHWEST CORNER OF THE PREVIOUSLY ABANDONED PORTION OF SAID W. INDIANA AVENUE ON THE NORTHERN LINE OF THE ABANDONED PORTION OF S. K STREET, ORDINANCE NO. 6159 AS RECORDED IN VOLUME 720, PAGE 469 OF SAID DEED RECORDS OF MIDLAND COUNTY, TEXAS;

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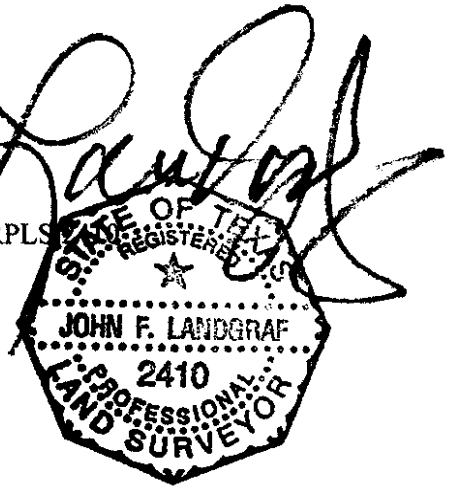
LCA

JOHN F. LANDGRAF, RPLS
3 MAY, 2022

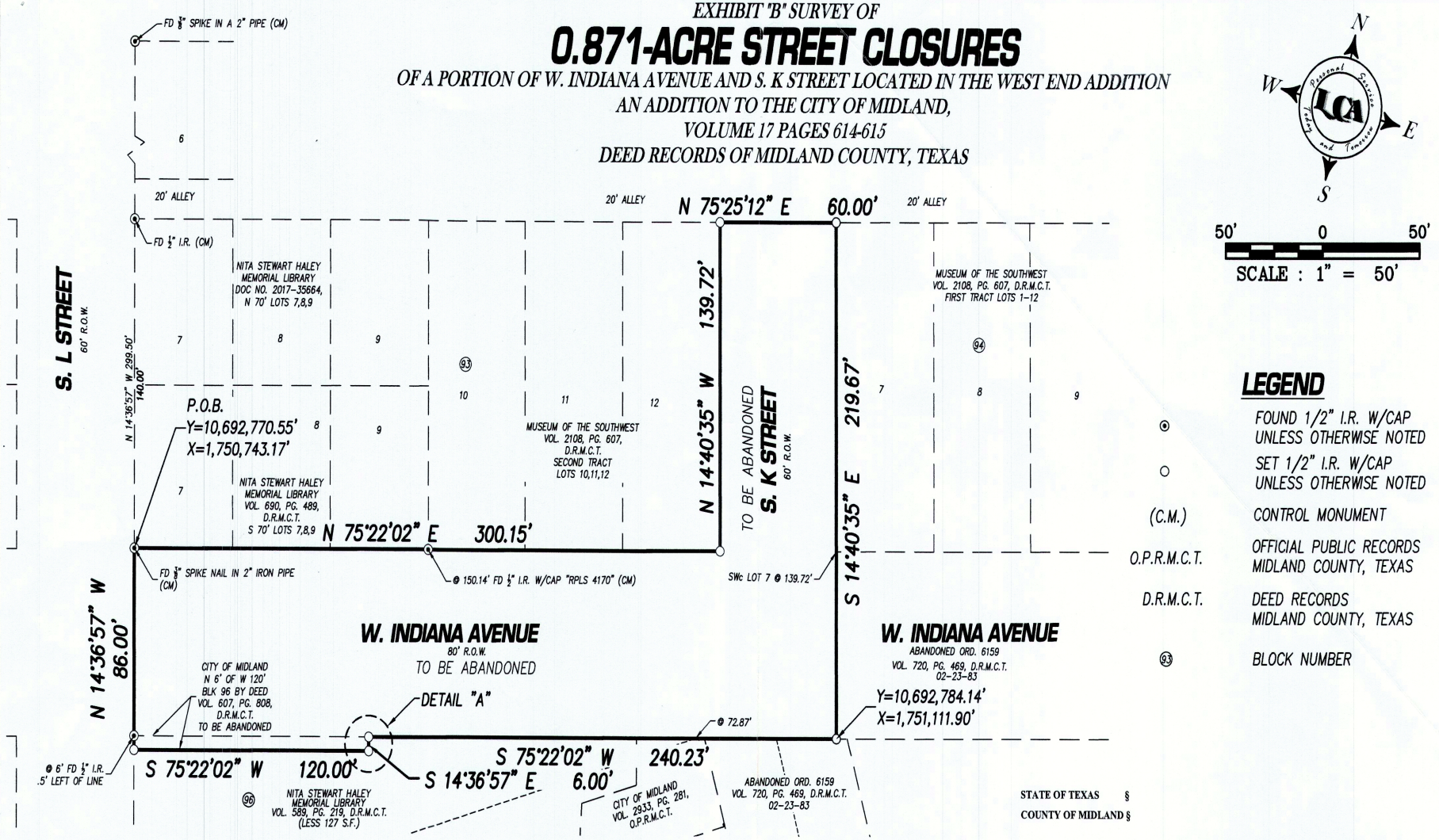


LCA PROJECT NO. 2020-029

EXHIBIT "B" SURVEY OF

0.871-ACRE STREET CLOSURES

OF A PORTION OF W. INDIANA AVENUE AND S. K STREET LOCATED IN THE WEST END ADDITION
AN ADDITION TO THE CITY OF MIDLAND,
VOLUME 17 PAGES 614-615
DEED RECORDS OF MIDLAND COUNTY, TEXAS



50' 0 50'

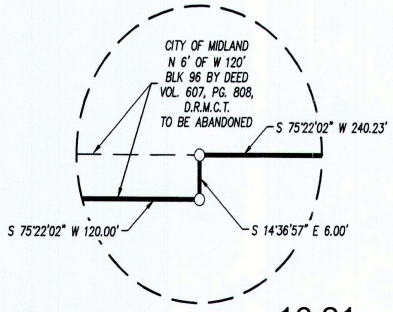
SCALE : 1" = 50'

LEGEND

⊙	FOUND 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
(C.M.)	CONTROL MONUMENT
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY, TEXAS
D.R.M.C.T.	DEED RECORDS MIDLAND COUNTY, TEXAS
(93)	BLOCK NUMBER

NOTES:

1. BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND GPS CONTROL MONUMENT "E89-6405" (Y=10,695,261.89' AND X=1,754,276.95', ELEVATION = 2782.04 NAVD 29) WITH A THETA ANGLE OF -00°54'55" WITH A COMBINED GRID FACTOR OF 0.999900197 AS PUBLISHED IN US SURVEY FEET.
2. THIS SURVEY EXHIBIT DOES NOT SHOW ANY OF THE IMROVEMENTS.
3. A METES & BOUNDS DESCRIPTION, EXHIBIT "B", ACCOMPANIES THIS SURVEY EXHIBIT.



DETAIL "A"

STATE OF TEXAS §
COUNTY OF MIDLAND §

I, JOHN F. LANDGRAF, TEXAS REGISTERED PROFESSIONAL SURVEYOR NO. 2410, DO HEREBY CERTIFY THAT THE ABOVE SURVEY WAS MADEACTUALLY MADE ON-THE-GROUND BY ME OR UNDER MY DIRECT SUPERVISION.



JOHN F. LANDGRAF, R.P.L.S. NO. 2410
3 MAY, 2022

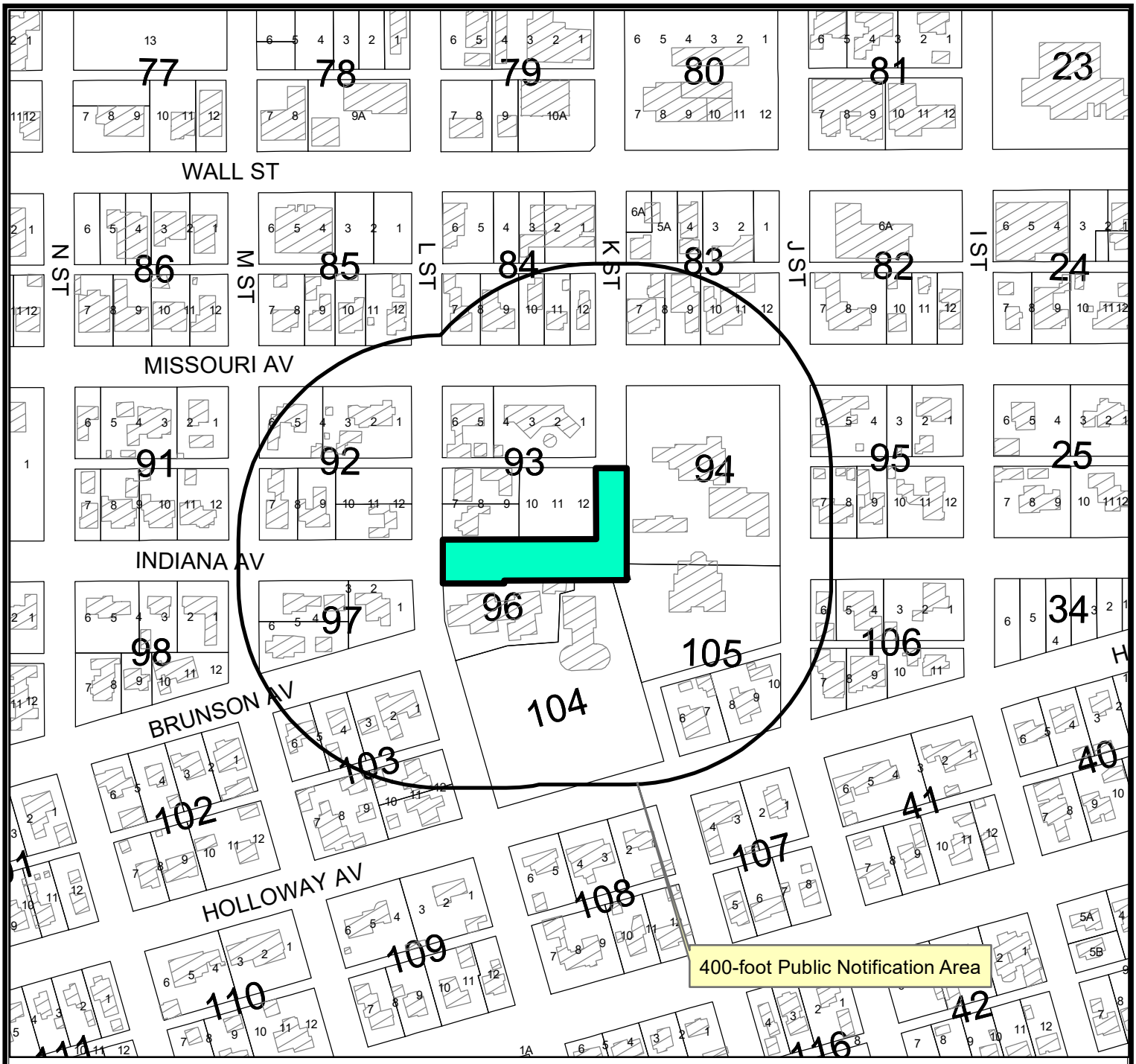
ENG._____ E.T. PACKET
SVY._____ DFT._____

16.21

LCA JOB No. 2020-027

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com
Personal Service, Today and Tomorrow

June 28, 2022



LOCATION MAP

V-22-0040 **Scale: 1" = 200'**

Request request by LCA, for a vacation of a 0.871-acre portion of the street right-of-way of W. Indiana Avenue and S. "K" Street adjacent to Lots 7-12, Blocks 93, and Block 94, 96, 104, and 105, West End Addition, City and County of Midland, Texas.

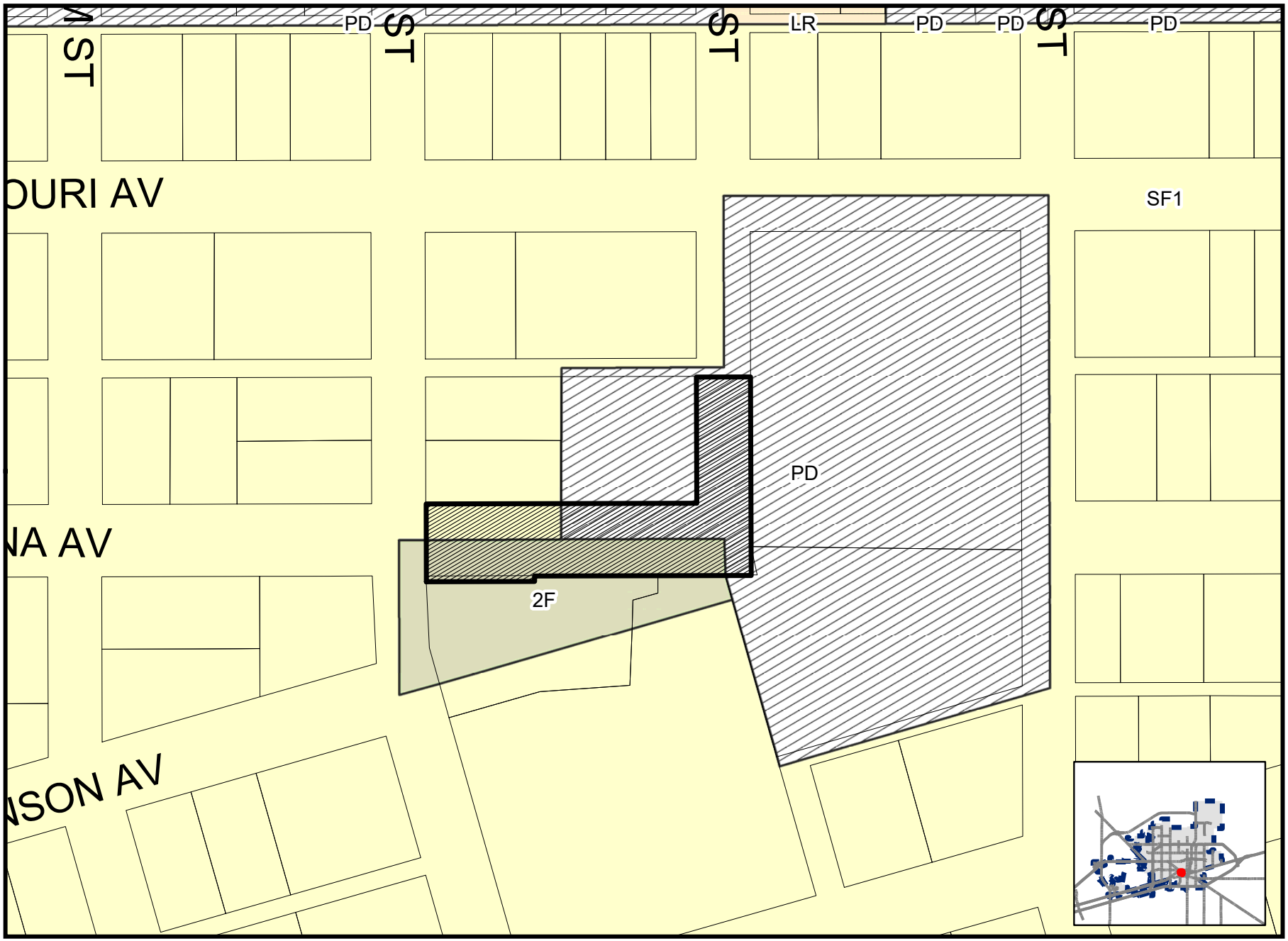
Generally located on the northeast corner of the intersetion of S. "K" Street and Indiana Avenue. Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR PRIOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By ES, 6/3/2022

V-22-0040

Scale: 1" = 200'

ZONING MAP

PACKET
16.23
June 28, 2022









From: Luis Montez
To: Bradley Ritter; Eron Zapata; Raymond Revilla
Cc: Paul Rodriguez
Subject: RE: External E-mail - V-22-0040, Memorial Library Vacation
Date: Tuesday, May 31, 2022 12:17:54 PM
Attachments: image005.png
image006.png
image001.png



I have attached a Google earth picture of out aerial plant. Our coax plant dead ends on the 3rd pole east off of, L Street.
And goes north & south on L street.

From: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Sent: Tuesday, May 31, 2022 7:52 AM
To: Luis Montez <Luis.Montez@AlticeUSA.com>; Eron Zapata <Eron.Zapata@AlticeUSA.com>; Raymond Revilla <Raymond.Revilla@AlticeUSA.com>
Subject: FW: External E-mail - V-22-0040, Memorial Library Vacation

Can yall look into this pls

Thank You,

altice

Supervisor Ops.
Abilene, Midland, & San Angelo System's
Altice USA
P: (806)771-6256
C: (806)241-0488
E: Bradley.Ritter@AlticeUSA.com
A: 6710 Hartford Ave. Lubbock,Tx. 79413

From: Paul Rodriguez <prodriguez@midlandtexas.gov>

Sent: Friday, May 27, 2022 5:19 PM
To: Bradley Ritter <Bradley.Ritter@AlticeUSA.com>
Subject: External E-mail - V-22-0040, Memorial Library Vacation

[External Email]

Caution: This email originated outside of Altice USA. Please do not click links or attachments unless you recognize the sender and know the content is safe.

Hello Mr. Bradley Ritter,

Attached you will find the street closure map as well as the vacation notification letter.

Please review and provide comments in 5-7 business days.

Paul Rodriguez, MPA
Planner
Development Services Department
(432) 685-7208
300 N. Loraine Midland, TX 79702



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CAUTION: This email originated from outside your organization — exercise caution when opening attachments or

clicking links, especially from unknown senders.

From: Ruben Guerra
To: Paul Rodriguez
Subject: Re: V-22-0040, Memorial Library Vacation
Date: Wednesday, June 1, 2022 10:05:33 AM
Attachments: image001.png

From looking at our maps it does not show we have any kind of network in that section of Midland.

Thank You
Ruben Guerra
Construction Coordinator
O: 432-272-3088
C: 432-653-9369
Ruben.Guerra@astound.com
Astound Business Solutions
Powered by RCN | Grande | Wave
astound.com

On Fri, May 27, 2022 at 5:20 PM Paul Rodriguez <prodriguez@midlandtexas.gov> wrote:

> Hello Mr. Ruben Guerra,
>
> Attached you will find the street closure map as well as the vacation notification letter.
>
> Please review and provide comments in 5-7 business days.
>
> Paul Rodriguez, MPA
>
> Planner
>
> Development Services Department
>
> (432) 685-7208
>
> 300 N. Loraine Midland, TX 79702

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

From:	UNDERWOOD, JERRY D
To:	Paul Rodriguez
Cc:	JONES, BRYAN
Subject:	RE: V-22-0040, Memorial Library
Date:	Tuesday, May 31, 2022 7:23:24 AM
Attachments:	image001.png Museum.PNG

Good morning,

I show we have a fiber going south on K street from the alley between Missouri and W. Indiana Ave on the east side of K street and going into the Museum.

Thanks,
Jerry

From: Paul Rodriguez <prodriguez@midlandtexas.gov>
Sent: Friday, May 27, 2022 5:13 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: V-22-0040, Memorial Library

Hello Mr. Jerry Underwood,

Attached you will find the street closure map as well as the vacation notification letter.

Please review and provide comments in 5-7 business days.

Paul Rodriguez, MPA
Planner
Development Services Department
(432) 685-7208
300 N. Loraine Midland, TX 79702

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

City Council Meeting

Item Number: 17

Meeting Date: June 14, 2022, June 28, 2022

To: City Council / City Manager

From: Cole Furqueron, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, David Powlen, is requesting a zone change from PD, Planned Development District for a Shopping Center to Amended PD, Planned Development District for Shopping Center on Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas for an addition of a garden center.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Discussion:

Current Zoning:

PD, Planned Development District for a Shopping Center

Surrounding Zoning and Land Use:

The properties to the north is zoned PD, Planned development District and the location of a shopping center and SF-1 Single-family Dwelling and the location of C.J. Kelly Park. The property to the east is zoned RR, Regional Retail District, and the location of a shopping center. The property to the south, is zoned PD, Planned Development District, and the location of office buildings. The property the west is zoned PD, Planned Development District, and the location of a housing development.

Analysis:

The applicant, David Powlen, is requesting a zone change from PD, Planned Development District of a Shopping Center to Amended PD, Planned Development District of a Shopping Center, for the expansion of their Garden Center located at 3315 N. Loop 250 W. Midland TX.

The site plan provided, hereto shown as Exhibit A, illustrates the proposed addition that will be located on the southwest side of the existing Garden Center building. The proposed new design will be approximately 19,237 square feet. Although 99 parking spaced where removed, they are still exceeding the parking requirements by 229 spaces, providing a total of 709 parking spaces.

The applicant will be required to adhere to the site plan review standards outlined within the City of Midland Zoning Ordinance Section 5.05: - Nonresidential Zoning District Dimensional Regulations Chart as well as Chapter 9, Landscape Regulations for future landscaping.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access and traffic circulation may be adjusted during the construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

Code: (Approved)

No Oil and Gas issues. Informational: No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified and left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

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 Applicant's information only.]

Planning:

The request fits with the Tall City Tomorrow Comprehensive Plan, Chapter 3-Land Use Vision. The land use map indicates that this area shall be used for RC, Regional Commercial developments. There areas are designed to be utilized by major community and reginal commercial developments that are both large in scale and have high traffic impact. The reason for this proposed zone change is to allow for alterations to the previously adopted Site Plan, which could not be changed without an amendment to the PD. Additionally, the Garden Center expansion will not change the overall use of the property and will have minimal impact on traffic in the area.

This request was recommended for approval at the June 6, 2022, Planning and Zoning Commission meeting.

Therefore, staff recommends approval of this zone change from PD, Planned Development District for a Shopping Center, to Amended PD, Planned Development District for a Shopping Center to condition A through G.

Condition:

A. **That the development of this property shall significantly conform to the site plan and elevations attached hereto and incorporated herein as Exhibits "A".**

B. **In addition to the uses allowed in an "RR", Reginal Retail District, the property may be used for outdoor commercial amusements such as driving ranges, skating rinks, or miniature golf.**

C. **All landscaping shall be irrigated with an automatic sprinkler system, and be maintained in a healthy, growing condition.**

D. **That the use and development of this property shall conform to the regulations and the RR, Regional Retail District, except as stated below.**

E. **That a 26-foot fire lane shall be striped in the outdoor storage area and kept clear at all times.**

F. **That the gates to the outdoor storage area shall have emergency overrides for emergency services.**

G. **That the covered outdoor storage area shall be fire sprinkled.**

Letters of Objection:

Staff has not received any letters of objection as of June 8, 2022.

Attachments:

Application
Site Plans (Exhibit A)
Maps
Ordinance #9333

Morris William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WADLEY AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and

incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the development of the Property shall significantly conform to the site plan and elevation drawings attached hereto as Exhibit "A".

B. That in addition to the uses allowed in the RR, Regional Retail District, the Property may be used for outdoor commercial amusements such as driving ranges, skating rinks, or miniature golf.

C. All landscaping shall be irrigated with an automatic sprinkler system and be maintained in a healthy, growing condition.

D. That a 26-foot fire lane shall be striped in the outdoor storage area and kept clear at all times.

E. That the gates to the outdoor storage area shall have emergency overrides for emergency services.

F. That the covered outdoor storage area shall be fire sprinkled.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in

accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT A

LOWES #0063 - MIDLAND

3315 N. LOOP 250 W
MIDLAND, TX 79707

INDEX OF DRAWINGS

C000	COVER SHEET
C100	EXISTING CONDITIONS
C200	DEMOLITION PLAN
C300	LAYOUT AND MATERIALS PLAN
C301	SITE ENLARGEMENTS
C400	GRADING AND DRAINAGE PLAN
C500	SITE DETAILS
A5.2	PLAN, SECTIONS & DETAILS
	GARDEN CENTER (FOR REFERENCE)

SITE INFORMATION

PROJECT TEAM

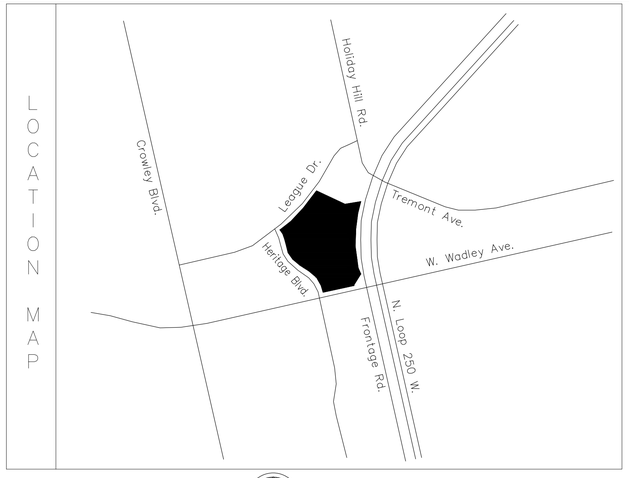
OWNER
LOWE'S HOME CENTERS, LLC
1000 LOWE'S BLVD
MOORESVILLE, NC 28117-8520
(704)-758-1000

ARCHITECT
LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING
615 SOUTH COLLEGE STREET, SUITE 1600
CHARLOTTE, NORTH CAROLINA 28202
(704)-525-6350

LAND PLANNING
LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING
615 SOUTH COLLEGE STREET, SUITE 1600
CHARLOTTE, NORTH CAROLINA 28202
(704)-525-6350

SURVEYOR
FREELAND-CLINKSCALES & ASSOCIATES INC. OF NC
201 2ND AVE EAST
HENDERSONVILLE, NC 28792
(828)697-6539

VICINITY MAP



NOT TO SCALE

ORIGINAL SUBMITTAL
FINAL

REVISIONS
◇ PRE-BID SET ISSUE DATE △ POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE
DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
T: 704.525.6350 F: 704.561.8700

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COVER

LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 121792.00 | DRAWN BY: | CHECKED BY:

FOR REVIEW

PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:
C000

League Drive
60' Public Right of Way

Loop 250 Frontage Road
Variable Width Public Right of Way

Heritage Boulevard
110' Public Right of Way

West Wadley Avenue
120' Public Right of Way

Ex. One Story Block Building
142,860 Sq.Ft.±
30' High±
Ex. Zoning: PD

Covered Walkway

Loading Dock

Greenhouse

Roofed Area

Canopy

Garden Center

Canopy

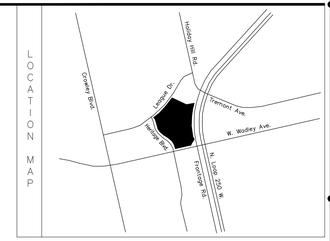
EXISTING COMPACTOR

N15°26'15"W 108.12'

S30°35'49"W 117.83'

S75°36'28"W 402.45'

LOCATION MAP



REVISIONS

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LOWE'S

THIS PLAN IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THIS PLAN IS PREPARED BY OTHERS. LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS FROM THIS SURVEY.

811 Know what's below. Call before you dig.

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THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESS OR IMPLIED AS TO THE COMPLETENESS OF ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

GRAPHIC SCALE

50 0 25 50 100 200

1" = 50'-0"

EXISTING CONDITIONS PLAN

LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 121729.00 | DRAWN BY: | CHECKED BY:

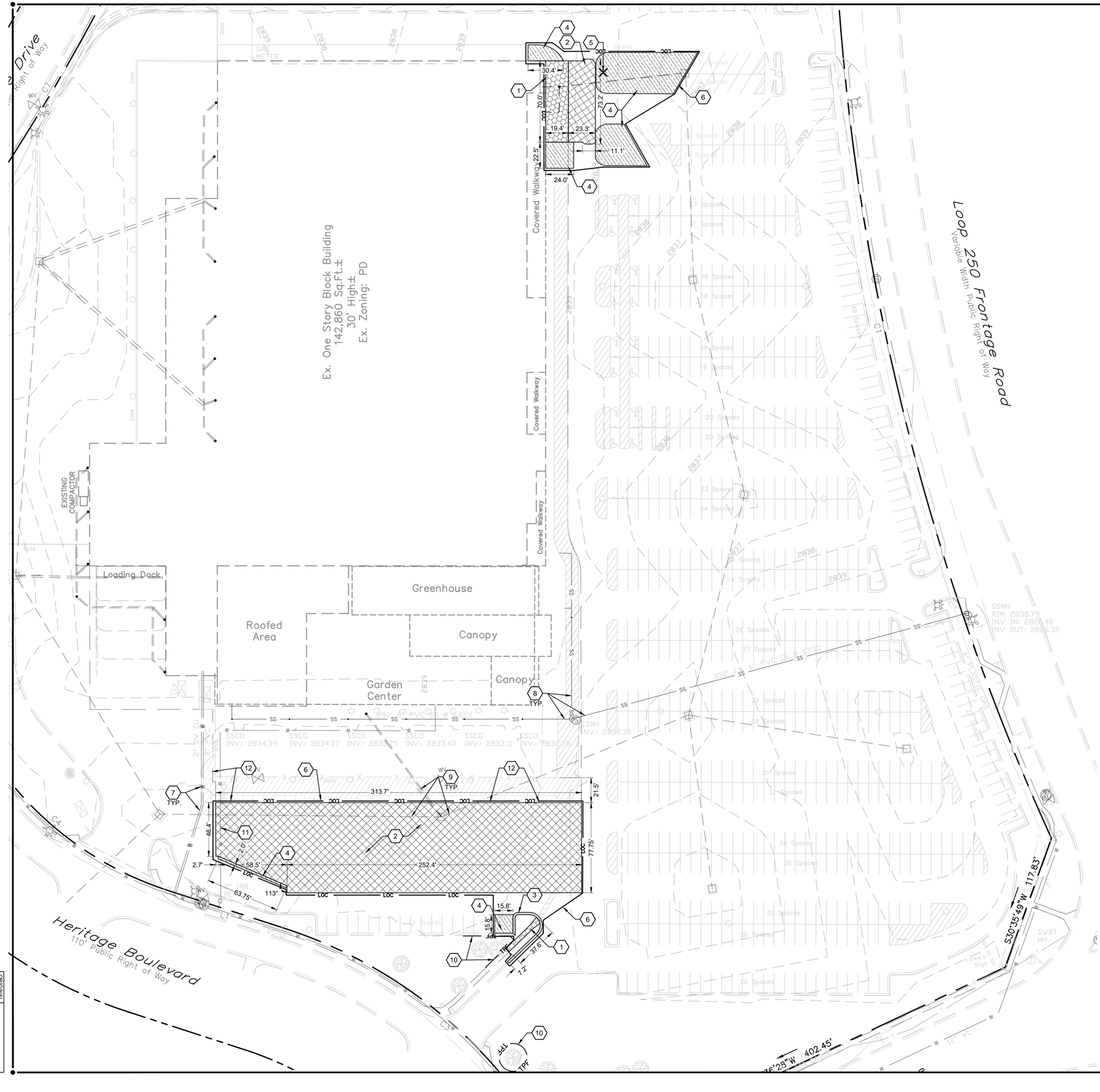
FOR REVIEW

PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:

C100

ORIGINAL | SECOND | FINAL



DEMOLITION NOTES

A. PARTIAL BOUNDARY AND TOPOGRAPHICAL SURVEY INFORMATION IS TAKEN FROM A SURVEY BY FREELAND-CLINKSCALES & ASSOCIATES INC. OF NC, 201 2ND AVE EAST, HENDERSONVILLE, NC 28792 (828)697-6539 AND ENTITLED "PLAT OF BOUNDARY SURVEY LOWE'S HOME IMPROVEMENT 3315 NORTH LOOP 250 WEST, MIDLAND, MIDLAND COUNTY, TEXAS" AND ORIGINAL DESIGN DRAWINGS BY ASG INCORPORATED, DATED 07-12-1995.

B. THE CONTRACTOR SHALL NOTIFY A PRIVATE UTILITY LOCATOR SERVICE AND RESEARCH EXISTING DRAWINGS AND OTHER DOCUMENTATION PRIOR TO BEGINNING CONSTRUCTION. ANY BELOW GRADE APPURTENANCES NOT CHARTED BY THE SURVEYOR ARE TO BE REPORTED TO THE DESIGNER OF RECORD. ALL REPAIRS/REPLACEMENTS MUST BE APPROVED BY DESIGNER OF RECORD.

C. THE UTILITIES AND THE LOCATION SHOWN ON THE PLANS REPRESENT THE DESIGNER'S UNDERSTANDING OF EXISTING UTILITIES LOCATED WITHIN THE LIMITS OF CONSTRUCTION. PRIOR TO ANY EXCAVATION, CONTRACTOR IS TO FIELD VERIFY THE LOCATION, DEPTH, AND EXISTENCE OF ALL UTILITIES (ELECTRICAL, MECHANICAL, WATER, TELEPHONE, GAS, STORM, ETC.) WITH THE OWNER AND/OR THE APPROPRIATE UTILITY COMPANY. THE OMISSION OF, NONEXISTENCE OF, OR INCLUSION OF UTILITY LOCATIONS ON THE PLANS IS NOT TO BE CONSIDERED AS ABSOLUTE. DAMAGED UTILITIES SHALL BE REPAIRED/REPLACED AT THE CONTRACTOR'S EXPENSE. CONTRACTOR TO COORDINATE ANY FIELD CONDITIONS THAT MAY REVISE THE DESIGN WITH THE DESIGNER OF RECORD PRIOR TO PROCEEDING.

D. CONTRACTOR SHALL MAINTAIN WATER, SEWER, ELECTRICAL AND OTHER UTILITY SERVICE TO EXISTING BUILDING AT ALL TIMES. CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES FROM DAMAGE DURING CONSTRUCTION. THE DESIGNER OF RECORD SHALL BE NOTIFIED OF ALL UNDERGROUND UTILITIES EXPOSED DURING CONSTRUCTION OR THOSE LEFT WITH LESS THAN ACCEPTABLE EARTH COVER. THE DESIGNER OF RECORD SHALL DETERMINE THE RESOLUTION OF THE UTILITY AND DETERMINE IF A CHANGE ORDER IS REQUIRED OR THE CONTRACTOR IS RESPONSIBLE FOR ALL COSTS INVOLVED.

E. INSTALL ALL EROSION CONTROL MEASURES PRIOR TO BEGINNING CONSTRUCTION.

F. INSTALL INLET PROTECTION AS NOTED ON EROSION CONTROL PLANS AT ALL EXISTING STORM DRAINAGE STRUCTURES ADJACENT TO OR DOWNSTREAM OF DEMOLITION AREAS TO PREVENT FLOW OF SEDIMENT AND DEBRIS INTO EXISTING STORM DRAINAGE SYSTEMS.

G. NO SOIL DISTURBANCE, SOIL COMPACTION, CONSTRUCTION MATERIALS, OR CONSTRUCTION TRAFFIC IS ALLOWED BEYOND THE LIMITS OF CONSTRUCTION SHOWN.

H. TREE PROTECTION BARRICADES MUST BE INSTALLED PRIOR TO ANY GRADING, DEMOLITION, OR CONSTRUCTION AND SHALL NOT BE REMOVED UNTIL PROJECT IS COMPLETED.

I. ALL EXISTING TREES AND SHRUBS SHALL REMAIN AND BE PROTECTED.

DEMOLITION LEGEND

1. SAWCUT AND REMOVE EXISTING CONCRETE
2. SAWCUT AND REMOVE EXISTING ASPHALT
3. SAWCUT AND REMOVE EXISTING CURB AND GUTTER
4. EXISTING PAVEMENT TO BE CLEANED IN PREPARATION FOR SEAL COATING
5. EXISTING LIGHT POLE AND UNDERGROUND ELECTRICAL SERVICE TO BE REMOVED.
6. LIMITS OF CONSTRUCTION (0.85 AC.).
7. EXISTING DOMESTIC AND FIRE WATER LINE TO REMAIN AND BE PROTECTED DURING CONSTRUCTION. COORDINATE WITH UTILITY PLANS.
8. EXISTING SANITARY SEWER LINE TO REMAIN AND BE PROTECTED DURING CONSTRUCTION - COORDINATE WITH UTILITY PLANS.
9. EXISTING STORM PIPES AND STRUCTURES TO REMAIN AND BE PROTECTED DURING CONSTRUCTION - COORDINATE WITH GRADING PLANS.
10. PROPOSED TREE PROTECTION FENCE - SEE DETAIL 11/C500
11. VERIFY LOCATION & DEPTH OF EXISTING IRRIGATION LINE AND RELOCATE AS NECESSARY IF LOCATION CONFLICTS WITH PROPOSED WALL.
12. EXISTING CONCRETE TO REMAIN AND BE PROTECTED.

Know what's below. Call before you dig.

CAUTION!!!

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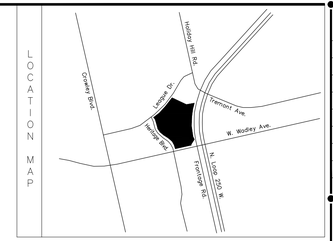
GRAPHIC SCALE

40 0 20 40 80 160

1" = 40'-0"

FINAL / ORIGINAL

LOCATION MAP



REVISIONS
PRE-BID SET ISSUE DATE
POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE
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LOWE'S

DEMOLITION PLAN

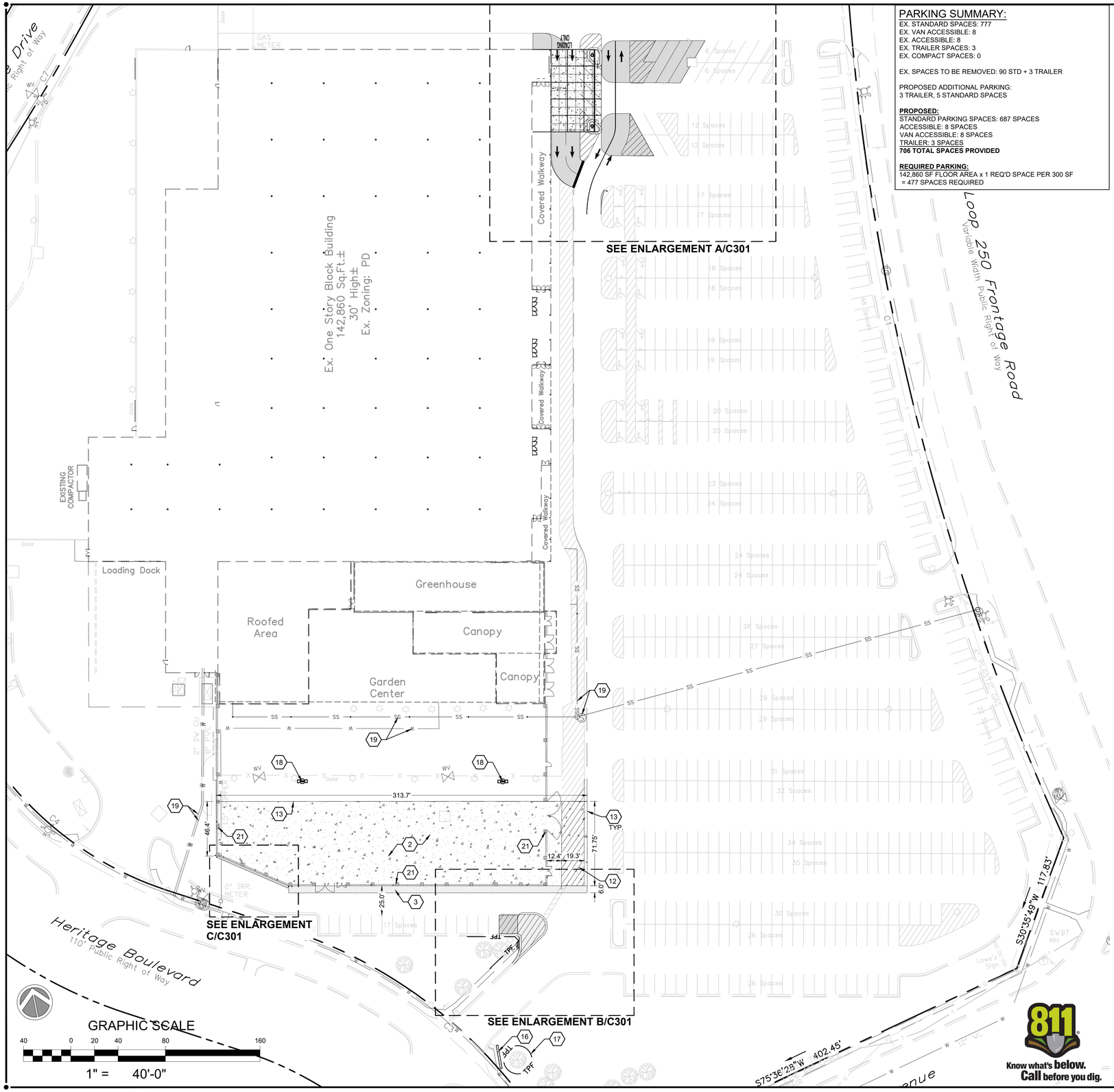
LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 191720.00 | DRAWN BY: | CHECKED BY:

FOR REVIEW

PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:
C200



PARKING SUMMARY:

EX. STANDARD SPACES: 777
EX. VAN ACCESSIBLE: 8
EX. ACCESSIBLE: 8
EX. TRAILER SPACES: 3
EX. COMPACT SPACES: 0

EX. SPACES TO BE REMOVED: 90 STD + 3 TRAILER

PROPOSED ADDITIONAL PARKING:
3 TRAILER, 5 STANDARD SPACES

PROPOSED:
STANDARD PARKING SPACES: 687 SPACES
ACCESSIBLE: 8 SPACES
VAN ACCESSIBLE: 8 SPACES
TRAILER: 3 SPACES
706 TOTAL SPACES PROVIDED

REQUIRED PARKING:
142,860 SF FLOOR AREA x 1 REQ'D SPACE PER 300 SF
= 477 SPACES REQUIRED

CAUTION!!!

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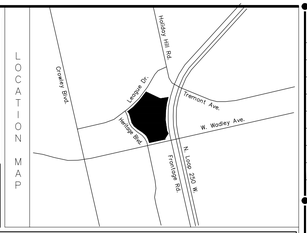
IMPERVIOUS AREA SUMMARY:

IMPERVIOUS AREA REMOVED: 0 SF
IMPERVIOUS AREA ADDED: 380 SF

LOCATION MAP



LAYOUT NOTES

A. ALL TRAFFIC CONTROL SIGNAGE, DEVICES, AND STRIPING TO CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.).

B. ALL PAVING CUTS SHALL BE MADE BY SAW CUTS.

C. EXISTING ELEVATIONS SHALL BE FIELD VERIFIED AND MATCHED.

D. CONTRACTOR TO COORDINATE ANY CHANGES IN FIELD CONDITIONS THAT MAY REVISE THE DESIGN WITH DESIGNER OF RECORD PRIOR TO PROCEEDING.

E. ALL DIMENSIONS ARE TO FACE OF CURB OR TO FINISHED FACE OF BUILDING UNLESS NOTED OTHERWISE.

F. ALL RADII ON CURBS SHALL BE 5'-0" UNLESS NOTED OTHERWISE.

G. ALL ACCESSIBLE PARKING SPACES SHALL DISPLAY APPROVED RESERVED PARKING SPACE SIGNAGE AS PRESCRIBED BY THE AMERICANS WITH DISABILITIES ACT (ADA), M.U.T.C.D., AND ANY ADDITIONAL STATE AND/OR LOCAL REQUIREMENTS. HEIGHT FROM FINISHED GRADE TO BOTTOM OF SIGN IN ANY LOCATION SHALL BE 84" MINIMUM.

H. ALL WORK WITHIN THE RIGHT OF WAY OF ALL ROADS AND HIGHWAYS SHALL BE IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE APPROPRIATE STATE AND/OR LOCAL JURISDICTION. CONTRACTOR SHALL SECURE ALL NECESSARY DRIVEWAY AND ENCROACHMENT PERMITS PRIOR TO CONSTRUCTION. IF NECESSARY, CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL DURING CONSTRUCTION WITHIN THE RIGHT OF WAY, PER WORK AREA TRAFFIC CONTROL HANDBOOK (W.A.T.C.H.) STANDARDS.

I. A MINIMUM OF 18" IS TO BE MAINTAINED BETWEEN ALL PAVED SURFACES AND TOPS OF FOOTINGS.

J. CONTRACTOR TO INSTALL TEMPORARY SEEDING IN ALL DISTURBED AREAS NOT COVERED BY PAVEMENT UPON COMPLETION OF CONSTRUCTION. CONTRACTOR TO INSTALL PERMANENT SEEDING DURING APPROPRIATE SEEDING SEASON.

K. EXISTING TRASH COLLECTION TO REMAIN.

LAYOUT LEGEND

1. HEAVY DUTY CONCRETE - SEE DETAIL 4/C500
2. PROPOSED CONCRETE SLAB - SEE ARCHITECTURAL PLANS
3. PROPOSED HEAVY DUTY ASPHALT PAVEMENT - SEE DETAIL 3/C500
4. 2'-0" WIDE CURB AND GUTTER - SEE DETAIL 1/C500
5. PROPOSED 3' CURB TAPER - SEE DETAIL 5/C500
6. DASHED LINE INDICATES FLUSH CURB - SEE DETAIL 7/C500
7. SEAL COAT PAVEMENT BLACK
8. WHITE PAINTED PARKING ISLAND
9. DIRECTION ARROW (TYP.) - SEE DETAIL 6/C500 AND GENERAL NOTE A
10. 4" WIDE PAINTED SOLID STRIPE (WHITE)
11. 18" WIDE PAINTED STOP BAR (WHITE)
12. PAINTED FIRE LANE STRIPING TO MATCH EXISTING
13. INSTALL FLUSH WITH EXISTING
14. 36" PAINTED LETTERS (WHITE)
15. 4" WIDE DASHED PAINTED LANE LINE (WHITE)
16. PROPOSED DELIVERY SIGNAGE
17. PROPOSED TREE PROTECTION FENCE - SEE DETAIL 11/C500
18. PROPOSED LIGHT POLE BASE - SEE DETAIL 12/C500. SEE SITE LIGHTING PLAN FOR EXACT LOCATIONS AND FIXTURES
19. EXISTING UTILITIES TO REMAIN AND SHALL BE PROTECTED DURING CONSTRUCTION
20. ACCESSIBLE CURB RAMP WITH TRUNCATED DOMES - SEE DETAILS 9/C500 & 8C500
21. PROPOSED SCREEN WALL - SEE ARCHITECTURAL DRAWINGS
22. PROPOSED BOLLARD - SEE DETAIL 10/C500
23. EDGE OF PROPOSED CANOPY - SEE ARCHITECTURAL DRAWINGS
24. EXPANSION JOINTS (@ 14' O.C.)
25. CONTROL JOINTS (@ 7' O.C.)

811 Know what's below. Call before you dig.

ORIGINAL SCALE
FINAL PLOT

REVISIONS

◇ PRE-BID SET ISSUE DATE △ POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
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LOWE'S®

SITE LAYOUT PLAN

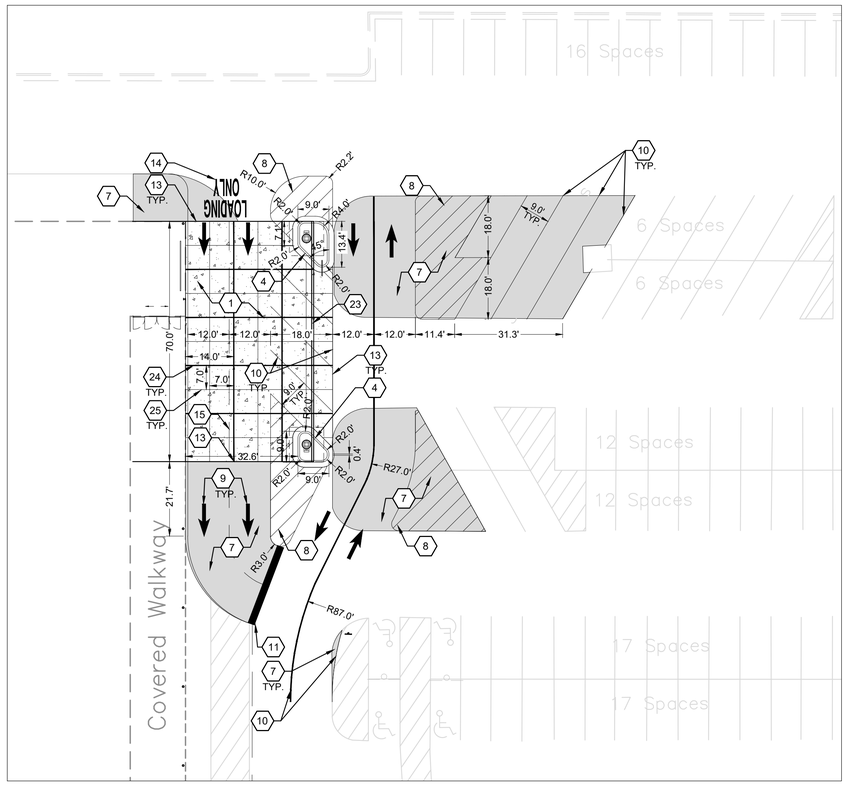
LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 121.17820.00 DRAWN BY: CHECKED BY:

FOR REVIEW

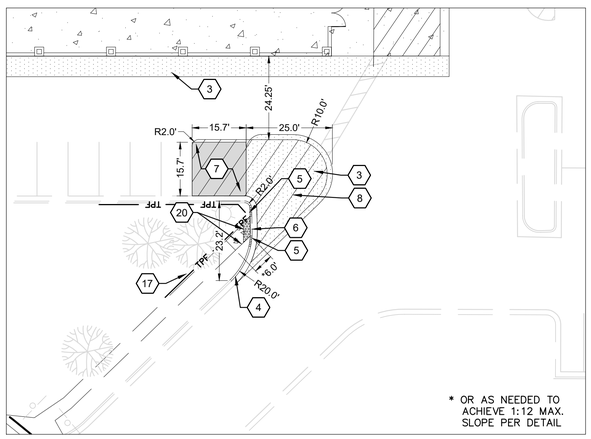
PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:
C300



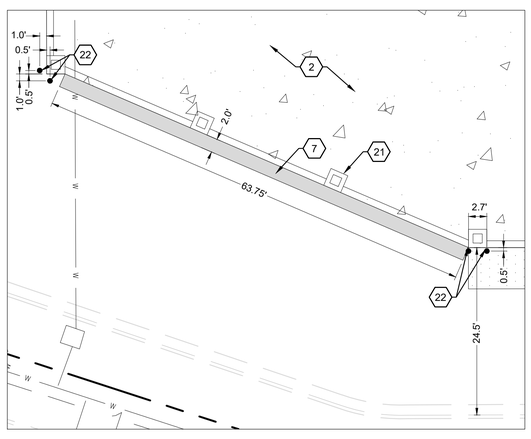
ENLARGEMENT A

SCALE: 1"=20'



ENLARGEMENT B

SCALE: 1"=20'



ENLARGEMENT C

SCALE: 1"=10'

LAYOUT LEGEND

1. HEAVY DUTY CONCRETE - SEE DETAIL 4/C500
2. PROPOSED CONCRETE SLAB - SEE ARCHITECTURAL PLANS
3. PROPOSED HEAVY DUTY ASPHALT PAVEMENT - SEE DETAIL 3/C500
4. 2'-0" WIDE CURB AND GUTTER - SEE DETAIL 1/C500
5. PROPOSED 3' CURB TAPER - SEE DETAIL 5/C500
6. DASHED LINE INDICATES FLUSH CURB - SEE DETAIL 7/C500
7. SEAL COAT PAVEMENT BLACK
8. WHITE PAINTED PARKING ISLAND
9. DIRECTION ARROW (TYP.) - SEE DETAIL 6/C500 AND GENERAL NOTE A
10. 4" WIDE PAINTED SOLID STRIPE (WHITE)
11. 18" WIDE PAINTED STOP BAR (WHITE)
12. PAINTED FIRE LANE STRIPING TO MATCH EXISTING
13. INSTALL FLUSH WITH EXISTING
14. 36" PAINTED LETTERS (WHITE)
15. 4" WIDE DASHED PAINTED LANE LINE (WHITE)
16. PROPOSED DELIVERY SIGNAGE
17. PROPOSED TREE PROTECTION FENCE - SEE DETAIL 11/C500
18. PROPOSED LIGHT POLE BASE - SEE DETAIL 12/C500. SEE SITE LIGHTING PLAN FOR EXACT LOCATIONS AND FIXTURES
19. EXISTING UTILITIES TO REMAIN AND SHALL BE PROTECTED DURING CONSTRUCTION
20. ACCESSIBLE CURB RAMP WITH TRUNCATED DOMES - SEE DETAILS 9/C500 & 8C500
21. PROPOSED SCREEN WALL - SEE ARCHITECTURAL DRAWINGS
22. PROPOSED BOLLARD - SEE DETAIL 10/C500
23. EDGE OF PROPOSED CANOPY - SEE ARCHITECTURAL DRAWINGS
24. EXPANSION JOINTS (@ 14' O.C.)
25. CONTROL JOINTS (@ 7' O.C.)

GRAPHIC SCALE

20 0 10 20 40 20

1" = 20'-0"

Know what's below. Call before you dig.

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ORIGINAL	SECOND	FINAL

REVISIONS

◇ PRE-BID SET ISSUE DATE △ POST BID SET ISSUE DATE

DATE		DESCRIPTION

LITTLE
DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
T: 704.525.6350 F: 704.561.8700

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LOWE'S®

SITE LAYOUT PLAN ENLARGEMENTS

LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

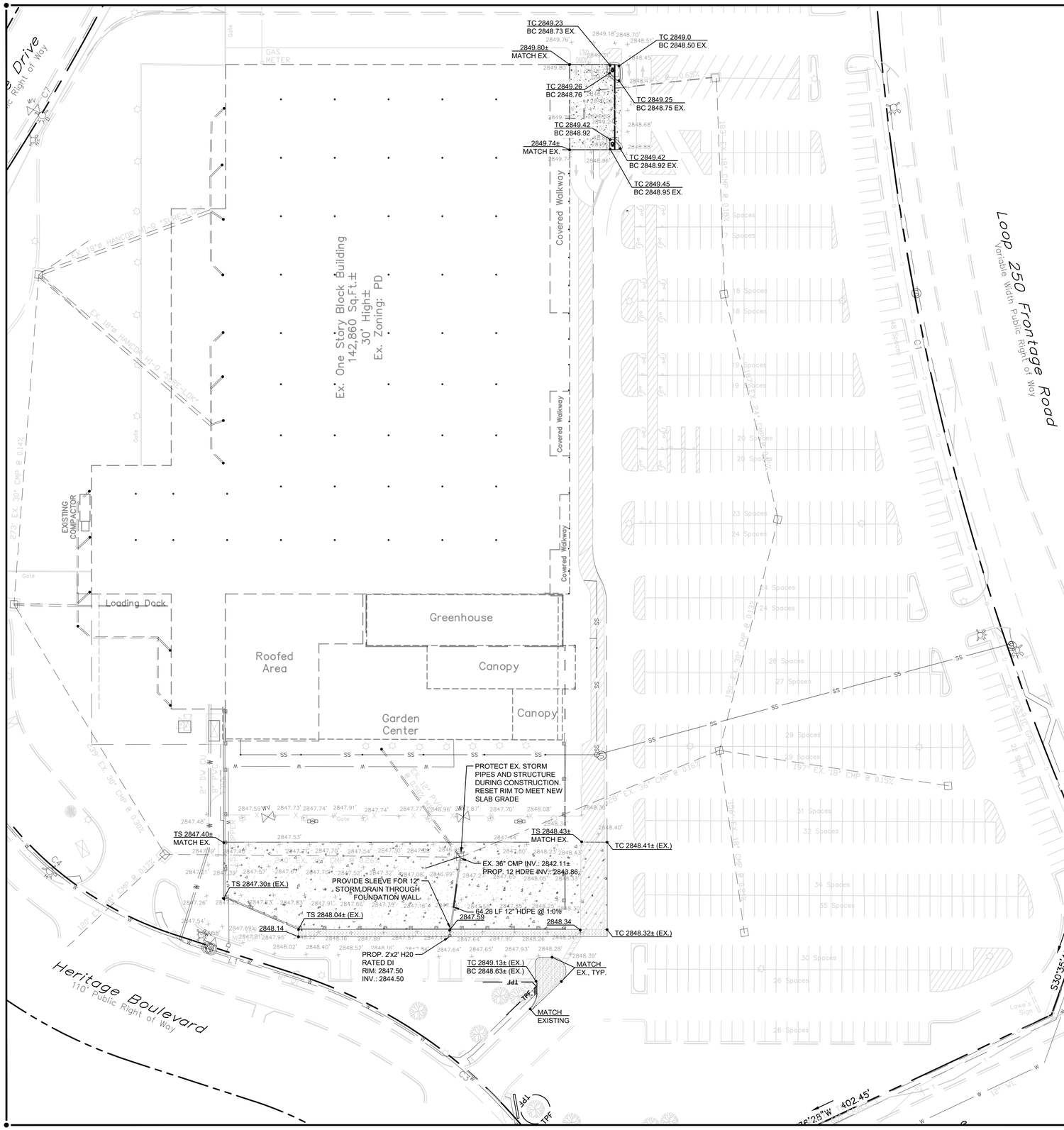
PROJECT No: 121.17282.00 DRAWN BY: CHECKED BY:

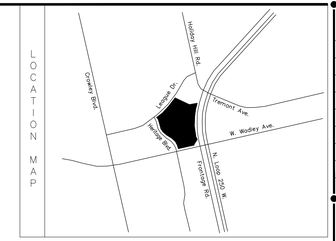
FOR REVIEW

PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:

C301





GRADING NOTES

A. VERIFY ALL EXISTING GRADES AND REPORT ANY DISCREPANCIES TO DESIGNER OF RECORD.

B. ALL NEW CONTOURS AND SPOT ELEVATIONS ARE SHOWN AS FINISHED GRADES. THE GRADING CONTRACTOR MUST MAKE ALLOWANCES FOR THICKNESS OF PAVING SECTIONS, CONCRETE SLABS, ETC.

C. THE ENTIRE SITE WITHIN THE LIMITS OF CONSTRUCTION SHALL BE GRADED TO DRAIN FREELY. ALL DISTURBED AREAS SHALL BE FINE GRADED AND SEEDED TO ESTABLISH A PERMANENT LAWN, WHETHER INSIDE OR OUTSIDE THE LIMITS OF CONSTRUCTION.

D. NO SLOPES SHALL BE GRADED STEEPER THAN 3:1, UNLESS INDICATED OTHERWISE.

E. APPROVAL OF THIS PLAN IS NOT AN AUTHORIZATION TO GRADE ADJACENT PROPERTIES. ANY GRADING BEYOND THE PROPERTY LINE INDICATED ON THE CONSTRUCTION DOCUMENTS IS A VIOLATION AND IS SUBJECT TO A FINE. WHEN FIELD CONDITIONS WARRANT OFF-SITE GRADING, PERMISSION MUST BE OBTAINED FROM THE AFFECTED PROPERTY OWNERS.

F. GRADING MORE THAN ONE ACRE WITHOUT AN APPROVED EROSION CONTROL PLAN IS A VIOLATION AND IS SUBJECT TO A FINE.

G. ANY UNSUITABLE MATERIAL ON SITE IS TO BE QUANTIFIED BY A GEOTECHNICAL ENGINEER PRIOR TO REMOVING. CONTRACTOR MUST NOTIFY OWNER OR OWNER'S REPRESENTATIVE IF UNSUITABLE MATERIAL IS ENCOUNTERED.

H. CONTRACTOR MUST COORDINATE ALL DRAINAGE STRUCTURE GRATES SHOWN WITH FIELD CONDITIONS TO ENSURE THAT GRATES ARE FLUSH WITH FINISHED GRADE.

I. IF UNDERGROUND ROOF DRAINS ARE ENCOUNTERED OR IF EXISTING ROOF DRAINS INTERFERE WITH APPROVED DESIGN, NOTIFY DESIGNER OF RECORD.

N. 90 DAYS PRIOR TO OBTAINING A CERTIFICATE OF OCCUPANCY, THE CONTRACTOR IS TO PROVIDE DESIGNER OF RECORD WITH A PDF AND AUTOCAD AS-BUILT SURVEY (SEALED BY REGISTERED SURVEYOR) OF ALL STORMWATER CONTROL AND MANAGEMENT DEVICES SHOWING THE FIELD LOCATION, SIZE, DEPTH, AND PLANTED VEGETATION OF ALL MEASURES AND DEVICES AS INSTALLED. SURVEY TO INCLUDE ALL STORM INVERTS, OUTLET CONTROL WEIRS & ORIFICE DIAMETER, ORIFICE SIZE AND BMP CONTOURS AND SPILLWAY ELEVATION & DIMENSIONS TO SUBMIT AS A CONDITION OF STORMWATER APPROVAL.

O. A 24" VERTICAL SEPARATION MUST BE PROVIDED BETWEEN STORM SEWER AND SANITARY SEWER PIPES UNLESS OTHERWISE NOTED.

P. BENCHMARK LOCATIONS AND ELEVATIONS ARE TO BE VERIFIED BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF CONSTRUCTION.

Q. UPON COMPLETION OF CONSTRUCTION OPERATIONS AND PRIOR TO USE OF FACILITIES, THE CONTRACTOR IS TO FULLY FLUSH ALL SUBSURFACE STORMWATER CONDUITS USING FIRE HOSES OR OTHER WATER SOURCES OF EQUIVALENT MAGNITUDE. THE CONTRACTOR SHALL TAKE CARE NOT TO DAMAGE ANY OF THE SITE DURING THIS PROCEDURE.

ACCESSIBILITY NOTES

A. AMERICANS WITH DISABILITIES ACT (ADA) REGULATIONS MANDATE A MAXIMUM OF 2% SLOPE IN ANY DIRECTION IN ACCESSIBLE PARKING SPACES AND ACCESS AISLES.

B. ADA REGULATIONS MANDATE REQUIRED EGRESS SIDEWALKS FROM PARKING TO THE BUILDING ENTRANCE AND PUBLIC RIGHT OF WAY CANNOT EXCEED 2% CROSS SLOPE AND 5% RUNNING SLOPE.

C. ALL GRADES IN THESE AREAS WILL BE VERIFIED BY DESIGNER OF RECORD (USING A 2' DIGITAL LEVEL) PRIOR TO FINAL APPROVAL.

Know what's below. Call before you dig.

CAUTION!!!

THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESS OR IMPLIED AS TO THE COMPLETENESS OF ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

GRAPHIC SCALE

40 0 20 40 80 160

1" = 40'-0"

ORIGINAL	FINAL

REVISIONS

◇ PRE-BID SET ISSUE DATE △ POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE
DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
T: 704.525.6350 F: 704.561.8700

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1000 LOWE'S BOULEVARD
MOORESVILLE, NC 28117
704.758.1000 (PH.)

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LOWE'S®

GRADING AND DRAINAGE PLAN

LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

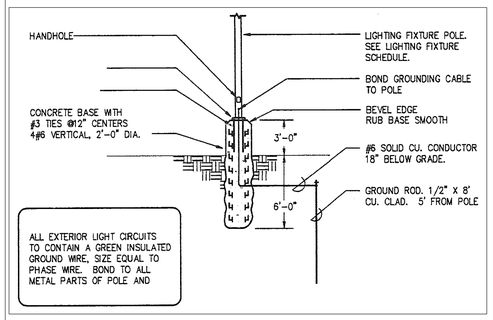
PROJECT No.: 121.17830.00 | DRAWN BY: | CHECKED BY:

FOR REVIEW

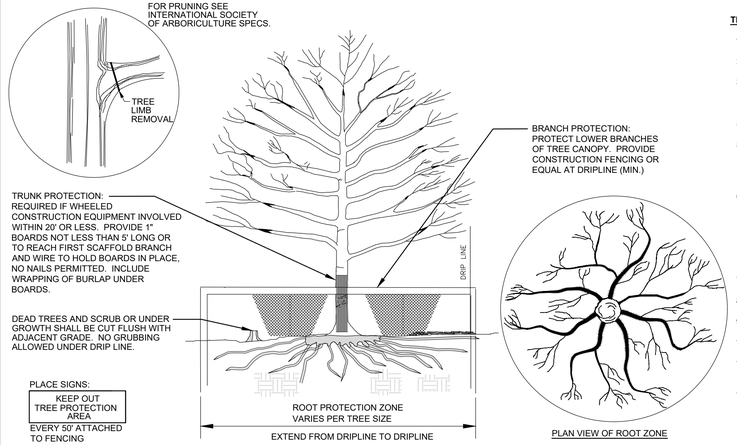
PLANNING ISSUE DATE: 04/13/22

DRAWING NUMBER:

C400



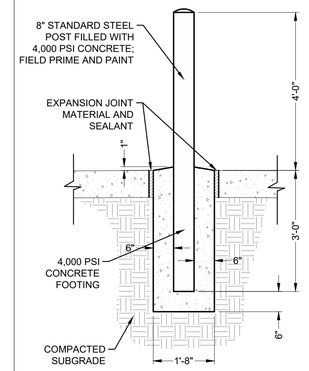
12 LIGHT POLE BASE DETAIL
NOT TO SCALE



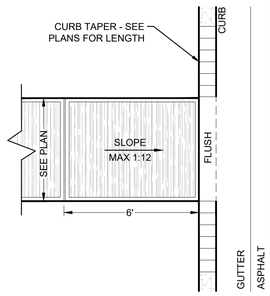
TREE PROTECTION NOTES:

1. ALL TREES AND SHRUBS TO BE PROTECTED AND PRESERVED SHALL BE PER DETAIL.
2. TREES AND SHRUBS TO BE PROTECTED AND PRESERVED SHALL BE IDENTIFIED ON THE TRUNK WITH WHITE SURVEY TAPE.
3. TO PREVENT ROOT SMOTHERING, SOIL STOCKPILES, SUPPLIES, EQUIPMENT OR ANY OTHER MATERIAL SHALL NOT BE PLACED OR STORED WITHIN THE DRIP LINE OR WITHIN 15' OF A TREE OR SHRUB TRUNK, WHICHEVER IS GREATER.
4. TREE AND SHRUB ROOTS SHALL NOT BE CUT UNLESS CUTTING IS UNAVOIDABLE
5. TRENCHES SHALL BE HAND DUG WITHIN THE DRIP LINE IN AREAS WHERE ROOTS TWO INCHES IN DIAMETER AND GREATER ARE PRESENT, OR WHEN IN CLOSE PROXIMITY TO LOW BRANCHING TREES. WHENEVER POSSIBLE, ROOTS TWO INCHES OR GREATER IN DIAMETER SHALL BE TUNNELED OR BORED UNDER AND SHALL BE COVERED TO PREVENT DEHYDRATION.
6. WHEN ROOT CUTTING IS UNAVOIDABLE, A CLEAN SHARP CUT SHALL BE MADE TO AVOID SHREDDING OR SMASHING. ROOT CUTS SHOULD BE MADE BACK TO A LATERAL ROOT. WHENEVER POSSIBLE. ROOTS SHOULD BE CUT BETWEEN LATE FALL AND BUD OPENING, WHEN ROOT ENERGY SUPPLIES ARE HIGH AND CONDITIONS ARE LEAST FAVORABLE FOR DISEASE CAUSING AGENTS. EXPOSED ROOTS SHALL BE COVERED IMMEDIATELY TO PREVENT DEHYDRATION. ROOTS SHALL BE COVERED WITH SOIL OR BURLAP AND KEPT MOIST.
7. WATERING OF PROTECTED TREES IN WHICH ROOTS WERE CUT SHALL BE PROVIDED BY THE CONTRACTOR.
8. AUGER TUNNELING RATHER THAN TRENCHING SHOULD BE USED FOR UTILITY PLACEMENT WITHIN THE DRIP LINE.
9. FENCING MATERIAL SHALL ENCIRCLE ANY TREE OR SHRUB WHOSE OUTER DRIP LINE EDGE IS WITHIN 20 FEET OF ANY CONSTRUCTION ACTIVITIES.
10. FENCING MATERIAL SHALL BE BRIGHT, CONTRASTING COLOR, DURABLE AND A MINIMUM OF FOUR FEET IN HEIGHT.
11. FENCING MATERIAL SHALL BE SET AT THE DRIP LINE OR 15 FEET FROM TREE TRUNK, WHICHEVER IS GREATER, AND MAINTAINED IN AN UPRIGHT POSITION THROUGHOUT THE DURATION OF CONSTRUCTION ACTIVITIES.
12. ANY GRADE CHANGES (SUCH AS THE REMOVAL OF TOPSOIL OR ADDITION OF FILL MATERIAL) WITHIN THE DRIP LINE SHOULD BE AVOIDED FOR EXISTING TREES TO REMAIN. RETAINING WALLS AND TREE WELLS ARE ACCEPTABLE ONLY WHEN CONSTRUCTED PRIOR TO GRADE CHANGE.

11 TREE PROTECTION BARRICADE
NOT TO SCALE



10 PIPE BOLLARD
NOT TO SCALE



NOTE: CURB TAPER TO BE PAINTED YELLOW

9 SIDEWALK RAMP
NOT TO SCALE

NOTES:

A. ALL DETECTABLE WARNING DEVICES USED IN NEW CONSTRUCTION SHALL BE OF A RIGID PRECAST OR EMBEDDED PRODUCT APPROVED BY THE DESIGNER OF RECORD. RETRO FIT MATS WILL ONLY BE ALLOWED ON EXISTING RAMPS WITH PRIOR APPROVAL OF THE CITY ENGINEER FOR MATERIAL TYPE AND INSTALLATION (I.E. RESURFACING).

B. RAMP AND DETECTABLE WARNING AREA SHALL BE A MIN. OF 4'-0" IN WIDTH, BUT NOT LESS THAN THE WIDTH OF SIDEWALK LEADING TO BACK OF RAMP.

C. DETECTABLE WARNING SURFACES SHALL EXTEND 2'-0" MIN. IN THE DIRECTION OF PEDESTRIAN TRAVEL.

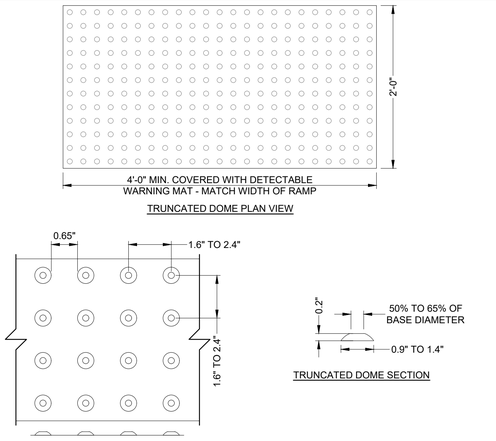
D. DETECTABLE WARNING AREA CAN BE PLACED SQUARE WHERE USED IN A CURB RADIUS.

E. THE ROWS OF TRUNCATED DOMES IN DETECTABLE WARNING SURFACES SHOULD BE ALIGNED PERPENDICULAR TO THE GRADE BREAK BETWEEN THE RAMP RUN AND THE STREET. WHERE DETECTABLE WARNING SURFACES ARE PROVIDED ON A SURFACE WITH A SLOPE THAT IS LESS THAN 5%, DOME ORIENTATION IS LESS CRITICAL.

F. DETECTABLE WARNING AREA SHALL CONTRAST VISUALLY WITH ADJACENT GUTTER, STREET OR HIGHWAY, OR PEDESTRIAN ACCESS ROUTE SURFACE; EITHER LIGHT-ON-DARK OR DARK-ON-LIGHT.

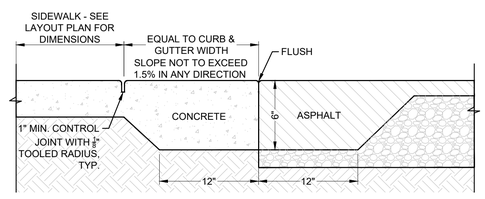
G. IF PAVERS ARE TO BE USED, PAVERS SHOULD BE MINIMUM 8000 PSI CONCRETE WITH A 2" MIN. THICKNESS, SET ON A THIN-SET MORTAR ON TOP OF 4" THICK 3600 PSI CONCRETE BASE.

H. MATS ARE TO BE RIGID WITH TURNED-DOWN EDGES EMBEDDED IN CONCRETE TO ELIMINATE TRIP HAZARD.

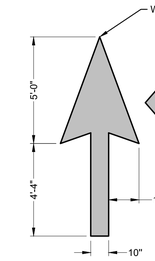


8 TRUNCATED DOMES
NOT TO SCALE

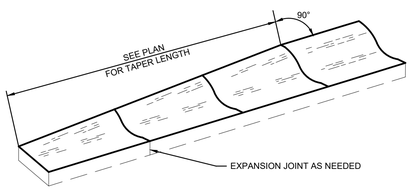
NOTE: ALL NEW CONCRETE SURFACES TO MEET FLUSH WITH ALL NEW AND EXISTING ASPHALT OR CONCRETE SURFACES.



7 ACCESSIBLE FLUSH CURB
NOT TO SCALE



6 PAINTED ARROWS
NOT TO SCALE



5 CURB TAPER
NOT TO SCALE

PAVING MATERIALS SCHEDULE

	THICKNESS	TYPE	BEARING VALUE
LIGHT DUTY PAVING			
SUBGRADE STABILIZE	6"	SCARIFIED & 100% RECOMPACTED SUBGRADE	
BASE LIFT 1	6"	TX D.O.T., ITEM 247 TYPE "D" GRADE 4	
ASPHALTIC BINDER	2"	TX D.O.T., ITEM 340 TYPE "B"	
ASPHALTIC TOPPING	1"	TX D.O.T., ITEM 340 TYPE "D"	
PRIME COAT		0.25 GAL PER SQ. YD. OVER TOP BASE LIFT	
TACK COAT		0.05 - 0.10 GAL PER SQ. YD.	
HEAVY DUTY PAVING			
SUBGRADE STABILIZE	6"	SCARIFIED & 100% RECOMPACTED SUBGRADE	
BASE LIFT 1	4"	TX D.O.T., ITEM 247 TYPE "D" GRADE 4	
BASE LIFT 2	4"	TX D.O.T., ITEM 247 TYPE "D" GRADE 4	
ASPHALTIC BINDER	2"	TX D.O.T., ITEM 340 TYPE "B"	
ASPHALTIC TOPPING	1"	TX D.O.T., ITEM 340 TYPE "D"	
PRIME COAT		0.25 GAL PER SQ. YD. OVER TOP BASE LIFT	
TACK COAT		0.05 - 0.10 GAL PER SQ. YD.	

3 ASPHALT PAVEMENT
NOT TO SCALE

CONCRETE NOTES:

A. UNLESS NOTED OTHERWISE, ALL CONCRETE SHALL ATTAIN A MIN. COMPRESSIVE STRENGTH OF 3000 PSI AT 28 DAYS.

B. AGGREGATES SHALL BE NATURAL SAND AND ROCK CONFORMING TO ASTM C33.

C. CEMENT SHALL BE PORTLAND CEMENT CONFORMING TO ASTM C-150, TYPE I OR II, LOW ALKALI OR AS REQUIRED TO SATISFY SITE SOIL CONDITIONS AS DETERMINED BY THE PROJECT SOILS ENGINEER.

D. WATER SHALL BE POTABLE, CLEAN AND FREE FROM INJURIOUS AMOUNTS OF OIL, ACIDS, ALKALIS, SALTS, ORGANIC MATERIALS, OR OTHER SUBSTANCES THAT MAY BE DELETERIOUS TO CONCRETE OR REINFORCEMENT.

E. ADMIXTURES TO BE USED IN CONCRETE SHALL BE SUBJECT TO PRIOR APPROVAL BY THE ENGINEER.

F. MAX. PERMISSIBLE WATER-CEMENT RATIOS FOR CONCRETE WHEN STRENGTH DATA FROM TRIAL BATCHES ARE NOT AVAILABLE SHALL CONFORM TO TABLE 4.5 OF ACI STANDARD 318-77 OR BASED ON SULFATE CONTENT OF THE SITE SOILS, AS DETERMINED BY THE SOILS ENGINEER. THE LOWER WATER-CEMENT RATIO SHALL GOVERN.

G. CONCRETE SHALL BE CURED WHILE IN A MOIST CONDITION FOR AT LEAST THE FIRST 7 DAYS AFTER PLACEMENT. METHODS FOR ACCELERATED CURING SHALL HAVE PRIOR APPROVAL OF THE ENGINEER.

H. THE FOLLOWING MINIMUM CLEAR DISTANCES BETWEEN REINFORCING STEEL AND FACE OF CONCRETE SHALL BE MAINTAINED UNLESS NOTED OTHERWISE:
SLABS ON GRADE.....CENTER OF SLAB
CONCRETE BELOW GRADE, FORMED.....2"
CONCRETE BELOW GRADE, UNFORMED (POURED AGAINST EARTH).....3"
CONCRETE EXPOSED TO WEATHER.....1-1/2"

2 CONCRETE NOTES
NOT TO SCALE

NOTES:

A. CONTRACTION JOINTS SHALL BE SPACED AT 10'-0" INTERVALS, EXCEPT THAT A 15'-0" SPACING MAY BE USED WHEN A MACHINE IS USED OR WHEN SATISFACTORY SUPPORT FOR THE FACE OF THE FORM CAN BE OBTAINED WITHOUT THE USE OF TEMPLATES AT 10'-0" INTERVALS. JOINT SPACING MAY BE ALTERED BY THE ENGINEER TO PREVENT UNCONTROLLED CRACKING.

B. CONTRACTION JOINTS MAY BE INSTALLED BY THE USE OF TEMPLATES OR FORMED BY OTHER APPROVED METHODS. WHERE SUCH JOINTS ARE NOT FORMED BY TEMPLATES, A MINIMUM DEPTH OF 1½" SHALL BE OBTAINED.

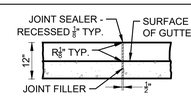
C. ALL CONTRACTION JOINTS SHALL BE FILLED WITH JOINT SEALER.

D. EXPANSION JOINTS SHALL BE SPACED AT 90'-0" INTERVALS AND ADJACENT TO ALL RIGID OBJECTS.

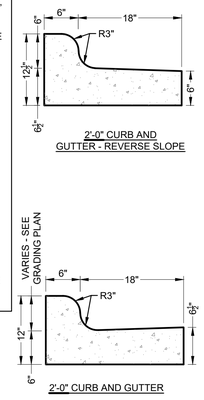
E. JOINTS SHALL MATCH LOCATIONS WITH JOINT IN ABUTTING SIDEWALK.

F. CONCRETE SHALL BE 3600 PSI IN 28 DAYS.

G. TOP 6" OF SUBGRADE BENEATH CURB AND GUTTER SHALL BE COMPACTED TO 100% STANDARD PROCTOR DENSITY.



TRANSVERSE EXPANSION JOINT IN CURB AND GUTTER



1 CURB AND GUTTER
NOT TO SCALE

ORIGINAL	PRELIMINARY	FINAL

REVISIONS
◇ PRE-BID SET ISSUE DATE △ POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
T: 704.525.6350 F: 704.561.8700

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MOORESVILLE, NC 28117
704.758.1000 (PH.)

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LOWE'S

SITE DETAILS

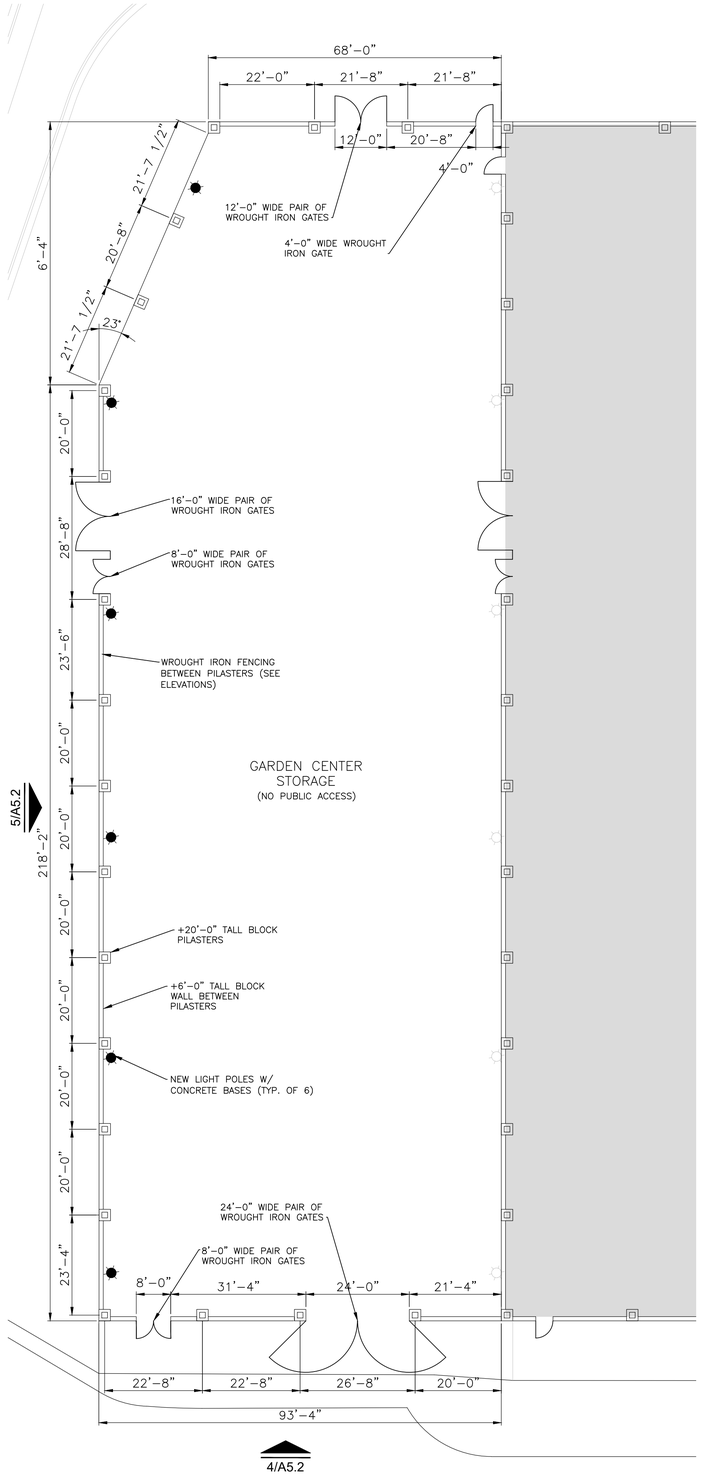
LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 121.17282.00 | DRAWN BY: | CHECKED BY:

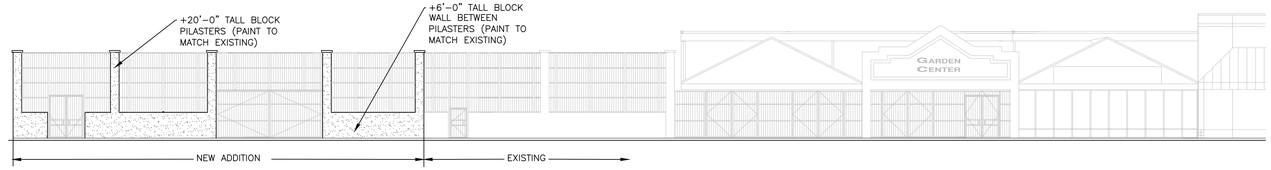
FOR REVIEW

PLANNING ISSUE DATE: 04/13/22

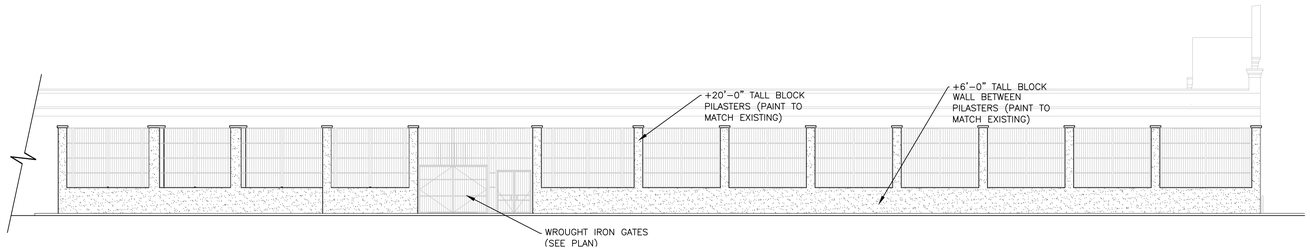
DRAWING NUMBER:
C500



2 ENLARGED GARDEN CENTER STORAGE PLAN
SCALE: 1/16"=1'-0"



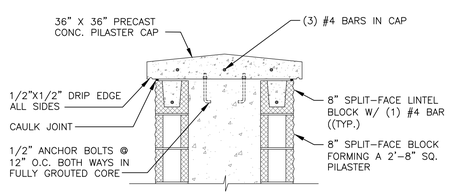
4 ENLARGED FRONT ELEVATION
SCALE: 1/16"=1'-0"



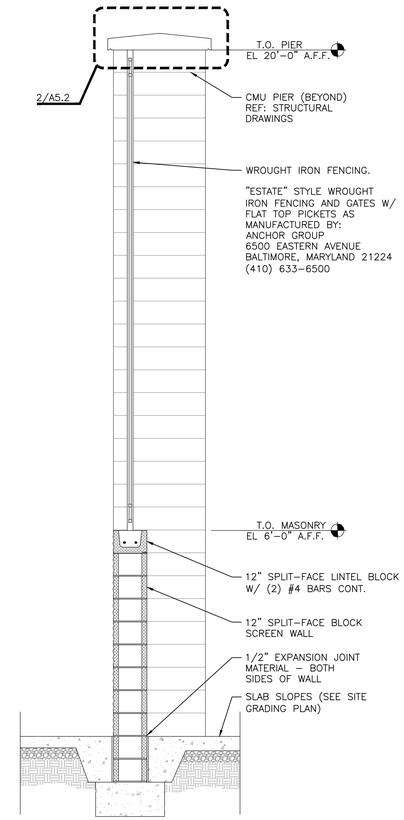
5 ENLARGED SIDE ELEVATION
SCALE: 1/16"=1'-0"

GENERAL NOTES

1. INSTALL JOINT SEALANT OVER 1/2" EXPANSION JOINT FILLER AT ALL EXTERIOR PAVEMENT JOINTS AND AT ALL CUTS AND HOLES THROUGH PAVEMENT.
2. REFER TO STRUCTURAL FOR LOCATION OF REINFORCEMENT AND STRUCTURAL CONNECTIONS.
3. REFER TO SHEET A3.0 FOR EXTERIOR FINISHES.



3 PILASTER CAP DETAIL
SCALE: 3/4"=1'-0"



1 SECTION AT GARDEN CENTER WALL
SCALE: 1/2"=1'-0"

ORIGINAL
SECOND
FINAL

N PROJECT N MAGNETIC

REVISIONS
PRE-BID SET ISSUE DATE / POST BID SET ISSUE DATE

DATE	DESCRIPTION

LITTLE
DIVERSIFIED ARCHITECTURAL CONSULTING
615 S. COLLEGE ST., SUITE 1600 Charlotte, NC 28202
T: 704.525.6350 F: 704.561.8700

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MOORESVILLE, NC 28117
704.758.1000 (PH.)

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PLAN, SECTIONS & DETAILS - GARDEN CENTER

LOWE'S #0063 - MIDLAND
3315 N. LOOP 250 W
MIDLAND, TEXAS 79707

PROJECT No: 121.17258.00 | DRAWN BY: | CHECKED BY:

FOR REVIEW

PLANNING ISSUE DATE: 04/07/22

DRAWING NUMBER:
A5.2

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-22-0293

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone (704) 561-3472	
Printed Name: David Powlen, Little Diversified Architectural Consulting		Email david.powlen@littleonline.com	
Address 615 S. College Street, Suite 1600	City Charlotte	State NC	Zip 28202

Property Owner		Phone (704) 632-5849	
Printed Name: Lowe's #63 (Lowe's Home Centers, LLC)		Email Tom.cross@lowes.com	
Address 1000 Lowe's Boulevard	City Mooresville	State NC	Zip 28117

Representative *(if different from Applicant or Property Owner)*		Phone (704) 632-5849	
Firm: Lowe's		Email tom.cross@lowes.com	
Printed Name: Thomas M. Cross			
Address 1000 Lowes Blvd	City Mooresville	State NC	Zip 28117

Street Address: 3315 N. Loop 250 W

Legal Description
Lot: 0020 Block: 002 Subdivision: 41500

Current Zoning: PD

Proposed Zone: PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: No change

Present Use of Property: Retail

Proposed Use of Property: Retail

How would this zone change affect the public health, safety and welfare? No change

Describe how conditions affecting the property have changed since present zoning designation: No change

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)

RECEIVED
APR 21 2022
BY: CF

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Thomas M. Cron	Date: 4/19/22
Property Owner (printed) : Thomas M. Cross	

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.

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

David Fowler
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 19th day of April, 2022, to certify which witness my hand and seal of office.

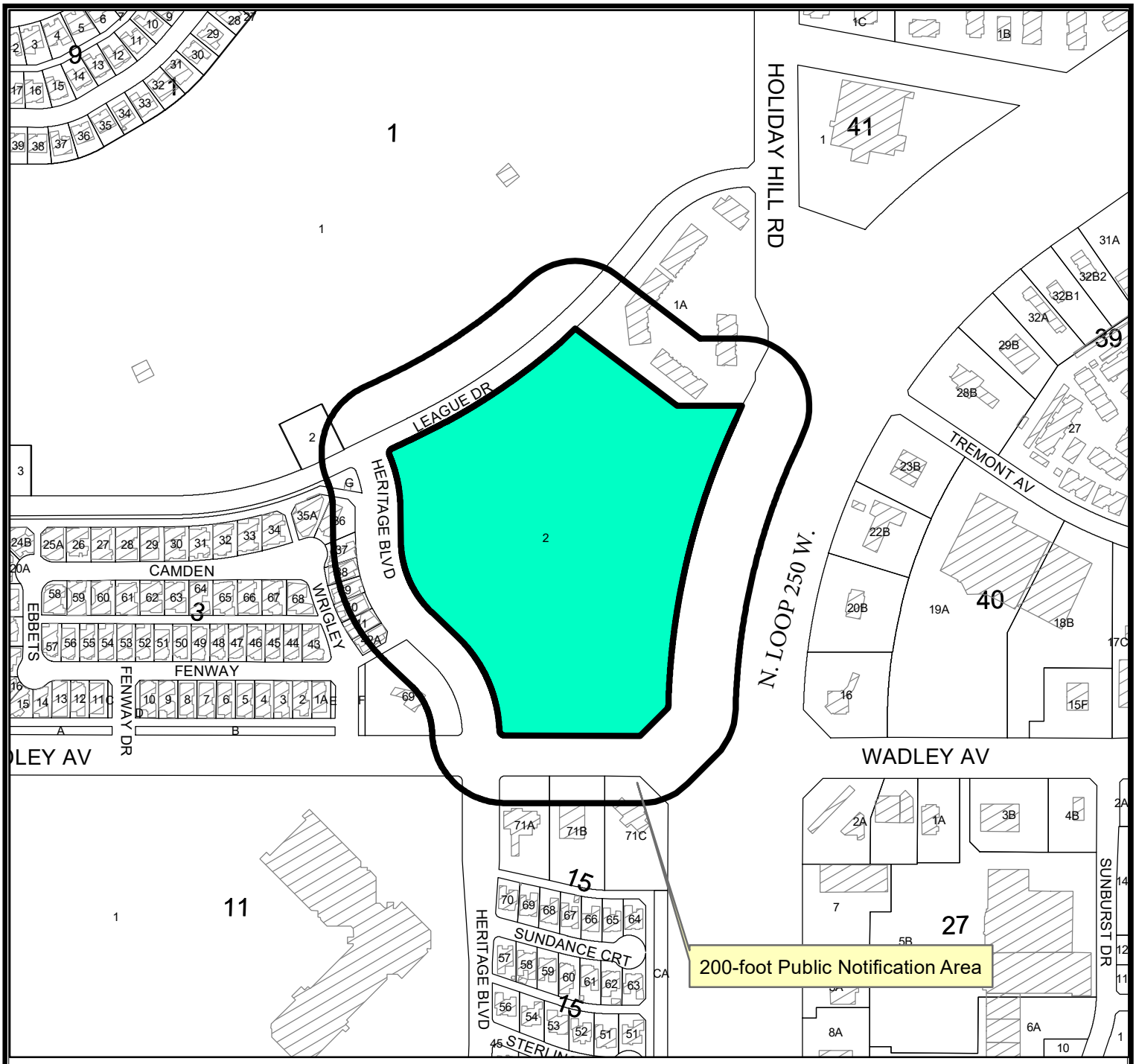
JUDITH M. YARBOROUGH
NOTARY PUBLIC
Iredell County
North Carolina
My Commission Expires July 4, 2026

Judith M Yarborough
NOTARY PUBLIC

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 184062	
Received By: [illegible]	Date: 4-21-22

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

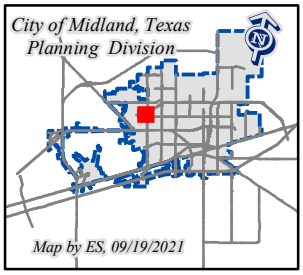
SUD-22-0126 **Scale: 1" = 200'**

Request by David Powlen, for a Zone Change From a PD, Planned Development District for a Shopping Center to an Amended PD, Planned Development District for a Shopping Center on Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland Texas.
Generally located on the northwest corner fo the intersection of N. Loop 250 W. and Wadley Avenue- (Council District 4)

PACKET 17.20

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



June 28, 2022

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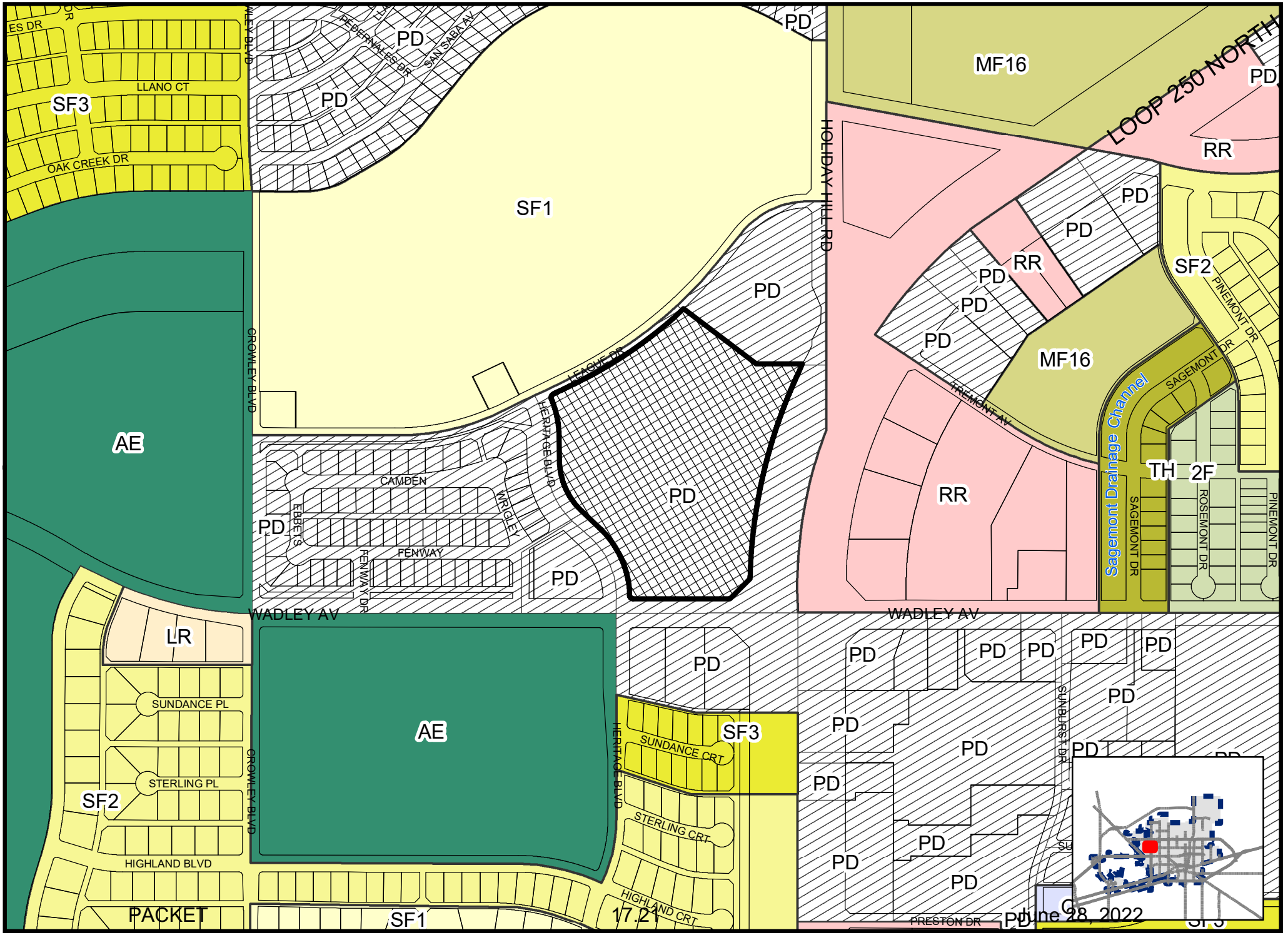

Map By ES, 7/8/2021

Z-22-0293

Scale: 1" = 200'

ZONING MAP

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LOWE'S
4X4




432.978.3310
432.978.3310


LOWE'S
GARDEN CENTER


GARDEN
CENTER
214

ORDINANCE NO. 9333

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NORTHWEST OF THE INTERSECTION OF NORTH LOOP 250 WEST AND WEST WADLEY AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT 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, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, 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 the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Case Number: Z-14-042

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: LOWE'S HOME CENTERS, LLC

Address: 3315 N LOOP 250 W
Street Address (Phone/e-mail)

MIDLAND TX 79707
City State Zip Code

Property Owner: LOWE'S HOME CENTERS, LLC

Address: 1605 CURTIS BRIDGE ROAD
Street Address (Phone/e-mail)

WILKESBORO, NC 28697
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:
LOT 2, BLOCK 2 GRANDRIDGE PARK ADDITION SECTION 1

Current PD Classification: PLANNED DISTRICT FOR A SHOPPING CENTER

Requested PD Classification: _____
(List by tracts if more than one zoning district is requested)

Reason for amendment request: TO ALLOW STORAGE OF PRODUCT IN STRATEGIC LOCATIONS AROUND THE BUILDING

Describe how conditions affecting the property have changed since it was designated its present zone: ENTRANCE VESTIBULES WERE ADDED IN APRIL 2001 GARDEN CENTER WAS EXPANDED IN SEPTEMBER 2009

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? ____ Yes X No

FEES:
Single, Planned District amendment: $550. Multiple, PD proposal: add $75 per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): ✓

Site Plan in digital format .pdf and .jpg: ✓

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: 8/14/2014

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

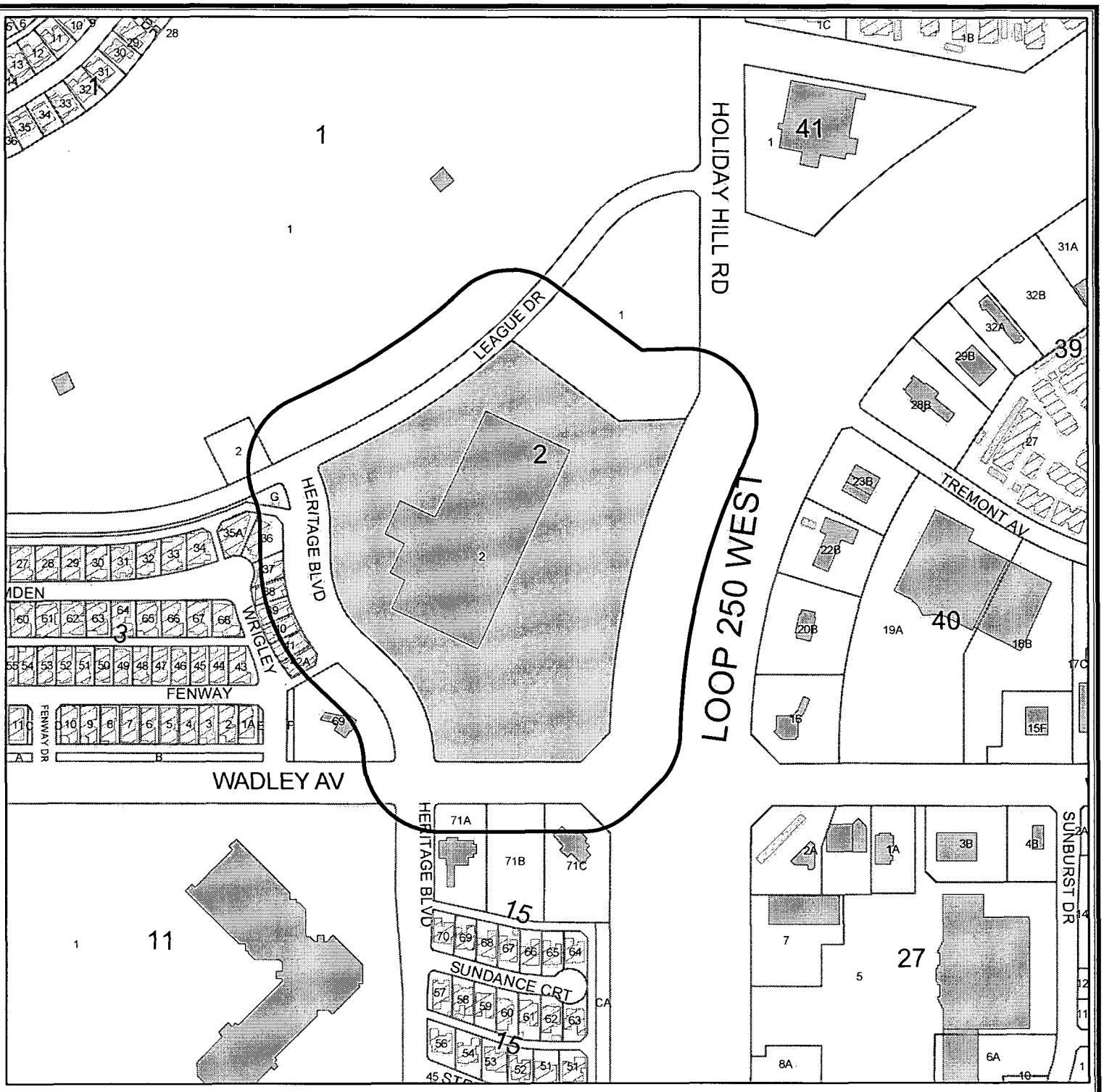
_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: ✓ Date: 8/15/14
Assigned: KC
For: PTZ On: 9/15/14

****Application will not be considered for scheduling until reviewed by a planner. ****



LOCATION MAP

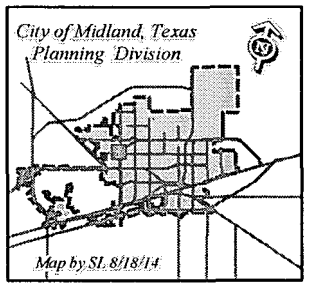
Z - 14 - 042 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District for a Shopping Center, on Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas.

Generally located northwest of the intersection of W. Loop 250 West and W. Wadley Avenue. (Council-District-4)

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PROPOSED AREA
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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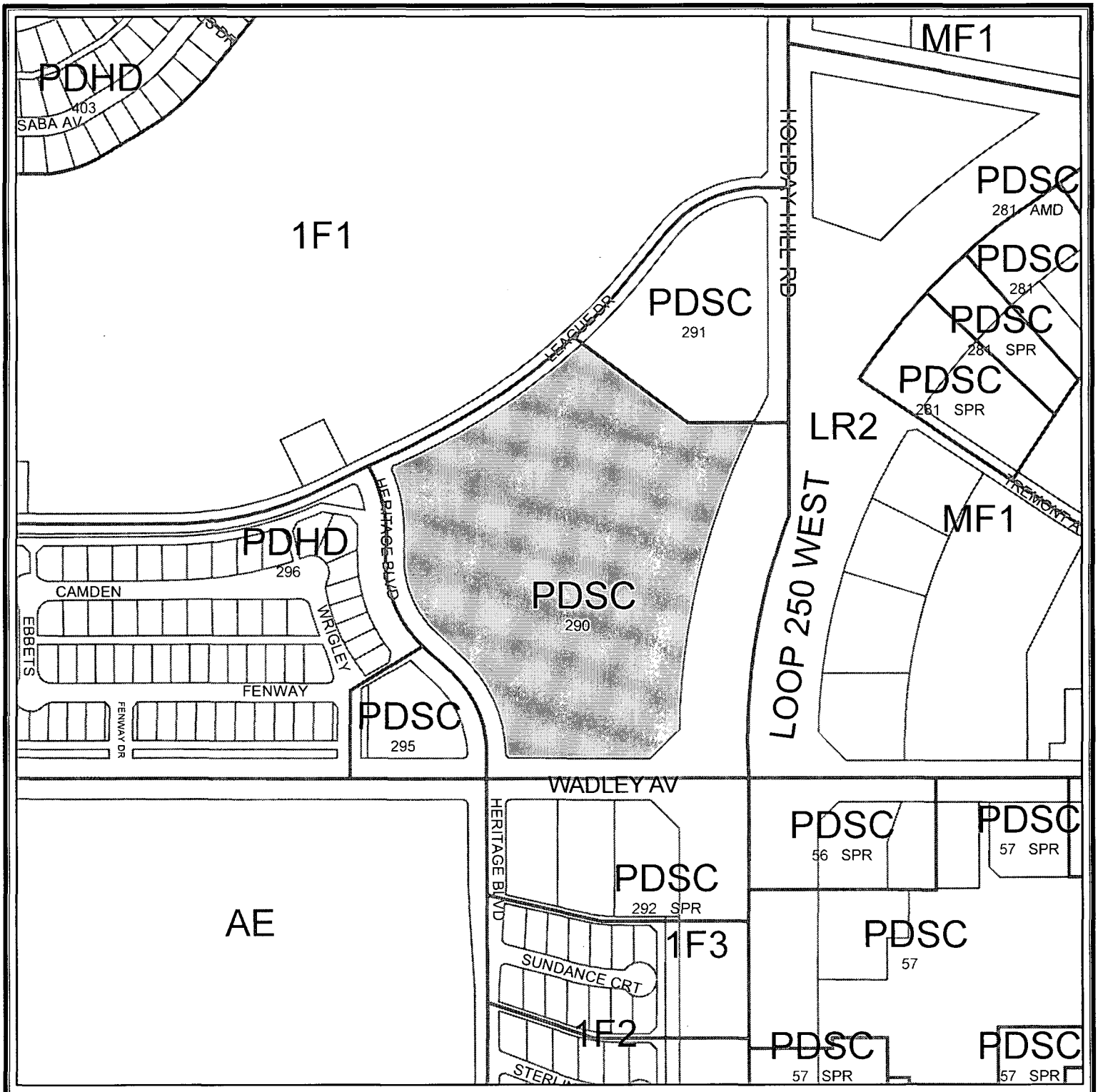

ZONING MAP

Map by SL 8/18/14

Z - 14 - 042 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District for a Shopping Center, on Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas.

Generally located northwest of the intersection of W. Loop 250 West and W. Wadley Avenue. (Council-District-4)

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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REVISIONS
DATE
DESCRIPTION
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF CRITERIA REVIEW AND UNDER THE AUTHORITY OF
DANIEL W. MCMOW, P.E.
TX LICENSE #: 105878
ON THE DATE SHOWN. IT IS NOT TO BE USED FOR BIDDING OR CONSTRUCTION.
JOHNSON & PACE
INCORPORATED
LOWE'S HOME CENTERS, INC.
1605 CURTIS BRIDGE ROAD
WILKESBORO, NC 28697
336.658.4000 (V) 336.658.3257 (F)
LOWE'S
EXISTING CONDITIONS MAP
LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION SECTION 1
LOWE'S OF
MIDLAND
MIDLAND, TEXAS
PROJECT No: 2722-011
DRAWN BY: DPB
CHECKED BY: DPB
ORIGINAL ISSUE DATE: AUGUST 3, 2014
PERMIT SET
ISSUE DATE:
CONSTRUCTION SET
ISSUE DATE:
DRAWING NUMBER:
C2.0
LEGEND
EXISTING FIRE HYDRANT
EXISTING WATER VALVE
EXISTING SIGN
EXISTING LIGHT POLE
EXISTING UTILITY MANHOLE
EXISTING ELECTRICAL BOX
EXISTING TELEPHONE BOX
EXISTING TREE
EXISTING CONCRETE
EXISTING ASPHALT
EXISTING BUILDING
EXISTING CURB & GUTTER
EXISTING LANDSCAPE
EXISTING SIDEWALK
NOTES:
EXISTING PARKING DATA
STANDARD PARKING SPACES PROVIDED
ADA PARKING SPACES PROVIDED
TOTAL PARKING SPACES PROVIDED
PARKING SPACES EXCHANGING CART CORRALS
PARKING SPACES ADJACENT TO GARDEN CENTER USED FOR SEASONAL SALES
TOTAL LESS ALT PARKING SPACES
LEAGUE DRIVE
HERITAGE BLVD.
STATE HIGHWAY 250
FRONTAGE ROAD
WADLEY AVENUE
LOT 1, BLOCK 2, GRANDRIDGE PARK ADDITION SECTION 1
GARDEN CENTER
16,248 SF
CURB CUT
CURB CUT
CURB CUT

Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That City of Midland Ordinance No. 7463 shall remain in full force and effect except as otherwise stated below.

2. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District, except as otherwise stated below.

3. That the development shall significantly conform to the conditions shown on Exhibits "A" and "B", which are attached hereto and incorporated herein.

4. That a 26 foot fire lane shall be striped in the outdoor storage area and kept clear at all times.

5. That the gates to the outdoor storage area shall have emergency overrides for emergency services.

6. That the covered outdoor storage area shall be fire sprinkled.

SECTION THREE. 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 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.

SECTION SIX. 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 SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 7th day of October, A.D., 2014; and passed to second reading on motion of Council member Lacy, seconded by Council member Hotchkiss, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

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 Lacy, seconded by Council member Sparks, on the 21st day of October, A.D., 2014, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 21st day of October, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

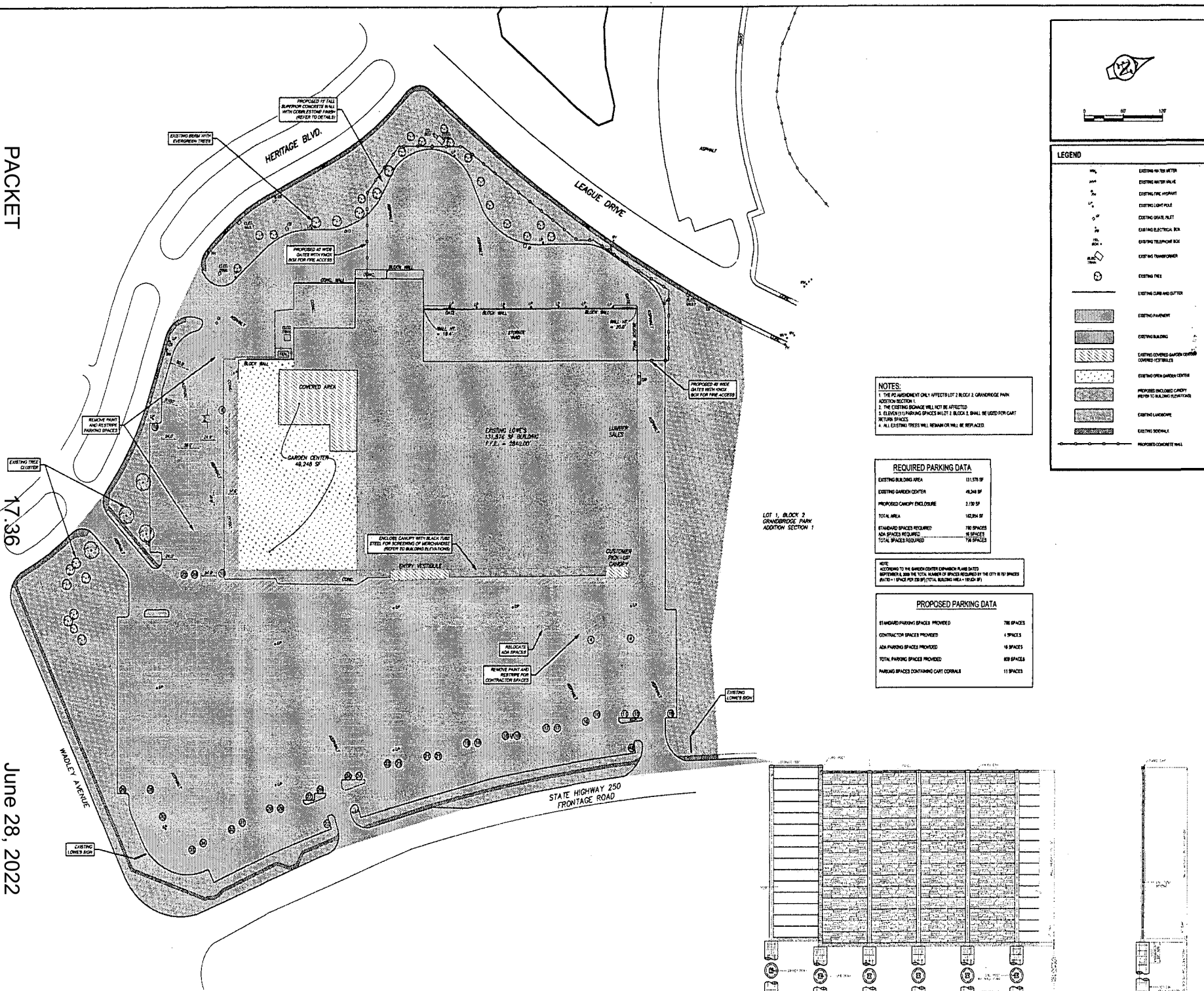

EXHIBIT A

LEGEND

- EXISTING WATER METER
- EXISTING WATER VALVE
- EXISTING FIRE HYDRANT
- EXISTING LIGHT POLE
- EXISTING GRATE INLET
- EXISTING ELECTRICAL BOX
- EXISTING TELEPHONE BOX
- EXISTING TRANSFORMER
- EXISTING TREE
- EXISTING CURB AND GUTTER
- EXISTING PAVEMENT
- EXISTING BUILDING
- EXISTING COVERED GARDEN CENTER COVERED VESTIBULES
- EXISTING OPEN GARDEN CENTER
- PROPOSED ENCLOSED CANOPY (REFER TO BUILDING ELEVATIONS)
- EXISTING LANDSCAPE
- EXISTING SIDEWALK
- PROPOSED CONCRETE WALL

NOTES:

1. THE PD AMENDMENT ONLY AFFECTS LOT 2 BLOCK 2, GRANDRIDGE PARK ADDITION SECTION 1.
2. THE EXISTING SIGNAGE WILL NOT BE AFFECTED.
3. ELEVEN (11) PARKING SPACES IN LOT 2 BLOCK 2, SHALL BE USED FOR CART RETURN SPACES.
4. ALL EXISTING TREES WILL REMAIN OR WILL BE REPLACED.

REQUIRED PARKING DATA

EXISTING BUILDING AREA	131,576 SF
EXISTING GARDEN CENTER	49,248 SF
PROPOSED CANOPY ENCLOSURE	2,130 SF
TOTAL AREA	182,954 SF
STANDARD SPACES REQUIRED	780 SPACES
ADA SPACES REQUIRED	16 SPACES
TOTAL SPACES REQUIRED	796 SPACES

NOTE:
ACCORDING TO THE GARDEN CENTER EXPANSION PLANS DATED SEPTEMBER 8, 2009 THE TOTAL NUMBER OF SPACES REQUIRED BY THE CITY IS 781 SPACES (RATIO = 1 SPACE PER 230 SF) (TOTAL BUILDING AREA = 180,024 SF)

PROPOSED PARKING DATA

STANDARD PARKING SPACES PROVIDED	786 SPACES
CONTRACTOR SPACES PROVIDED	4 SPACES
ADA PARKING SPACES PROVIDED	18 SPACES
TOTAL PARKING SPACES PROVIDED	808 SPACES
PARKING SPACES CONTAINING CART CORRALS	11 SPACES

REVISIONS

DATE	DESCRIPTION

THIS DOCUMENT IS RELEASED FO THE PURPOSE OF INTERIM REVIEW AND UNDER THE AUTHORITY OF

DANIEL REANOW, P.E.
TX LICENSE #: 106676

ON THE DATE SHOWN. IT IS NOT BE USED FOR THE PURPOSE O BIDDING OR CONSTRUCTION

JOHNSON & PACE INCORPORATED
ENGINEERING - ARCHITECTURE - SURVEYING
111 LANDERS | ODNE EAST, SUITE 215,
ODESSA, TEXAS 79762 | 432.580.7200
OFFICE@JNPINC.COM | FAX 432.580.7240
WWW.JNPINCORP.COM

LOWE'S HOME CENTERS, IN
1605 CURTIS BRIDGE ROA
WILKESBORO, NC 28697

336.658.4000 (V) 336.658.3257

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LOWE'S

PROPOSED PD SITE PLAN
LOT 2, BLOCK 2, GRANDRIDGE PARK ADDITION SECTION 1

LOWE'S OF
MIDLAND
MIDLAND, TEXAS

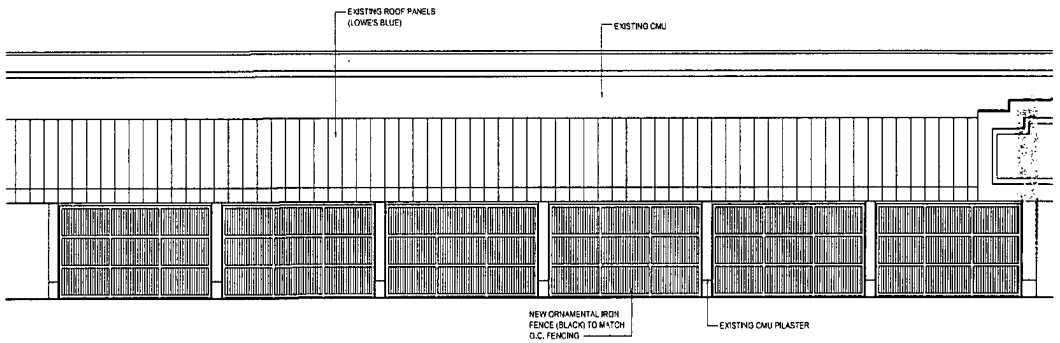
ORIGINAL ISSUE DATE: AUGUST 5, 20
PERMIT SET ISSUE DATE:
CONSTRUCTION SET ISSUE DATE:
DRAWING NUMBER:

C3.0

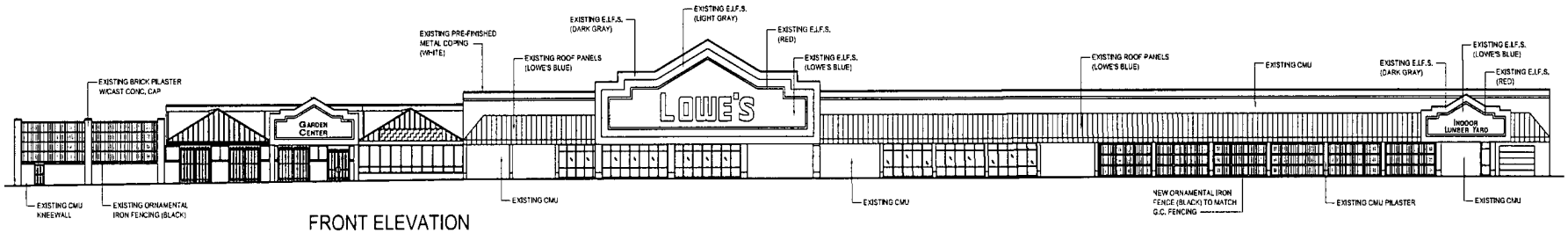
PACKET

EXHIBIT B
17.37

June 28, 2022



ENLARGED ELEVATION
SCALE: 1/8"=1'-0"



FRONT ELEVATION
SCALE: 1"=20'-0"

AUGUST 1, 2014

LOWE'S OF MIDLAND, TEXAS
3315 NORTH LOOP 250 WEST

B|R|R architecture

Ord # 9333

City Council Agenda

MIDLAND
Feel the Energy!

Approved for Agenda:
FSalvato
City Manager's Office

MEETING DATE: October 21, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Robert Baronti, Jr., AICP, Planning Division Manager

SUBJECT: **Consider an ordinance on second reading on a request by Lowe's Home Centers, LLC for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas. (Generally located northwest of the intersection of N. Loop 250 West and W. Wadley Avenue) – District 4.**

Purpose:

Consider an ordinance on second reading on a request by Lowe's Home Centers, LLC for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The property is currently zoned PD, Planned District for a Shopping Center. The Lowe's at this location has a need for additional outdoor storage and as such has chosen to pursue changing their site plan in order to incorporate a large screened outside storage area at the back of the property. A small screened storage area will be added to the front of the property as well. The fence is proposed to be 15 feet in height. A gate with overrides for Emergency Services will be provided at both ends, and a 26 foot striped fire lane will be provided and kept clear at all times. No product storage will be permitted to be visible above the fence. The proposed covered area will also need to be fire sprinkled. City Council approved this request on first reading on October 7, 2014. This ordinance is now ready to be considered for second and final reading.

PLANNING AND ZONING COMMISSION

September 15, 2014

CASE: Z-14-042, Lowe's Home Centers, LLC

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District.

APPLICANT/OWNER: Lowe's Home Centers, LLC

LEGAL DESCRIPTION: Lot 2, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas.

LOCATION: Generally located northwest of the intersection of W. Loop 250 West and W. Wadley Avenue.

CURRENT ZONING: PD, Planned District for a Shopping Center.

DETAILS OF REQUEST:

1. The property is currently zoned PD, Planned District for a Shopping Center. The Lowe's at this location has a need for additional outdoor storage and as such has chosen to pursue changing their site plan in order to incorporate a large screened outside storage area at the back of the property. A small screened storage area will be added to the front of the property as well.

SURROUNDING ZONING AND LAND USE:

2. This property is located northwest of the intersection of W. Wadley Avenue and N. Loop 250 West. The property is bounded on the west by a PD, Planned District for a Housing Development. To the south is a PD, Planned District for a Shopping Center. To the northwest is a 1F-1, One-Family Dwelling District that is a park. To the north is a PDSC that will be a shopping center.

ANALYSIS:

3. The applicant's proposed site plan adds a large outdoor storage area behind a screening fence to the rear of the property. Exhibit A shows the proposed site plan as well as the elevation for the screening fence. The fence will be 15 feet in height. A gate with overrides for Emergency Services will be provided at both ends, and a 26 foot striped fire lane will be provided and kept clear at all times. No product storage will be permitted to be visible above the fence. Exhibit B shows the front elevation of the building including the screened area for storage on the front of the building. The proposed covered area will also need to be fire sprinkled. Exhibit C shows the current conditions for reference.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District subject to the following conditions:

A. **That ordinance 7463 will remain in effect except for the conditions stated below.**

B. **That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District, except as stated below:**

C. **That the development shall significantly conform to the attached Exhibits A and B.**

D. **That a 26 foot Fire Lane shall be striped in the proposed outdoor storage area and kept clear at all times**

E. **That the gates to the outdoor storage area shall have emergency overrides (Knox Box) for Emergency Services.**

F. **That the proposed covered outdoor storage area shall be Fire Sprinkled.**

Robert Baronti, Jr., AICP
Planning Division Manager
Department of Development Services

Kevin Crosby, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A – B
Illustrative Exhibit C

City Council Meeting

Item Number: 18

Meeting Date: June 14, 2022, June 28, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), BY PERMITTING A DEVIATION FROM OFF-STREET PARKING REQUIREMENTS; ESTABLISHING A THREE-YEAR TERM FOR SAID SPECIAL EXCEPTION; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Sean Elphick, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties, for an alternative building material for the dumpster screening wall and denial of a deviation from Section 6.02(B) - General Requirements, a deviation from off-street parking requirements, for the property located at 4401 North Big Spring Street.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Current Zoning:

RR, Regional Retail District.
Surrounding Zoning and Land Use:

The property north is zoned PD, Planned Development District for a Recreation Center and the location of MISD softball fields. The property to the east is zoned RR, Regional Retail District and the location of a shopping center. The property to the south is zoned PD, Planned Development District for an Office Center and the location of vacant land. The property to the west is zoned 2F, Two-Family Dwelling District and the location of the Midland Executive Airpark.

Discussion:

The applicant's property is located at 4401 North Big Spring Street and the location Tailgate. The applicant is requesting a special exception to deviate from parking pavement material requirement and to alter the type of material of a trash dumpster enclosure.

Per our City of Midland Zoning Ordinance, Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties

2. Screening Required
   a. The container shall be screened by the masonry wall capable of screening the area.

Also, per Section 6.02(B) - General Requirements:

1. Parking Areas and Driveways
   Unless otherwise noted, parking areas and driveways shall be curbed, paved and maintained to the City specifications.

The property currently in operation and has been for the past year. The floor plan as shown in Exhibit A indicated that the property would have a total of 54 parking spaces, in which two are accessible parking spaces. Upon a final inspection of the project. It was identified that the surface of this parking lot consisted of asphalt millings for pavement. As shown in the attached photos, the striping does not remain intact. The applicant proposed to restripe every month. From the staff's viewpoint, this method of constructing a parking lot is unacceptable. In the past, we have denied this type of construction for many developments. This could set a precedence whereby other projects might seek similar special exceptions. The staff offered to allow them to apply an emulsion that would better solidify the base material as an alternative.

In addition to the parking deviation, the applicant is proposing an alternative material (metal)

other than the required masonry wall enclosure for the trash dumpsters.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objection.

Fire: (Approved)

No objections.

Building: (Approved)

No objection.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance and no hardship has been shown, staff recommends denial of this request for a Special Exception to the City of Midland Zoning Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties, for an alternative building materials for the dumpster screening wall and denial of a deviation from Section 6.02(B) - General Requirements, a deviation from off-street parking requirements.

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

A. **That the dumpster screening wall shall be constructed with metal building material.**

B. **That the parking lot shall be paved with asphalt millings. No other deviation from the Zoning Ordinance's off-street parking requirements is permitted.**

As of May 6, 2022, staff has not received any letters of objection.

Attachments:

Application
Site Plan (Exhibit A)

Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), BY PERMITTING A DEVIATION FROM OFF-STREET PARKING REQUIREMENTS; ESTABLISHING A THREE-YEAR TERM FOR SAID SPECIAL EXCEPTION; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE

CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas. Said special exception shall allow a deviation from off-street parking requirements.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the parking lot shall be paved with asphalt millings. No other deviation from the Zoning Ordinance's off-street parking requirements is permitted.

B. That a dumpster screening wall need not be constructed.

C. That said special exception shall be limited to a term of three years, which shall commence on the date of final approval of this ordinance; provided, however, that the City Council may renew or extend the term.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this

ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



MIDLAND
Planning Division

Special Exception Application

Project Number: E-22-0078

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Sean Elphick		Phone (432) 553-9250 Email sean-elphick@yahoo.com	
Address 11 marchelle ct.	City midland	State TX	Zip 79705

Property Owner Printed Name: Sean Elphick		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4401 N. Big Spring St. Midland, TX 79705

Legal Description
Lot: Block: Subdivision:

Current Zoning:

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☐ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: parking pavement and garbage enclosure

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
MAY 25 2022

Signatures	
Applicant (signature):	Date: May 25, 2022
Applicant (printed): Sean Elphick	
Property Owner (signature):	Date: May 25, 2022
Property Owner (printed): Sean Elphick	

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 Sean Elphick who, being by me duly sworn, upon oath says: That (s)he is authorized by HEB, 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 26th day of May, 2022 to certify which witness my hand and seal of office.

DALIA SALINAS
My Notary ID # 128541568
Expires March 3, 2023

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☑ Dimensioned Site Plan
☐ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By: ES	Date: 5/26/22

MAY 26 2022

****Application will not be considered for scheduling until reviewed by a planner.****

City Council Meeting

Item Number: 18

Meeting Date: June 14, 2022

To: City Council / City Manager

From: Paul Rodriguez, Planner

Subject: **AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), BY PERMITTING (1) THE USE OF ALTERNATIVE BUILDING MATERIALS FOR THE DUMPSTER SCREENING WALL AND (2) A DEVIATION FROM OFF-STREET PARKING REQUIREMENTS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Sean Elphick, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties, for an alternative building material for the dumpster screening wall and denial of a deviation from Section 6.02(B) - General Requirements, a deviation from off-street parking requirements, for the property located at 4401 North Big Spring Street.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The property north is zoned PD, Planned Development District for a Recreation Center and the location of MISD softball fields. The property to the east is zoned RR, Regional Retail District and the location of a shopping center. The property to the south is zoned PD, Planned Development District for an Office Center and the location of vacant land. The property to the west is zoned 2F, Two-Family Dwelling District and the location of the Midland Executive Airpark.

Discussion:

The applicant's property is located at 4401 North Big Spring Street and the location Tailgate. The applicant is requesting a special exception to deviate from parking pavement material requirement and to alter the type of material of a trash dumpster enclosure.

Per our City of Midland Zoning Ordinance, Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties

2. Screening Required
   a. The container shall be screened by the masonry wall capable of screening the area.

Also, per Section 6.02(B) - General Requirements:

1. Parking Areas and Driveways
   Unless otherwise noted, parking areas and driveways shall be curbed, paved and maintained to the City specifications.

The property currently in operation and has been for the past year. The floor plan as shown in Exhibit A indicated that the property would have a total of 54 parking spaces, in which two are accessible parking spaces. Upon a final inspection of the project. It was identified that the surface of this parking lot consisted of asphalt millings for pavement. As shown in the attached photos, the striping does not remain intact. The applicant proposed to restripe every month. From the staff's viewpoint, this method of constructing a parking lot is unacceptable. In the past, we have denied this type of construction for many developments. This could set a precedence whereby other projects might seek similar special exceptions. The staff offered to allow them to apply an emulsion that would better solidify the base material as an alternative.

In addition to the parking deviation, the applicant is proposing an alternative material (metal) other than the required masonry wall enclosure for the trash dumpsters.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objection.

Fire: (Approved)

No objections.

Building: (Approved)

No objection.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance and no hardship has been shown, staff recommends denial of this request for a Special Exception to the City of Midland Zoning Section 6.01(G) - Screening of Outdoor Waste Storage for Nonresidential, Single-Family Attached, and Multiple Family Residential Properties, for an alternative building materials for the dumpster screening wall and denial of a deviation from Section 6.02(B) - General Requirements, a deviation from off-street parking requirements.

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

A. **That the dumpster screening wall shall be constructed with metal building material.**

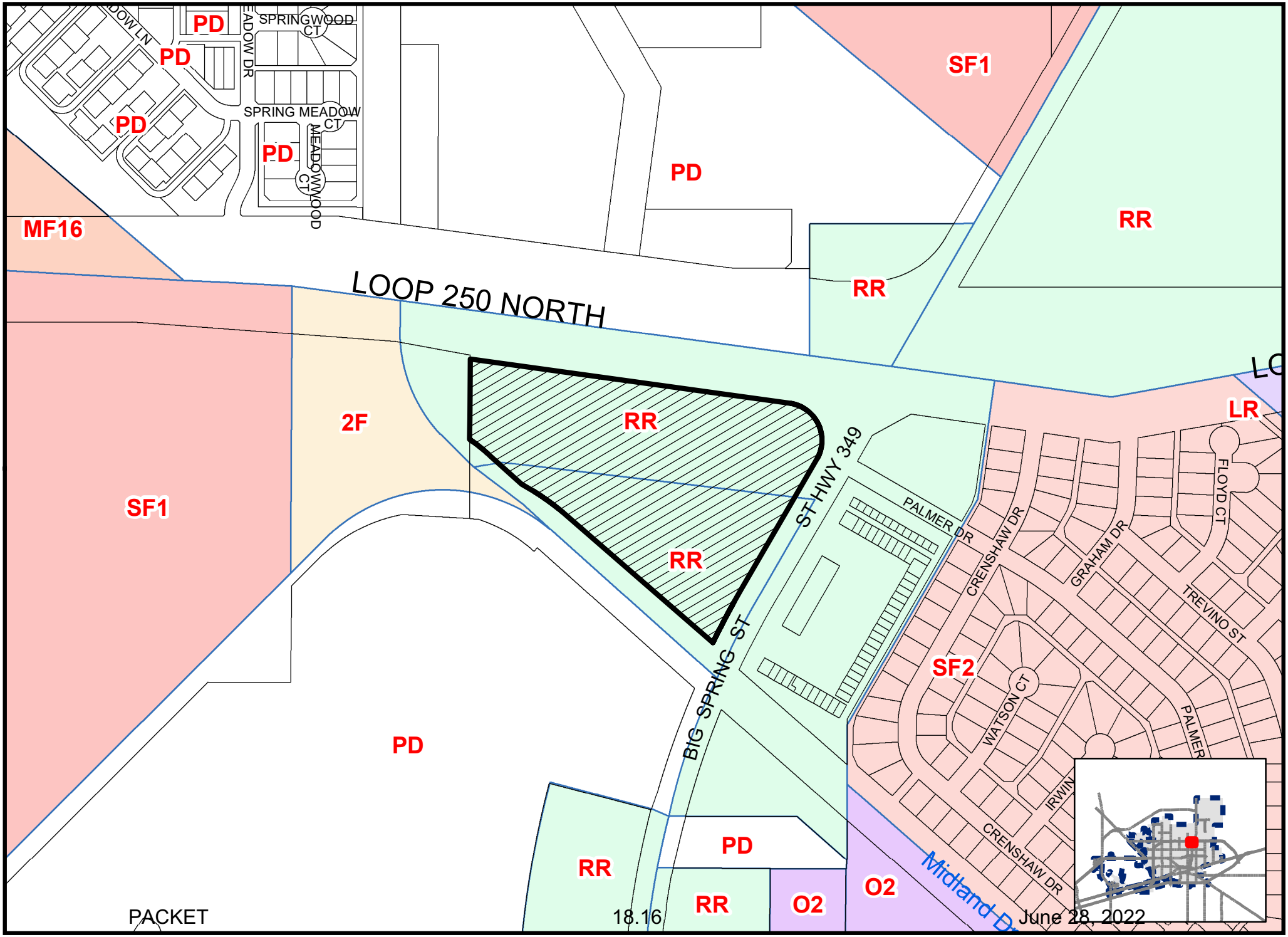
B. **That the parking lot shall be paved with asphalt millings. No other deviation from the Zoning Ordinance's off-street parking requirements is permitted.**

As of May 6, 2022, staff has not received any letters of objection.

Attachments:

Application
Site Plan (Exhibit A)
Maps

City Manager's Office



Map By ES, 06/01/2022

E-22-0078

Scale: 1" = 400'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




HAYASHI
JAPANESE HIBACHI & SUSHI


SOUTHBOUND
TRUCKS MUST
USE LOOP 250
ENTRANCE



City Council Meeting

Item Number: 19

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: **The proposed granting of oil and gas well permits to Permian Deep Rock Oil Co., LLC ("Operator") for the drilling of the following oil and gas wells: Rebel #H150SS and Rebel #H160MS; said wells being generally located between 1,942 feet and 2,032 feet west of South Lamesa Road and between 165 feet and 167 feet south of I-20 THIS IS A PUBLIC HEARING ONLY (DISTRICT 2) (DEVELOPMENT SERVICES)**

Purpose:

The proposed granting of oil and gas well permits to Permian Deep Rock Oil Co., LLC ("Operator") for the drilling of the following oil and gas wells: Rebel #H150SS and Rebel #H160MS; said wells being generally located between 1,942 feet and 2,032 feet west of South Lamesa Road and between 165 feet and 167 feet south of I-20. Council may consider these permits following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval with updated exhibit. A 16 ft. sound wall will be used during drilling and completion operations being located on the north side of location. There have been previous permitted applications near this well pad requiring the same variances. The operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee,

Permian Deep Rock Oil is requesting the following variances:

.
(1) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(2) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(3) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation due to no city water is available.
(4) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Morris William Jr.

City Manager's Office

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
05/02/2022	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Kyle M. Hammond	500 W. Wall St. Ste 300 Midland, TX 79701	432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions within Rebel Unit

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped pastures, service company yards and apartment complex

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,

Current Tax Roll from Midland Central Appraisal District), **which lists**

the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

***ATTACHED AS EXHIBIT E* is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Rebel #H150SS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 105' FSL & 1942' FEL,
Section 2 Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].**

***ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

***ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations).* [See § J(16) and (20)].**

***ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

***ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

***ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)].**

***ATTACHED AS EXHIBIT M*: No city roads will be used**

***ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V: Applicants variances

Permian Deep Rock Oil Compnay
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

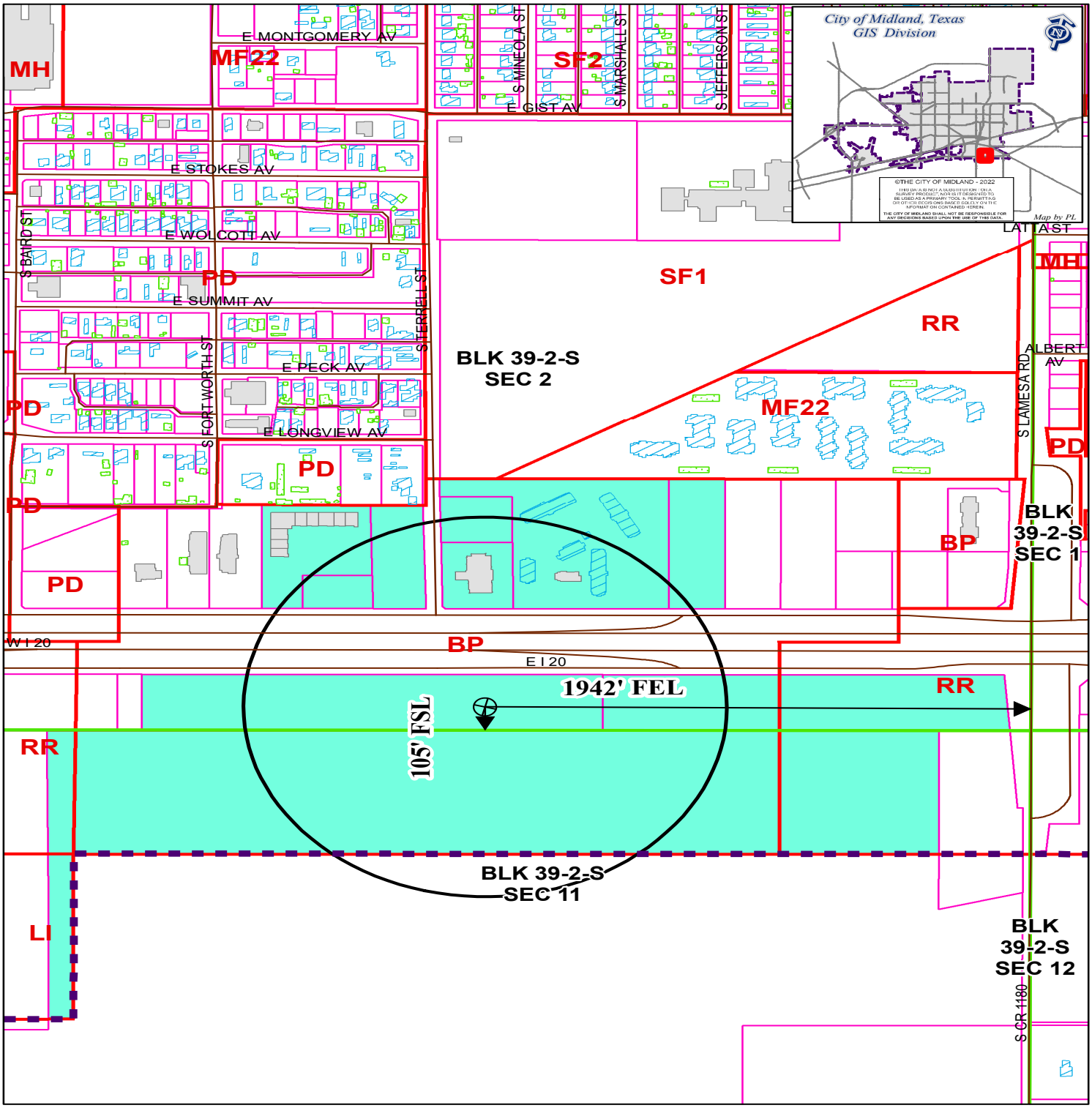
County of Midland)

Kyle Hammond , personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Estella Peña
Notary Public, State of Texas

[S E A L]

ESTELLA PENA
Notary Public, State of Texas
My Commission Expires
August 03, 2025
NOTARY ID 13123361-8



LOCATION AND ZONING MAP

Oil - 043445 - 2022 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 105' FSL and 1,942' FEL, Section 2, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,942 feet west of South Lamesa Road and 167 feet south of I-20.

Rebel #H150SS

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR, MR, HR	LOW RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

SCALE: 1" = 300'

0' 150' 300'

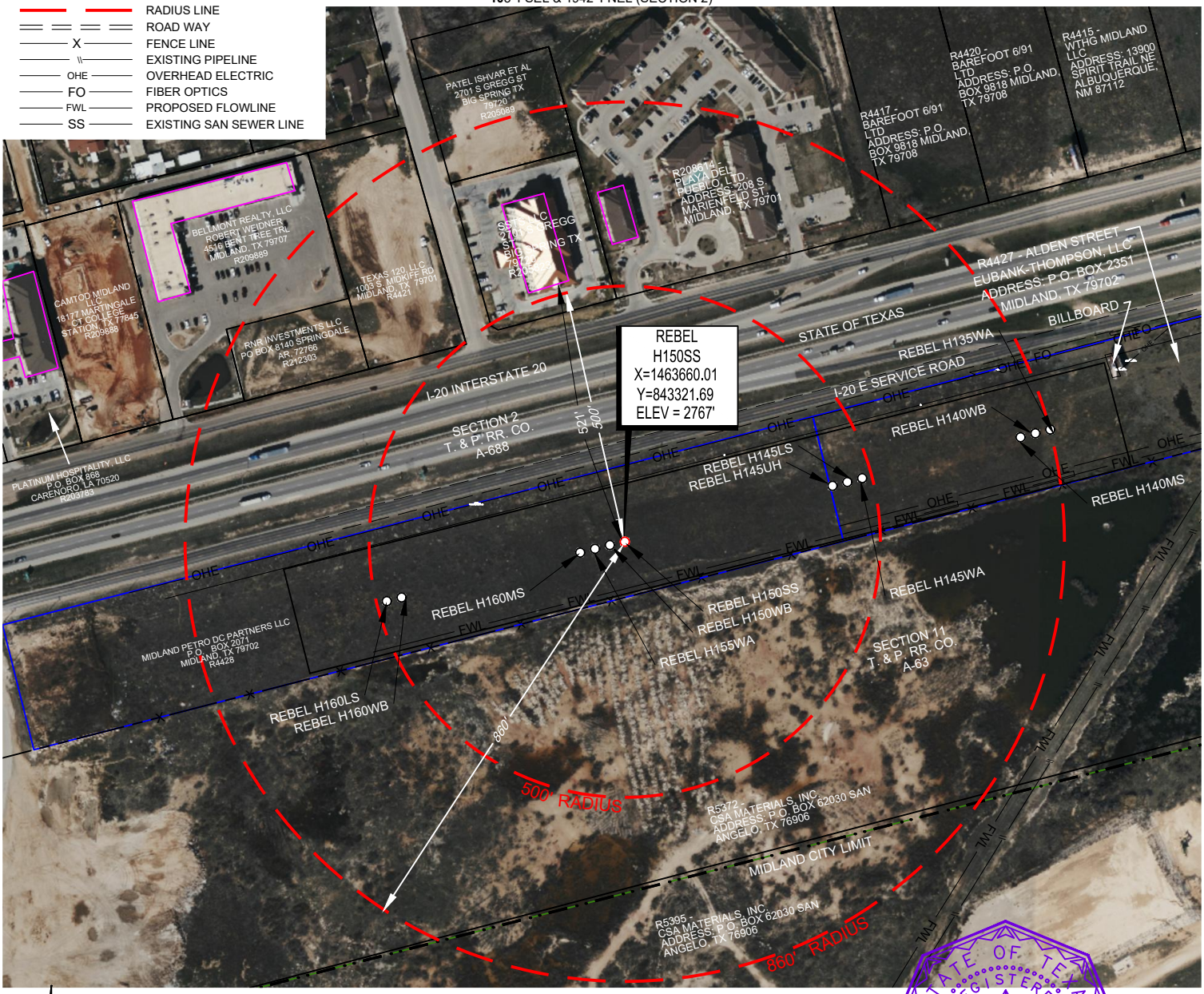
LEGEND

- SURVEY/SECTION LINE
- TRACT BORDER
- RADIUS LINE
- ROAD WAY
- X — FENCE LINE
- \\ — EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- FO — FIBER OPTICS
- FWL — PROPOSED FLOWLINE
- SS — EXISTING SAN SEWER LINE

SECTION 2, T. & P. RR. CO. SURVEY, A-688
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **REBEL H150SS**
105' FSEL & 1942' FNEL (SECTION 2)

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: APRIL 5, 2022

REBEL H150SS	REVISION: INT	DATE
	DRH	03/22/2022
DATE: 03/16/2022	DRH	04/06/2022
FILE: CD_REBEL_H150SS_REV2		
DRAWN BY: DRH		
SHEET : 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. THIS PROPOSED LOCATION HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, OFFICIAL SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED PERMIAN DEEP ROCK OIL CO., LLC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE.
4. OWNERSHIP INFORMATION SHOWN HEREON WAS TAKEN FROM THE CITY OF MIDLAND, TEXAS GIS SITE.
5. DISTANCES SHOWN HEREON TO EXISTING STRUCTURES ARE SCALED PER AERIAL MAP.

S:\SURVEY\ARRINGTON\DP_7B_UNIT\FINAL_PRODUCTS\CITY_PERMITS\CD_REBEL_H150SS_REV2.DWG 4/6/2022 8:52:35 AM dharris

EXHIBIT "G"

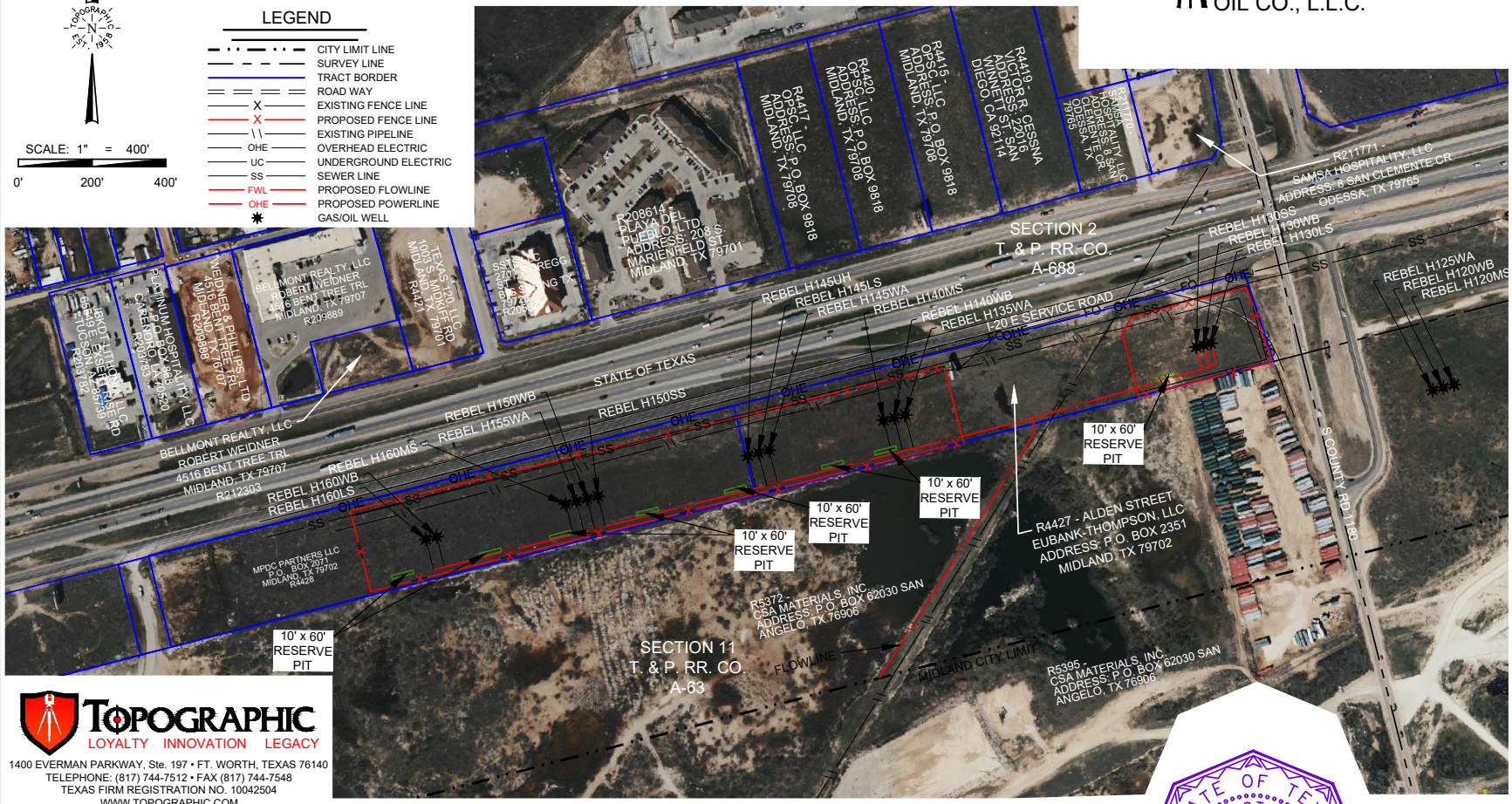
SECTION 2, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-688
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.

SCALE: 1" = 400'
0' 200' 400'

LEGEND

- CITY LIMIT LINE
- SURVEY LINE
- TRACT BORDER
- ROAD WAY
- EXISTING FENCE LINE
- PROPOSED FENCE LINE
- EXISTING PIPELINE
- OVERHEAD ELECTRIC
- UNDERGROUND ELECTRIC
- SEWER LINE
- PROPOSED FLOWLINE
- PROPOSED POWERLINE
- GAS/OIL WELL



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TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

REBEL UNIT
CITY PERMIT

REVISION:	
INT	DATE
DRH	12/17/2021
DRH	01/14/2022
DRH	03/07/2022
DRH	04/07/2022
DRH	04/14/2022

DATE: 12/07/2021
FILE: SK_REBEL_UNIT_PERMIT_REV5
DRAWN BY: DRH
SHEET : 3 OF 8

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. CERTIFICATION IS MADE ONLY FOR PROPOSED UTILITIES AND SITES, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY PERMIAN DEEP ROCK OIL CO., L.L.C. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS EASEMENT, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ALL PROPOSED INFRASTRUCTURE SHOWN HEREON IS SOLELY FOR THE PURPOSE OF APPLYING FOR A PERMIT WITH THE CITY OF MIDLAND, TEXAS. THIS IS EXHIBIT IS NOT TO BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH THE T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THESE ARE FOR PLANNING PURPOSES ONLY.
5. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: November 23, 2021

S:\SURVEY\ARRINGTON\DP_7B_UNIT\FINAL_PRODUCTS\SKETCH\SK_REBEL_UNIT_PERMIT_REV5.DWG 4/14/2022 12:36:35 PM dharris

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
05/02/2022	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Kyle M. Hammond	500 W. Wall St. Ste 300 Midland, TX 79701	432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions within Rebel Unit

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped pastures, service company yards and apartment complex

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,

Current Tax Roll from Midland Central Appraisal District), **which lists**

the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

***ATTACHED AS EXHIBIT E* is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Rebel #H160MS

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 107' FSL & 2032' FEL,
Section 2 Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].**

***ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

***ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations).* [See § J(16) and (20)].**

***ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

***ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

***ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)].**

***ATTACHED AS EXHIBIT M*: No city roads will be used**

***ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* : Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V: Applicants variances

Permian Deep Rock Oil Compnay
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

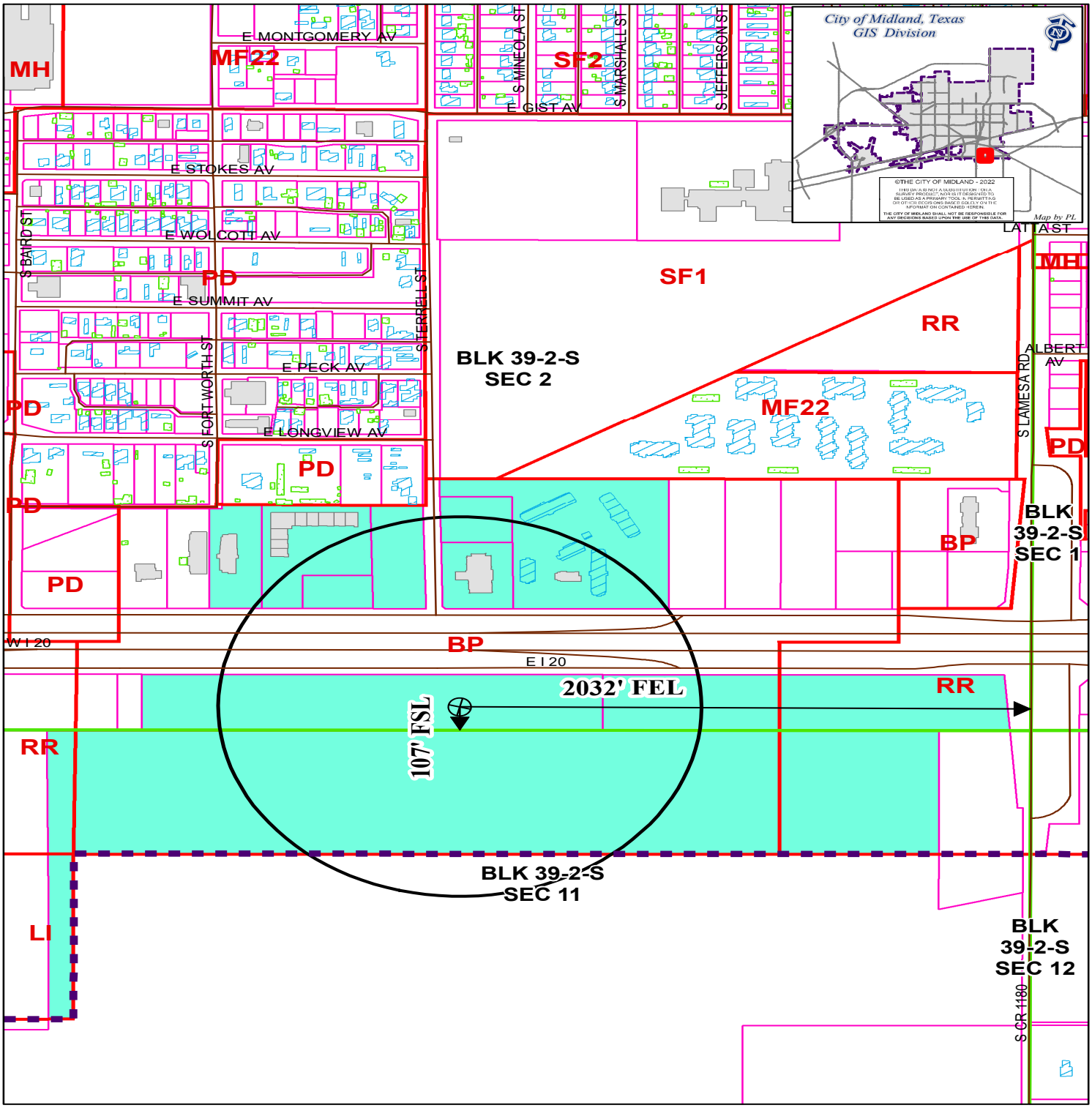
County of Midland)

Kyle Hammond , personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Estella Peña
Notary Public, State of Texas

[S E A L]

ESTELLA PENA
Notary Public, State of Texas
My Commission Expires
August 03, 2025
NOTARY ID 13123361-8



LOCATION AND ZONING MAP

Oil - 043444 - 2022 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 107' FSL and 2,032' FEL, Section 2, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 2,032 feet west of South Lamesa Road and 165 feet south of I-20.

Rebel #H160MS

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR, MR, HR	LOW RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

SCALE: 1" = 300'

0' 150' 300'

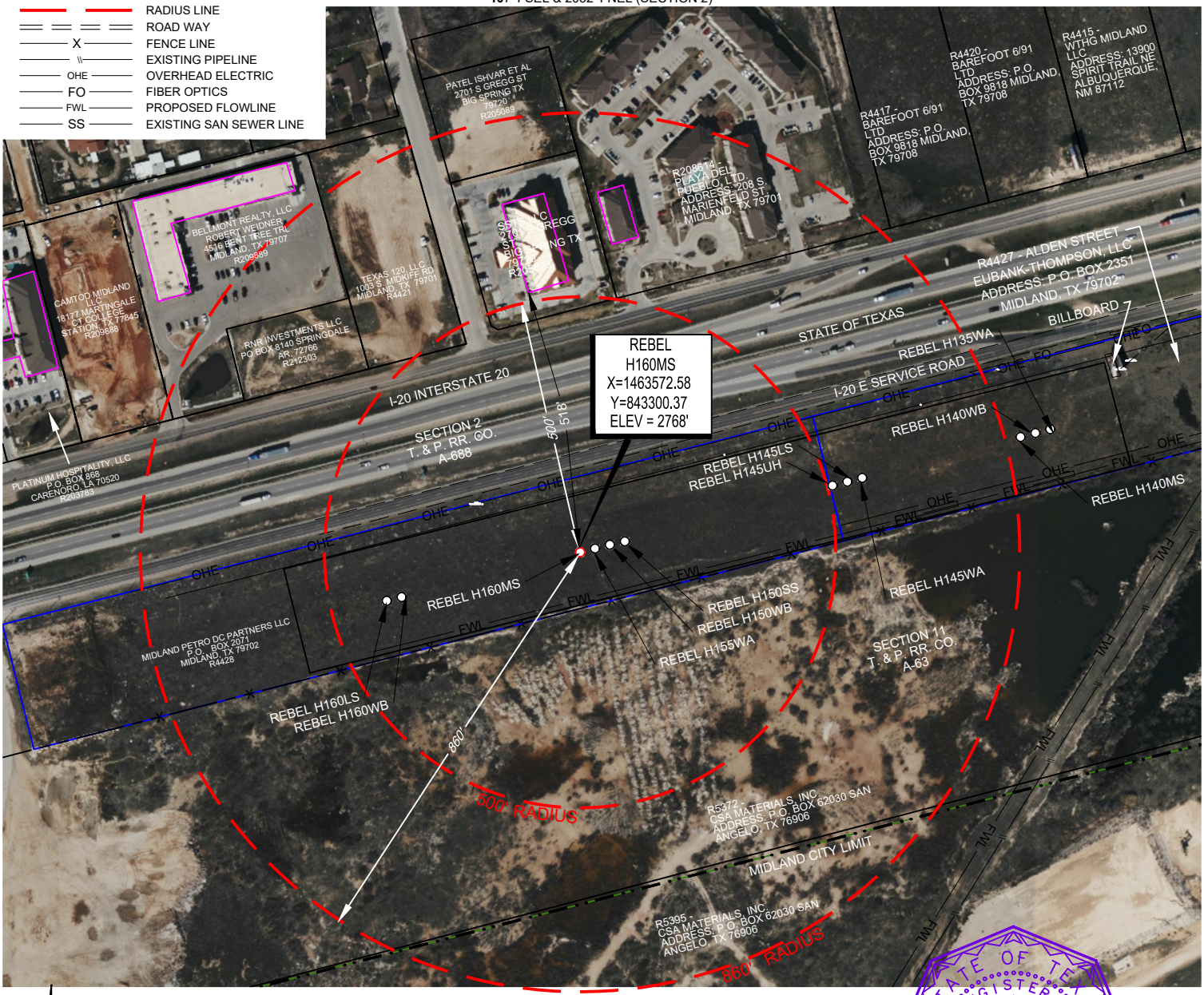
LEGEND

- SURVEY/SECTION LINE
- TRACT BORDER
- RADIUS LINE
- ROAD WAY
- X — FENCE LINE
- \\ — EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- FO — FIBER OPTICS
- FWL — PROPOSED FLOWLINE
- SS — EXISTING SAN SEWER LINE

SECTION 2, T. & P. RR. CO. SURVEY, A-688
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **REBEL H160MS**
107' FSEL & 2032' FNEL (SECTION 2)

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: APRIL 5, 2022

REBEL H160MS	REVISION: INT	DATE
	DRH	03/16/2022
DATE: 10/10/2018	DRH	04/06/2022
FILE: CD_REBEL_H160MS_REV3		
DRAWN BY: PA		
SHEET : 1 OF 2		

NOTES:
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PACKET 19.15 June 28, 2022

S:\SURVEY\ARRINGTON\DP_7B_UNIT\FINAL_PRODUCTS\CITY_PERMITS\CD_REBEL_H160MS_REV3.DWG 4/6/2022 8:51:48 AM dharris

City Council Meeting

Item Number: 20

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 1 AND 2, BLOCK 12, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH C STREET), BY PERMITTING A REDUCED MINIMUM NUMBER OF OFF-STREET PARKING SPACES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Marcy Madrid, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 6.02. Off-Street Parking and Loading Requirements* for a reduced number of parking spaces located at 111 N. C Street.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 111. N C Street and the location of a single-family residence. The applicant is wanting to convert the current residence into a coffee shop. The property is zoned O-1, Office District, which allows for the development of coffee shop.

However, this property does not meet the parking requirement. Therefore, the applicant is requesting a special exception to reduce the number of parking spaces required.

Per our City of Midland Zoning Ordinance, *Section 6.02 – Off-Street Parking and Loading Requirements*

> *E. Parking Space Schedule: Nonresidential Uses Applicable to All Districts*
>
> > *23. Restaurant or Cafeteria: On space for every four seats under maximum seating arrangements, minimum of five spaces, plus one space for every 100 square feet of kitchen area.*

The current site plan as shown in Exhibit A shows 11 parking spaces. Based on the site plan, this site requires about 28 parking spaces. As a result, this site will not have enough parking to accommodate the occupancy load of 95 determined by the building official. However, Brew Street is located near Midland Senior High School, which is expecting a heavier pedestrian foot traffic due to its driving demographics. Brew Street will be catering to students walking to and from the restaurant, their primary goal is to create a destination that encourages and prompts walkability. Additionally, there are other means of transportation in this area including a bus stop and a bike route, and this was one of the many reasons why this location was selected. On the other hand, Midland residents are more likely to travel by car, and a lack of parking will force customers to park along the streets or inconvenient spaces. Thus, causing problems including traffic congestion as a motorist cruise for parking or stops in a traffic lane to wait for a space.

This request has been circulated to all pertinent City departments for review and received 3 denials. Below are the departments' comments.

Engineering: (Denied)

See Transportation's comment.

Transportation: (Denied)

By city code, "Vehicular access from a commercial use is only allowed if an alley has been improved to city standards, regardless of when it was platted. Such access connections shall have a permanent opening of not more than 25 feet per separately owned parcel (as per City Code Section 4-1-4)."

By city code, Driveway on Texas and the northern driveway on C street are not allowed.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas issues.

Building: (Denied)

The occupancy number is determined by Section 1004, Table 1004.5 of the 2018 International Building Code. This number is based on the use of the building and the Square Footage of the structure. This number cannot be increased or decreased unless changes to the building take place. Based on the submitted floor plan, the occupancy would be 95.

GIS: (Approved)

N/A

Planning Analysis:

Brew Street is a local coffee shop that will attract new customers in this area. The area consists of small businesses, Midland Senior High School, and First Presbyterian Church. However, the property is constrained to eleven (11) parking spaces due to the existing site layout. They are not allowed a driveway off Texas Avenue and only one driveway off C Street. Furthermore, access from the alley is allowed, but only a 25-foot alley opening or less. Each parking space must be 9 feet x 20 feet. Parking will be an issue, but this area is in a revitalization stage and has focuses on encouraging and supporting walkability movement; Currently there are two other modes of transportation, a bike and bus route. Therefore, this will encourage people to use other modes of travel. One way to solve the parking issue would be to share parking facilities among a different business in the area to take advantage of different peak periods. For example, businesses with no night-time hours can make their parking available for those that have night-time hours.

Should the City Council approve this request, the property shall be subject to conditions A through C:

Conditions:

A. **That the minimum number of off-street parking spaces on the property shall be eleven (11).**

B. **That the locations of the off-street parking spaces shall significantly conform to those shown in Exhibit "A", which is attached hetero and incorporated herein.**

C. **That the vehicular access points shown in Exhibit "A" are illustrative only. This ordinance does not grant a special exception, variance, permit or approval pertaining to vehicular access points.**

Letters of Objection:

As of June 16, 2022, staff has not received any letters of objection

Attachments:

Application
Site Plan (Exhibit A)
Floor Plan
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 1 AND 2, BLOCK 12, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST TEXAS AVENUE AND NORTH C STREET), BY PERMITTING A REDUCED MINIMUM NUMBER OF OFF-STREET PARKING SPACES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Ordinance, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as Lots 1 and 2, Block 12, West End Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum number of off-street parking spaces.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the minimum number of off-street parking spaces on the Property shall be eleven (11).

B. That the locations of the off-street parking spaces shall significantly conform to those shown in Exhibit "A", which is attached hereto and incorporated herein.

C. That the vehicular access points shown in Exhibit "A" are illustrative only. This ordinance does not grant a special exception, variance, permit or approval pertaining to vehicular access points.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

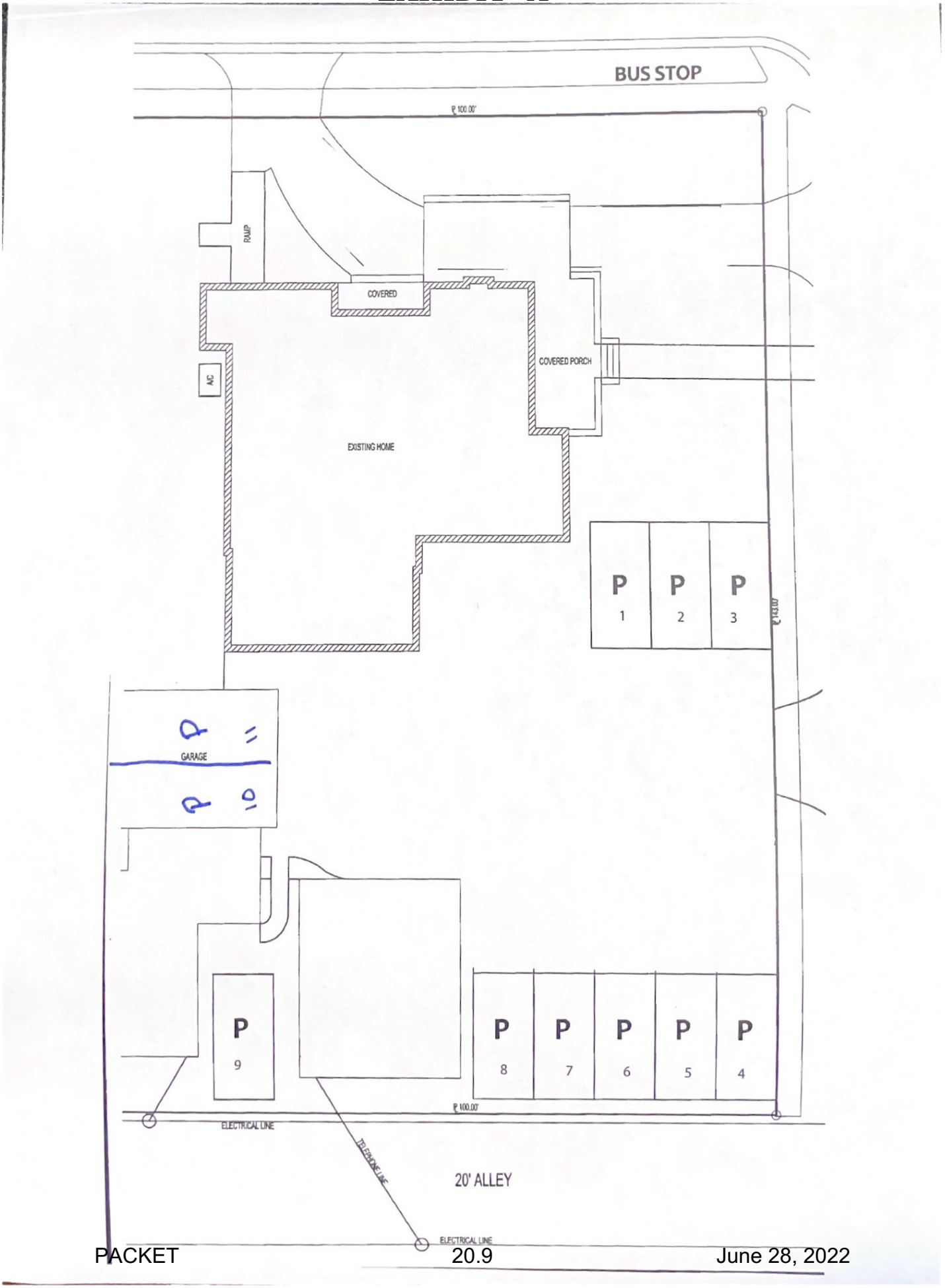
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"


BUS STOP
℄ 100.00'
RAMP
COVERED
COVERED PORCH
A/C
EXISTING HOME
P 1
P 2
P 3
℄ 143.00'
GARAGE
P 9
P 8
P 7
P 6
P 5
P 4
℄ 100.00'
ELECTRICAL LINE
TELEPHONE LINE
20' ALLEY
ELECTRICAL LINE

MIDLAND Planning Division

Special Exception Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Brew St. LLC		Phone (432) 638-4251 Email info@thebrewstreet.com	
Address 111 N.C Street	City Midland	State TX	Zip 79701

Property Owner Printed Name: Carlos Madrid		Phone (432) 559-5886 Email info@thebrewstreet.com	
Address 1104 WCR 143	City Midland	State Tx	Zip 79706

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 111 North C Street

Legal Description
Lot: 001&2 Block: 012 Subdivision: West End Addition

Current Zoning: O-1

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: Not adequate Parking per occupancy code. Asking for an exception to parking requirement to get to 98 occupancy considering heavy foot traffic & Proximity to downtown

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature):	Date: 6/10/22
Applicant (printed): Marcy Madrid	
Property Owner (signature):	Date: 6/10/22
Property Owner (printed) : Marcy Madrid	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

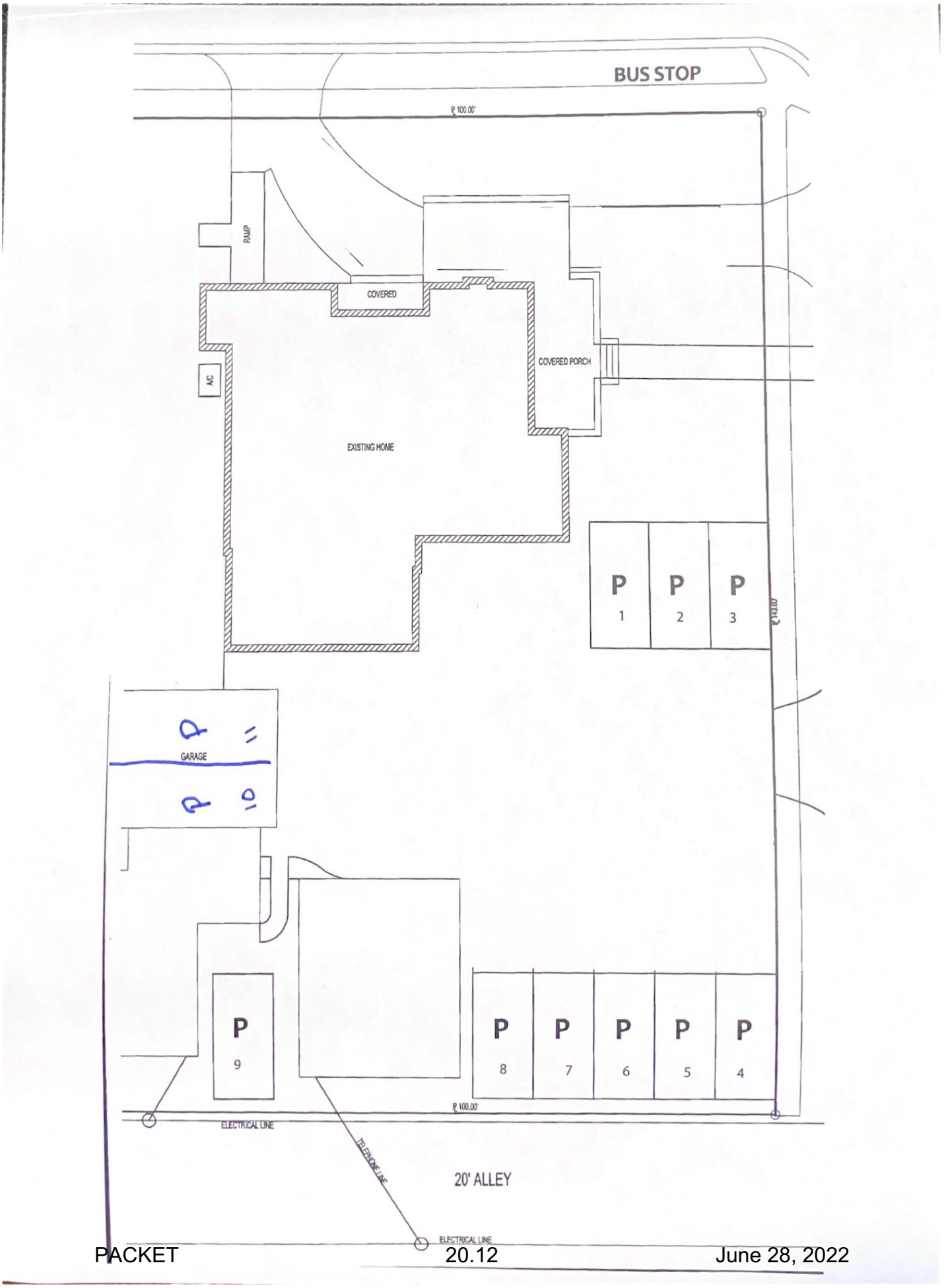
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

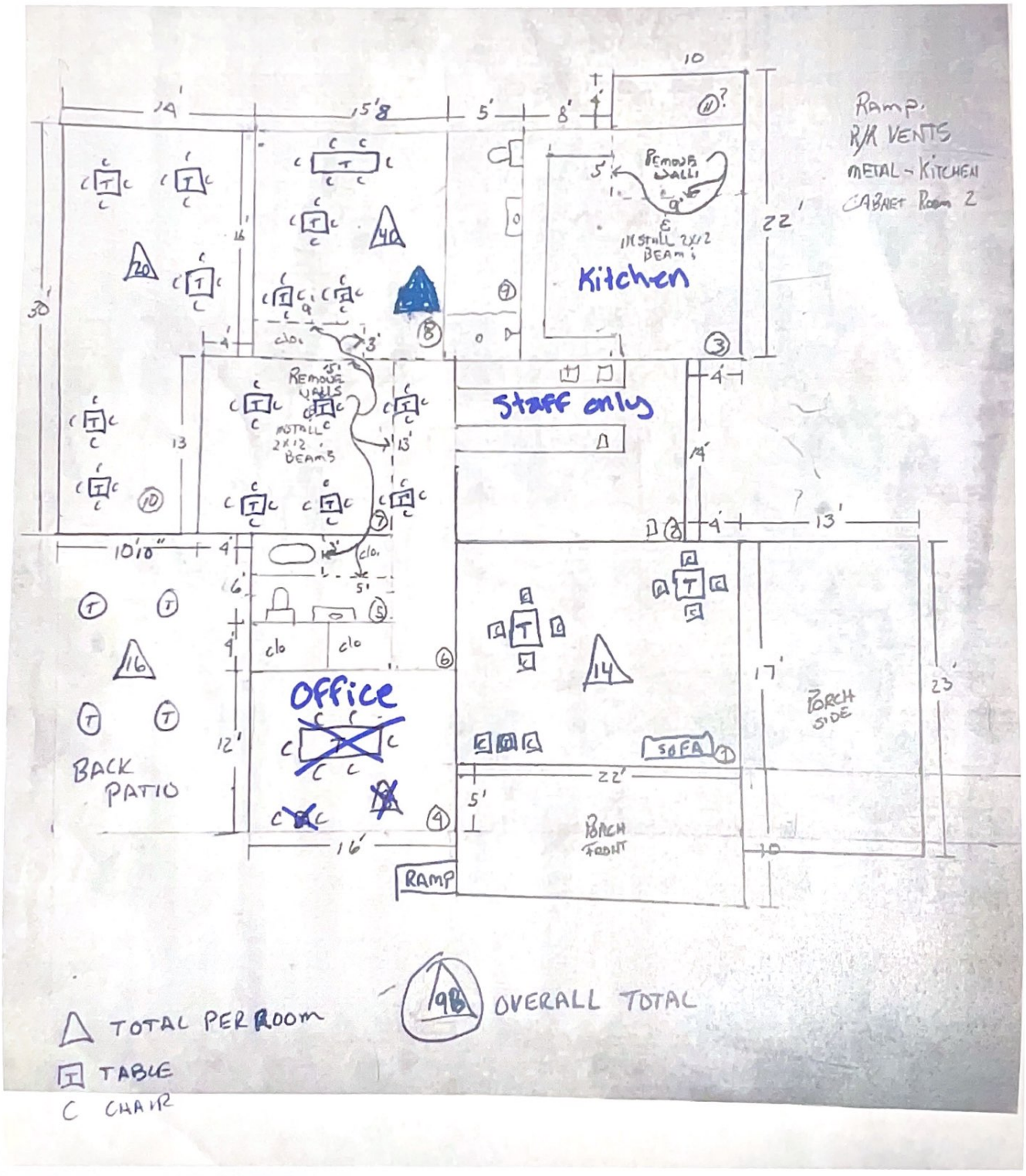
_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

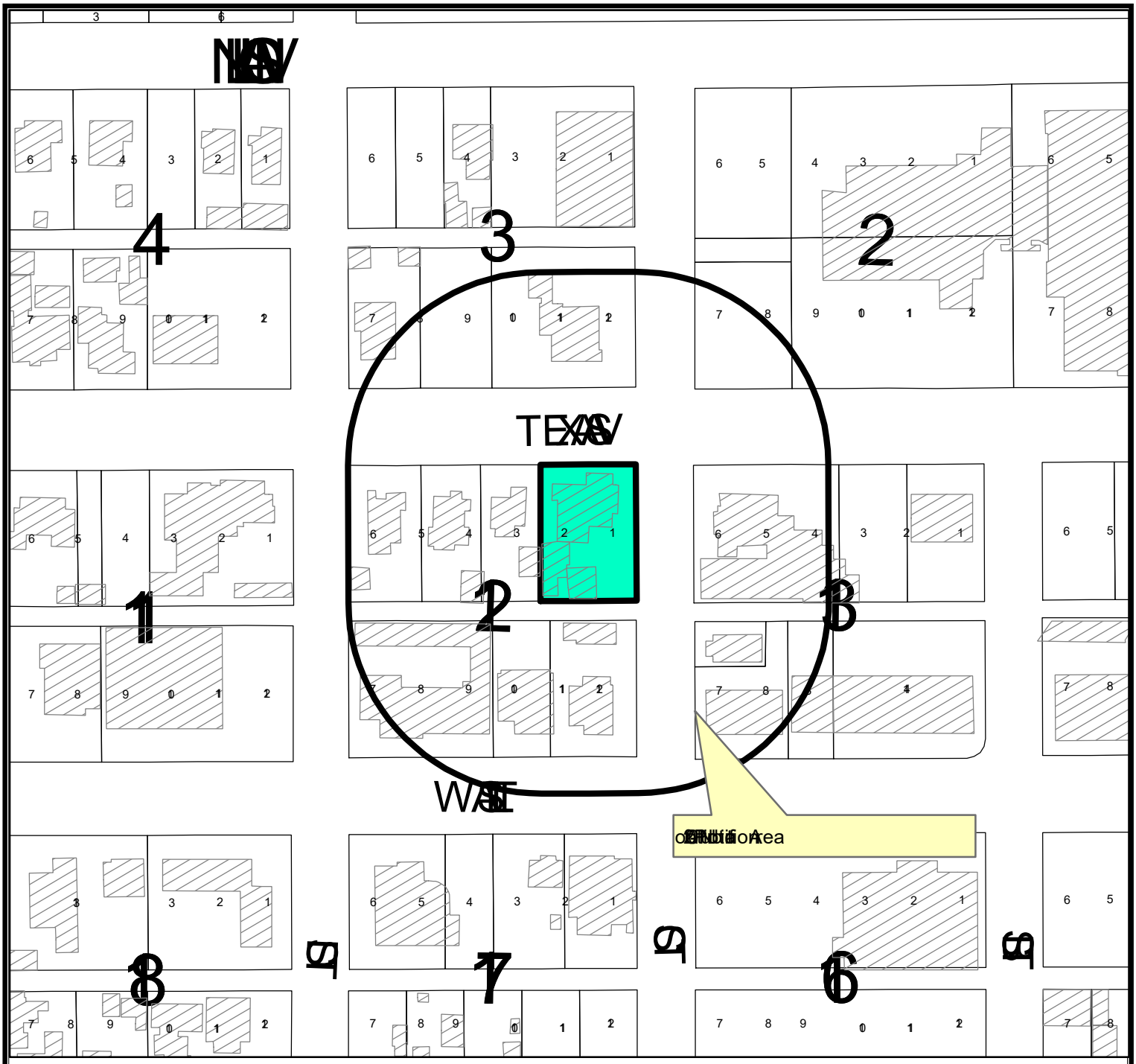
FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****


BUS STOP
℄ 100.00'
RAMP
COVERED
COVERED PORCH
A/C
EXISTING HOME
P 1
P 2
P 3
℄ 143.00'
GARAGE
P 9
P 8
P 7
P 6
P 5
P 4
℄ 100.00'
ELECTRICAL LINE
TELEPHONE LINE
20' ALLEY
ELECTRICAL LINE


Ramp.
R/R VENTS
METAL - KITCHEN
CABINET Room 2
Kitchen
Staff only
Office
BACK PATIO
RAMP
PORCH SIDE
PORCH FRONT
SOFA
REMOVE WALLS
INSTALL 2X12 BEAMS
REMOVE WALL
INSTALL 2X12 BEAMS
TOTAL PER ROOM
TABLE
CHAIR
98
OVERALL TOTAL



LOCATION MAP

E-22-0079 **Scale: 1" = 200'**

Consider a request by Brew Street, LLC for a Special Exception from the City of Midland Zoning Ordinance, Section 6.02 Off-Street Parking and Loading Requirements for a reduced number of parking spaces on Lot 1 and 2, Block 12, West End Addition, City and County of Midland, Texas.

(Generally located on the southwest corner of the intersection of W. Texas Avenue and N. C Street. Council District 3)

LEGEND

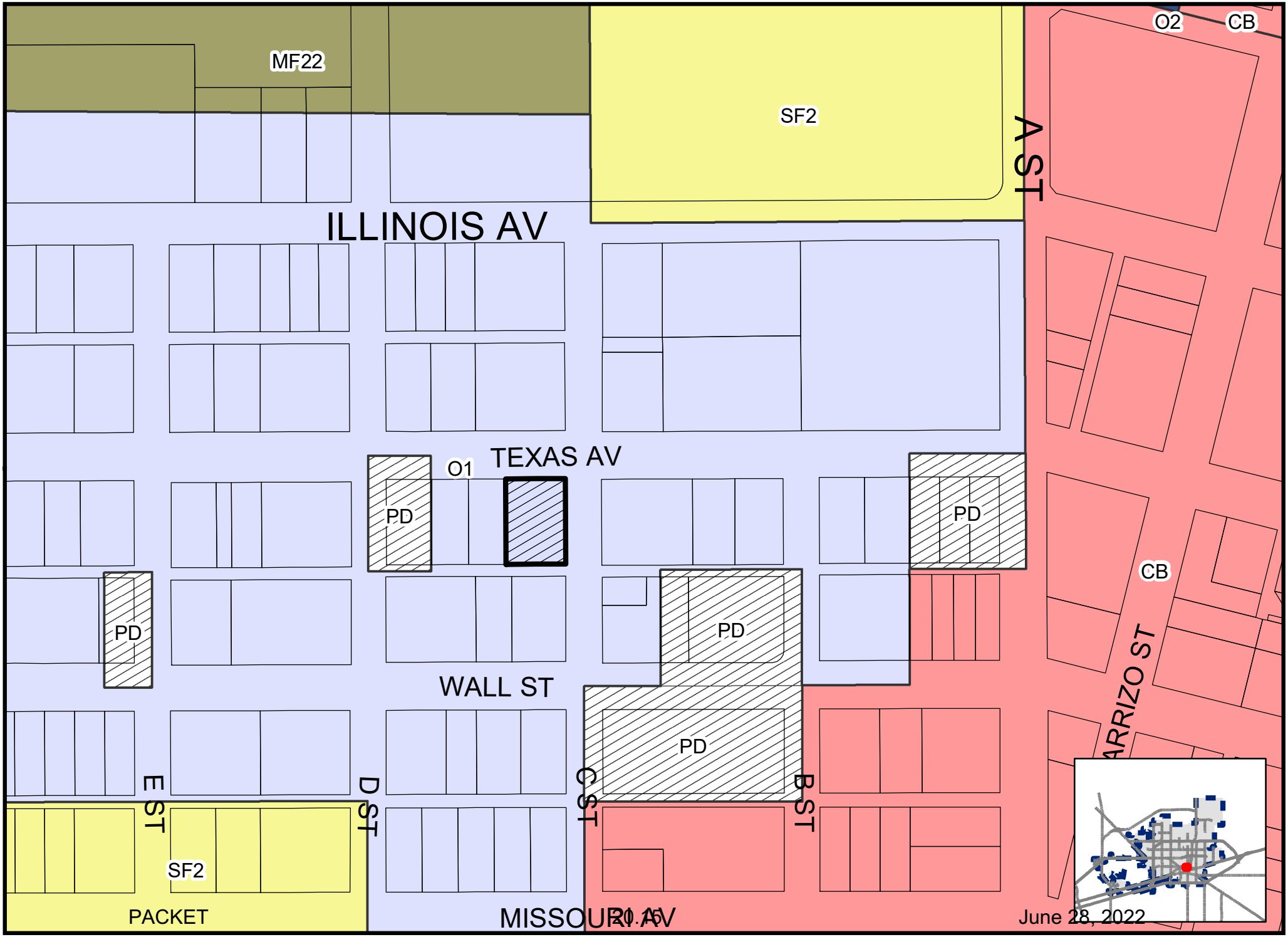
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By Km, 06/06/2022

E-22-0079

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.


TEXAS
ONE WAY
STOP
ROAD
CLOSED


TAHOE




1ST
ALARM
www.1st-ALARM.com
432-530-3535
LIC. #B08923

City Council Meeting

Item Number: 21

Meeting Date: June 28, 2022

To: City Council / City Manager

From: Kelly Martinez, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 0.41-ACRE TRACT OF LAND OUT OF LOT 3, ASHLIN PLACE, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST SIDE OF LIVE OAK DRIVE, APPROXIMATELY 233 FEET SOUTH OF WEST SCHARBAUER DRIVE), WHICH IS PRESENTLY ZONED SF-1, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AN ACCESSORY DWELLING UNIT; 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); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Garner Gonzales, is requesting a Specific Use Designation, without Term, for an accessory dwelling unit at 2 Live Oak Drive.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Current Zoning:

SF-1, Single Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north, east, south, and west are zoned 1F-2, One Family Dwelling District, and the location of residential homes.

Discussion:

The applicant, Garner Gonzales, is requesting a Specific Use Designation, without Term, for an accessory dwelling unit to build a pool/guest house. Per City of Midland Zoning Ordinance, Section 4.03, Use Chart, an accessory dwelling unit is permitted in this zoning district upon approval of a specific use designation.

The floor plan attached hereto as Exhibit "C" shows a two-story structure with two beds, two baths, and a gym. The pool house is approximately 1,319 square feet, which includes a 182 square foot cantilevered patio.

Additionally, the accessory dwelling unit needs to comply with the standards as listed in Section 4.09 Accessory Building and Uses, Section C of the Zoning Ordinances.

C. Accessory Dwelling Units and Use Limitations

a. Accessory Dwelling Units shall not be leased or rented.

b. The living area of an Accessory Dwelling Unit shall not exceed 1,000 square feet or 30 percent of the area of the principal residence, whichever is less.

c. Only one Accessory Dwelling Unit shall be allowed on any individual tract of land.

d. A mobile home, travel trailer, or recreational vehicle shall not be used as a detached Accessory Dwelling Unit.

e. The total number of people, who live on the property, including the principal residence and the Accessory Dwelling Unit, shall not exceed that of a "Family" as defined in the Zoning Ordinance.

Additionally, a special exception for the maximum living area allowed for an Accessory Dwelling Unit was approved on April 26, 2022, by City Council.

This proposed project has been circulated to and reviewed by respective City departments and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

Must maintain at least 5 foot from any other structure including the swimming pool.

Engineering: (Approved with Conditions)

A floodplain compliance pre-construction certificate has already been provided and a floodplain determination and permit has already been issued for this proposed structure. A final elevation certificate based off of finish construction must be provided once construction is complete or before a C.O. can be issued.

Transportation: (Approved)

No objection. [For the Applicant's information only.]

Planning:

This request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision*, Principle 4, "Land use policies and regulations should support diverse housing choices." (Tall City Tomorrow, Page 58). This allows for the property owner to provide an attractive space for their family to enjoy.

Staff recommends approval of this Specific Use Designation, without term, for an accessory dwelling unit, subject to conditions A through E.

Conditions:

A. That the use and development of this structure as an accessory dwelling unit shall significantly conform to the site plan attached hereto, as Exhibit B.

B. That the living area of the accessory dwelling unit shall not exceed 1,137 square feet as shown in "Exhibit C."

C. That the Unit shall not be leased or rented as a separate dwelling unit and shall not be used for any commercial purpose.

D. That the applicant shall secure a Certificate of Occupancy to ensure that the conditions of this permit are satisfied.

E. That the City Secretary is hereby authorized and directed to file a certified copy of this ordinance in the Official Records of Midland County, Texas, as notice to any subsequent purchaser of the Property that the Unit shall not be

leased or rented as a separate dwelling unit and shall not be used for any commercial purposes.

Letters of Objection:

As of June 15, 2022, Staff has received no letters of objection.

Attachments:

Property Survey (Exhibit A)
Site Plan (Exhibit B)
Floor Plan (Exhibit C)
Application
Maps

Morris William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR A 0.41-ACRE TRACT OF LAND OUT OF LOT 3, ASHLIN PLACE, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST SIDE OF LIVE OAK DRIVE, APPROXIMATELY 233 FEET SOUTH OF WEST SCHARBAUER DRIVE), WHICH IS PRESENTLY ZONED SF-1, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AN ACCESSORY DWELLING UNIT; 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); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for a 0.41-acre tract of land out of Lot 3, Ashlin Place, Section 2, City and County of Midland, Texas, said tract being more fully described in Exhibit "A", which is attached hereto and incorporated herein (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 an accessory dwelling unit (the "Unit"), together with the uses permitted in the present SF-1, Single-Family Dwelling District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the development and use of the Unit shall significantly conform to Exhibit "B", which is attached hereto and incorporated herein.

B. That the living area of the Unit shall not exceed 1,137 square feet as shown in Exhibit "C", which is attached hereto and incorporated herein.

C. That the Unit shall not be leased or rented as a separate dwelling unit and shall not be used for any commercial purpose.

D. That the applicant shall obtain a Certificate of Occupancy prior to using the Unit to ensure that the conditions of this Specific Use Designation Without Term are satisfied.

E. That the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas, as notice to any subsequent purchaser of the Property that the Unit shall not be leased or rented as a separate dwelling unit and shall not be used for any commercial purpose.

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., 2022; 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., 2022, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

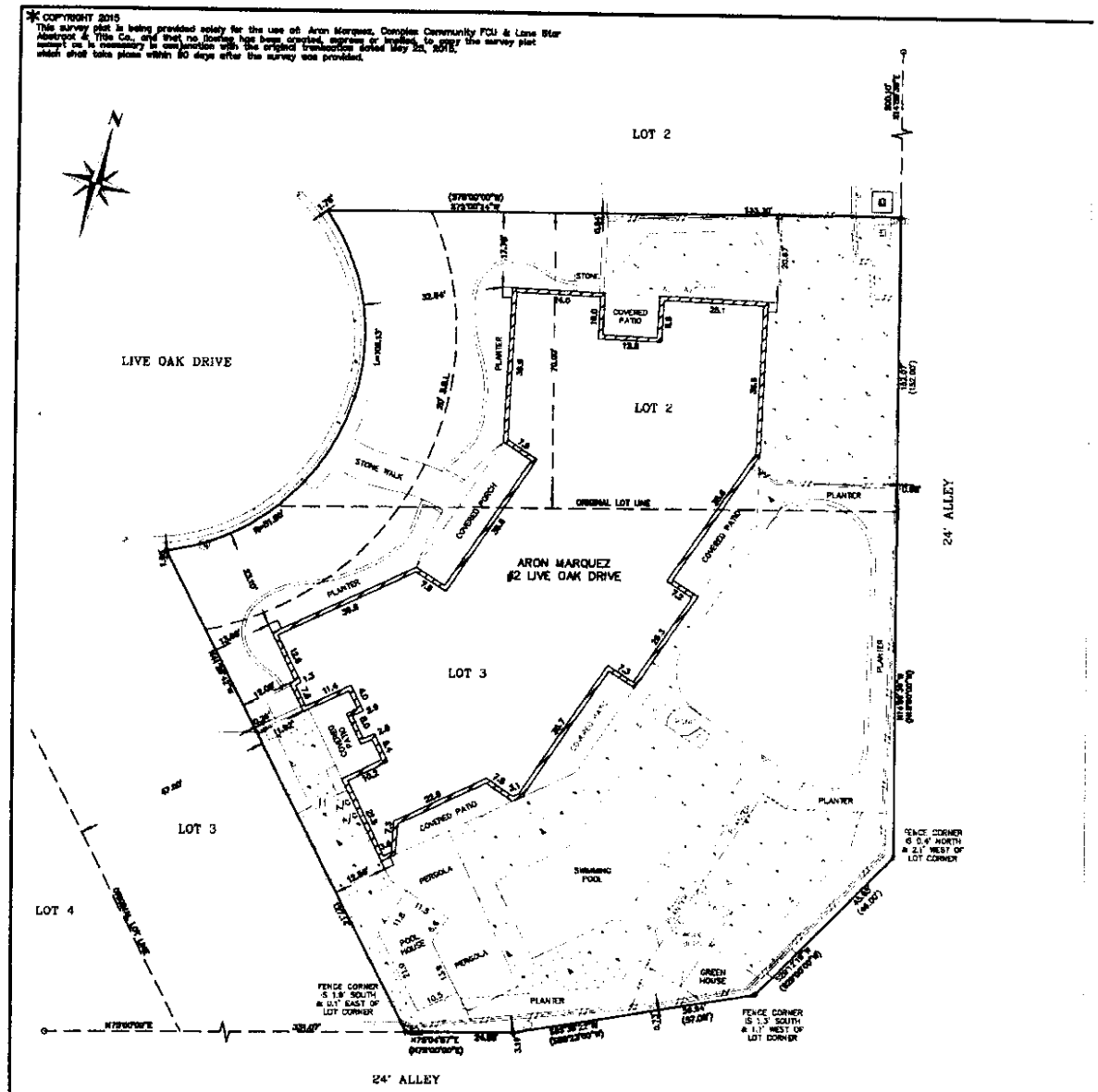
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

COPYRIGHT 2015
This survey plat is being provided solely for the use of: Aron Marquez, Complex Community FCU & Lone Star Abstract & Title Co., and that no liability has been accepted, expressed or implied, to any the survey plat except as is necessary in conjunction with the original transaction dated May 22, 2015, which shall take place within 90 days after the survey was provided.



PLAT OF THAT PORTION OF
LOT TWO (2) LYING SOUTH OF A LINE BEGINNING AT
A POINT IN THE EAST BOUNDARY LINE OF SAID LOT 2 WHICH
IS 50' SOUTH OF THE NORTHEAST CORNER OF SAID
LOT 2 AND DRAWN WESTERLY AND PERPENDICULAR
TO THE EASTERN BOUNDARY LINE OF SAID LOT 2;
AND ALL OF LOT THREE (3), SAVE AND EXCEPT
THAT PORTION OF SAID LOT 3 LYING TO THE WEST OF
A LINE EXTENDING FROM THE NORTH BOUNDARY LINE TO
THE SOUTH BOUNDARY LINE AND PARALLEL TO AND 47'
FROM THE WESTERLY BOUNDARY LINE OF SAID LOT 3,
ASHLIN PLACE, (2ND SECTION),
AN ADDITION TO THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS
ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 167, PLAT RECORDS, MIDLAND COUNTY, TEXAS

The following Easements, Rights-of-way, and Restrictive covenants as listed on this title commitment furnished by:
Lone Star Abstract and Title Co., Inc.,
G.F. No.: 204920

Restrictive Covenants:
Vol. 303, Pg. 187 & 189,
Deed Records,
Midland Co., Texas

Census Tract: 6

This tract is in Flood Zone "AE" as shown on the Flood Insurance Rate Map, Dated September 18, 2009 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0089 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 25th day of May 2015.

Registered Professional Land Surveyor No. 4170
Date: 05/25/15

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL LAND SURVEYING
PROFESSIONAL LAND SURVEYING
P.O. BOX 51682, MIDLAND, TEXAS 79710
VOICE:(432)570-0256 FAX: (432)682-3292 MOBILE: (432)528-1027

ABSTRACT OFFICE: LONE STAR | G.F. # 204920 | COMMITMENT EFFECTIVE DATE: 04/23/15
CAD FILE: BRF18054 | DATA FILE: ZLIVEOAK | DRAWN BY: MARCY M. | BOOK/PAGE: 1/

STATE OF TEXAS REGISTERED BRUCE R. PENNELL 4170 PROFESSIONAL LAND SURVEYOR

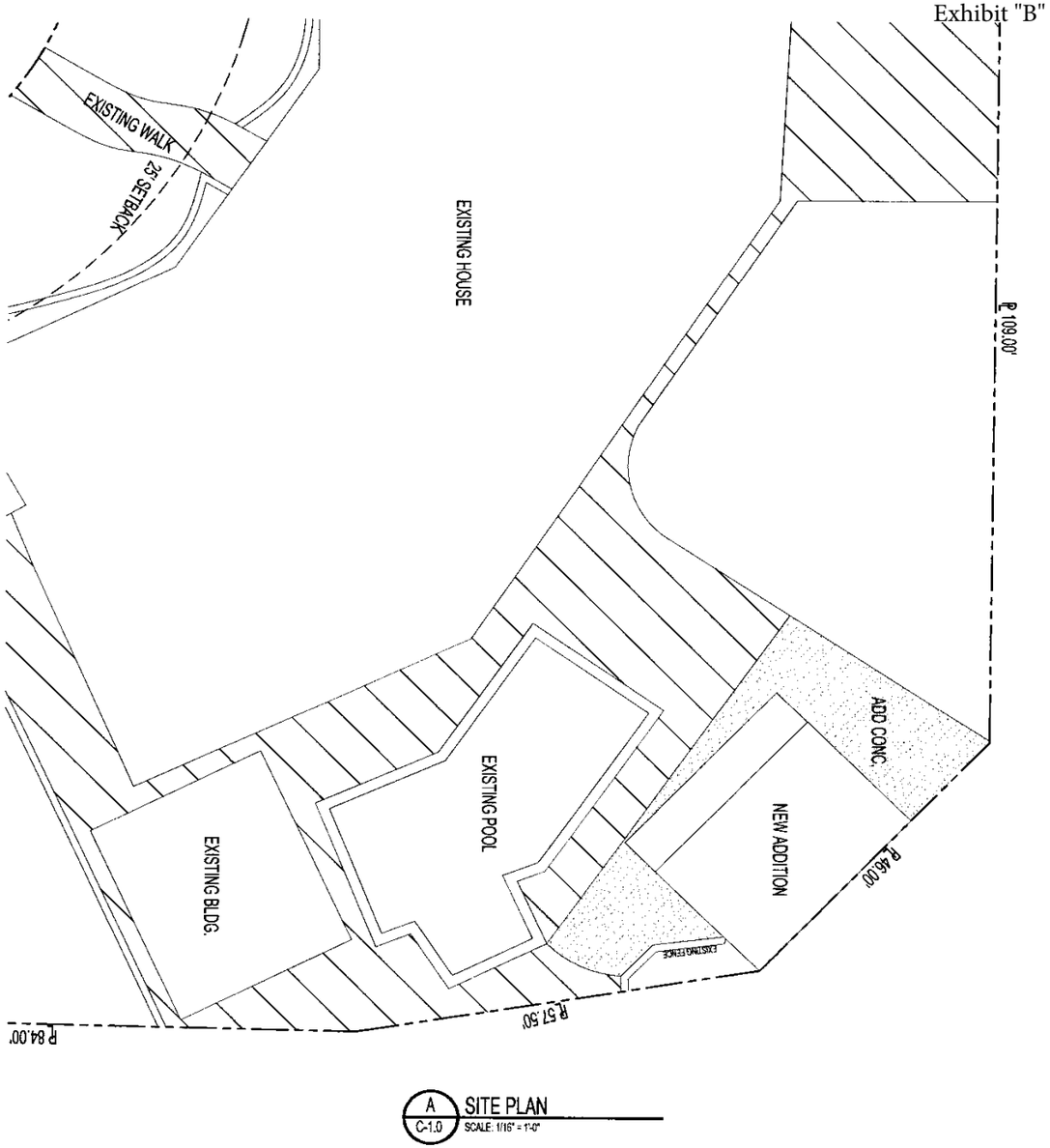
Basis of Bearings:
SOUTH Line of this Block

Bearings and Distances Shown
Inside ( ) Indicate Record Information

20 10 0 20
SCALE: 1" = 20'

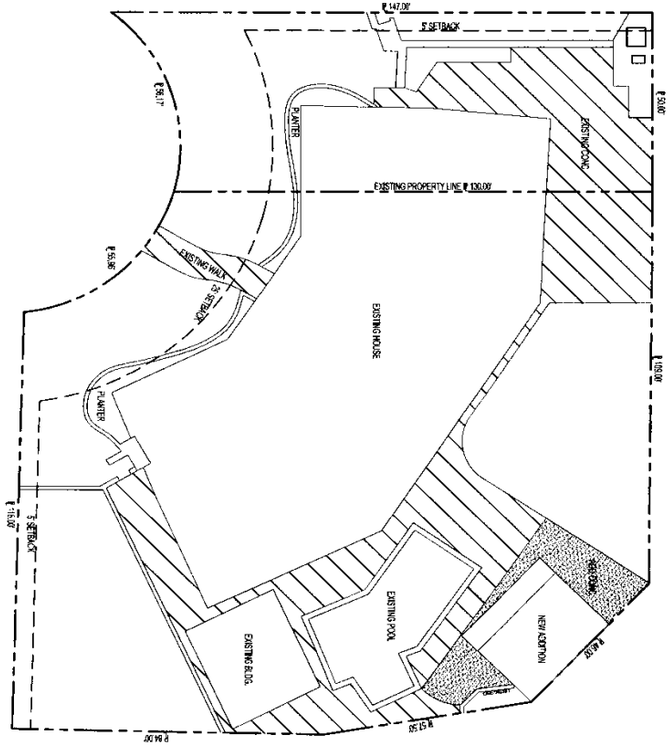
LEGEND
- Set 1/2" I.R. W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- Gas Meter
- Water Meter
- Light Pole
- Power Pole
- Fire Hydrant
- OVERHEAD ELECTRIC
- Guy Wire
- Telephone Junct. Box
- Cable TV Junct. Box
- Buried Pipeline Marker
- Sewer Cleanout
- Underground Electric Box
- Utility Box
- Misc. Sign
- Sanitary Sewer Manhole
- Water Valve
- Gas Valve
- Satellite Dish
- Propane Tank
- Water Well

Exhibit "B"



A C-1.0 SITE PLAN
SCALE: 1/16" = 1'-0"

1. DRIVEWAY DETAILS ON SHEET D-1.0



B C-1.0 SITE PLAN
SCALE: 1/32" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION

THESE DOCUMENTS ARE INTERIM REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION AND/OR PERMIT PURPOSES.

2 LIVE OAK DR.
MIDLAND, TEXAS
LOT 0021, BLOCK 000
ASHLIN PLACE ADDN.

No.	Revision/Issue	Date
1	PRELIMINARY PLANS	01/20/22

DCI
Designers-Consultants-Inspectors

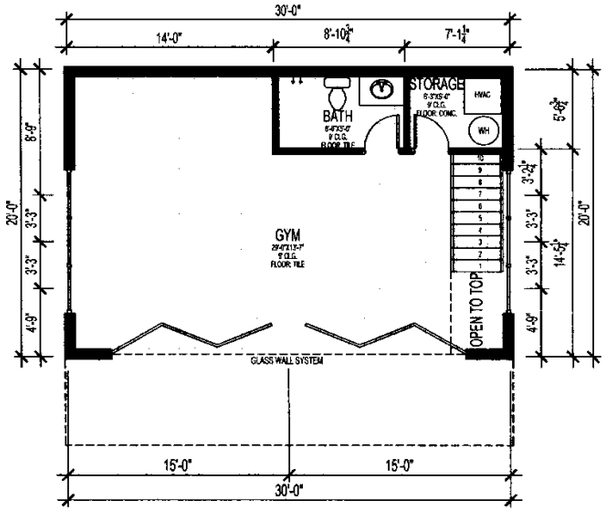
Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 202200
DRAWN BY: CCW
CHECKED BY: CCW

5 8
C-1.0

© 2022 MIDLAND DCI, LLC
The design represented by these plans are copyrighted and are subject to copyright protection as an "Architect Work" Contractor and all other plans, including facts and assumptions of the design, data and other information shown on the design and contract, are subject to change to the design and/or contract when any alterations or changes to the plans and the data shown on the design are not the responsibility of the design.

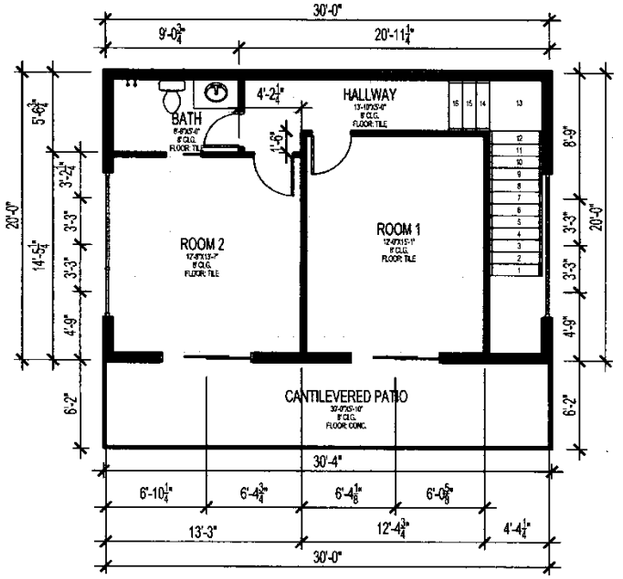
Exhibit "C"



A / A-2.0 1ST FLOOR PLAN
SCALE: 1/8" = 1'-0"

SQUARE FOOTAGE'S OVER BRICK
SQUARE FOOTAGE'S ARE CALCULATED WITH 5.5" BRICK POCKET AND MAY VARY DEPENDING ON EXTERIOR MATERIAL

1ST FLOOR LIVABLE	617	SQ. FT.
2ND FLOOR LIVABLE	520	SQ. FT.
TOTAL LIVABLE	1,137	SQ. FT.
CANTILEVERED PATIO	182	SQ. FT.
TOTAL	1,319	SQ. FT.



B / B-2.0 2ND FLOOR PLAN
SCALE: 1/8" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION

THESE DOCUMENTS ARE IN FOR REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION AND/OR PERMIT PURPOSES.

2 LIVE OAK DR.
MIDLAND, TEXAS
LOT 0021, BLOCK 000
ASHLIN PLACE ADDN.

1	PRELIMINARY PLANS	(01/20/22)

Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 2021039	
DRAWN BY	CDW
CHECKED BY	CDW

A-2.0

© 2022 MIDLAND DCI, INC.
The drawings and specifications and ideas, arrangements and designs represented thereon are the property of the Architect and were created, evolved and developed for use on the designated project. None of such ideas, arrangements or designs shall be used by or disclosed to any person, firm or corporation for any purpose whatsoever without the written permission of the Architect.

MIDLAND Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUD-WO-22-0027

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Garner Gonzales		Phone (432) 967-0699 Email	
Address PO Box 125	City Midland	State Tx	Zip 79702
Property Owner Printed Name: Aron Marquez		Phone (432) 770-8624 Email	
Address 2 Live Oak Dr.	City Midland	State Tx	Zip 79705
Representative *(if different from Applicant or Property Owner)* Firm: Gonzales Contractors, LLC Printed Name: Henry Gonzales		Phone (432) 967-0059 Email	
Address PO Box 125	City Midland	State Tx	Zip 79702

Type of Permit:	*For Office Use Only* ☐ with Term ☐without Term
Is there any Code Enforcement action pending on property? ☐ Yes ☐ No	

Street Address: 2 Live Oak Dr., Midland, Tx 79705

Legal Description
Lot: 0021 Block: 000 Subdivision: Ashlin Place Addn.

Current Zoning:

Maximum Floor Area: | **Maximum Occupancy:**

Proposed hours and days of use or operation: _____

Reason for request: Pool House Project - Accessory Building

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: _____

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) [signature] Date 04/27/22

Applicant (printed) Garner Gonzales

Property Owner (signature) [signature] Date 4/28/22

Property Owner (printed) Aron Mangum

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 GARNER GONZALES who, being by me duly sworn, upon oath says That (s)he is authorized by ARON MANGUM the owner of the above described property, to fully represent him/her in this application and that (s)he has 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 2nd day of May, 2022, to certify which witness my hand and seal of office

[signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Christian V Olivas
Notary Public, State of Texas
Notary ID 13158974-1
My Commission Exp. 06-11-2022

FOR OFFICE USE ONLY

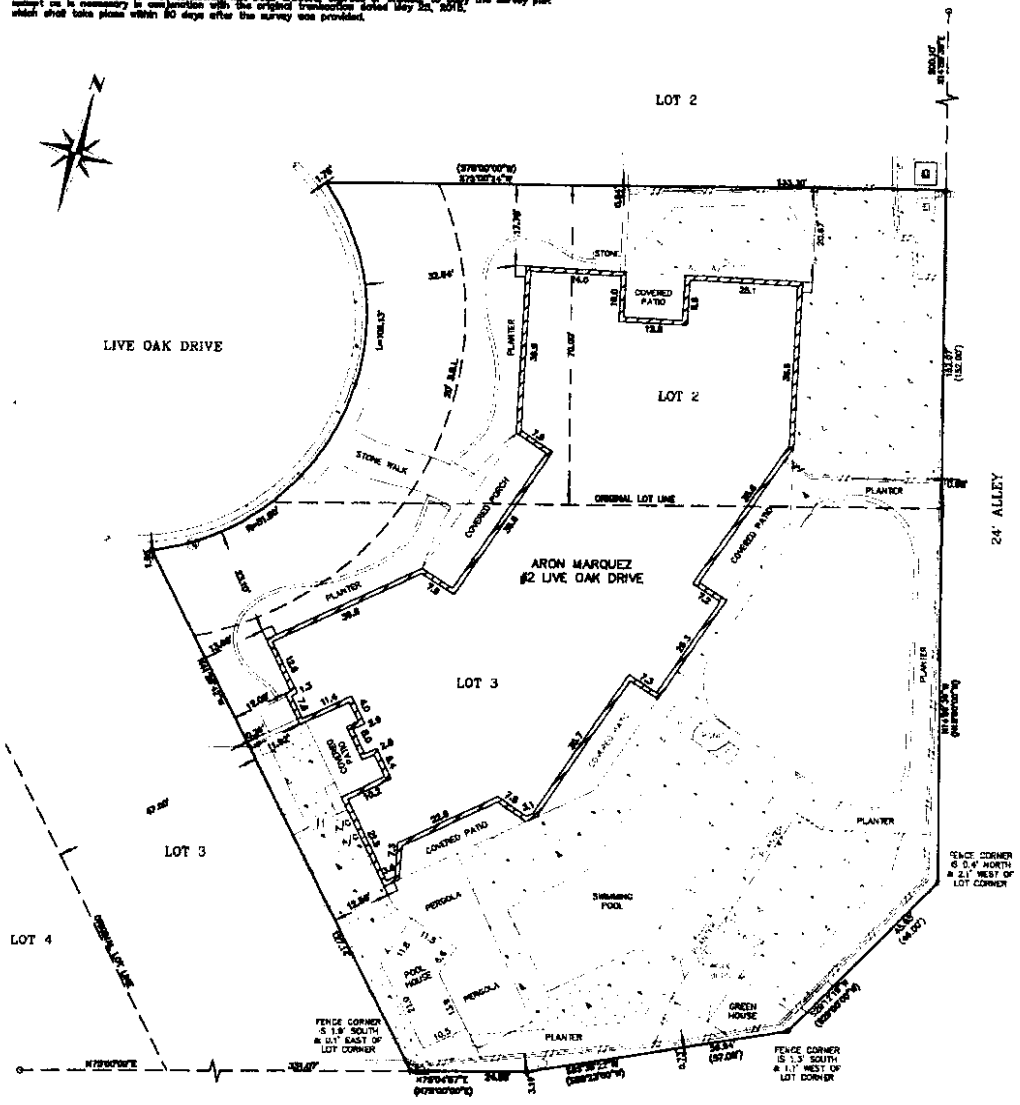
☒ Property Owner Authorization
☐ Application Fee Missing
Check # CC
☒ Dimensioned Site Plan
☐ Site Plan in Digital Format (PDF/JPEG) MISSING / USING ONES FROM OTHER CASE

Received By: KM Date

RECEIVED
MAY 05 2022

"Application will not be considered for scheduling until reviewed by a planner."

COPYRIGHT 2015
This survey plat is being provided solely for the use of: Aron Marquez, Complex Community FCU & Lone Star Abstract & Title Co., and that no liability has been accepted, expressed or implied, to any other party except as is necessary in conjunction with the original transaction dated May 22, 2015, which shall take place within 90 days after the survey was provided.



PLAT OF THAT PORTION OF
LOT TWO (2) LYING SOUTH OF A LINE BEGINNING AT
A POINT IN THE EAST BOUNDARY LINE OF SAID LOT 2 WHICH
IS 50' SOUTH OF THE NORTHEAST CORNER OF SAID
LOT 2 AND DRAWN WESTERLY AND PERPENDICULAR
TO THE EASTERN BOUNDARY LINE OF SAID LOT 2;
AND ALL OF LOT THREE (3), SAVE AND EXCEPT
THAT PORTION OF SAID LOT 3 LYING TO THE WEST OF
A LINE EXTENDING FROM THE NORTH BOUNDARY LINE TO
THE SOUTH BOUNDARY LINE AND PARALLEL TO AND 47'
FROM THE WESTERLY BOUNDARY LINE OF SAID LOT 3,
ASHLIN PLACE, (2ND SECTION),
AN ADDITION TO THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS
ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET A, PAGE 167, PLAT RECORDS, MIDLAND COUNTY, TEXAS

The following Easements, Rights-of-way, and Restrictive covenants as listed on this title commitment furnished by:
Lone Star Abstract and Title Co., Inc.,
G.F. No.: 204920

Restrictive Covenants:
Vol. 303, Pg. 181 & 183,
Deed Records,
Midland Co., Texas

Census Tract: 6

This tract is in Flood Zone "AE" as shown on the Flood Insurance Rate Map, Dated September 18, 2009 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0089 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 25th day of May 2015.

Bruce R. Pennell
Registered Professional Land Surveyor No. 4170
Date: 05/25/15

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL LAND SURVEYING
PROFESSIONAL LAND SURVEYING
P.O. BOX 51682, MIDLAND, TEXAS 79710
VOICE:(432)570-0256 FAX: (432)682-3292 MOBILE: (432)528-1027

ABSTRACT OFFICE: LONE STAR | G.F. # 204920 | COMMITMENT EFFECTIVE DATE: 04/23/15
CAD FILE: BRF18054 | DATA FILE: ZLIVEOAK | DRAWN BY: MARCY M. | BOOK/PAGE: 1/

STATE OF TEXAS REGISTERED BRUCE R. PENNELL 4170 PROFESSIONAL LAND SURVEYOR

Basis of Bearings:
SOUTH Line of this Block

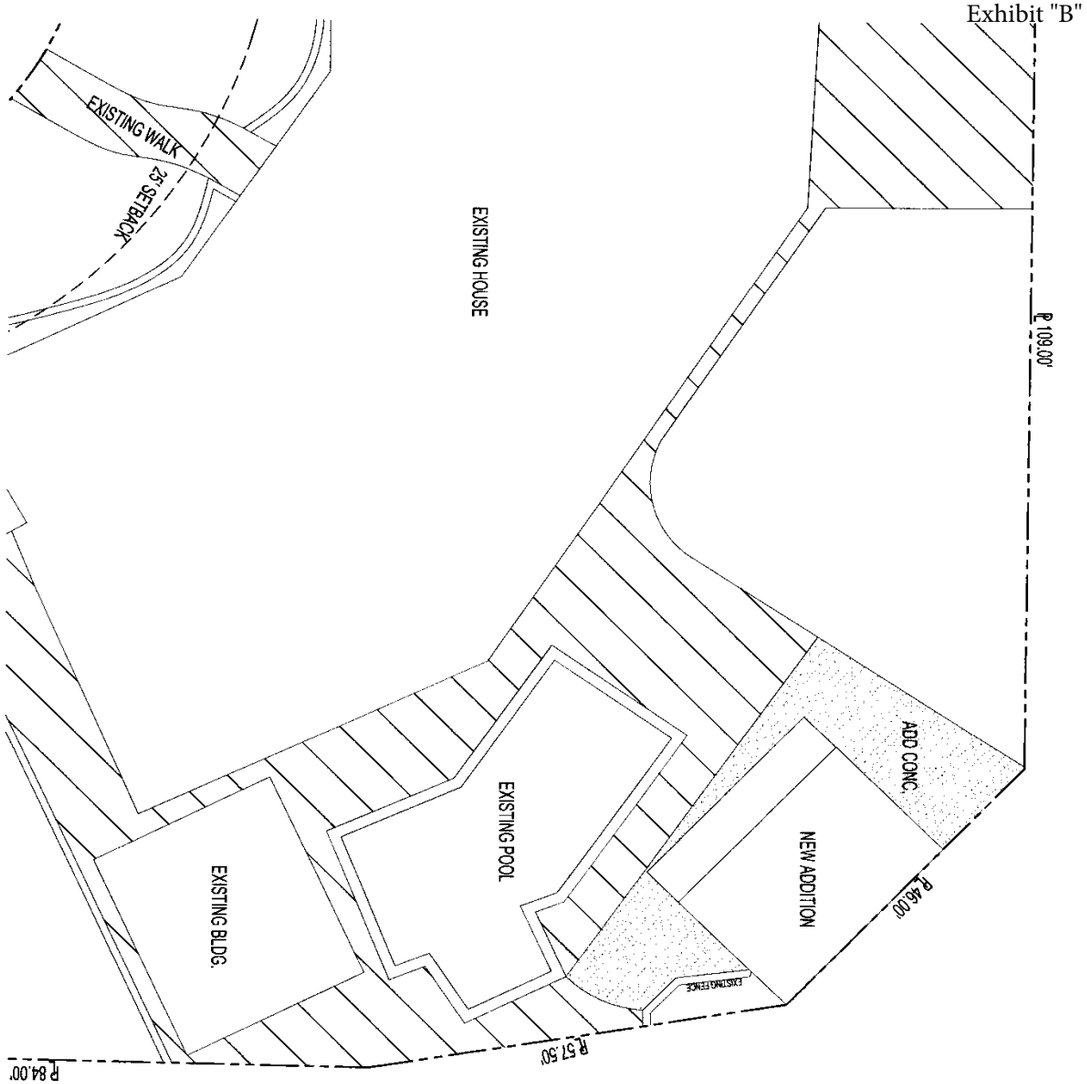
Bearings and Distances Shown Inside ( ) Indicate Record Information

20 10 0 20

SCALE: 1" = 20'

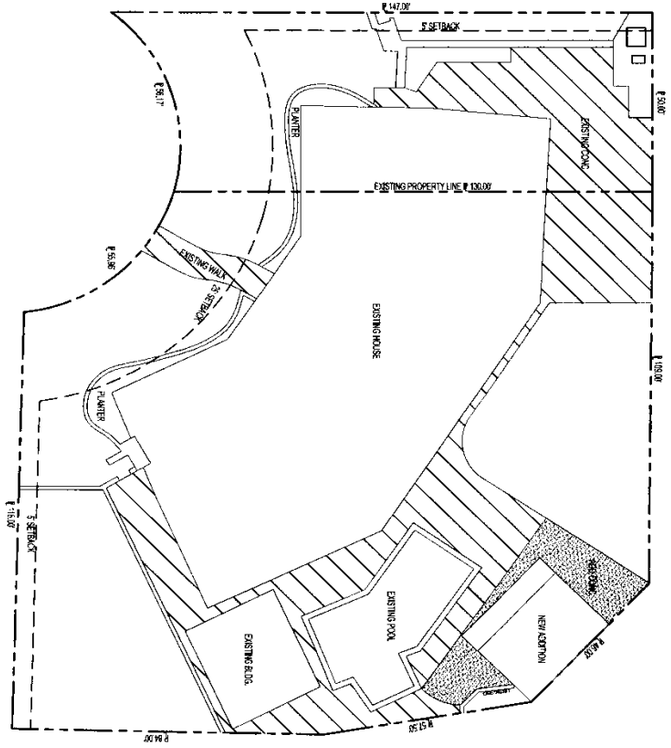
LEGEND
- Set 1/2" I.R. W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- Gas Meter
- Water Meter
- Light Pole
- Power Pole
- Fire Hydrant
- OVERHEAD ELECTRIC
- Guy Wire
- Telephone Junct. Box
- Cable TV Junct. Box
- Buried Pipeline Marker
- Sewer Cleanout
- Underground Electric Box
- Utility Box
- Misc. Sign
- Sanitary Sewer Manhole
- Water Valve
- Gas Valve
- Satellite Dish
- Propane Tank
- Water Well

Exhibit "B"



A C-1.0 SITE PLAN
SCALE: 1/16" = 1'-0"

1. DRIVEWAY DETAILS ON SHEET D-1.0



B C-1.0 SITE PLAN
SCALE: 1/32" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION

THESE DOCUMENTS ARE INTERIM REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION AND/OR PERMIT PURPOSES.

2 LIVE OAK DR.
MIDLAND, TEXAS
LOT 0021, BLOCK 000
ASHLIN PLACE ADDN.

No.	Revision/Issue	Date
1	PRELIMINARY PLANS	01/20/22

Designers-Consultants-Inspectors
DCI

Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 202209

DRAWN BY	CCW
CHECKED BY	CCW

5 8
C-1.0

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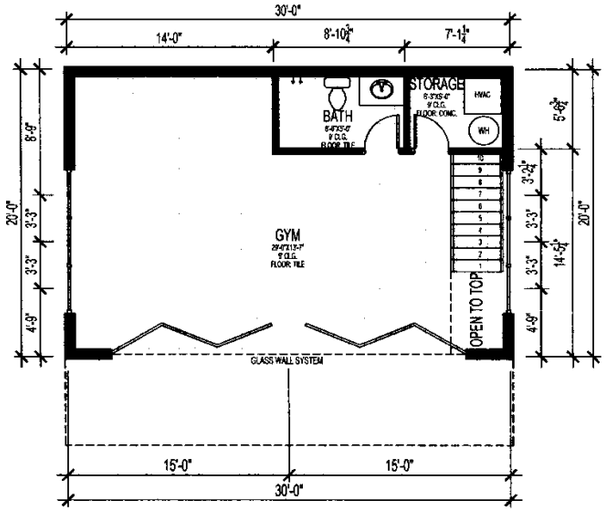
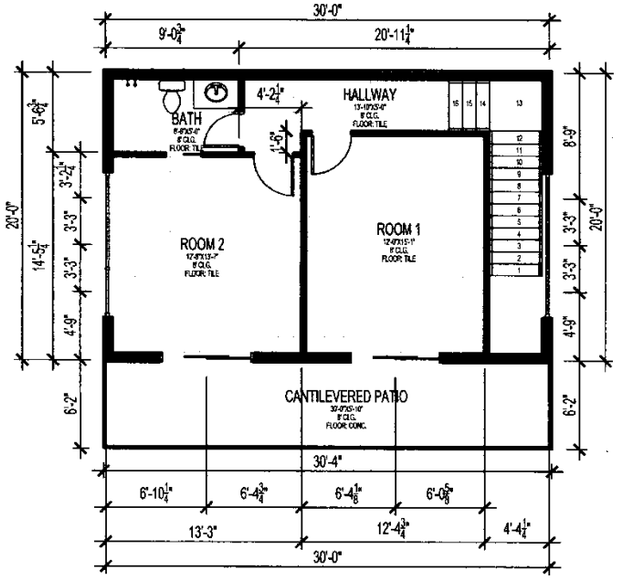
Exhibit "C"



A A-2.0 1ST FLOOR PLAN
SCALE: 1/8" = 1'-0"

SQUARE FOOTAGE'S OVER BRICK
SQUARE FOOTAGE'S ARE CALCULATED WITH 5.5" BRICK POCKET AND MAY VARY DEPENDING ON EXTERIOR MATERIAL

1ST FLOOR LIVABLE	617	SQ. FT.
2ND FLOOR LIVABLE	520	SQ. FT.
TOTAL LIVABLE	1,137	SQ. FT.
CANTILEVERED PATIO	182	SQ. FT.
TOTAL	1,319	SQ. FT.



B B-2.0 2ND FLOOR PLAN
SCALE: 1/8" = 1'-0"

PRELIMINARY - NOT FOR CONSTRUCTION
THESE DOCUMENTS ARE IN FOR REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION AND/OR PERMIT PURPOSES.

2 LIVE OAK DR.
MIDLAND, TEXAS
LOT 0021, BLOCK 000
ASHLIN PLACE ADDN.

1 PRELIMINARY PLANS (01/20/22)

Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 202009
DRAWN BY: CDW
CHECKED BY: CDW

SHEET 2 OF 8
A-2.0

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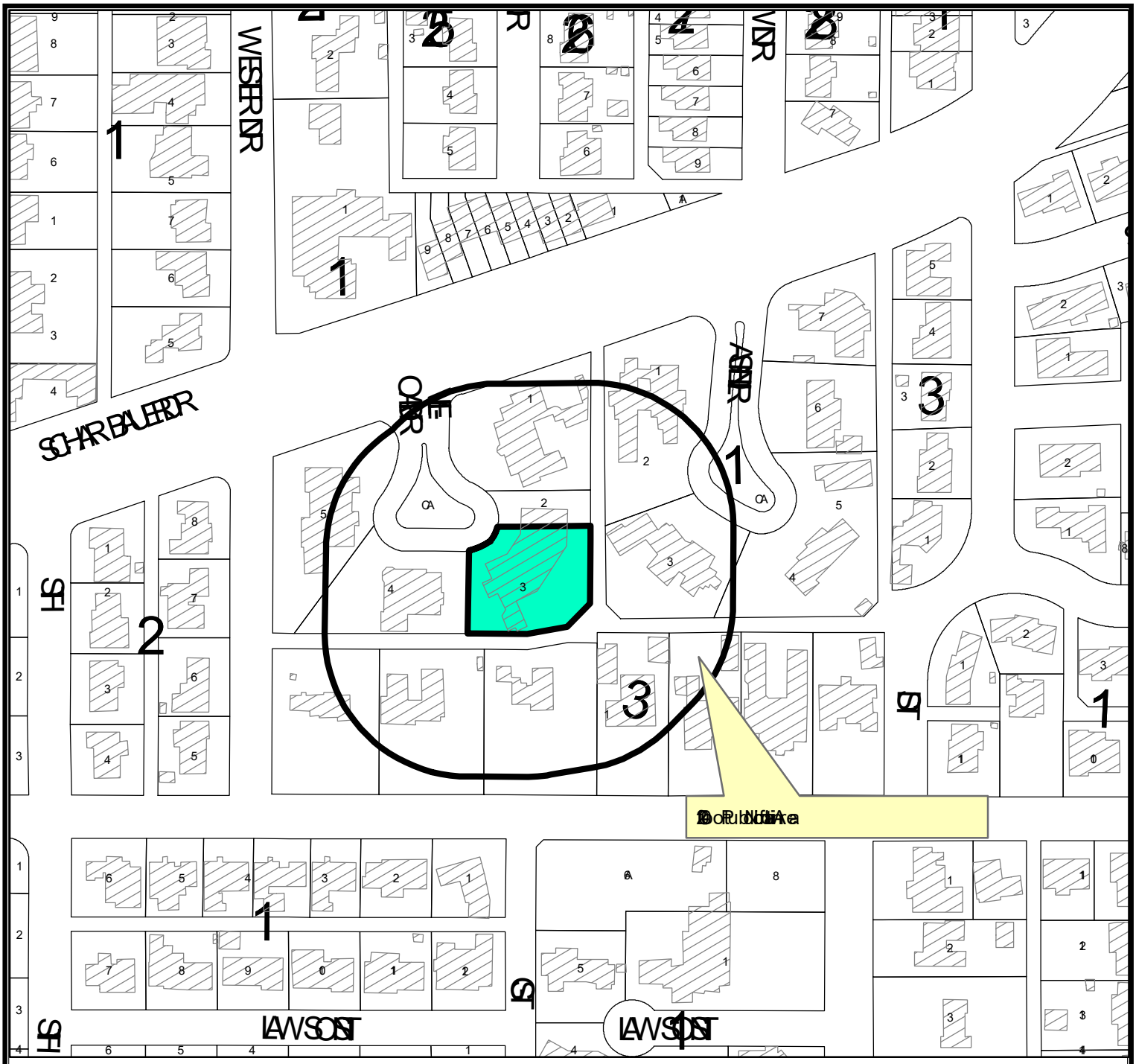

LOCATION MAP

SUDwo-22-0027 **Scale: 1" = 200'**

Consider a request by Garner Gonzales for a Specific Use Designation, without term, for an Accessory Dwelling Unit on a 0.41-acre portion of Lot 3, Ashlin Place, Section 2, City and County of Midland, Texas.

(Generally located on the south side of Live Oak Drive, approximately 233-feet south of W. Scharbauer Drive. Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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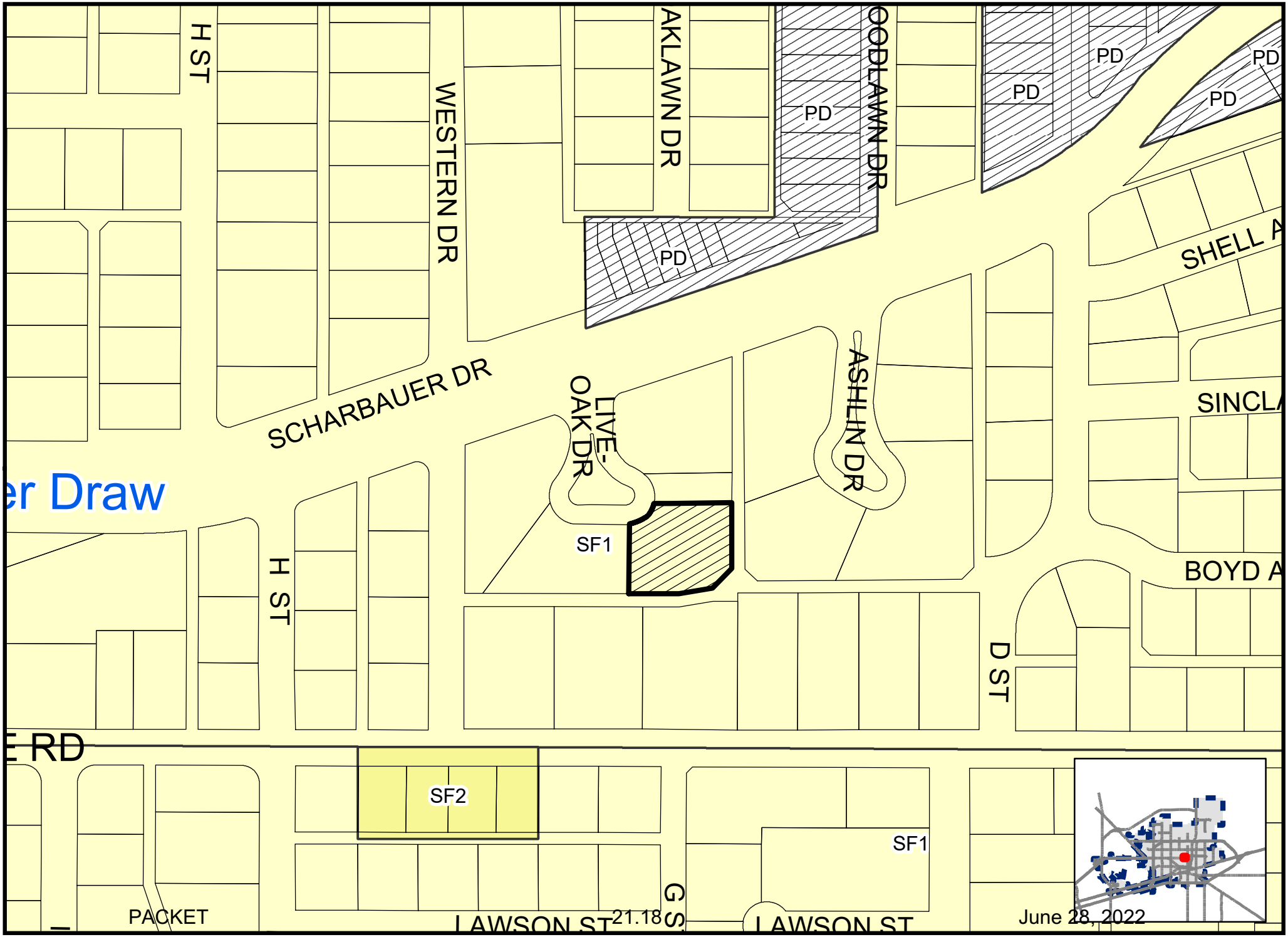

Map By KM, 2/16/2022

SUDwo-22-0027

Scale: 1" = 200'

ZONING MAP

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