

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
July 12, 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 Dagan Mayfield, Providence Presbyterian Church
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - 3a. REGULAR SESSION OF JUNE 28, 2022
4. 2022-084 – RESOLUTION APPROVING THE PURCHASE OF A PALFINGER M100 GRAPPLE LOADER TRUCK FROM HOUSTON FREIGHTLINER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF \$202,193.00; AND APPROPRIATING FUNDS FOR SAID PURCHASE (DISTRICT: NONE) (GENERAL SERVICES)
5. 2022-085 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR SURVEY, DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE NORTH CITIZENS COLLECTION STATION FOR A COST OF \$310,700.00; AND APPROPRIATING FUNDS (DISTRICT: ALL) (GENERAL SERVICES)
6. 2022-086 – RESOLUTION APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF SHADE STRUCTURES AT MOMENTUM BANK BALLPARK AND THE SCHARBAUER SPORTS COMPLEX AUXILIARY FOOTBALL AND SOCCER FIELDS FOR A TOTAL COST OF \$262,084.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)
7. 071-2022 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR THE DATA NETWORK AND INTERNET SERVICES PROJECT FOR THE COMMUNICATIONS AND

INFORMATION SYSTEMS DEPARTMENT AND TO NEGOTIATE A CONTRACT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL. (DISTRICT: ALL) (GENERAL SERVICES)

8. 072-2022 – MOTION APPROPRIATING \$39,950.05 FROM THE AIRPORT UNAPPROPRIATED FUND BALANCE TO THE AQUEOUS FILM FORMING FOAM (AFFF) TEST CART PROJECT IN FUND 505 (DISTRICT 4) (AIRPORTS)
9. 2022-087 – RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS (DISTRICT: ALL) (POLICE)
10. 073-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-025) WITH ENTERPRISE NAVITAS MIDSTREAM MIDLAND BASIN, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 19, BLOCK 36 AND SECTION 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)
11. 074-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-026) WITH ENTERPRISE NAVITAS MIDSTREAM MIDLAND BASIN, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)
12. 075-2022 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (22-329-003) WITH PILOT WATER GATHERING DELAWARE LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 5, 6 AND 7, BLOCK C-24, PUBLIC SCHOOL LAND SURVEY, LOVING COUNTY, SECTION 3, BLOCK C-24, PUBLIC SCHOOL LAND SURVEY, LOVING COUNTY AND WINKLER COUNTY, SECTIONS 21, 22, 23, 24, 25 AND 26, BLOCK C-23, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY AND SECTIONS 9, 10 AND 27, BLOCK 74, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

13. 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) (FIRST READING HELD JUNE 28, 2022)

14. 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) (FIRST READING HELD JUNE 28, 2022)

PUBLIC HEARINGS

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

15. 10323 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1, 2, 3, 10, 11, AND 12, BLOCK 13, AND LOTS 1 AND 2, BLOCK 14, LANGFORD WEATHERED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF NORTH A STREET AND ELK AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)
16. 10324 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,472-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 RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)
17. 10325 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOTS 2 AND

3, BLOCK 27, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH COLORADO STREET, APPROXIMATELY 66 FEET SOUTH OF OHIO AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

18. 10326 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 5, BLOCK 1, KALPOWAR ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF TROBAUGH BOULEVARD, APPROXIMATELY 409 FEET NORTH OF GLASGOW DRIVE), BY PERMITTING AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS; 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 4) (DEVELOPMENT SERVICES)

PUBLIC COMMENT

19. 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 28, 2022**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., June 28, 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 10:00 a.m.

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

Lori Blong moved to approve Consent Agenda items 4-12, excluding item(s) 5, 6, and 10; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

4. MOTION APPROVING THE FOLLOWING MINUTES:

4a. REGULAR SESSION OF JUNE 14, 2022

7. 2022-080 – RESOLUTION AWARDDING 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 AWARDDING 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)
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)

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

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)

When asked why the City pays for crossing guards at schools instead of the school district, Administrative Services Director Mark Widmann reported that the City has paid for crossing guards for years and that the City is responsible for roads and traffic. City Manager Robert Patrick reported that cities with a population over 800,000 are required to have crossing guards, however, many cities pay for them even though they are not required.

PACKET

3a.2

July 12, 2022

Council Member Ladd suggested starting a conversation with the school district about this item.

Jack Ladd moved to approve Resolution No. 2022-078; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

6. 2022-079 – RESOLUTION AWARDED 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)

Council Member Ladd commented on the fact that the City built the stadium and has to pay \$25,000 per year for the City suite at the RockHounds.

Monty Hoppel, with Midland Rockhounds, clarified that what the City pays for is actually for the naming rights to the suite. There is no charge for the City suite. Mr. Hoppel reported on highlights taking place at the stadium.

Jack Ladd moved to approve Resolution No. 2022-079; seconded by John Norman.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

10. 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)

Airports Director Justine Ruff reported that the blast pad is at the very end of the runway. The Airpark North Fence Replacement should not have any impact on traffic as most work will be done along the inside of the fence.

Dan Corrales moved to approve Motion No. 068-2022; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10315.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10315; seconded by John Norman.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10316.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10316; seconded by Dan Corrales.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10317.

John Norman moved to approve the second and final reading of Ordinance No. 10317; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10318.

Mark Wellen, 5110 Daventry Place, requested that the City waive the fees for this project.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10318 with an amendment to remove the fees; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Norman

NAY: None

ABSTAIN: Ladd

ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10319.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10319; seconded by John Norman.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

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 BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD JUNE 14, 2022)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10320.

Robin Poole moved to approve the second and final reading of Ordinance No. 10320; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Ladd, Norman

NAY: None

ABSTAIN: Dufford

ABSENT: None

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)

Mayor Payton opened the public hearing at 10:29 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

This is a public hearing only. No action taken.

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10321.

Mayor Payton opened the public hearing at 10:32 a.m.

Development Services Director Chuck Harrington gave a brief overview of the item noting the request is on behalf of Brew Street. They are looking for more walkup traffic and would like to convert the site to receive more commercial activity.

Marcy Madrid, Brew Street, gave a report on the restaurant, her health and the importance of a plant based diet lifestyle. Mrs. Madrid noted that she and her husband have the support of several doctors and community members to bring quality vegan food to Midland.

There being no one else wishing to speak, the public hearing was closed at 10:46 a.m.

Lori Blong moved to approve the first of two readings of Ordinance No. 10321; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10322.

Mayor Payton opened the public hearing at 10:48 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. 10322; seconded by John Norman.

The motion passed by the following vote:

AYE: Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

NAY: None

ABSTAIN: None

ABSENT: None

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.)

Ty Coleman was introduced as the new Animal Services Manager and Martha Cortazar was introduced as the new Communications Coordinator in the Public Information Office.

All the business at hand having been completed, the meeting adjourned at 10:51 a.m.

PASSED AND APPROVED July 12, 2022.

Patrick Payton, Mayor

ATTEST:

PACKET

3a.8

July 12, 2022

MINUTES

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June 28, 2022

Amy M. Turner, City Secretary

DRAFT



City Council Meeting

Item Number: 4
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING THE PURCHASE OF A PALFINGER M100 GRAPPLE LOADER TRUCK FROM HOUSTON FREIGHTLINER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF \$202,193.00; AND APPROPRIATING FUNDS FOR SAID PURCHASE (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution authorizing the purchase of one (1) Palfinger M100 Grapple Loader Truck from Houston Freightliner through Houston-Galveston Area Council (H-GAC) contract #HT06-20 for the cost of \$202,193.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Sanitation Fund Unappropriated Fund Balance and will be appropriated for said purpose.

Discussion:

Staff is recommending the purchase of one (1) Palfinger M100 Grapple Loader Truck to be used by the Solid Waste Department. The Grapple Loader Truck is available through the Houston-Galveston Area Council (H-GAC) cooperative contract #HT06-20. 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. This truck is new to the fleet. Please see the attached memos from Manuel Salinas, Garage Superintendent and Jeffery Ahrlott, Director of Solid

Waste, for additional information.

Therefore, please consider a resolution authorizing the purchase of one (1) Palfinger M100 Grapple Loader Truck from Houston Freightliner through Houston-Galveston Area Council (H-GAC) contract #HT06-20 for the cost of \$202,193.00.

Jina Gang

City Manager's Office



INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director
FROM: Jeffery Ahrlett, Director of Solid Waste
SUBJECT: Bulk Waste Loader Grapple Truck Purchase
DATE: June 27, 2022
CC: Tina Jauz, Assistant City Manager

Staff is seeking city council approval of a new Bulk Waste Grapple Truck for the Solid Waste Department.

The Grapple truck will be used at the Citizen Collection Station to load brush and large items into open-top construction containers. The Grapple truck will also be used for large item collection throughout City streets and alleyways.

Staff is seeking the approval in the amount of \$202,193.00 for the purchase of the Bulk Waste Grapple Truck. Funding is available in the Sanitation Fund Unappropriated Fund Balance and will be appropriated for said purpose.



Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: Bulk Waste Loader Grapple Truck

DATE: June 28, 2022

Fleet services is in support of the purchasing of one Bulk Waste Loader Grapple Truck for the Solid Waste Department in the amount of \$202,193.00. Funding is available through the Sanitation Fund Unappropriated Fund Balance.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF A
PALFINGER M100 GRAPPLE LOADER TRUCK FROM
HOUSTON FREIGHTLINER THROUGH THE
HOUSTON-GALVESTON AREA COUNCIL AT A
TOTAL COST OF \$202,193.00; AND APPROPRIATING
FUNDS FOR SAID PURCHASE**

WHEREAS, the Houston-Galveston Area Council (“*H-GAC*”) 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, Houston Freightliner has submitted a total proposed cost to the City of \$202,193.00 for the purchase of a Palfinger M100 grapple loader truck through H-GAC, as shown on the quote attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Houston Freightliner through H-GAC for a Palfinger M100 grapple loader truck to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase a Palfinger M100 grapple loader truck from Houston Freightliner through H-GAC for a total cost of \$202,193.00;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase a Palfinger M100 grapple loader truck from Houston Freightliner at a total cost of \$202,193.00.

SECTION TWO. That the sum of \$202,193.00 is hereby appropriated from the Sanitation Fund Unappropriated Fund Balance to a project established by the City of Midland Finance Department.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Houston Freightliner for said grapple loader truck from funds available in the project

established by the City of Midland Finance Department upon receipt of proper invoices or statements approved by the City Manager.

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



CONTRACT PRICING WORKSHEET

For MOTOR VEHICLES Only

Contract
No.:

HT06-20

Date
Prepared:

5/24/2022

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Midland	Contractor:	Houston Freightliner
Contact Person:	Jeff Ahrlett	Prepared By:	Adam Neuse
Phone:		Phone:	713-580-8148
Fax:		Fax:	713-955-6282
Email:		Email:	adam.neuse@strhouston.com
Product Code:	D5	Description:	M2-106, Conventional Cab, SBFA, SRA (PRL-20M)

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 63147

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
L9 300 HP 860 LB FT TQ ENGINE	8747	Adjustable Steering Column	359
3000 RDS AUTOMATIC TRANSMISSION	5089	AM/FM/WB Radio with Bluetooth	368
DA-F-13.3-3 13,300 LB FRONT AXLE	190		
13,300 LB TAPERLEAF FRONT SUSPENSION	235		
258" Wheelbase	1228		
11/32x3-1/2x10-15/16" Frame 120KSI	464		
Driver Controlled Differential Lock (One Axle)	551		
Dual West Coast Mirrors w/LH-RH Remote	215		
LH/RH Electric Windows	164		
Smart Switch Expansion Module	149	Special Palfinger M100L72 Bulk Waste Loader	118021
Basic High Back Air Driver Seat	159	Subtotal From Additional Sheet(s):	
2 Man Passenger Seat	144	Subtotal B:	136083

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
DTNA 23 MY Materials Surcharge	6700		
		Subtotal From Additional Sheet(s):	0
		Subtotal C:	6700

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 3%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	205930	=	Subtotal D:	205930
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E. H-GAC Order Processing Charge (Amount Per Current Policy) Subtotal E: 1000

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
Discount	-4737		
		Subtotal F:	-4737

Delivery Date: 4/7 G. Total Purchase July 12, 2022: 202193



City Council Meeting

Item Number: 5
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR SURVEY, DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE NORTH CITIZENS COLLECTION STATION FOR A COST OF \$310,700.00; AND APPROPRIATING FUNDS (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Resolution authorizing the execution of a professional services agreement with Parkhill, Smith & Cooper, Inc dba Parkhill, for the survey, design, and construction administration services for a new Northeast Citizens Collection Station (CCS).

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY22 Sanitation Fund operating budget, and will be transferred and appropriated to a project for said purpose.

Discussion:

Staff recommends the authorization of a professional services agreement with Parkhill, Smith & Cooper, Inc. for the survey, design and construction administration services for a new Northeast Citizens Collection Station (CCS). Please see the attached memo from Jeffery Ahrlett, Director of Solid Waste, for further information.

Therefore, please consider a resolution authorizing a professional services agreement for the survey, design, and construction administration services for a new Northeast Citizens Collection

Station (CCS) with Parkhill, Smith & Cooper, Inc. of Midland, Texas for a cost of \$310,700.00.

Jina Gang

City Manager's Office



INTEROFFICE MEMORANDUM

TO: Erika Munoz Martinez, Purchasing Manager

FROM: Jeffery Ahrllett, Director of Solid Waste

SUBJECT: A resolution authorizing a professional services agreement with Parkhill for the northeast citizen collection station design, bid and construction administration

DATE: June 29, 2022

CC: Tina Jauz, Assistant City Manager
Regina Stephenson, General Services Director

The Solid Waste Department is requesting approval of a resolution authorizing a professional services agreement with Parkhill for engineering scope of services and associated fee estimates for design, bid, and construction administration services for a new northeast citizen collection station.

In anticipation of the future closure of the Airpark citizen collection station site, the Solid Waste Department feels it is necessary to begin the design of the next northeast location. It is staff's recommendation to have two citizen collection station locations to accommodate the continual growth and demand. A collection site is planned for southwest Midland as well as northeast Midland, ensuring accessibility for all residents. An agreement is already in place with Parkhill on the design and construction oversight of the southwest location. The construction documents for that site are nearing completion.

The Solid Waste Department is requesting approval of the professional services agreement with Parkhill for a total of \$310,700. Funding is available in the FY22 Sanitation Fund operating budget and will be transferred and appropriated to a project for said purpose.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR SURVEY, DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE NORTH CITIZENS COLLECTION STATION FOR A COST OF \$310,700.00; AND APPROPRIATING FUNDS

WHEREAS, the Solid Waste Department has selected Parkhill, Smith & Cooper, Inc., d/b/a Parkhill (“Parkhill”), to provide survey, design and construction administration services for the North Citizens Collection Station; and

WHEREAS, Parkhill has agreed to perform said professional services at a cost of \$310,700.00; and

WHEREAS, the City Council finds that Parkhill is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Parkhill are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Parkhill provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Parkhill as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Parkhill for said professional services. A copy of said agreement is attached hereto as Exhibit “1” and incorporated herein for all purposes.

SECTION TWO. That funds are available in the FY22 Sanitation Fund operating budget and will be transferred and appropriated to a project for said purpose.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Parkhill from funds available in a project for said purpose 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:

Jeffrey Ahrlett, Utilities Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
22003660

THIS AGREEMENT is made and effective the 13 day of July 2022, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Parkhill, Smith & Cooper, Inc dba Parkhill (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform survey, design, and construction administration services for a new Northeast Citizens Collection Station (CCS), (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$310,700.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

fifteen (15) days of the date of receipt of the invoice, and the Parties shall immediately make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, CITY shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from July 12, 2022 until July 11, 2023, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer,

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

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

If to COMPANY: Parkhill, Smith & Cooper, Inc dba Parkhill
 4222 85th Street
 Lubbock, Texas 79423

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

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

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

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

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

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

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

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

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

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

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

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

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

this Agreement;

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

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

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

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

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

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

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

June 15, 2022

Mr. Jeffery Ahrllett
Solid Waste Director
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

Re: City of Midland Landfill – TCEQ MSW Permit No. 1605B
Midland North CCS
Proposed Scope and Professional Fees

Dear Mr. Ahrllett:

As you requested, we have prepared an Engineering Scope of Services and associated fee estimates for Design, Bid, and Construction Administration Services for a new Citizens Collection Station (CCS) to be constructed at your site in Midland.

Citizens Collection Station

This task includes design, bidding, and construction administration duties for a CCS to be constructed in Midland. Prior to start of Engineering, Parkhill will prepare and submit a TCEQ registration application for the site. Our fee is based on the following Scope of Services:

- | Preparation and submittal of registration documents.
- | Design of facility.
- | Preparation of bidding and construction Drawings and Specifications.
- | Preparation of an Engineer's Opinion of Probable Cost.
- | Resident Project Representative services.
- | Construction testing.
- | Geotechnical services.
- | Surveying.

This Proposal does not include an estimate of construction costs.

CCS Professional Services Fee Summary	\$310,700
Citizens Collection Station (Design and Bid Phase)	\$172,200
TCEQ Registration	\$12,500
Architecture	\$25,000
Mechanical, Electrical, Plumbing	\$34,000
Structural	\$12,000
Civil	\$58,500
Landscape Architecture	\$10,700
Surveying	\$8,000
Geotechnical Subconsultant	\$10,000
TDLR & RAS	\$1,500
Citizens Collection Station (Construction Phase)	\$138,500
Construction Administration	\$51,500
Resident Project Representative	\$72,000
Materials Testing	\$15,000

Mr. Jeffery Ahrllett
City of Midland

Page 2

June 15, 2022

We appreciate the opportunity to provide Professional Engineering Services to the City of Midland to help maintain your municipal solid waste operations. We would be happy to discuss these services in more detail at your convenience.

If you need any additional information, please call me at 806.473.2200.

Sincerely,

PARKHILL

By _____
Todd E. Stiggins, PE
Environmental Team Leader | Principal

TES/clw
Enclosures



City Council Meeting

Item Number: 6
Meeting Date: July 12, 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 SHADE STRUCTURES AT MOMENTUM BANK BALLPARK AND THE SCHARBAUER SPORTS COMPLEX AUXILIARY FOOTBALL AND SOCCER FIELDS FOR A TOTAL COST OF \$262,084.00; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Resolution executing a contract with 4B Recreation dba Playgrounds Etc. through Buyboard contract 592-19 for the purchase and installation of shade structures at the Scharbauer Sports Complex.

Recommended City Council Action:

Approve

Fiscal Impact:

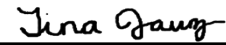
Funding is available in the Scharbauer Sports Complex Fund Unappropriated Fund Balance and will be transferred and appropriated to a project in the Special Revenue Capital Projects Fund.

Discussion:

Staff recommends executing a contract for the purchase and installation of shade structures at the Scharbauer Sports Complex through Buyboard contract 592-19. 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 shade structures at the Scharbauer Sports Complex to 4B Recreation Group, LLC dba Playgrounds Etc. of Midland, Texas through Buyboard contract 592-19 for a total cost of \$262,084.00.



City Manager's Office

MIDLAND
Community Services
Scharbauer Sports Complex Division
Interoffice Memorandum

Date: June 29, 2022

To: Morris Williams Jr., Deputy City Manager

From: Cristina Burns, Community Services Director

Subject: Purchase and Installation of shade structures at Momentum Bank Ball Park and the Auxiliary Football/Soccer Fields

The Community Services Department recommends the BuyBoard purchase of shade structures to be installed at Momentum Bank Ball Park and over all existing bleachers at the SSC auxiliary football/soccer fields.

The shades in baseball are located over the right field picnic area. They were damaged in the 2019 hail storm, and an attempt to replace them resulted in irreparable damage to the original structure. The only solution to replacing them at this point is to have the 3 shades removed and replaced, to include new engineered structures.

The auxiliary fields are in high demand and used throughout the year for youth and adult sports. Practices, games, tournaments and even playoff games are held throughout the week and on the weekends. Shading the spectator areas will provide much needed relief from the heat.

Playgrounds Etc. has quoted \$262,084 to furnish and install the shades. This work will include all materials, the engineered sealed drawings, freight, installation, and removal and disposal of the original shades in baseball.

Funding in the amount of \$262,084 is available in the Scharbauer 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 APPROVING A CONTRACT WITH 4B RECREATION GROUP, LLC DBA PLAYGROUNDS ETC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF SHADE STRUCTURES AT MOMENTUM BANK BALLPARK AND THE SCHARBAUER SPORTS COMPLEX AUXILIARY FOOTBALL AND SOCCER FIELDS FOR A TOTAL COST OF \$262,084.00; 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 \$262,084.00 for the purchase and installation of shade structures at Momentum Bank Ballpark and the Scharbauer Sports Complex auxiliary football and soccer fields 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 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 shade structures at Momentum Bank Ballpark and the Scharbauer Sports Complex auxiliary football and soccer fields 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 shade structures at Momentum Bank Ballpark and the Scharbauer Sports Complex auxiliary football and soccer fields, through Buyboard, for a total cost of \$262,084.00. 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 \$262,084.00 is hereby appropriated from the Scharbauer Sport Complex Fund Unappropriated Fund Balance to a project established by the City of Midland Finance Department in the Special Revenue Capital Projects Fund.

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 in the Special Revenue Capital Projects Fund 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. 22003734

THIS CONTRACT, effective the 13 day of July, 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: \$ 262,084.00 DOLLARS
2. **Scope of Work:** COMPANY shall perform all work described for the purchase and installation of shade structures at Momentum Bank Ball Park and the Scharbauer Sports Complex auxiliary football and soccer fields. Said work being more particularly described in the following documents, which are attached hereto and incorporated herein for all 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,
PACKET

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 90 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

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

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 Government Code, and Section 311.034 of the Texas Government Code, unless 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.

**Playgrounds Etc.**

1410 W Texas Ave.
Midland, TX 79701
432-687-6388

Bid

Date	Bid #
6/27/2022	17226

Name / Address
City of Midland 300 N. Loraine Ave. Midland, TX 79701

Ship To

Rep	P.O. No.	Project Location	Project		
JB		Auxiliary Fields/Rockhounds	Bleacher Shade R1		
Item	Description		Qt	Rate	Total
SRP - Shade	Blue Fields 37' X 19' T Cantilever Shade with 16' Entry Height. Inground mount with glides.		2	12,468.00	24,936.00T
SRP - Shade	31' X 14' T Cantilever Shade with 11' Entry Height. Inground mount with glides.		4	7,912.00	31,648.00T
SRP - Shade	Gold Fields 25' X 20' T Cantilever Shade with 16' Entry Height. Inground mount with glides.		2	10,522.00	21,044.00T
SRP - Shade	Red Fields 35' X 20' T Cantilever Shade with 16' Entry Height. Inground mount with glides.		2	13,083.00	26,166.00T
Engineered Drawings	Engineered Sealed Drawings for shades.		4	1,200.00	4,800.00T
SRP - Shade	Rockhounds 24' X 24' Commercial Umbrellas with 12' Entry Height with glide elbows - Surface mount. Includes 27 electrical cutouts for speakers.		3	11,307.33	33,921.99T
Freight	Freight		1	13,812.00	13,812.00T
Installation	Installation of equipment listed above at your location.		1	99,429.00	99,429.00T
Surcharge	Material Surcharge		1	16,455.01	16,455.01T
Installation	Removal and disposal of Two (2) existing Umbrellas.		1	4,372.00	4,372.00T
BuyBoard Discount	Buy Board Discount Vendor #592-19			-14,500.00	-14,500.00

This bid is good for 30 days

Subtotal	\$262,084.00
Sales Tax (0.0%)	\$0.00
Total	\$262,084.00

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 Oblige.

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT
_____ of the City of
_____ of the County of _____ and State of Texas
as Principal, and _____, as Surety, are held and
firmly bound unto the City of Midland, Texas, as Oblige, in the amount of
_____ DOLLARS
(\$ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 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

* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 25.26	7.13

* 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.

=====

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: 7
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: Motion authorizing the City Manager or the City Manager's designee to advertise a request for proposals for the Data Network and Internet Services Project for the Communications and Information Systems Department and to negotiate a contract for said services; provided, however, that said agreement shall not become effective until approved by the City Council. (DISTRICT: ALL) (GENERAL SERVICES)

Purpose:

Motion authorizing the City Manager or the City Manager's designee to advertise a request for proposals for the Data Network and Internet Services Project for the Communications and Information Systems Department and to negotiate a contract for said services; provided, however, that said agreement shall not become effective until approved by the City Council.

Recommended City Council Action:

Approve

Fiscal Impact:

No funding at this time.

Discussion:

Please consider approval of a motion authorizing advertisement of a request for proposals for the Data Network and Internet Services Project for the Communications and Information Systems Department. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for more information.

Jina Gang

City Manager's Office



DATE: June 28, 2022

TO: Erika Martinez, Purchasing Manager

FROM: Jennifer Frescaz, Chief Information Officer

SUBJECT: Request the approval to release a request for proposals for an internet service provider agreement

Consider a resolution approving the release of a request for proposals for an internet service provider agreement.

Several of the agreements for the existing Internet Services are nearing expiration. The last request for proposals was completed in 2019. Staff recommends releasing a new RFP for the services agreements in an effort to lower costs and increase internet speeds. In addition, our current service provider was Grande Communications and this company has been procured by Astound Communications. We would like to ensure that our service level agreements will be met with any new provider and performing the RFP process ensures this.

The RFP and coordinating attachments are included for your review.

The cost of the services are budgeted in CISD's Information Systems Admin-Communications budget in the General Fund.

Request for Proposals

RFP 22003761

for

Data Network & Internet Services

Proposals for this requirement will be accepted until 2:00 P.M. on September 9, 2022

Proposals May be Mailed or Delivered to:

**City Secretary
City of Midland
Suite 340
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 340 Midland, TX 79701)**

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY PROPOSER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE PROPOSAL. NON-RESPONSIVE PROPOSALS WILL BE REJECTED. PROPOSER/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.
2. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.
3. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK
4. **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.

See Section 1.9 for Pre-proposal Meeting Information

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SCHEDULE OF EVENTS

RFP 22003761

For

Date Network & Internet Services

Event	Date*
RFP Released	July 14, 2022
Announcements distributed	July 14, 2022
Deadline for Receipt of Announcement/requests for RFP	N/A
Pre-proposal Conference.....	August 4, 2022
Cutoff Date for inquiries and clarification.....	August 25, 2022
Proposal Due Date	September 9, 2022
Notification of Vendor Interviews / Product Demonstrations	September 16, 2022
Present Recommendation to Council for Consideration (if BAFO is NOT required)	October 11, 2022
Call for Best and Final Offers (if required)	September 19, 2022
Final Offer Due Date (if required)	September 26, 2022
Present Recommendation to Council for Consideration (if BAFO is required).....	October 25, 2022
Intended Date for Contract Award.....	October 12, 2022

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.
2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offeror's. All copies of the proposal may be delivered in the same box/package.
3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.
4. Late proposals will not be accepted under any circumstances.
5. Proposal should give full firm name and address of Offeror. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN _____ - ____ - ____.
6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.
7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.
2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.
3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.
4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.
5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.
7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.
8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.
9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.
10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Information Systems Department (hereinafter referred to as "the City") is pleased to invite you to submit a proposal to support existing, and expand upon, the City's Data Network & Internet Services as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal

costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

A Pre-Proposal Conference will be conducted via ZOOM, Meeting ID: 856 5763 8588 Passcode: 316978 on Thursday, August 4, 2022 at 10:00 AM. Offerors may use this opportunity to notify the City of any ambiguity, inconsistency, or error, which they may discover upon examination of this RFP. All responses to questions at the Pre-Proposal Conference will be oral and in no way binding on the City.

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a

specific subsection, the offeror shall indicate so in the point-by-point response with the following:

“(Offeror’s Name)”, understands and will comply.

1.14. OFFER PRICING

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

Special incentives (implementation credits, setup fee waivers, etc.) should be highlighted in your response as additional items on the cost summary sheet.

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

- 1.16.1.1. Offerors must submit one original, 2 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.
- 1.16.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.16.2. Each Offeror who submits a proposal represents that:

- 1.16.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.
- 1.16.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.
- 1.16.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

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

1.17. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination,

such actions would be in its best interests, the City in its sole discretion reserves the right to:

- A) waive any formality;
- b) cancel or terminate this RFP;
- c) reject any or all proposals received in response to this document;
- d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.18. BONDING REQUIREMENTS

Intentionally omitted.

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See Contract or Agreement

1.22. CONTRACTOR'S RESPONSIBILITIES

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

1.23. OFFEROR COMPETITION

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

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

1.24. CONTRACT PROVISIONS AND TERMS

1.24.1. Contract Execution

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

1.24.2. Terms and Conditions

A proposed contract for services should be included with the offeror's response as an addendum. The contract must include all terms as spelled out in this rfp including, but not limited to:

- 1.24.4 Initial Contract(s) Term
- 1.24.5 Contract Extension price reduction option
- 1.24.6 Escalation limitations
- 4.1 Service Requirements
- 4.2 Contractual Requirements

1.24.3. Exceptions to Contract Terms & Conditions

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

1.24.4. The initial contract(s) term is for a period of Three (3) years. Renewals of the contract may be made at One (1) year intervals, not to exceed a total of (7) seven years, at the City's option.

1.24.5. Contract Extension

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

1.24.6. Escalation

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

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE OFFEROR SPECIFICALLY AGREES THAT IF THE OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL 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 OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.

2.2. OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL

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

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

2.4. WAIVER:

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

2.5.1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;

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

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

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

2.8.

3. SCOPE OF PROJECT

The focus of this RFP is to identify a core vendor(s) that will provide cost-effective and diversified enterprise-class internet access to existing and new City locations as defined in Appendix A. The City will consider options to migrate services to one or more vendors that provide the best value as defined by the requirements in this RFP.

The City may choose to select more than one vendor based on pricing and service availability each specific location. It is the City's desire to have a single or dual source selection, but exceptions will

be made, if necessary, to ensure quality service is available at all locations.

More specifically, the City is looking for a vendor(s) that will:

- 3.1. Work with City of Midland Information Technology staff and its current Vendor(s) to migrate from the incumbent's circuits to the vendor's circuits, which may be scheduled during non-business hours (may be evenings and/or week-ends) with no disruption to services. This may entail a ramp-up approach to test and accelerate the cut-over.
- 3.2. Provide their own premise equipment at no charge to including any monitoring devices. Vendor is required to monitor the performance of their premise equipment.
- 3.3. Ensure all installed vendor owned hardware containing software and firmware has, for security and performance purposes, the latest version applied to all components. Vendor is required to maintain the hardware with the then latest version of software and firmware throughout the life of the agreement. If latest software and/or firmware cannot be applied due to programming issues and/or known vulnerabilities, the proposer must provide a written explanation of these issues prior to completion of this project.
- 3.4. Coordinate all work with City staff and designated support teams.
- 3.5. Schedule work during times that will not affect the operation of City services, which will necessitate evening and week-end hours
- 3.6. Detail their methodology for providing detection and protection against DoS and DNS attacks at no additional charge to the City.
- 3.7. Guarantee bandwidth leased by City is dedicated solely to the City from the defined demarcation points. Vendor to provide customer bandwidth allocation and network design strategies employed to mitigate oversubscription.
- 3.8. Not throttle or filter traffic unless directed by the City of Midland to do so. All TCP/UDP ports will be open.
- 3.9. Filter traffic as requested (i.e. All non-routable IP networks should not be forwarded to City).
- 3.10. Include a detailed schematic of all proposed fiber and cable runs to serve The City's data network and Internet access. Show all routes, local loops and paths.
 - 3.10.1. Vendor to detail the transport medium (fiber, copper, service provider) at all points along the proposed route(s) for The City network. The detail includes the identity of THIRD-PARTY infrastructure providers and owners.
 - 3.10.2. Vendor must detail in depth their network footprint indicating all NAP's and POPs in the region.
 - 3.10.3. Vendor must provide the number of hops in the proposed route(s) servicing The City's network.
 - 3.10.4. The physical connectivity between demarcation point and the Internet Service Provider's point-of-presence (POP) should not be shared.
 - 3.10.5. For proposed routes that must be shared, vendor must provide the number of customers utilizing the same route, total bandwidth purchased by customer utilizing the same route and bandwidth capacity of proposed route. Vendor must show the average and peak utilization of this route.
- 3.11. List any significant changes planned for their network transpiring over the next 12 months that will alter the information provided in response to this RFP.
- 3.12. Provide network performance statistics within the Midland geographic service area for the last 12 months including any third-party reports.
- 3.13. Provide the detail process and methodology for handling outages to ensure business continuity.

3.14. Provide City with secondary DNS services at no additional cost

4. REQUIREMENTS

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

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

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

4.1. SERVICES REQUIREMENTS

4.1.1. Support Requirements (All Required)

4.1.1.1. Vendor to notify, within 1 hour, the City in the event of vendor network outage.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.1.2. Vendor to dedicate an account representative or team to City. The dedicated representative(s) can work with other clients, but this person will be the primary point of contact for the City.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.1.3. City reserves the right to request a change and reject any account representative for the terms of the service agreement.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.1.1.4. The City reserves the right to immediately terminate any agreement without penalty to The City when there is evidence of service and/or performance degradation.

Included in Package	Will add or Modify	Not Included
☐	☐	☐

Comments:

- 4.1.1.5. The City reserves the right to terminate any agreement without penalty to the City when the vendor fails to correct repeated Service Level Agreement violations as defined in section 4.1.2.

Included in Package	Will add or Modify	Not Included
☐	☐	☐

Comments:

- 4.1.1.6. The vendor must provide a clear path of escalation for all problems, detailing contact information and providing a toll-free number for all maintenance and troubleshooting calls. Vendor to provide employee names, titles and contact information (office phone, cell phone, email address) along the path of escalation.

Included in Package	Will add or Modify	Not Included
☐	☐	☐

Comments:

- 4.1.1.7. Vendor must be proactive in detecting and resolving problems and must communicate with City staff and designated support providers proactively via any or all of these methods: email alerts, phone, fax, and pager.

Included in Package	Will add or Modify	Not Included
☐	☐	☐

Comments:

4.1.1.8. Vendor must communicate to City for planned vendor network outages at least 30 days in advance.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.1.9. Vendor is expected to aggressively and proactively pursue any local exchange carrier the vendor may use to escalate and resolve any problems that affect City's service.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.2. Service Level Agreements (All Required)

4.1.2.1. During the initial and all subsequent terms of the agreement the vendor will be responsible to provide City with financial penalty credits, outlined in 4.1.3, when vendor does not meet the Service Level Agreement requirements and metrics (SLA) outlined in 4.1.2.3.1 thru 4.1.2.3.7 within any four-week window for all major infractions as well as an accumulation of three minor infractions.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3. A major infraction is considered to be any network outage that exceeds 1 hour during a business day; the inability to provide business continuity during a major outage that exceeds 1 business day; the inability to meet 4.1.2.3.3, 4.1.2.3.4, 4.1.2.3.5, 4.1.2.3.6, and 4.1.2.3.7. A minor infraction includes 4.1.2.3. and 4.1.2.3.2 below.

Included in Package

Will add or Modify

Not Included

PACKET

10
7.17

July 12, 2022

☐
☐
☐

Comments:

4.1.3.1. SLA Requirements & Metrics

4.1.3.1.1. Latency - <0.45msec

Included in Package
Will add or Modify
Not Included

☐
☐
☐

Comments:

4.1.3.1.2. Packet Loss – <0.05%

Included in Package
Will add or Modify
Not Included

☐
☐
☐

Comments:

4.1.3.1.3. Network Availability – 99.99% core to core

Included in Package
Will add or Modify
Not Included

☐
☐
☐

Comments:

4.1.3.1.4. Port Availability – 99.99%

Included in Package
Will add or Modify
Not Included

☐
☐
☐

Comments:

4.1.3.1.5. Provisioning – Any customer-requested modifications or changes to take place within 72 business hours.

Included in Package
Will add or Modify
Not Included

☐
☐
☐

Comments:

4.1.3.1.6. DoS and DNS Protection - 80% utilization during these attacks.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3.1.7. Customer Service – 4 hour guaranteed response time to resolve technical or administrative issues including billing

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3.2. SLA Financial Credits

4.1.3.2.1. First infraction: 10% service credit (based on monthly rates).

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3.2.2. Second infraction: 30% service credit (based on monthly rates)

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3.2.3. Third infraction: 60% service credit (based on monthly rates)

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3.2.4. If the vendor cannot meet these penalty terms, the vendor can make a counteroffer.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.2. CONTRACTUAL REQUIREMENTS

4.2.1.1. City has the right to add services to this contract during the term of this agreement. The rate for these additional services will be at the schedule rate of the Agreement. Any added services will be coterminous to this Agreement's term date.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.2.1.2. Vendor charges to begin upon final acceptance of full implementation of data network and internet services by City.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.1.3. For routes shared with other customers as defined in your response to 3.13.5, the contract will guarantee that the vendor will not subscribe beyond the data capacity of the shared route for the term (s) of the agreement

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.1.4. City reserves the right to terminate any agreement with the vendor without penalty to the City in the event of the vendor's bankruptcy.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.1.5. Vendor will allow City, during the initial term and all subsequent terms, of the agreement, to make on-demand changes to services purchased. This shall include the ability to add services, at the pricing agreed upon in the contract, to both existing locations and new locations, as well as the ability to discontinue up to 50% of contracted services without incurring early termination, disconnect, or other penalty fees.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.1.6. Vendor to waive all Installation/Configuration fees

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.1.7. Vendor to include all Equipment Provisioning and Circuit Monitoring fees into their monthly costs.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. Vendor Stability

- 5.3.1.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.3.1.2. Provide financial statements, preferably audited, for the three (3) consecutive years immediately preceding the issuance of this RFP.
- 5.3.1.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

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

- 6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.
- 6.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award

6.2. EVALUATION CRITERIA

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

- 6.2.1. **Company Service Qualifications – 15%**
- 6.2.2. **Ability to meet Service Level Agreements as defined in 4.1.2 – 20%**
- 6.2.3. **Adherence to Required and Optional Contract Terms – 15%**
- 6.2.4. **Implementation Plan – 15%**
- 6.2.5. **Technical Abilities - 15%**
- 6.2.6. **Cost Analysis – 20%**

7. PROPOSAL CONTENTS

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

- 7.1. **THE RFP**
- 7.2. **THE COST SUMMARY OR PROPOSAL FORM**
- 7.3. **REQUESTED ATTACHMENTS**
 - 7.3.1. **Financial Information**
 - 7.3.2. **Signed Execution of Offer**

8. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

RFP

Appendix A

Service Location	Service Address	Internet Speed Up/Down
Police Department	601 N Loraine St, Midland, TX 79701	5 Gbps
Police Department	601 N Loraine St, Midland, TX 79701	1 Gbps
Police Department	601 N Loraine St, Midland, TX 79701	100 Mbps
Grande Stadium	801 N Loop 250 W, Midland, TX 79703	5 Gbps
Midland Airport	9506 La Force Blvd, Midland, TX 79706	1 Gbps
Midland Airport	9506 La Force Blvd, Midland, TX 79706	2 Gbps
Fire Station 5	2200 W Golf Course Rd, Midland, TX 79701	1 Gbps
Customer Service	1030 Andrews Hwy, Midland, TX 79701	1 Gbps
Midland Airport	9506 La Force Blvd, Midland, TX 79706	2 Gbps
Fire Station 11	6600 Briarwood Ave, Midland, TX 79707	1 Gbps

Static IPs	Description
120	Dedicated Internet Access
4	Dedicated Internet Access
4	Dedicated Internet Access
28	Dedicated Internet Access
-	TLS to Police Department
28	Dedicated Internet Access
-	Dedicated Internet Access
-	EVPL to Police Department
28	Dedicated Internet Access
-	Dedicated Internet Access

COST SUMMARY

City of Midland Texas
RFP 22003761 #1234

Internet DIA																	
Line Item Identifier	Location Name	Location Address	Service Type	Current		Option 1 Service (Required)		Option 2 Service		Option 3 Service		Option 4 Service		n 5 (Supplier Recomm		Speed	Price
				Speed	Static IP	Speed	Price	Speed	Price	Speed	Price	Speed	Price				
1	PD Central Communications	801 North Loraine St	DIA	50Mbps up/down		50mb up / down		100mb up / down		500mb up / down		1000mb up / down					
2	Municipal Court	201 E Texas Ave	DIA	20 Mbps up/down		20 Mb up/down		100mb up / down		500mb up / down		1000mb up / down					
3	Airport Administration	9506 La Force Blvd	DIA	500 Mb up/down	28	500 Mb up/down		Supplier Provider Options									
4	PD Central Communications	801 North Loraine St	DIA	1000 Mbps		1000 Mbps		Supplier Provider Options									
5	Traffic Maint/Water	1600 Orchard Lane	NFIS	50/8		50/8		100mb		500mb		1000mb					
6	DSL Line for PD	801 N. Loraine St	Internet 25	25 down 5 up		25 down 5 up		50mb		100mb		500mb					
7	Washington Pool	801 N. Loraine St	Internet 3	3 down 1 up		3 down 1 up		50mb		100mb		500mb					
8	Airport Water Tower	9506 La Force Blvd	Internet 12	12 down 1.5 up	8	12 down 1.5 up		50mb		100mb		500mb					
9	Doug Russell Pool	800 Midland Dr	Internet 18	18 down 1.5 up	8	18 down 1.5 up		50mb		100mb		500mb					
10	Hogan Park	1201 E Wadley Ave	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
11	Reyes-Mashburn-Nielsens Park	2101 Cuthbert Ave	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
12	Washington Park	1803 E Indiana Ave	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
13	Beal Park	5200 W Wall St	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
14	Doug Russell Park	800 Midland Dr	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
15	Denise the Menace Park	1201 W Indiana Ave	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					
16	Hogan Park Golf Course	3600 N Fairgrounds Rd	New Site			100MB synchronous		500MB synchronous		1000MB synchronous		1000MB synchronous					

Data/VOIP/TLS			Current		Option 1 Service (Required)		Option 2 Service		Option 3 Service		Option 4 Service		n 5 (Supplier Recomm		Direct Connection	Transparent LAN	OTHER
Line Item Identifier	Location Name	Location Address	Service Type	Speed	Quantity	Speed/QTY	Price	Speed/QTY	Price	Speed/QTY	Price	Speed/QTY	Price				
17	Health and Senior Services	3303 W Illinois Ave	R11		1												
18	ML King Community Center	2300 Butternut Ln	R11		5												
19	Hogan Park Golf Course	3601 N Fairgrounds Rd	R11		5												
20	PD Central Communications	801 N Loraine St Suite 101 FLR Bldg CSD	R11		3												
21	City Hall	300 N Loraine St	R11		20												
22	Health and Senior Services	3303 W Illinois Ave	Private IQ Port	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
23	Fire Station #1	1500 W Wall St	Private IQ Port	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
24	Traffic Maint/Water	1600 Orchard Ln	Private IQ Port	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
25	Municipal Court	201 E Texas Ave	Private IQ Port	10 Mbps	1	10 MBPS		25Mb synchronous		50Mb synchronous		100MB synchronous					
26	City Hall	300 N Loraine St	Private IQ Port	20 Mbps	1	20 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
27	PD Central Communications	801 N Loraine St	Private IQ Port	10 Mbps													
28	Traffic Maint/Water	1600 Orchard Ln	Available TN		1												
29	Municipal Court	201 E Texas Ave	Available TN		2												
30	City Hall	300 N. Loraine St	Available TN		2												
31	Water Purification Plant	5000 N. Midland Dr	Available TN		1												
32	PD Central Communications	801 N Loraine St Suite 101 FLR Bldg CSD	Loop SIP Trunk Location	10 Mbps	1	10 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
33	Health and Senior Services	3303 W Illinois Ave	Loop SIP Trunk Location	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
34	Fire Station #1	1500 W Wall St	Loop SIP Trunk Location	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
35	Traffic Maint/Water	1600 Orchard Ln	Loop SIP Trunk Location	2 Mbps	1	2 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
36	City Hall	300 N Loraine St	Loop SIP Trunk Location	20 Mbps	1	20 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
37	Municipal Court	201 E Texas Ave	Loop SIP Trunk Location	10 Mbps	1	10 Mbps		25Mb synchronous		50Mb synchronous		100MB synchronous					
38	Fire Station #1	1500 W Wall St	Standard SIP Seat		28												
39	Health and Senior Services	3303 W Illinois Ave	Standard SIP Seat		46												
40	Animal Services	1200 N Fairgrounds Rd	Standard SIP Seat		9												
41	ML King Community Center	2300 Butternut Ln	Standard SIP Seat		13												
42	Parks and recreation	2701 Elizabeth Ave	Standard SIP Seat		12												
43	City Hall	300 N Loraine St	Standard SIP Seat		527												
44	Water Treatment	3600 FM 307	Standard SIP Seat		8												
45	Hogan Park Golf Course	3601 N Fairgrounds Rd	Standard SIP Seat		9												
46	PD Range/Academy	4500 FM 307	Standard SIP Seat		13												
47	Water Purification Plant	5000 N Midland Dr	Standard SIP Seat		4												
48	PD Central Communications	801 N Loraine St Suite 101 FLR Bldg CSD	Standard SIP Seat		363												
49	Landfill	7901 E Hwy 158	Standard SIP Seat		8												
50	Municipal Court	201 E Texas Ave	Standard SIP Seat		10												
51	City Hall	300 N Loraine St	Standard SIP Seat		140												
52	Traffic Maint/Water	1600 Orchard Ln	Standard SIP Seat		136												
53	Municipal Court	201 E Texas Ave	TLS	100 Mbps synchronous	1	100 Mbps synchronous				500mb synchronous		1000mb synchronous					
54	Airport Administration	9506 La Force Blvd	TLS	1000 Mbps synchronous		1000 Mbps synchronous		Supplier Provider Options									
55	PD Central Communications	801 North Loraine St	TLS	100 Mbps synchronous	8	100 Mbps synchronous				500mb synchronous		1000mb synchronous					
56	PD Central Communications	801 North Loraine St	TLS	1000 Mbps synchronous		1000 Mbps synchronous		Supplier Provider Options									
57	Traffic Maint/Water	1600 Orchard Ln	Standard SIP Sessions		285												

DATA NETWORK & SERVICES AGREEMENT
22003761

THIS AGREEMENT is made and effective the __day of __ 20____, by and between the CITY OF MIDLAND, TEXAS (“CITY”), a home-rule municipal corporation, and _____ (“COMPANY”). CITY and COMPANY are at times individually referred to as a “Party” and collectively referred to as the “Parties.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform Data Network & Internet Services (the “Services”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

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

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

ARTICLE IV. TERM

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

CITY shall have the right to extend the term of this Contract for seven (7) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT AND HAD THE

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

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

If to COMPANY: _____

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

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

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

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

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

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

and all terms and requirements under said statutes and regulations are made terms and conditions of this Agreement, to which the Parties have agreed to be bound.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XV. INDEMNITY

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

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS,

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

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

AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION XV SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

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

~~PACKET~~ 7/42

Date July 12, 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.

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: _____



City Council Meeting

Item Number: 8
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Justine Ruff, Director
Subject: Motion appropriating \$39,950.05 from the Airport Unappropriated Fund Balance to the Aqueous Film Forming Foam (AFFF) Test Cart Project in Fund 505 (DISTRICT 4) (AIRPORTS)

Purpose:

Motion appropriating \$39,950.05 from the Airport Unappropriated Fund Balance to the Aqueous Film Forming Foam (AFFF) Test Cart Project in Fund 505 at Midland International Air & Space Port.

Recommended City Council Action:

Approve

Fiscal Impact:

City/Airport Share (10%) – Grant #68	\$ 5,506.05
City/Airport Share (Contingency) – Future 90/10 split FAA/City	\$ 34,444.00
Total	\$ 39,950.05

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:

During the June 14, 2022, Council meeting, the Council approved a motion authorizing the Mayor, City Manager and City Attorney to execute Federal Grant #68 upon receipt. Grant #68 awarded the City \$34,444.00 towards the purchase of an Aqueous Film Forming Foam (AFFF) Test Cart for testing the AFFF in the Aircraft Rescue Fire Fighting (ARFF) vehicles. The

appropriation language for this project was inadvertently left out of the June 14th memo, and therefore, the appropriation language is being addressed now. In order to purchase the AFFF cart, \$39,950.05 should be appropriated at this time.

Jina Gang

City Manager's Office



City Council Meeting

Item Number: 9
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Kayci LaDuke,
Subject: RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR THE FISCAL YEAR 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDS (DISTRICT: ALL) (POLICE)

Purpose:

Consider a resolution authorizing the City of Midland to submit a grant application for the FY2023 Edward Byrne Memorial Justice Assistance Grant Program through the Office of the Governor of Texas, Criminal Justice Division.

Recommended City Council Action:

Approve

Fiscal Impact:

No fiscal impact to the City of Midland.

Discussion:

Grant funding, if awarded, will be used to purchase crime scene forensic mapping equipment that will be utilized in the investigation of various crime scenes to ensure a thorough investigation is conducted with adequate evidence to prosecute cases.

City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE SUBMISSION OF
AN APPLICATION TO THE OFFICE OF THE
GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION,
FOR THE FISCAL YEAR 2023 EDWARD BYRNE
MEMORIAL JUSTICE ASSISTANCE GRANT
PROGRAM; AND AUTHORIZING THE EXECUTION OF
ALL NECESSARY DOCUMENTS FOR THE
ACCEPTANCE OF SAID GRANT FUNDS**

WHEREAS, the Office of the Governor, Texas Criminal Justice Division, has announced the availability of funds through the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant Program; and

WHEREAS, the Midland Police Department wishes to submit an application for grant funds in order to purchase crime scene forensic mapping equipment; and

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

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager or his designee to execute all necessary documents to provide for the acceptance of said grant funds; and

WHEREAS, the City of Midland shall not use the existence of an Office of the Governor, Texas Criminal Justice Division grant funds to offset or decrease total salaries, expenses and allowances that the City of Midland receives from the governing body at or after the time the grant funds are awarded; and

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

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

SECTION ONE. That the City of Midland is hereby authorized to submit a grant

application to the Office of the Governor, Texas Criminal Justice Division, in order to purchase crime scene forensic mapping equipment for the Police Department.

SECTION TWO. That the City of Midland shall not use the grant funds from Office of the Governor, Texas Criminal Justice Division to offset or decrease total salaries, expenses and allowances that the City of Midland receives from the governing body at or after the time the grant funds are awarded.

SECTION THREE. That in the event of loss or misuse of the grant funds from the Office of the Governor, Texas Criminal Justice Division, the City of Midland assures that the grant funds shall be returned to the Office of the Governor of Texas Criminal Justice Division in full.

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

SECTION FIVE. That upon the approval of the City of Midland's application for grant funds through the Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant Program, the City Manager or his designee is hereby authorized and directed to execute all necessary documents to provide for the acceptance of said grant funds.

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 _____, AD., 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, Chief of Police

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 10
Meeting Date: July 12, 2022
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License (22-329-025) with Enterprise Navitas Midstream Midland Basin, LLC, regarding City-owned property described as Section 19, Block 36 and Section 24, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion amends ROW License number 22-329-019, approved at the April 25, 2022 council meeting and recorded as Instrument number 22-12417 in Midland County records. This License provided a 30' wide right of way to place a Twenty-Four inch (24) privately owned, poly construction, natural gas pipeline on City of Midland owned real property. This amendment will allow applicant to adjust the final pipeline length and provide a surface use area of 3,593 square feet in Section 19 to make the connection to the existing pipeline. Applicant will need an additional 20' wide temporary workspace for construction.

This Right-of-Way License Amendment 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:

The following fees will be collected:

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

Annual Lease Rate,

Annual Lease Rate 24" pipeline(358.13 rods x \$220.00/rod): \$78,788.60 per year first 5 years paid in advance: \$393,921.00

Surface use (3,593 sq. ft. x \$0.12 per sq. ft.) \$431.16 per year first 5 years paid in advance \$2,155.80

Amended Annual Fee with pipeline adjustment and surface area: \$79,215.36 paid 5 years in advance \$396,098.80

Discussion:

This is a private, poly construction gas line will be twenty-four inches (24) in diameter and will be buried a minimum of thirty-six inches (36) deep. Surface use area will be 3,593 square feet with above ground valve connections.

Certificates of Insurance are on file

City Secretary to record all documents



City Manager's Office

**AMENDMENT TO THE RIGHT OF WAY LICENSE
BETWEEN ENTRPRISE NAVITAS MIDSTREAM MIDLAND BASIN LLC
AND
THE CITY OF MIDLAND, TEXAS**

THIS AMENDMENT is made and effective this ___ day of _____, 2022, by and between Enterprise Navitas Midstream Midland Basin LLC (“Company”), and the City of Midland (“City”), a home-rule municipality.

WHEREAS, Company and City entered into that certain Right of Way License dated April 27, 2022 (the “License”), for the right to enter upon certain City-owned property for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing a poly construction pipeline on and across City’s property which was approved by the Midland City Council by Motion No. 046-2022; and

WHEREAS, the License has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, Company and City desire to make certain amendments to the License as set forth below;

W I T N E S S E T H:

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

- a. The License is hereby amended so as to replace the original exhibit (referred to in the License as **Exhibit A**) in its entirety with **Exhibit “A”**, attached hereto and incorporated herein for all purposes.

- b. Section II(A) of the License is hereby amended to read in its entirety as follows:

A. License Fee. The license fee in the amount of THREE HUNDRED NINETY-SIX THOUSAND NINETY-EIGHT and 80/100 Dollars (\$396,098.80) shall be due and payable on or prior to the Commencement Date of this License (“License Fee”). Licensee’s failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

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).

- 3) Section III(A) of the License is hereby amended to read in its entirety as follows:

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a poly construction pipeline, not to exceed twenty-four (24) inches in diameter, for the transportation of natural gas and a 3,593 square foot surface site (collectively "Licensee's pipeline"). Licensee shall have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to thirty (30) feet after the pipeline 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.**

- 4) The License, inclusive of this Amendment, is hereby ratified and affirmed by Company and City, and the License shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

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

CITY OF MIDLAND

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

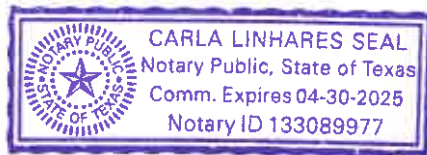
ENTERPRISE NAVITAS MIDSTREAM
MIDLAND BASIN LLC

Gloria L. Keeter, Agent and Attorney-in-Fact

THE STATE OF Texas §
COUNTY OF Harris §

BEFORE ME, Carla Seal, a notary public, on this day personally appeared Gloria L. Keeter an officer of Enterprise Navitas Midstream Midland Basin 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 company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY AND SEAL OF OFFICE this the 28th day of June, 2022.



Notary Public, in and for
The State of Texas

Printed Name: CARLA LINHARES SEAL

My Commission Expires: 04-30-2025

EXHIBIT "A"

SECTION LINE

S.F. 015390

SECTION 24, BLOCK 37
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

SURFACE SITE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	S 24°55'49" W	59.94'
L2	N 65°02'22" W	60.08'
L3	N 25°05'26" E	59.82'
L4	S 65°09'33" E	59.91'

TX-MD-CWTH-004
THE CITY OF MIDLAND
VOL. 1508, PG. 593
D.R.M.C.T.

SURFACE SITE
AREA = 3,593 SQUARE FEET
(0.082 ACRES)

POB
N: 10647011.15
E: 1843054.09

S 62°16'30" E
616.14' (TIE)

FOUND 1" IRON PIPE

FOUND IRON
ROD BEARS
N 76°08'31" E
35.23' (TIE)

SECTION LINE

- LEGEND**
- SECTION LINE
 - OHE OVERHEAD ELECTRIC
 - SURFACE SITE
 - EXISTING PIPELINE
 - FENCE LINE
 - POWER POLE
 - FOUND MONUMENT
 - CALCULATED CORNER
 - BEARING CHANGE

METES 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 SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

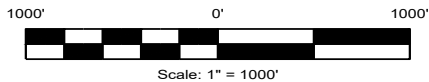
BEGINNING AT A POINT (N: 10647011.15, E: 1843054.09) IN SAID SECTION 24, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 24 BEARS S 62°16'30" E, A DISTANCE OF 616.14 FEET (TIE).

THENCE S 24°55'49" W, A DISTANCE OF 59.94 FEET TO A POINT;
THENCE N 65°02'22" W, A DISTANCE OF 60.08 FEET TO A POINT; FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 24 BEARS S 71°25'23" W, A DISTANCE OF 4860.69 FEET (TIE), FROM WHICH A FOUND IRON ROD BEARS N 76°08'31" E, A DISTANCE OF 35.23 FEET (TIE);
THENCE N 25°05'26" E, A DISTANCE OF 59.82 FEET TO A POINT;

THENCE S 65°09'33" E, A DISTANCE OF 59.91 FEET TO THE POINT OF BEGINNING.

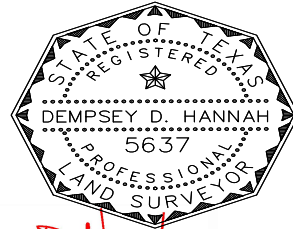
SAID SURFACE SITE CONTAINING A TOTAL OF 3,593 SQUARE FEET OR 0.082 ACRES IN SAID SECTION 24.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
18 MILES NORTHWEST OF GARDEN CITY, TEXAS



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.



Dempsey D. Hannah 06/01/2022
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE



COLOSSUS CS SUCTION PIPELINE
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



TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-118

10-6
DRAWN BY: JS DATE: 05/16/2022
CHECKED BY: DDH DATE: 06/01/2022
SCALE: 1"=1000' PAGE 1 OF 1

July 12, 2022
DWG. NO.
9462_TX-MD-CWTH-SS

REV.
0

EXHIBIT "A"

SECTION LINE

S.F. 015390

SECTION 24, BLOCK 37
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

PIPELINE CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	S 65°18'29" E	289.91'
L2	N 75°38'26" E	273.62'

TX-MD-CWTH-004
THE CITY OF MIDLAND
VOL. 1508, PG. 593
D.R.M.C.T.

POB
N: 10646996.65
E: 1843014.30

PIPELINE CENTERLINE
TOTAL LENGTH = 563.53 FEET
(34.15 RODS)

POT
N: 10646943.40
E: 1843542.78

S.F.
015390

FOUND IRON
ROD BEARS
N 76°08'31" E
35.23' (TIE)

FOUND 1"
IRON PIPE

- LEGEND
- SECTION LINE
 - OHE
 - PIPELINE CENTERLINE
 - PIPELINE RIGHT-OF-WAY
 - TEMPORARY RIGHT-OF-WAY
 - EXISTING PIPELINE
 - FENCE LINE
 - POWER POLE
 - FOUND MONUMENT
 - CALCULATED CORNER
 - BEARING CHANGE

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:

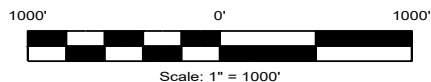
BEGINNING AT A POINT (N: 10646996.65, E: 1843014.30) IN SAID SECTION 24, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 24 BEARS S 71°24'40" W, A DISTANCE OF 4903.18 FEET (TIE), FROM WHICH A FOUND IRON ROD BEARS N 76°08'31" E, A DISTANCE OF 35.23 FEET (TIE);

THENCE S 65°18'29" E, A DISTANCE OF 289.91 FEET TO A POINT;

THENCE N 75°38'26" E, A DISTANCE OF 273.62 FEET TO THE POINT OF TERMINATION (N: 10646943.40, E: 1843542.78) OF SAID CENTERLINE, AT A POINT IN THE EAST BOUNDARY LINE OF SAID SECTION 24, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 24 BEARS S 14°31'29" E, A DISTANCE OF 226.13 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 563.53 FEET OR 34.15 RODS IN SAID SECTION 24.

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
18 MILES NORTHWEST OF GARDEN CITY, TEXAS



NOTES:

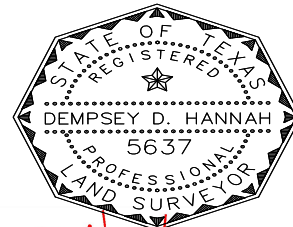
1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT 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
1	05/22	JS	REVISED ROUTE	DDH

PROJECT NO. 9462



TBPELS FIRM# 10193740 / 19148
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-118



Dempsey D. Hannah

06/01/2022

DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE

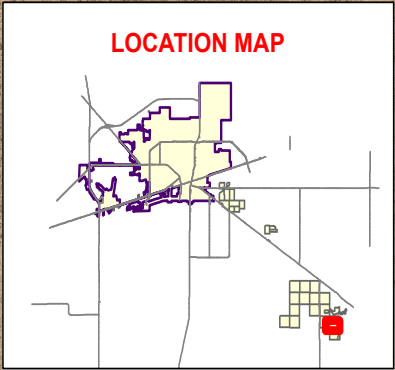


COLOSSUS CS SUCTION PIPELINE

THE CITY OF MIDLAND

PROPOSED PIPELINE CENTERLINE
ONE (1) 24" POLY PIPELINE CARRYING NATURAL GAS
SITUATED IN
SECTION 24, BLOCK 37, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

DRAWN BY: WAS	DATE: 03/17/2022	BWG: NO.	REV.
CHECKED BY: DDH	DATE: 04/18/2022	9462_TX-MD-CWTH-004_REV	1
SCALE: 1"=1000'	PAGE 1 OF 1		



BLK 37-3-S
SEC 24

BLK 36-3-S
SEC 19

BLK 36-3-S
WRAGE, HC
SEC 20

Surface Site Total Area:
0.082 Acres (3,593 Square Feet)

Proposed ROW:
358.14 Rods (5,909.27 Feet)

BLK 37-3-S
SEC 25

BLK 36-3-S
SEC 30

BLK
36-3-S
SEC 30

Date: 6/6/2022

- Proposed ROW
- Surface Site
- Survey Section

PACKET

Navitas Proposed Pipeline ROW & Surface Site

10.8

July 12, 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)
04/12/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Southwest, Inc. Houston TX Office 5555 San Felipe Suite 1500 Houston TX 77056 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): 800-363-0105 E-MAIL ADDRESS:														
INSURED Enterprise Navitas Midstream Midland Basin LLC 1100 Louisiana Street 10th Floor Houston TX 77002 USA	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Old Republic Insurance Company</td><td>24147</td></tr><tr><td>INSURER B: Lexington Insurance Company</td><td>19437</td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Old Republic Insurance Company	24147	INSURER B: Lexington Insurance Company	19437	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** 570092646067**REVISION NUMBER:**

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

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS												
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR *Each Occurrence GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			MWZY31308822	04/18/2022	04/18/2023	<table><tr><td>EACH OCCURRENCE</td><td>\$1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>Excluded</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$6,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$2,000,000</td></tr></table>	EACH OCCURRENCE	\$1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000	MED EXP (Any one person)	Excluded	PERSONAL & ADV INJURY	\$1,000,000	GENERAL AGGREGATE	\$6,000,000	PRODUCTS - COMP/OP AGG	\$2,000,000
EACH OCCURRENCE	\$1,000,000																		
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000																		
MED EXP (Any one person)	Excluded																		
PERSONAL & ADV INJURY	\$1,000,000																		
GENERAL AGGREGATE	\$6,000,000																		
PRODUCTS - COMP/OP AGG	\$2,000,000																		
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			MWTB 313086 22	04/18/2022	04/18/2023	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td></td></tr><tr><td>BODILY INJURY (Per accident)</td><td></td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td></td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000	BODILY INJURY (Per person)		BODILY INJURY (Per accident)		PROPERTY DAMAGE (Per accident)					
COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000																		
BODILY INJURY (Per person)																			
BODILY INJURY (Per accident)																			
PROPERTY DAMAGE (Per accident)																			
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION ☒ OCCUR ☒ CLAIMS-MADE			MWZU31362822	04/18/2022	04/18/2023	<table><tr><td>EACH OCCURRENCE</td><td></td></tr><tr><td>AGGREGATE</td><td>\$9,000,000</td></tr><tr><td>Each Claim</td><td>\$9,000,000</td></tr></table>	EACH OCCURRENCE		AGGREGATE	\$9,000,000	Each Claim	\$9,000,000						
EACH OCCURRENCE																			
AGGREGATE	\$9,000,000																		
Each Claim	\$9,000,000																		
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe in under DESCRIPTION OF OPERATIONS below	☒ Y ☒ N	N/A	MWC31308522	04/18/2022	04/18/2023	<table><tr><td>☒ PER STATUTE</td><td>☐ OTHER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td></td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-EA EMPLOYEE</td><td></td><td>\$1,000,000</td></tr><tr><td>E.L. DISEASE-POLICY LIMIT</td><td></td><td>\$1,000,000</td></tr></table>	☒ PER STATUTE	☐ OTHER		E.L. EACH ACCIDENT		\$1,000,000	E.L. DISEASE-EA EMPLOYEE		\$1,000,000	E.L. DISEASE-POLICY LIMIT		\$1,000,000
☒ PER STATUTE	☐ OTHER																		
E.L. EACH ACCIDENT		\$1,000,000																	
E.L. DISEASE-EA EMPLOYEE		\$1,000,000																	
E.L. DISEASE-POLICY LIMIT		\$1,000,000																	

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

Certificate Holder is included as Additional Insured excluding Workers' Compensation and Employers' Liability as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions. Waiver of Subrogation is granted in favor of Certificate Holder as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions.

CERTIFICATE HOLDER**CANCELLATION**

City of Midland City Hall, Room 520 300 N Loraine Midland TX 79701 USA	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 <i>Aon Risk Services Southwest, Inc.</i>
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PACKET

10.9

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ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

Holder Identifier :

Certificate No : 570092646067



THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

[illegible]



City Council Meeting

Item Number: 11
Meeting Date: July 12, 2022
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License (22-329-026) with Enterprise Navitas Midstream Midland Basin, LLC, regarding City-owned property described as Section 24, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas
(DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide applicant a 30' wide right of way to place up to a Sixteen inch (16) privately owned, poly construction, natural gas pipeline on City of Midland owned real property. Applicant will need an additional 20' wide temporary workspace for construction.

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 16" pipeline (96.73 rods x \$220.00/rod): \$21,280.60 per year / First 5 years paid in advance: \$106,403.00

Surface Damages: included in new annual rate

Total Collected: \$107,403.00

Discussion:

This is a private, poly construction gas line will be up to Sixteen Inches (16" in diameter and will be buried a minimum of thirty-six inches (36) deep.

Certificates of Insurance are on file

City Secretary to record all documents

A handwritten signature in black ink, appearing to read "Robert Palmer". The signature is fluid and cursive, with the first name "Robert" and last name "Palmer" clearly distinguishable.

City Manager's Office

RIGHT OF WAY LICENSE

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

Date: July 13, 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: Enterprise Navitas Midstream Midland Basin LLC

Licensee's Representative: **Carl D. Richardson**

Licensee's Mailing Address: P.O. Box 4324
Attn: Land Department
Houston, Texas 77210-4324

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

License Number: 22-329-026

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.

W I T N E S S E T H:

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 ONE HUNDRED SIX THOUSAND FOUR HUNDRED THREE and No/100 Dollars (\$106,403.00) 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 fifty (50) feet in width of the pipeline location as shown on Exhibit A attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a poly construction pipeline, not to exceed sixteen (16) inches in diameter, for the transportation of natural gas 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 work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed."

Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

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

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

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

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

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

federal or state laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

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

Workers' Compensation: Statutory limits

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

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

The Commercial General Liability shall be on an occurrence basis. This insurance shall name 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

Licensee 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 Craig, Director of Utilities

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

**LICENSEE:
ENTERPRISE NAVITAS MIDSTREAM
MIDLAND BASIN LLC**

By: 
Printed Name: Carl D. Richardson
Title: Agent and Attorney-in-Fact

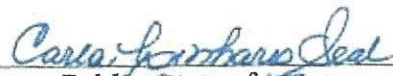
THE STATE OF Texas

§
§
§

COUNTY OF Harris

BEFORE ME, the undersigned authority, on this 28th day of June, 2022 personally appeared Carl D. Richardson an officer of Enterprise Navitas Midstream Midland Basin 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 28th day of June, 2022.


Notary Public, State of Texas

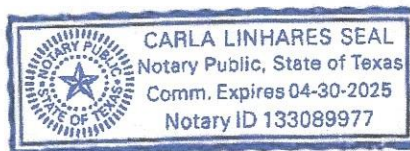
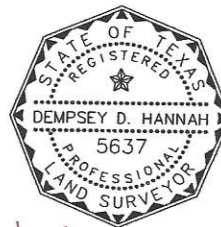
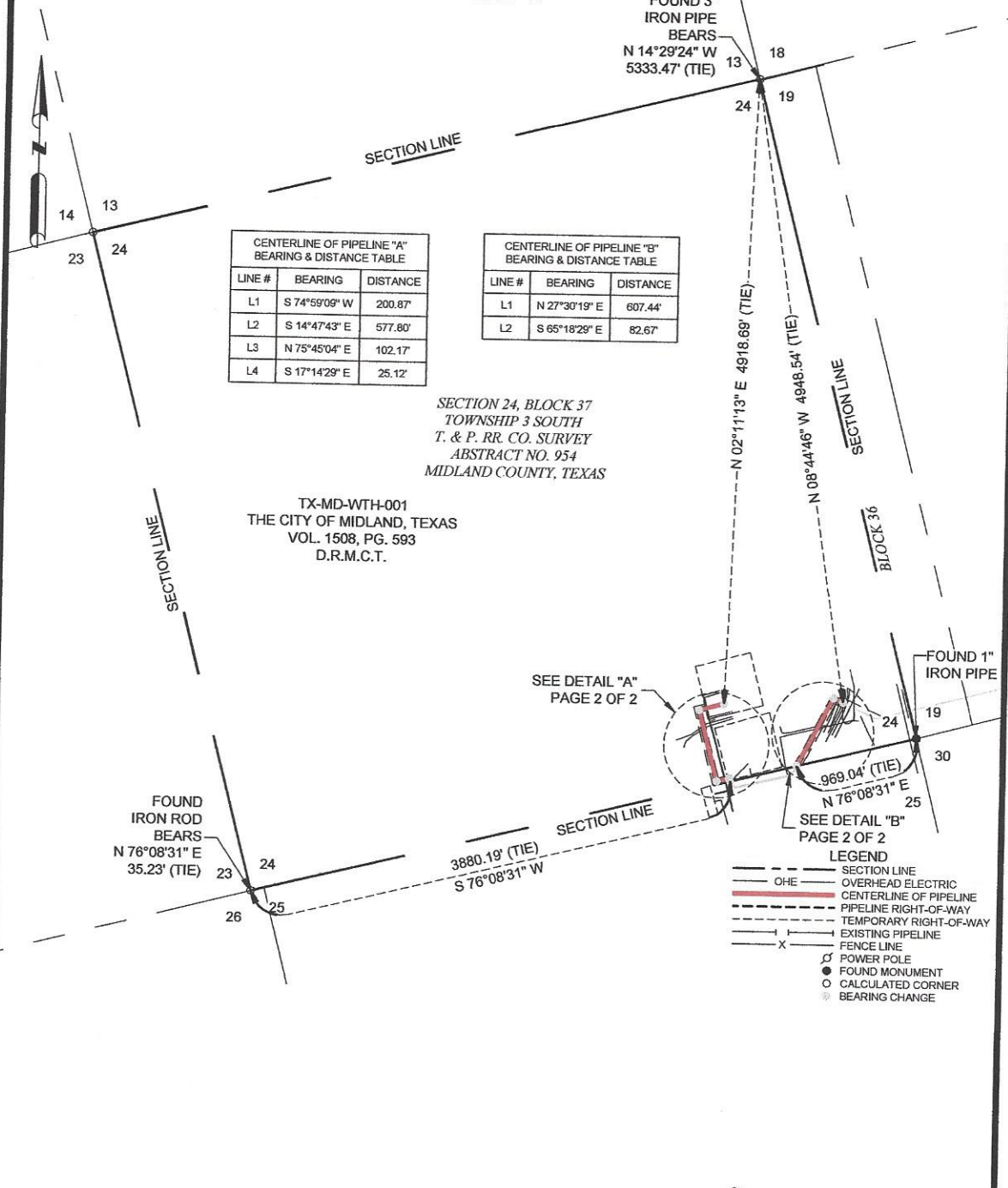


EXHIBIT "A"



Dempsey D. Hannah
06/20/2022
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE

#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 11546



TBPELS FIRM# 10193740
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181



WTH 24-13S WELL CONNECTS THE CITY OF MIDLAND, TEXAS PROPOSED CENTERLINE OF PIPELINE

SITUATED IN
SECTION 24, BLOCK 37,
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

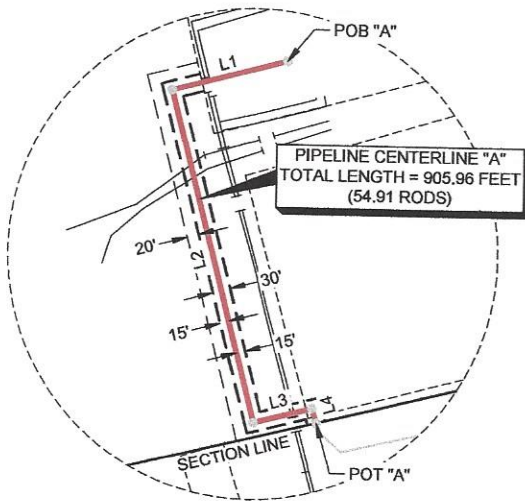
DRAWN BY: JS
CHECKED BY: DDH
SCALE: 1"=1000'

DATE: 06/14/2022
DATE: 06/17/2022
PAGE 1 OF 2

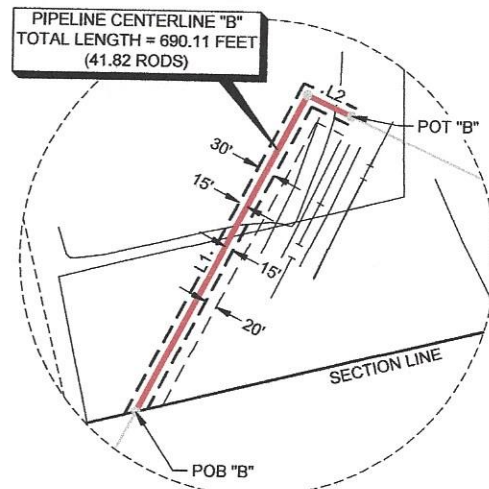
DWG. NO.
11546_01.00 SEC 24

REV.
0

July 12, 2022



DETAIL "A"
N.T.S.



DETAIL "B"
N.T.S.

CENTERLINE DESCRIPTION "A"

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: 10646972.54, E: 1842074.15) IN SAID SECTION 24, FROM WHICH THE CALCULATED NORTHEAST CORNER OF SECTION 24 BEARS N 02°11'13" E, A DISTANCE OF 4918.69 FEET (TIE), FROM WHICH A FOUND 3" IRON PIPE BEARS N 14°29'24" W, A DISTANCE OF 5333.47 FEET (TIE);

THENCE S 74°59'09" W, A DISTANCE OF 200.87 FEET TO A POINT;
THENCE S 14°47'43" E, A DISTANCE OF 577.80 FEET TO A POINT;
THENCE N 75°45'04" E, A DISTANCE OF 102.17 FEET TO A POINT;

THENCE S 17°14'29" E, A DISTANCE OF 25.12 FEET TO THE POINT OF TERMINATION (N: 10646363.01, E: 1842134.16) OF SAID CENTERLINE, AT A POINT IN THE SOUTH BOUNDARY LINE OF SAID SECTION 24, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SECTION 24 BEARS S 76°08'31" W, A DISTANCE OF 3880.19 FEET (TIE), FROM WHICH A FOUND IRON ROD BEARS N 76°08'31" E, A DISTANCE OF 35.23 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 905.96 FEET OR 54.91 RODS IN SAID SECTION 24.

CENTERLINE DESCRIPTION "B"

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: 10646492.40 E: 1842658.66) IN SAID SECTION 24, FROM WHICH A 1" IRON PIPE FOUND FOR THE SOUTHEAST CORNER OF SAID SECTION 24 BEARS N 76°08'31" E, A DISTANCE OF 969.04 FEET (TIE);

THENCE N 27°30'19" E, A DISTANCE OF 607.44 FEET TO A POINT;

THENCE S 65°18'29" E, A DISTANCE OF 82.67 FEET TO THE POINT OF TERMINATION (N: 10646996.65, E: 1843014.30) OF SAID CENTERLINE AT A POINT IN SAID SECTION 24, FROM WHICH THE CALCULATED NORTHEAST CORNER OF SECTION 24 BEARS N 08°44'46" E, A DISTANCE OF 4948.54 FEET (TIE), FROM WHICH A FOUND 3" IRON PIPE BEARS N 14°29'24" W, A DISTANCE OF 5333.47 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 690.11 FEET OR 41.82 RODS IN SAID SECTION 24.

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. 11546



TBPELS FIRM# 10193740
2129 S Great Southwest Parkway Suite 313
Grand Prairie, TX 75051
(817) 529-1180 ~ Fax (817) 529-1181



WTH 24-13S WELL CONNECTS
THE CITY OF MIDLAND, TEXAS
PROPOSED CENTERLINE OF PIPELINE

SITUATED IN
SECTION 24, BLOCK 37,
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 954
MIDLAND COUNTY, TEXAS

DRAWN BY: JS

DATE: 06/14/2022

CHECKED BY: DDH

DATE: 06/17/2022

SCALE: 1"=1000'

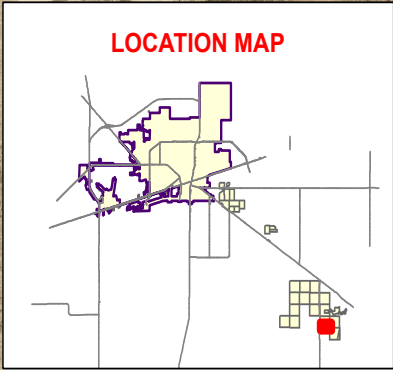
PAGE 2 OF 2

DWG. NO. 11546_01.00 SEC 24

REV.

0

July 12, 2022



BLK 37-3-S
SEC 24

BLK 36-3-S
SEC 19

Proposed ROW "A":
54.91 Rods (905.96 Feet)

Proposed ROW "B":
41.82 Rods (690.11 Feet)

BLK 37-3-S
SEC 25

BLK 36-3-S
SEC 30

Date: 6/21/2022

PACKET

Enterprise Navitas Midstream Proposed Pipeline ROW
Total Length: 96.73 Rods (1,596.07 Feet)

July 12, 2022



0 150 300 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.

Proposed ROW
Survey Section



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
04/12/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Southwest, Inc. Houston TX Office 5555 San Felipe Suite 1500 Houston TX 77056 USA	CONTACT NAME:	
	PHONE (A/C. No. Ext): (866) 283-7122	FAX (A/C. No.): 800-363-0105
INSURED Enterprise Navitas Midstream Midland Basin LLC 1100 Louisiana Street 10th Floor Houston TX 77002 USA	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A: Old Republic Insurance Company	
	INSURER B: Lexington Insurance Company	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

Holder Identifier :

COVERAGES**CERTIFICATE NUMBER:** 570092646067**REVISION NUMBER:**

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

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR *Each Occurrence GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			MWZY31308822	04/18/2022	04/18/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$6,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			MWTB 313086 22	04/18/2022	04/18/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB DED RETENTION			MWZU31362822	04/18/2022	04/18/2023	EACH OCCURRENCE AGGREGATE \$9,000,000 Each Claim \$9,000,000
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe in under DESCRIPTION OF OPERATIONS below	☒ Y ☒ N	N/A	MWC31308522	04/18/2022	04/18/2023	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

Certificate No : 570092646067

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

Certificate Holder is included as Additional Insured excluding Workers' Compensation and Employers' Liability as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions. Waiver of Subrogation is granted in favor of Certificate Holder as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions.

CERTIFICATE HOLDER**CANCELLATION**

City of Midland City Hall, Room 520 300 N Loraine Midland TX 79701 USA	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 <i>Aon Risk Services Southwest, Inc.</i>

PACKET

11.19

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ACORD 25 (2016/03)

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Revised 10/2022

**ADDITIONAL REMARKS**



City Council Meeting

Item Number: 12
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Carl Craigo, Director
Subject: Motion authorizing the execution of a Right-of-Way License (22-329-003) with Pilot Water Gathering Delaware LLC regarding City-owned property described as Sections 5, 6 and 7, Block C-24, Public School Land Survey, Loving County, Section 3, Block C-24, Public School Land Survey, Loving County and Winkler County, Sections 21, 22, 23, 24, 25 and 26, Block C-23, Public School Land Survey, Winkler County and Sections 9, 10 and 27, Block 74, Public School Land Survey, Winkler County (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide applicant a 30' wide right of way to place up to a Thirty-Six inch (36") private, poly construction, produced water pipeline, a power line, and the use of two existing lines (6" and 8" lines) on City of Midland owned T-Bar Ranch. Pilot Water systems is the successor in interest to Felix Water, LLC..

Applicant will need a 50' wide temporary workspace in places for construction.

This Right-of-Way License is proposed for a 10 years term at two times University Land Rates.

Recommended City Council Action:

Approve

Fiscal Impact:

Power Line: 2,534 rods X \$370/rod UL Rate = \$937,580.00
Existing 6" & 8" lines: 2,591 rods X \$260/rod UL Rate = \$673,660.00
New 30" pipeline: 3,860 rods X \$750/rod UL Rate = \$2,895,000.00
10 years paid in advance total: \$4,506,240.00
An Annual transportation fee of \$200,000 with a 3% annual increase

A one time payment of \$492,795.61 (past transportation fees)

Discussion:

This is a private carrier, poly construction, produced water pipeline and will be up to thirty-six inches (36") in diameter and will be buried a minimum of thirty-six inches (36) deep. This pipeline will be an upgrade to the existing and aging produced water pipeline servicing multiple mineral production facilities as well as allow Pilot Water the ability to tie their existing facilities on adjacent properties to better move produced water off T-bar Ranch. No produced water will be disposed of on City owned property.

Certificates of Insurance are on file

City Secretary to record all documents

A handwritten signature in black ink, appearing to read "David Patrick".

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTIES OF LOVING §
AND WINKLER §

Date: _____, 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: Pilot Water Gathering Delaware LLC

Licensee's Representative: Chris Mertz

Licensee's Mailing Address: 20 Greenway Plaza, Suite 1050, Houston, Texas 77046

Property: As described in Article III below.

License Number: _____

Licensee desires use of certain Property (as defined below) owned by Licensor in Loving and Winkler Counties, Texas, for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license in order to use the public lands of Licensor.

W I T N E S S E T H:

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

I. Term

A. Initial Term. This License shall be for a term of ten (10) years (the "Initial Term"), commencing on the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of ten (10) years (the "Renewal Term"), upon the written request of Licensee received by Licensor not more than one (1) year and not less than one hundred twenty (120) days

prior to the expiration of the Initial Term then in effect. The granting of consent for the Renewal Term shall be in the sole discretion of the applicable governing body and/or officials 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, in each case, after Licensor delivers notice to Licensee reasonably detailing the breach or default; provided, however, such time shall be extended for such period of time that Licensee is unable to exercise its rights granted hereunder because of Force Majeure. “Force Majeure” means the occurrence of any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, Licensee, and which delays or prevents Licensee from timely performing any obligation under this License.

Additionally, Licensor may terminate this License in full or in part upon giving at least three hundred sixty-five (365) days’ written notice to Licensee. In connection with any such termination Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the License being terminated. To the extent reasonably possible, Licensor will use commercially reasonable efforts to grant Licensee a new pipeline right-of-way and/or electric line right-of-way, as applicable, on other property owned by Licensor in order to allow Licensee to reroute Licensee’s pipelines and/or electric lines affected by any such termination of this License. The parties to this License understand and agree that it is in Licensor’s sole discretion to terminate this License during the term of this License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of this License. All work and services under this License shall be suspended upon termination of this License.

Upon expiration or termination of this License, Licensee shall remove all pipelines, electric lines, poles, fixtures, facilities, equipment and structures associated with the undertakings contemplated by this License. After removal of all pipelines, electric lines, poles, fixtures, facilities, equipment and structures associated with the undertakings contemplated by this License, the surface of the Property shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor’s Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred eighty (180) days after the expiration or termination of this License. All of the terms, provisions and requirements of this paragraph shall survive the expiration or termination of this License.

II. Financial Consideration

A. License Fee. The license fee for the Initial Term in the amount of Four Million Five Hundred Six Thousand Two Hundred Forty and 00/100 Dollars (\$4,506,240.00) shall be due and payable on or prior to the Commencement Date of this License (“License Fee”). For any Renewal Term, a License Fee for the Renewal Term, adjusted as set forth in Article II.F. below, shall be payable by Licensee to Licensor on or prior to the first day of the Renewal Term.

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 paragraph shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Purposefully omitted.

C. Annual Transportation Fees. On or prior to the Commencement Date and on or prior to each anniversary of the Commencement Date, Licensee shall pay to Licensor an annual transportation fee (the "Annual Transportation Fee"), such Annual Transportation Fee to be paid in advance as aforesaid for the respective twelve (12) month periods beginning on the Commencement Date and on each anniversary of the Commencement Date. The initial Annual Transportation Fee due on or prior to the Commencement Date shall be payable by Licensee to Licensor in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00). The amount of each subsequent Annual Transportation Fee shall be increased by three percent (3%) over the amount of the Annual Transportation Fee paid for the immediately preceding twelve (12) month period.

D. Outstanding Transportation Fees. Reference is made to that certain Produced Water Disposal Site Lease Agreement, effective as of December 11, 2018, by and between Licensor and Licensee (as successor in interest to Felix Water, LLC) (the "Lease Agreement"), as amended. Licensor and Licensee acknowledge and agree that certain fees payable to Licensor by Licensee in the amount of Four Hundred Ninety Two Thousand Seven Hundred Ninety Five and 61/100 Dollars (\$492,795.61) for the transportation of water as described below remain outstanding (the "Outstanding Fees"). The Outstanding Fees represent disposal fees owed for water transported through pipelines owned and/or operated by Licensee and/or its predecessors located on lands owned by Licensor in Sections 1-7, 12, 17 and 18, Block C-24, Sections 7, 10-14 and 17-27, Block C-23, Section 1, Block 75, and Sections 8-11 and 27, Block 74, all in PSL Survey, in Winkler and Loving Counties, Texas (the "T-Bar Ranch Lands") during the two year time period immediately preceding the Commencement Date that was supposed to have been disposed of in certain disposal wells to be drilled under the Lease Agreement. Licensee shall submit payment to Licensor for all such Outstanding Fees on or prior to the Commencement Date of this License. In connection with such payment of the Outstanding Fees, the Lease Agreement is hereby terminated in its entirety and the easement with respect to existing pipelines constructed pursuant to the Lease Agreement shall be pursuant to the terms of this License. **EFFECTIVE UPON RECEIPT OF THE OUTSTANDING FEES, LICENSOR HEREBY FOREVER REMISES, GIVES UP, QUITCLAIMS, SETTLES, COMPROMISES, FULLY RELEASES, AND FOREVER DISCHARGES LICENSEE AND ITS PRESENT, FORMER OR FUTURE OFFICERS, DIRECTORS, ASSIGNS, AGENTS, PARTNERS, EMPLOYEES, TRUSTEES, REPRESENTATIVES, INSURERS AND LAWYERS FROM ALL DEMANDS, CLAIMS, CAUSES OF ACTION, SUITS, CONTROVERSIES, DEBTS, ACCOUNTS, DAMAGES AND EXECUTIONS, AT LAW OR IN EQUITY, HERETOFORE ASSERTED, THAT COULD HAVE BEEN ASSERTED, OR THAT COULD BE ASSERTED IN THE FUTURE IN CONNECTION WITH OR IN ANY WAY RELATED TO THE LEASE AGREEMENT.**

E. Application Fee. On or prior to the Commencement Date of this License, Licensee shall pay a non-refundable one-time fee of One Thousand and No/100 Dollars (\$1,000.00) to Licensor's

Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for this License.

F. 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 payable by Licensee to Licensor for the Renewal Term. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee for the Renewal Term, then the License Fee for the Renewal Term shall be determined by Licensor in its sole discretion, provided that any increase in the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

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

H. Late Payment. Licensee's failure to make payment of any of the above fees within thirty (30) days after such fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%) of such fee.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right (i) to enter upon certain property owned by Licensor in Loving and Winkler Counties, Texas, being fifteen (15) feet on each side of the centerline of the pipeline locations as shown on Exhibits A-1 and A-2 attached hereto and incorporated herein together with an additional ten (10) feet on each side of the centerline of said pipeline locations during the construction of such pipelines (the "Pipeline Locations"), for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described Pipeline Locations, the existing pipelines constructed in connection with the Lease Agreement that are described and/or depicted on Exhibit A-1 attached hereto and one (1) additional pipeline, not to exceed thirty (30) inches in diameter, described and/or depicted on Exhibit A-2 attached hereto, for the transportation of water (including, without limitation, salt water, produced water and/or fresh water), (ii) to enter upon certain property owned by Licensor in Loving and Winkler Counties, Texas, being ten (10) feet on each side of the centerline of the electric line locations as shown on Exhibit B attached hereto and incorporated herein together with an additional ten (10) feet on each side of the centerline of said electric line locations during the construction of such electric lines (the "Electric Line Locations", and together with the Pipeline Locations, the "Property"), for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described Electric Line Locations, electric lines for the transmission of power to Licensor's pipelines, and (iii) of ingress and egress over and across the Property and the right to access the Property at such locations, if any, on Licensor's land as may be designated by Licensor on Exhibits A-1 and A-2 and/or Exhibit B attached hereto or as may otherwise be designated to Licensee in writing by Licensor, for such purposes. Such pipelines will be SDR eleven (11) poly pipelines. In the event Licensee desires to construct or install within the Pipeline Locations additional pipeline(s) and/or pipeline(s) with a diameter different than that listed above, Licensee must obtain the prior written consent of Licensor as to the number, location, size and specifications therefor,

which consent shall be in the sole discretion of Licensor. Except during the construction of the pipeline and/or with the prior written consent of Licensor, which consent shall be at Licensor's sole discretion, other than the above-described electric lines, no facilities, structures or equipment shall be located upon the surface of the Property. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline, electric lines and permitted facilities described herein. The parties agree that Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline, electric lines and permitted facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair, at its own expense, any of Licensor's roads that Licensee, its employees, contractors, representatives, agents or assigns damage on Licensor's property, so that such roads will comply with Licensor's standard specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines, water meters and other utility lines owned by Licensor that Licensee, its employees, contractors, representatives, agents or assigns, damage so that such water lines, sewer lines, water meters and other utility lines shall comply with Licensor's standard specifications.

D. Pipeline Depth. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than thirty-six (36) inches in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Electric Line Specifications. All underground electric lines shall be buried at least forty-eight inches (48") below grade. All above ground electric lines shall be maintained plum, at a minimum height of thirty feet (30'), measured from the bottom of the line to the surface. No electric lines with more than 300,000 volts line capacity may be constructed under this License without Licensor's prior written consent, which consent shall be in Licensor's sole discretion.

F. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, Licensee shall first obtain written approval of the specifications therefor from Licensor's Representative, which approval shall be at Licensor's Representative's sole discretion, such approval not to be unreasonably withheld, conditioned or delayed.

G. 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, CASING, ELECTRIC LINES OR OTHER PERMITTED FACILITIES, STRUCTURES OR EQUIPMENT, ARISING OUT OF THE NEGLIGENCE OF LICENSOR, ITS EMPLOYEES, OFFICERS, REPRESENTATIVES OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's pipeline, electric lines or permitted facilities or structures because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline, electric lines or permitted facilities or structures that must be moved. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

H. 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.

I. 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 pipelines, electric lines, fixtures, facilities, equipment, structures or appurtenances associated with the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction of the pipeline and electric lines, and upon giving Licensee one hundred twenty (120) days' written notice, then and in that event, this License shall automatically terminate and revert to Licensor, its successors or assigns, free and clear of any right, title, or interest of Licensee.

J. Approval of Specifications. In the event Licensee desires to reconstruct, repair, alter, replace or remove any pipeline or electric line installed hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her prior written approval, which approval shall be at Licensor's Representative's sole discretion. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative as soon as is reasonably practicable, but in no event longer than 48 hours after the discovery of any such emergency.

K. Gates and Fences. Without altering or expanding the limitations on ingress, egress and access to the Property set forth in Paragraph A. of Article III above, Licensee agrees to use existing gates

and roadways to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed". Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express prior consent thereto in writing, such consent not to be unreasonably withheld, conditioned or delayed. 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.

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

M. 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.

N. Storage of Machinery and Equipment. Except during periods when Licensee is actively placing, constructing, repairing, replacing or removing facilities, Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

O. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace on, below or above the land covered by this License for any purpose allowed by law and deemed necessary or proper by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through any portion of the Property, in each case, in any manner that will not unreasonably interfere with the exercise by Licensee of its rights hereunder, and the right to grant to others such right. In the event of such work in connection with said purposes it shall be deemed necessary or proper by Licensor, at Licensor's sole discretion, to alter, change, or relocate any pipeline, electric line, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing

by Licensor pursuant to directions from Licensor without any claim for reimbursement for the cost of the alteration, change or relocation or damages against Licensor. In connection with any such changes Licensor agrees to use commercially reasonable efforts to minimize the portion(s) of the pipeline, electric lines or permitted facilities or structures that must be moved. The relocation, change or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration, change or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments. Without limiting the foregoing, Licensor expressly reserves the full right to grant other licenses, easements and/or rights-of-way in, on, across, along, over, under or through all or any portion of the Property in any manner that will not unreasonably interfere with the exercise by Licensee of its rights hereunder, and the right to grant to others such right. Licensor expressly reserves the right to use and grant to third parties the right to use all or any portion of the Property and the surface, subsurface or airspace on, below or above the Property for any purpose in any manner that will not unreasonably interfere with the exercise by Licensee of its rights hereunder, and the right to grant to others such right.

P. Records. Licensee shall maintain true and accurate records and books of account reflecting Licensee's operations on the Property and under this License. Licensor shall have the right to audit and inspect (including the right to receive copies at Licensee's expense) all books and records of Licensee related or in any way pertaining to this License and/or to Licensee's operations under this License at all reasonable times upon reasonable notice to Licensee. In furtherance of such audit and inspection rights, Licensee agrees to maintain all such books and records for a period of no less than three (3) years from December 31 of the year in which such books and records relate.

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 Licensors.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

All insurance required pursuant to this License, except for Worker's Compensation Insurance, shall name Licensors as an additional insured. All insurance required pursuant to this License, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to Licensors. The parties agree that, prior to the execution of this License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. Licensors shall determine, in its sole discretion, whether such requirements have been satisfied.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required herein, and name the City of Midland as an additional insured (except as to Worker's Compensation Insurance). Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS LICENSORS AND LICENSORS' REPRESENTATIVES, AGENTS, ATTORNEYS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART)

THIS LICENSE, LICENSEE'S USE OF OR ACTIVITIES ON THE PROPERTY OR ANY OTHER PROPERTY OWNED BY LICENSOR, OR ANY ACT OR OMISSION OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF ANY INDEMNITEE. LICENSEE SHALL PROMPTLY ADVISE LICENSOR OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THIS INDEMNIFICATION MAY APPLY, AND OF WHICH LICENSEE HAS RECEIVED NOTICE, AND LICENSEE, AT LICENSEE'S EXPENSE, SHALL ASSUME ON BEHALF OF LICENSOR (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL REASONABLY SATISFACTORY TO LICENSOR; PROVIDED, HOWEVER, THAT ANY INDEMNITEE SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY LICENSEE TO ASSUME THE DEFENSE OF LICENSOR IN ACCORDANCE WITH THIS INDEMNIFICATION, LICENSOR, AT ITS OPTION, AND WITHOUT RELIEVING LICENSEE OF ITS OBLIGATION HEREUNDER, MAY ASSUME SUCH DEFENSE, AFTER WRITTEN NOTICE THEREOF TO LICENSEE AND LICENSEE'S FAILURE TO RESPOND THERETO WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE (SAID TEN (10) DAY PERIOD SHALL NOT APPLY IN ANY CASE WHERE IMMEDIATE ANSWERS, RESPONSES, OR OTHER AFFIRMATIVE ACTION IS REQUIRED TO PRESERVE THE RIGHTS OF LICENSOR) BUT ALL REASONABLE COSTS AND EXPENSES SO INCURRED BY LICENSOR IN THAT EVENT SHALL BE REIMBURSED BY LICENSEE TO LICENSOR, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE WAS PAID BY LICENSOR UNTIL REIMBURSED BY LICENSEE, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAWS OF THE STATE OF TEXAS.

WITHOUT LIMITING THE FOREGOING, LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY, PROTECT, DEFEND AND SAVE LICENSOR HARMLESS FROM ANY AND ALL CLAIMS, LIENS, JUDGMENTS, SUITS, CAUSES OF ACTION, AND DEMANDS OF ANY SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, OR FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, OR SUPPLIES, IN CONNECTION WITH THE CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), ELECTRIC LINES, CASING SYSTEM, OR OTHER PERMITTED FACILITIES OR STRUCTURES DESCRIBED HEREIN.

WITHOUT LIMITING ANY OF THE FOREGOING, LICENSEE SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS AND DEFEND EACH INDEMNITEE FROM ALL LIABILITIES, SUITS, ACTIONS, CLAIMS, DAMAGES, CAUSES OF ACTION, CHARGES, JUDGMENTS, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED

OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF ANY INDEMNITEE, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', REPRESENTATIVES', AGENTS', CONTRACTORS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE, INCLUDING, WITHOUT LIMITATION, SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S), ELECTRIC LINES, CASING SYSTEM, OR PERMITTED FACILITIES OR STRUCTURES ON LICENSOR'S PROPERTY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY INDEMNITEE, INCLUDING RELATED ATTORNEY'S FEES.

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

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE PROVISIONS OF THIS INDEMNIFICATION SHALL APPLY TO AND PROTECT EACH INDEMNITEE FROM THE CONSEQUENCES OF STRICT LIABILITY IMPOSED OR THREATENED TO BE IMPOSED ON SUCH INDEMNITEE, AS WELL AS FROM THE

CONSEQUENCES OF THE NEGLIGENCE OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS ARTICLE IV.B. NOTWITHSTANDING ANYTHING IN THIS LICENSE TO THE CONTRARY THE PROVISIONS OF THIS INDEMNIFICATION SHALL NOT APPLY TO THE EXTENT OF INDEMNITEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

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

C. Assignment. The provisions of this License shall inure to the benefit of and be binding upon Licensor and Licensee and their respective successors and permitted assigns. The rights and privileges granted by Licensor under this License inure to the benefit of Licensee. No rights, privileges or obligations hereunder shall be assignable by Licensee without the express prior written consent of Licensor. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

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

E. Attorney Fees. SHOULD LICENSOR BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS LICENSE, OR ANY OF ITS RIGHTS UNDER THIS LICENSE, LICENSOR SHALL BE ENTITLED TO REIMBURSEMENT FROM LICENSEE FOR LICENSOR'S ATTORNEYS' FEES. LICENSEE SHALL REIMBURSE LICENSOR FOR LICENSOR'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF

THIS LICENSE NOT TO EXCEED \$10,000. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS LICENSE, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE. WITHOUT LIMITING THE FOREGOING, LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, OR TO THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LICENSE, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR AND LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND

UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

I. Third Party Beneficiary. Except as provided in Article IV.B. above with respect to Indemnitees, (i) Licensor's granting of this License does not create any third party beneficiary, (ii) there is no third party beneficiary to this License, and (iii) no person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

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

K. Notice of Alleged Breach; Statutory Prerequisite. Without limiting the provisions of Article IV.G. above, as a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager or other such official of Licensor within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties hereto agree that this License does not constitute a "Contract" for providing goods and/or services

to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the maximum extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties hereto expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to this License.

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

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

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

P. Memorandum of Right of Way License. Licensor and Licensee have executed a Memorandum of Right of Way License in the form attached hereto as **Exhibit C**, dated of even date herewith, for recording in the records of the counties in which the Property is located, to give record notice of this Right of Way License. This Right of Way License shall not be recorded except with the prior written consent of Licensor (other than the Memorandum).

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

such provision.

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

S. No Release of Liability. Notwithstanding anything to the contrary contained in this License, the termination or expiration of this License shall not relieve Licensee of any liability, duty or obligation under this License, nor shall it preclude Licensor from asserting any right to specific performance, damages or any other rights or remedies to which Licensor may be entitled. Upon termination or expiration of this License for any reason, Licensee shall execute and deliver a recordable release of this License to Licensor in form and substance satisfactory to Licensor.

T. Entire Agreement. This License constitutes the entire agreement between Licensor and Licensee concerning the subject matter hereof, superseding all negotiations, prior discussions, prior licenses and prior agreements and understandings related to the subject matter hereof. This License may only be amended by written instrument executed by Licensor and Licensee.

[Signature Pages 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:

**PILOT WATER GATHERING DELAWARE
LLC**

By: _____
Printed Name: _____
Title: _____

THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, this instrument was acknowledged by _____, as _____ of Pilot Water Gathering Delaware LLC, a Delaware limited liability company, on behalf of said limited liability company.

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

Notary Public, State of _____

EXHIBIT A-1

Attached to that certain Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Existing Pipeline Locations

(see attached)

EXHIBIT A-2

Attached to that certain Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Additional Pipeline Locations

(see attached)

EXHIBIT B

Attached to that certain Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Electric Line Locations

(see attached)

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

FORM OF MEMORANDUM OF RIGHT OF WAY LICENSE

WITNESSETH:

Licensors and Licensee are executing this Memorandum for the purpose of placing the same

of record in the above-referenced Counties, and in order to constitute constructive notice to all third parties dealing with Licensor and/or Licensee of the existence of the Right of Way License and of the rights and obligations contained therein. Licensor and Licensee give notice that the Right of Way License may be amended or supplemented from time to time in the future and any inquiry as to the contents thereof should also include an inquiry as to the contents of any and all such amendments and supplements. In the event of any conflict between the terms of this Memorandum and the Right of Way License, the terms of the Right of Way License shall control.

The Right of Way License constitutes the entire agreement between Licensor and Licensee concerning the subject matter thereof, superseding all negotiations, prior discussions and prior agreements and understandings related to the subject matter thereof. In connection with the foregoing, reference is made to that certain Produced Water Disposal Site Lease Agreement, effective as of December 11, 2018, by and between Licensor and Licensee (as successor in interest to Felix Water, LLC), recorded by Memorandum of Produced Water Disposal Site Lease Agreement as Instrument C27901 in the Official Public Records of Winkler County, Texas, as amended by that certain First Amendment to Produced Water Disposal Site Lease Agreement dated on or about March 21, 2019, but effective as of December 11, 2018, recorded by Memorandum of First Amendment to Produced Water Disposal Site Lease Agreement as Instrument C28893 in the Official Public Records of Winkler County, Texas (the "Lease Agreement"). Licensor and Licensee agree that the Lease Agreement is hereby terminated in its entirety and the easement with respect to existing pipelines constructed pursuant to the Lease Agreement shall be pursuant to the terms of the Right of Way License.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

IN WITNESS WHEREOF, this Memorandum is executed as of the dates of the acknowledgments of the respective parties, but effective as of _____, 20__.

LICENSOR:

CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

Notary Public – State of Texas

LICENSEE:

**PILOT WATER GATHERING DELAWARE
LLC**

By: _____

Printed Name: _____

Title: _____

THE STATE OF _____

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, this instrument was acknowledged by _____, as _____ of Pilot Water Gathering Delaware LLC, a Delaware limited liability company, on behalf of said limited liability company.

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

Notary Public, State of _____

EXHIBIT A-1

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Existing Pipeline Locations

(see attached)

EXHIBIT A-2

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Additional Pipeline Locations

(see attached)

EXHIBIT B

Attached to that certain Memorandum of Right of Way License
between the City of Midland, Texas, as “Licensor”
and
Pilot Water Gathering Delaware LLC, as “Licensee”

Electric Line Locations

(see attached)



City Council Meeting

Item Number: 13
Meeting Date: July 12, 2022 (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

A handwritten signature in black ink, reading "Morris Williams Jr." with a stylized flourish at the end.

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

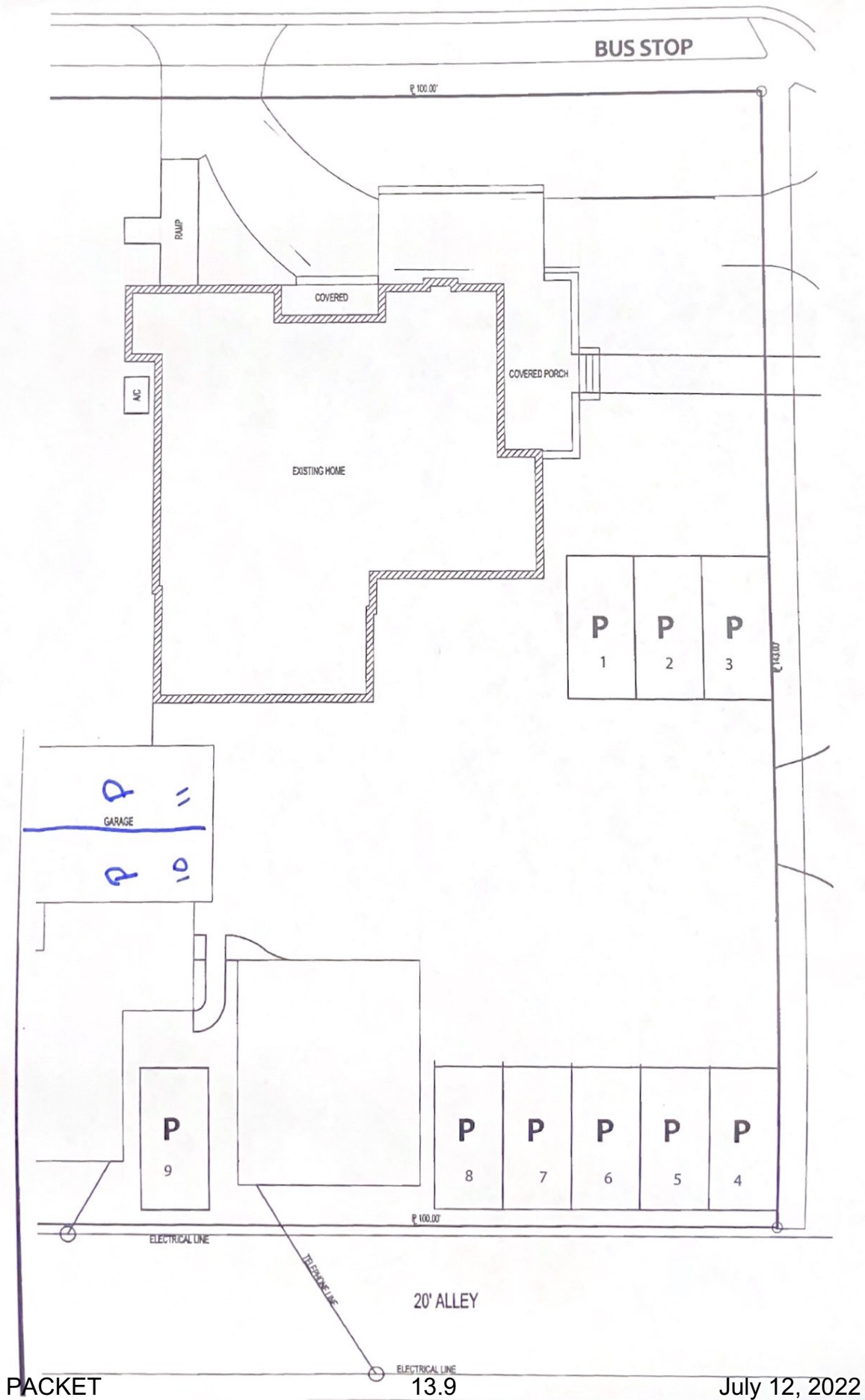
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"





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 W. 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: 00182 Block: 012 Subdivision: West End Addition

Current Zoning: O-1

This property qualifies as an exception to the City Code because:

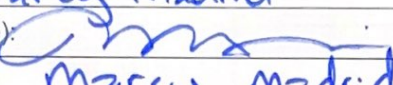
- ☐ It is an expansion of a nonconforming use.
- ☒ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

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	
<i>The Special Exception shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

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

STATE OF TEXAS
COUNTY OF MIDLAND

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

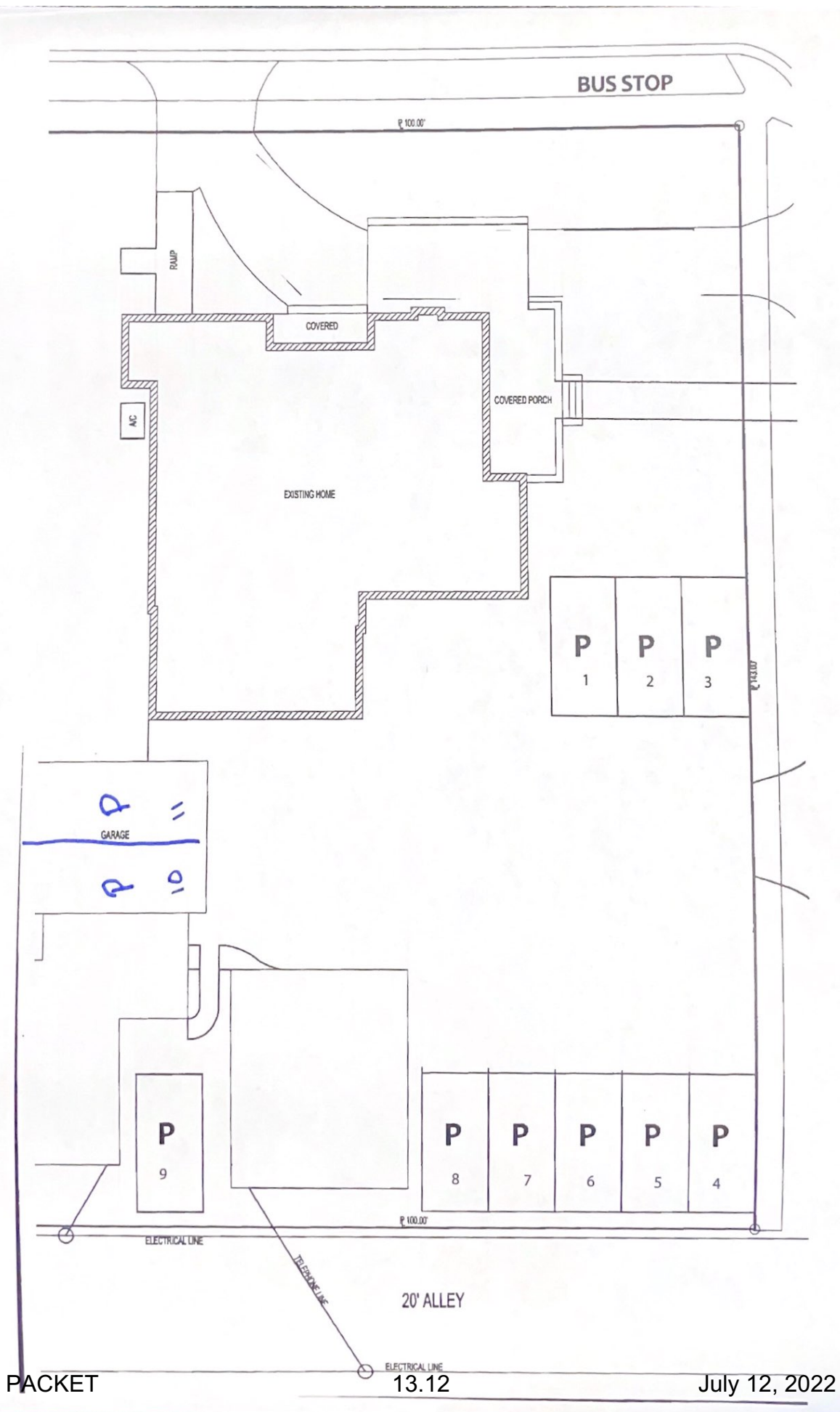
Authorized Agent (signature)

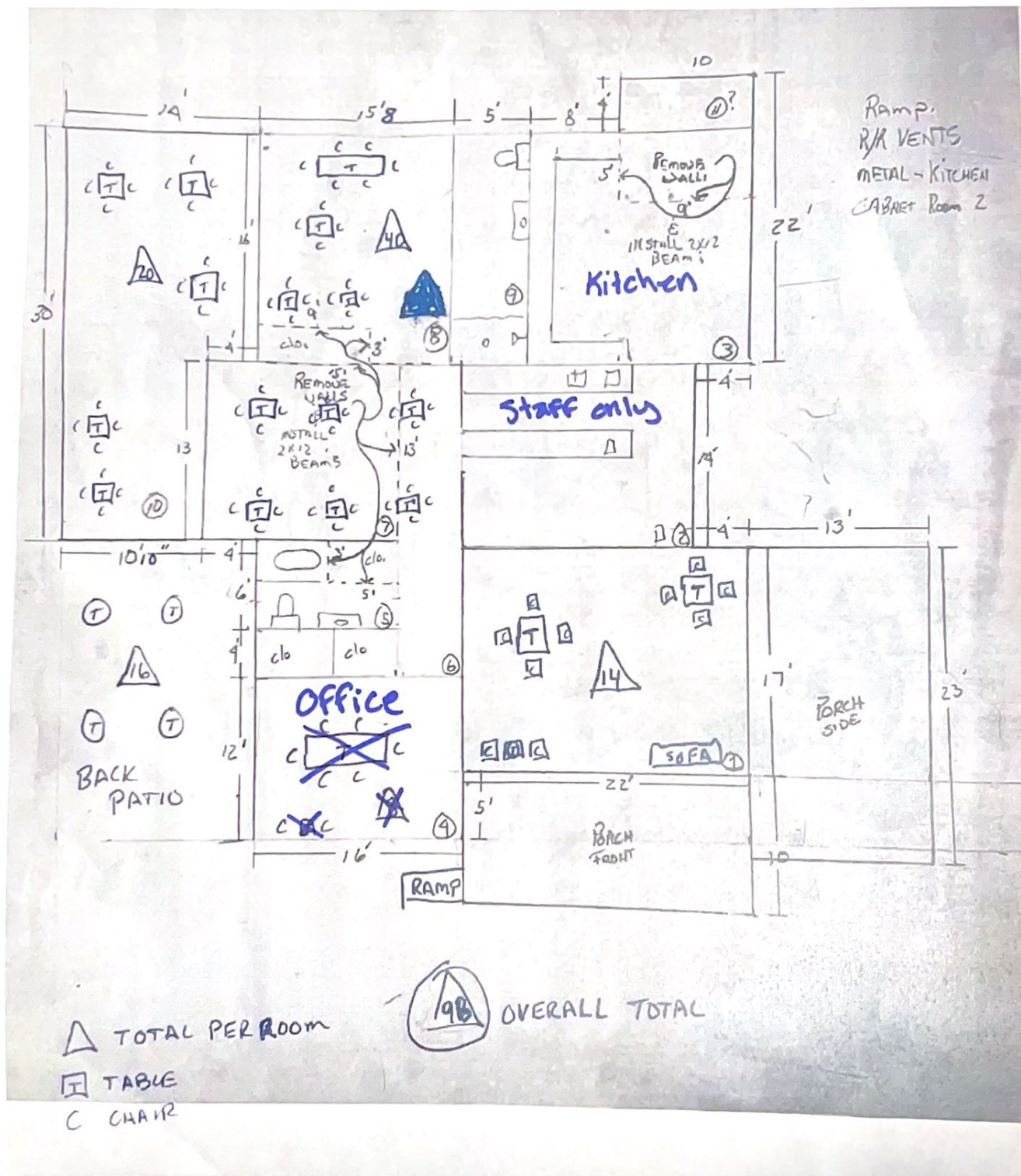
Subscribed and sworn to before me, this ____ day of _____, 20 ____, to certify which witness my hand and seal of office.

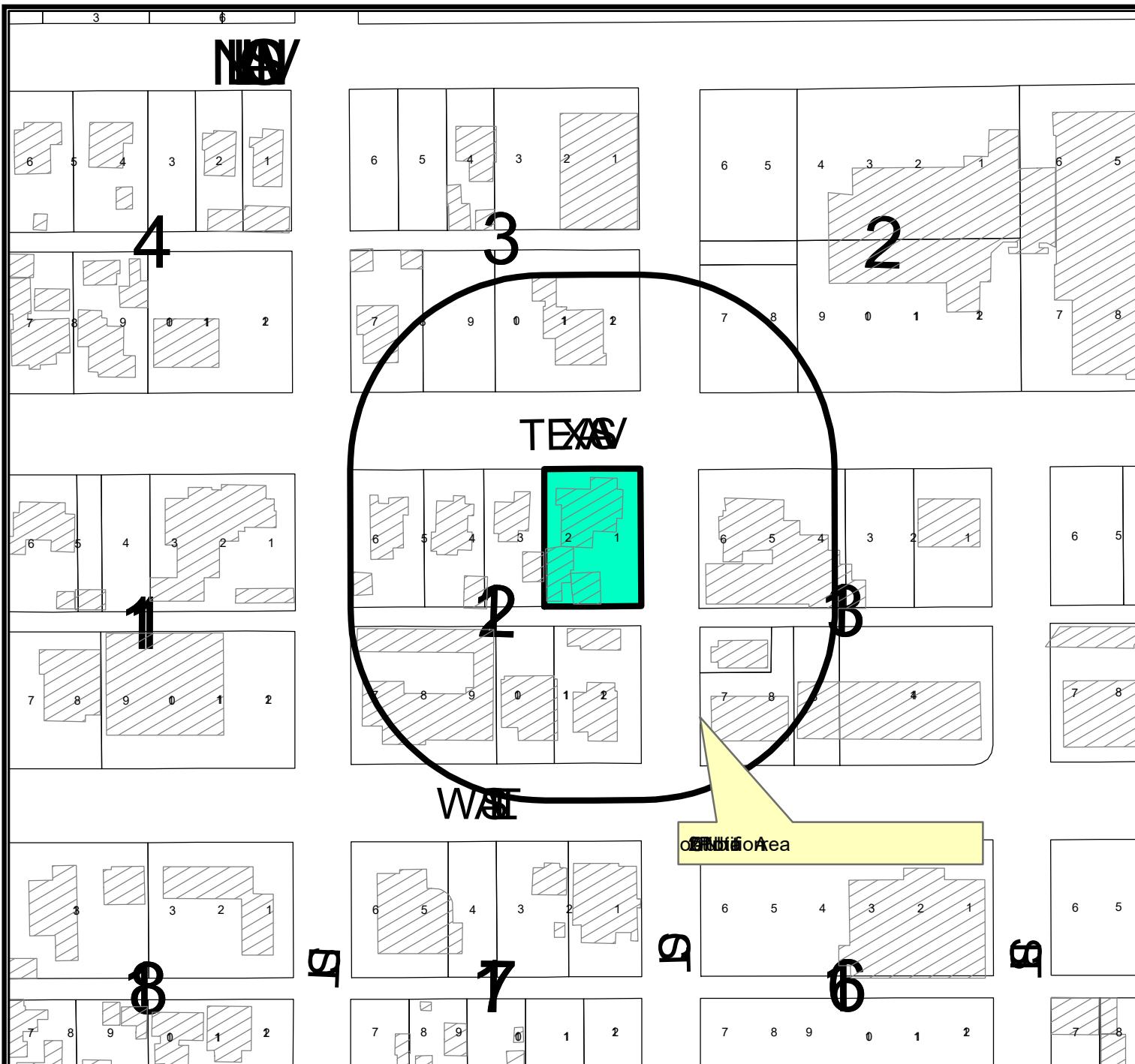
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # _____	
Received By:	Date:

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







LOCATION MAP

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

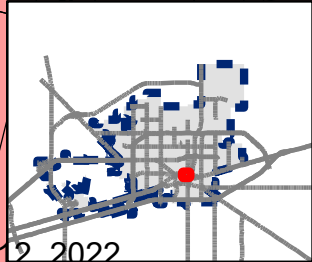


©THE CITY OF MIDLAND - 2021

July 12, 2022

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING 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.



July 12, 2022













City Council Meeting

Item Number: 14
Meeting Date: July 12, 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 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



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:

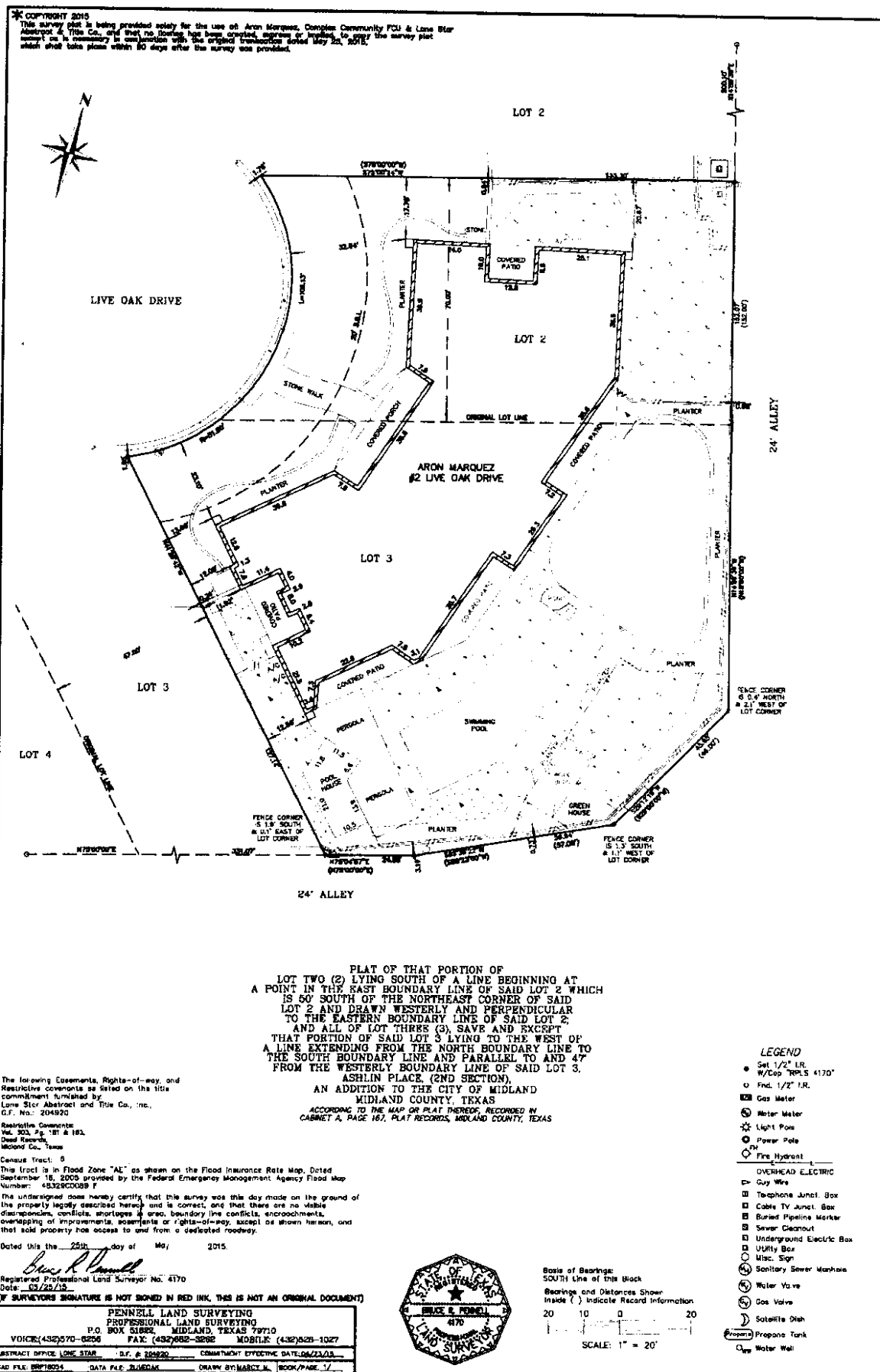
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

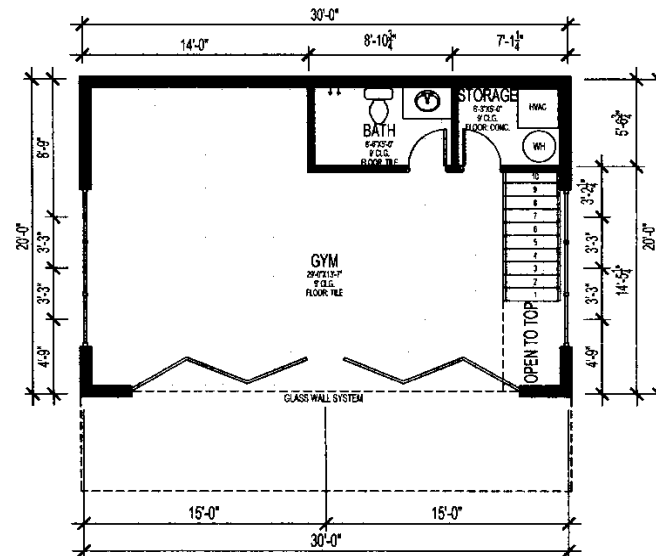
APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

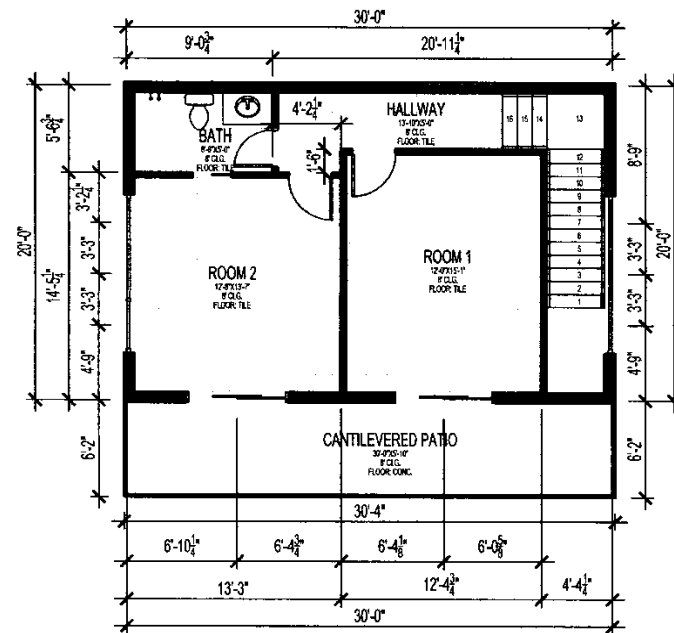


SQUARE FOOTAGE'S OVER BRICK
SQUARE FOOTAGE'S ARE CALCULATED WITH
5.5" BRICK POCKET AND MAY VARY
DEPENDING ON EXTERIOR MATERIAL

1ST FLOOR LIVABLE.....	617	SQ. FT.
2ND FLOOR LIVABLE.....	520	SQ. FT.
TOTAL LIVABLE.....	1,137	SQ. FT.
CANTILEVELED PATIO.....	182	SQ. FT.
TOTAL.....	1,319	SQ. FT.



A 1ST FLOOR PLAN
A-2.0 SCALE: 1/8" = 1'-0"



B 2ND FLOOR PLAN
B-2.0 SCALE: 1/8" = 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.

1	PRELIMINARY PLANS	01/2022
	Floor Plan	Yes



Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 2022008	
DRAWN BY	CDW
CHECKED BY	CDW

2 8
A-2.0

© 1991 HILLMAN INC. LLC

PACKET
14.11
July 12, 2022



**Specific Use Designation
Application (Non-Alcohol)**

Case Number:

^{wo}
540-22-0027

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) <u>[Signature]</u>	Date <u>04/27/22</u>
Applicant (printed) <u>Garner Gonzales</u>	
Property Owner (signature) <u>[Signature]</u>	Date <u>4/28/22</u>
Property Owner (printed) <u>Aron Marquez</u>	

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

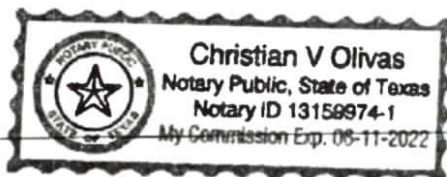
Before me, the undersigned authority on this day personally appeared GARNER Gonzales who, being by me duly sworn, upon oath says That (s)he is authorized by ARON MARQUEZ the owner of the above described property, to fully represent him/her in this application and that (s)he has the legal right, power 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

Christian V. Olivas

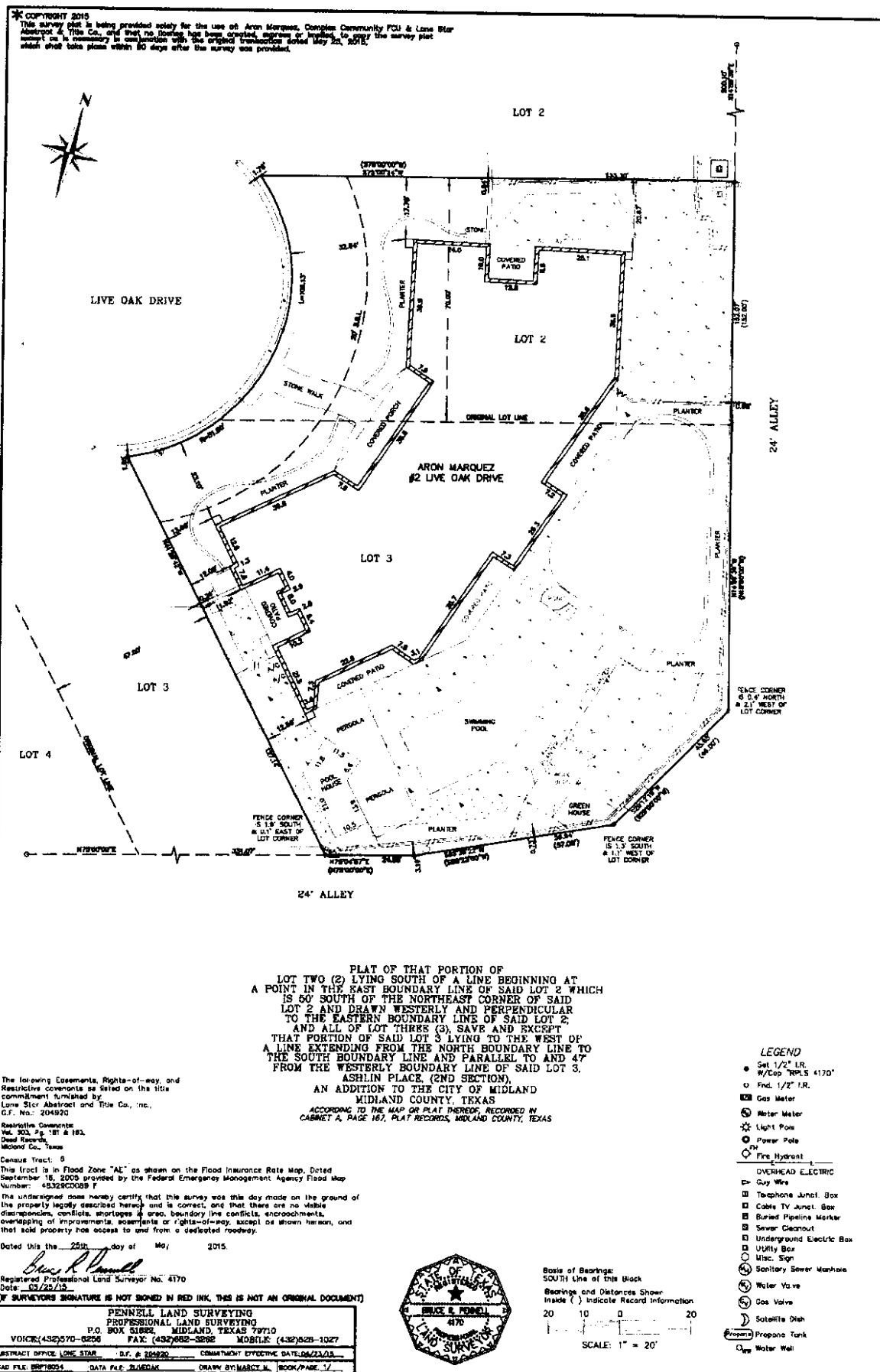
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

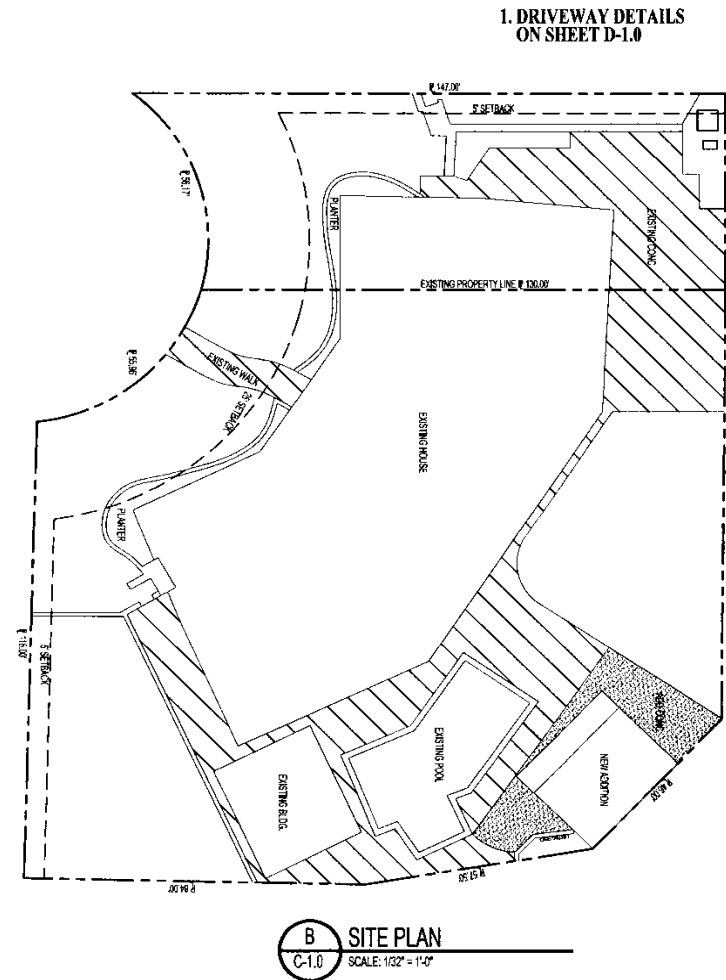
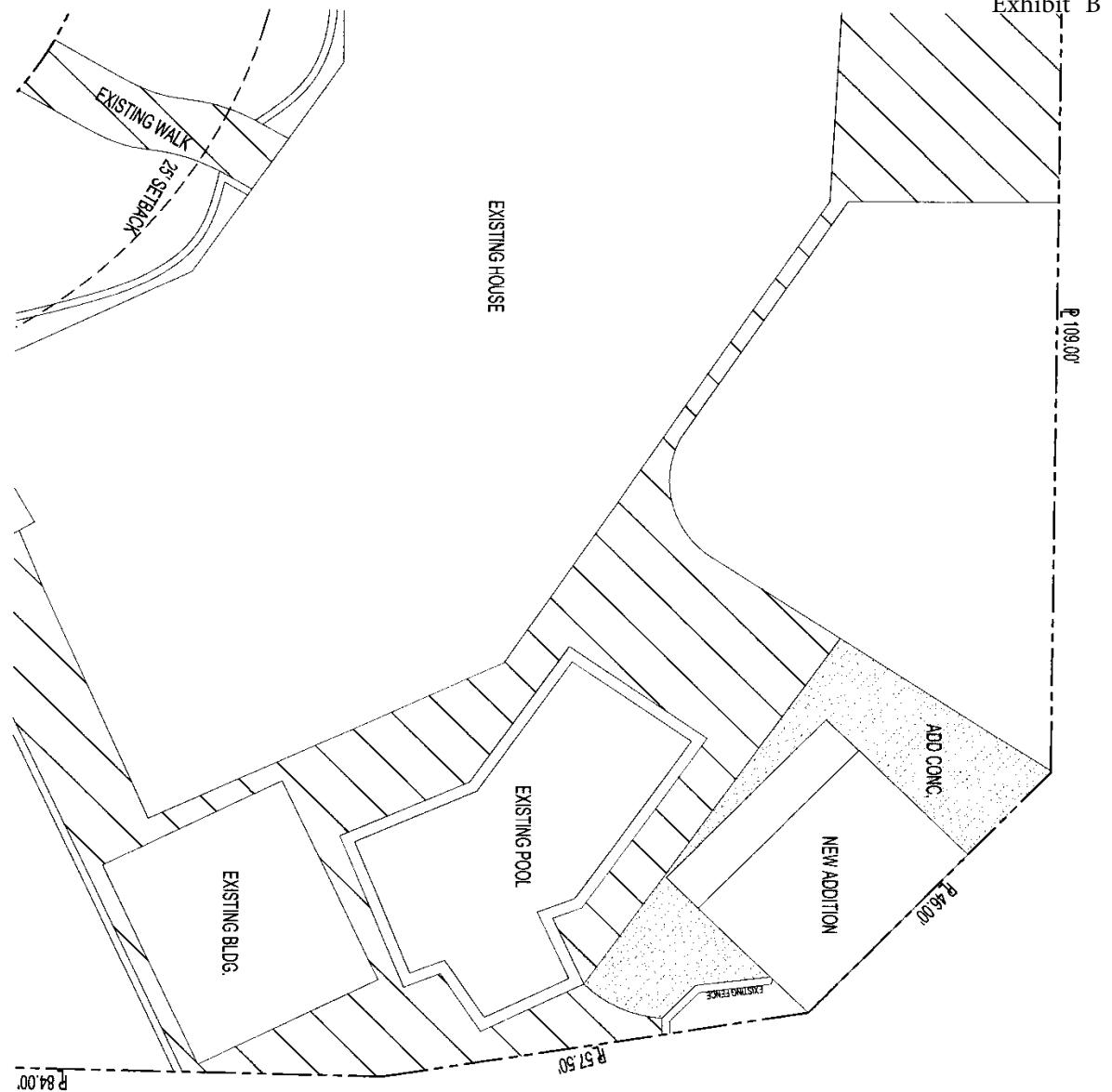


FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☐ Application Fee <u>Missing</u>	☐ Site Plan in Digital Format (PDF/JPEG) <u>Missing</u> <i>using ones from other case</i>
Check # <u>CC</u>	
Received By: <u>KM</u>	Date

RECEIVED
MAY 05 2022

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





SA.

**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.

1	PRELIMINARY PLANS	01/20/22
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Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

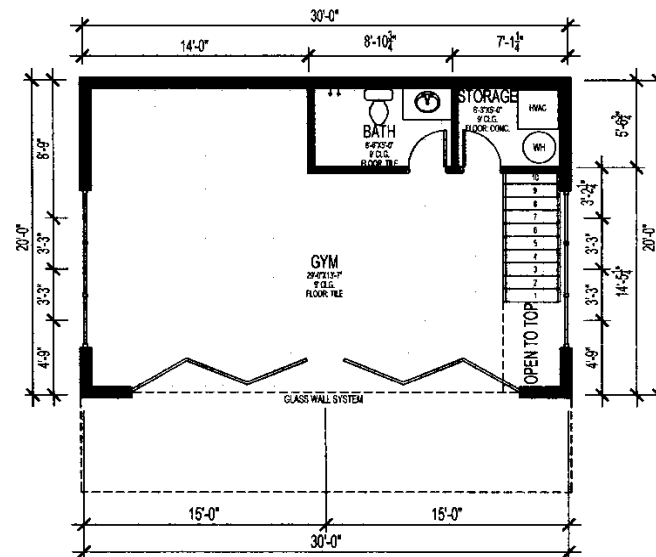
PROJECT NUMBER: 212200	
DRAWN BY:	CCW
CHECKED BY:	CCW

5 8
C-1.0

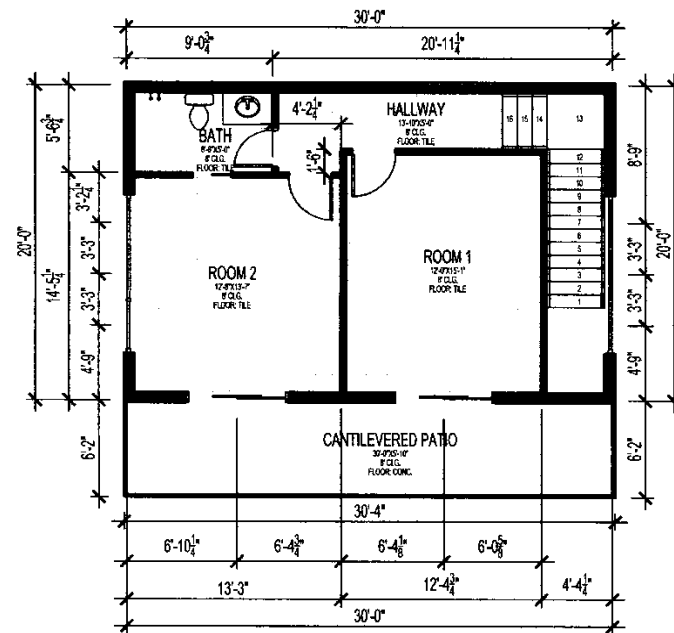
THE DESIGN SPECIFICATIONS BY THESE PLANS ARE APPROVED AND ARE TO BE CONSIDERED VALIDATED BY AN "INDEPENDENT" ARCHITECTURAL FIRM OF REPUTATION. THE DESIGN SPECIFICATIONS WILL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE ARCHITECTURAL FIRM OF REPUTATION. THE DESIGN SPECIFICATIONS WILL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE ARCHITECTURAL FIRM OF REPUTATION.

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.
CANTILEVELED PATIO.....	182	SQ. FT.
TOTAL.....	1,319	SQ. FT.



A 1ST FLOOR PLAN
A-2.0 SCALE: 1/8" = 1'-0"



B 2ND FLOOR PLAN
B-2.0 SCALE: 1/8" = 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.

[illegible]

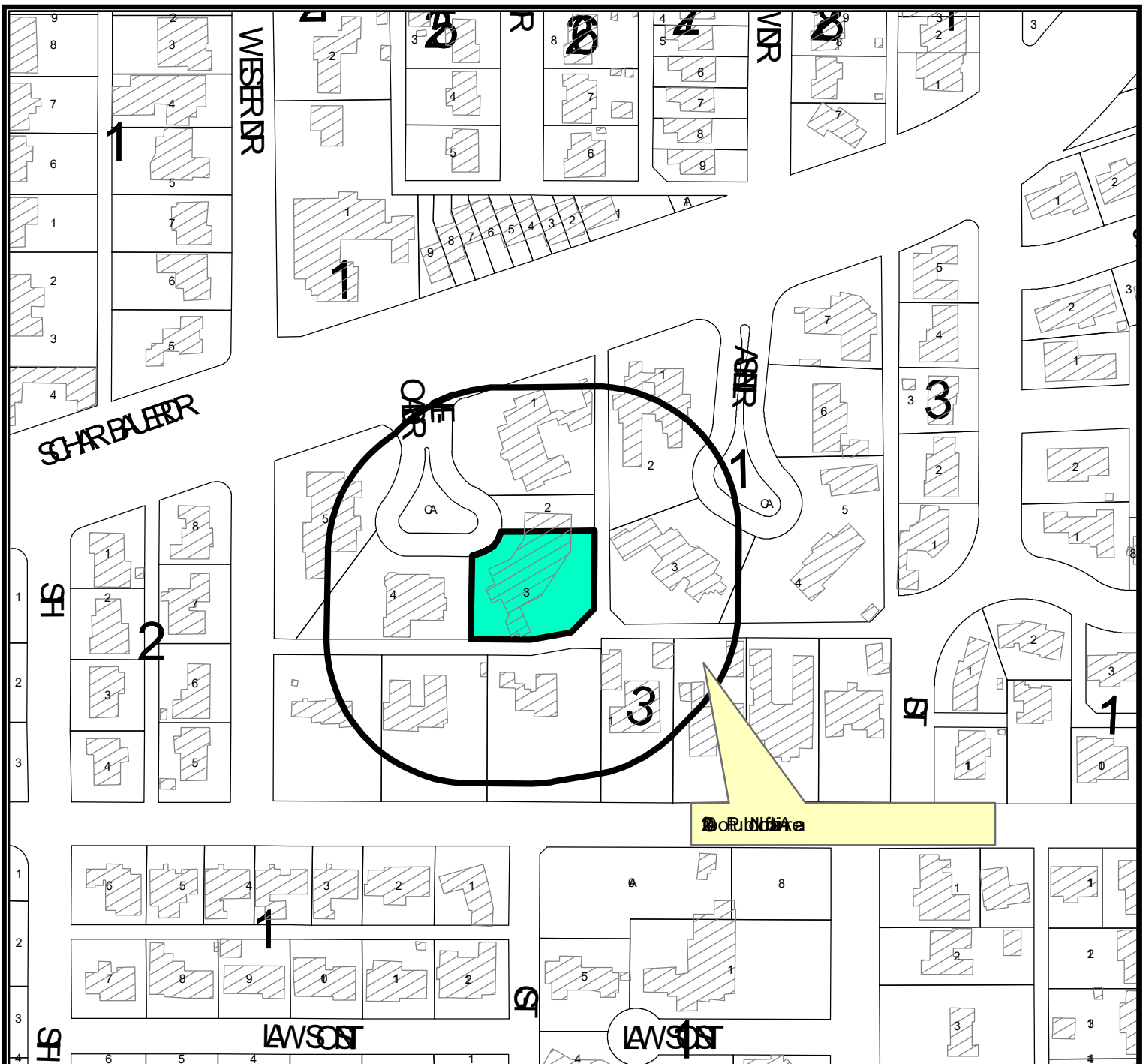
Chad Walters
432-352-0788
chad@midland-dci.com
www.midland-dci.com

PROJECT NUMBER: 2022008	
DRAWN BY	CDW
CHECKED BY	CDW

2 8
A-2.0

© 1991 HILLMAN INC. LLC

PACKET
14.16
July 12, 2022



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)

PACKET

14.17

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

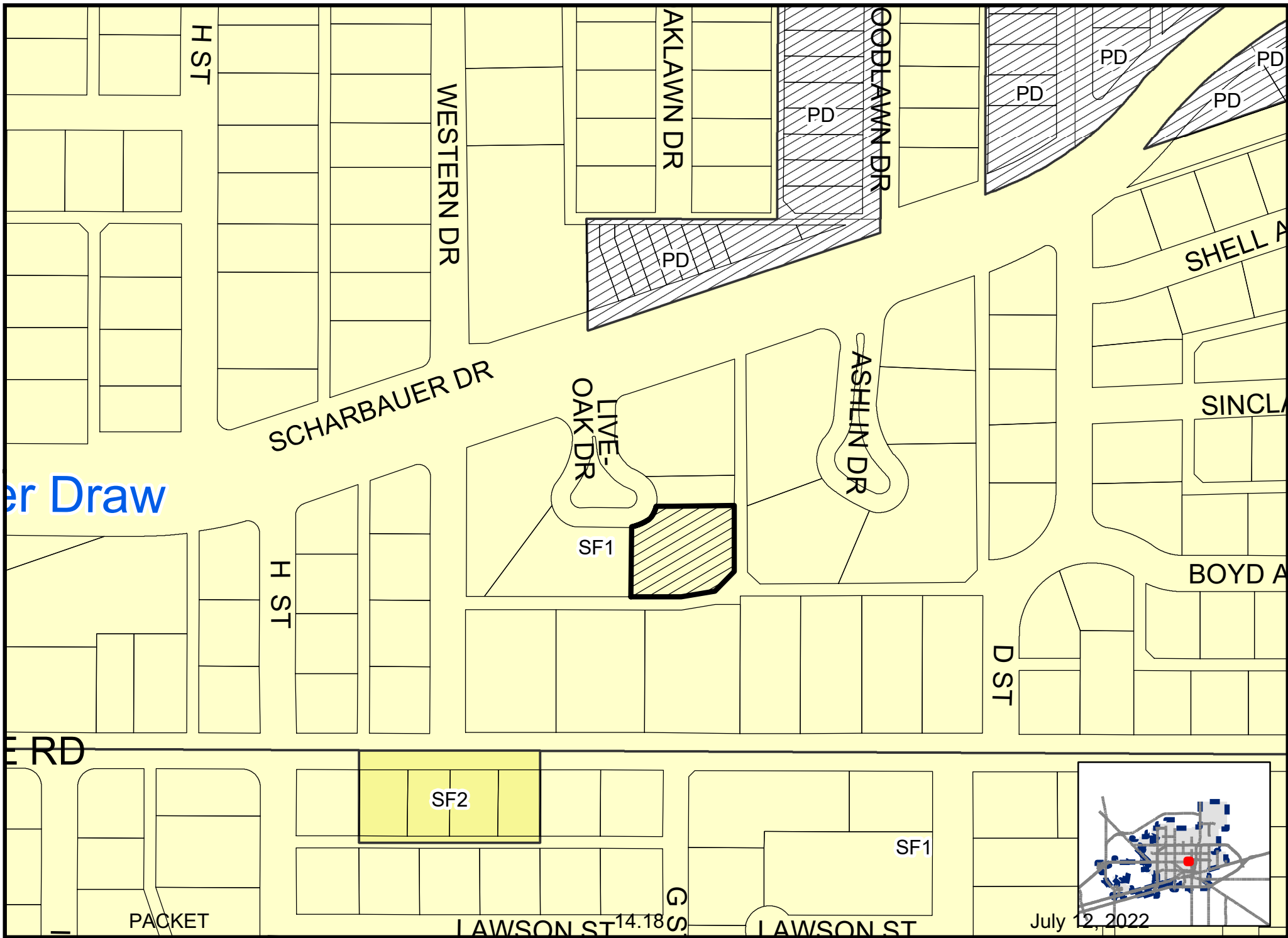


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR MAP OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

July 12, 2022













City Council Meeting

Item Number: 15
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Cole Furqueron,
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1, 2, 3, 10, 11, AND 12, BLOCK 13, AND LOTS 1 AND 2, BLOCK 14, LANGFORD WEATHERED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF NORTH A STREET AND ELK AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The Applicant, James Griffis, is requesting a zone change from SF-1, Single-Family Dwelling District, in part, and SF-2 Single-Family Dwelling District, in part to PD, Planned-Development District on the property located at 1606 N. "A" Street, to construct a mini-storage facility.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

No City funds would be required for this project.

Current Zoning:

SF-1, Single-Family Dwelling District, in part, and SF-2, Single-Dwelling District in part.

Surrounding Zoning and Land Use:

The properties to the north, east and west are Zoned SF-1 Single-Family Dwelling District and to location of a Bowie Elementary, Cemetery and single-family homes. The properties to the South are zoned SF-1, Single-Family Dwelling District and SF-2, Single-Family Dwelling District, and the location of single-family homes.

Discussion:

The property is currently vacant and in the process of replating. The applicant, James Griffis, is requesting a zone change to allow for the development of a mini-storage facility since the current zoning district (SF-1, Single-Family Dwelling District, in part, and SF-2, Single-Family Dwelling District, in part) does not allow for this type of development. If the change to PD, Planned Development District for an Office Center were approved, then the property would be considered spot-zoned in the middle of a Single-Family residential neighborhood.

If approved, the development will need to conform to section 5.05, Nonresidential Zoning District Dimensional Regulations and section 6.01 through 6.05, Zoning Development Regulations of the Zoning Ordinance.

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.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objections.

Planning:

This request is not in compliance the Tall City Tomorrow Comprehensive Plan, Chapter 3 as it designates this area for Urban Medium, a classification which calls for a mix of housing styles that include single-family attached housing, townhomes, and limited multiple-family housing. As the surrounding lots consist of cemetery and residences, this zone change will not mesh with the current style and characteristics of the surrounding neighborhood. Rezone the property from SF-1, Single-Family Dwelling District, in part, and SF-2, Single-Family Dwelling District, in part to PD, Planned Development District for an Office Center with an underlying zoning of C, Commercial District, will allow for the development of a mini storage facility and will be the only commercial use allowed on this property.

This request was recommended for approval at the July 5, 2022, Planning and Zoning Commission meeting.

If approved, staff recommends that the zone change from SF-1, Single-Family Dwelling District, in part, and SF-2, Single-Family Dwelling District, in part to PD, Planned Development District for an Office Center, are subject to conditions A through E.

Condition:

- A. That the use and development of this property shall conform to the regulations of the C, Commercial District, except as stated below.**
- B. That the development of a storage facility shall be the only commercial use allowed.**
- C. That this property shall significantly conform to the site plan, attached hereto and incorporated herein as Exhibit A.**
- D. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**
- E. That all signage shall conform to the City of Midland Sign Code.**

Letters of Objection:

Staff has not received any letters of objection as of July 7, 2022.

Attachments:

Application
Site Plan (Exhibit A)

Metes and Bounds
Maps

A handwritten signature in black ink, appearing to read "Robert Palmer". The signature is fluid and cursive, with the first name "Robert" and last name "Palmer" clearly distinguishable.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1, 2, 3, 10, 11, AND 12, BLOCK 13, AND LOTS 1 AND 2, BLOCK 14, LANGFORD WEATHERED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT, IN PART, AND SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF THE INTERSECTION OF NORTH A STREET AND ELK AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 1, 2, 3, 10, 11, and 12, Block 13, and Lots 1 and 2, Block 14, Langford Weathered Addition, City and County of Midland, Texas (the “Property”) to PD, Planned Development District for an Office 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 SF-1, Single-Family Dwelling District, in part, and SF-2, Single-Family Dwelling District, in part, to PD, Planned Development District for an Office 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 C, Commercial District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit “A” and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

- A. That the use and development of the Property shall significantly conform to the site plan attached hereto as Exhibit “A”.
- B. That the only allowed commercial use of the Property shall be Storage Units, Mini, as that term is defined in Section 11-1-2.01 of the City Code.
- C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.
- D. That all signage shall conform to the regulations set forth in Title XI, Chapter 7a of the City Code.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars

(\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ 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

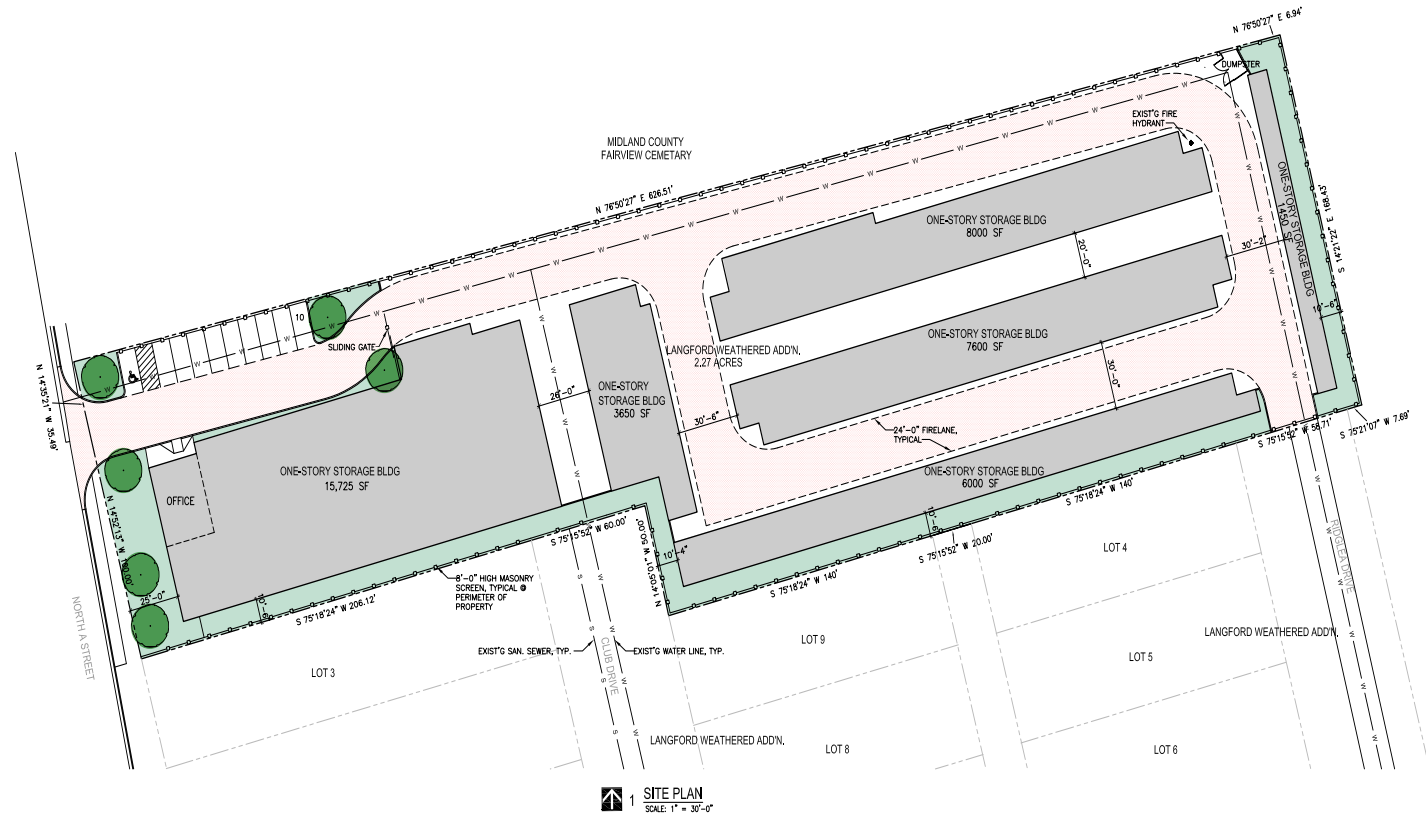
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



1 SITE PLAN
SCALE: 1" = 30'-0"

SITE PLAN STATISTICS:	
CURRENT ZONING:	SF1
PROPOSED ZONING:	C
LOT AREA:	98,881 SF (2.27 AC.)
BUILDING AREA:	42,500 SF
BUILDING HEIGHT (MAX):	25'-0" @ OFFICE; 12'-0", TYP.
IMPERVIOUS AREA:	86,895 SF (88%)
LANDSCAPED AREA:	11,986 SF (12%)
BUILDING USE:	SELF STORAGE
PARKING DATA	
USE: WAREHOUSE PARKING REQUIRED: 1 SPACE/1000 SF =	43 SPACES (2 H.C. SPACE)
PARKING PROVIDED: 1 SPACE/5000 SF =	10 SPACES (1 H.C. SPACE)

BACA

100 NORTH TRAVIS STREET
SUITE NO.500
SHERMAN, TEXAS 75090
903.893.5800
www.BACA.team

SCHEMATIC DESIGN REVIEW

NOT FOR REGULATORY
APPROVAL, PERMITTING, OR
CONSTRUCTION

REVISIONS	DESCRIPTION	DATE

North A Storage
A New Self-Storage Facility
North A Street, Midland, Texas

PROJECT NUMBER

2204

DATE

01.18.22

SHEET NUMBER

CSP-1



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: 2-22-0283

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

Printed Name: JAMES B. GRAFFIS

Phone (713) 294-3331

Email JAMES@WTICAP.COM

Address 1411 W. CUTHBERT AVE.

City MIDLAND

State TX

Zip 79701

Property Owner

Printed Name: MIKE MASSEY

Phone ()

Email MLM@MIKELMASSEY.COM

Address 24 HIRLEAH DR.

City MIDLAND

State TX

Zip 79705

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email _____

Address _____

City _____

State _____

Zip _____

Street Address: 1606 N. A STREET MIDLAND, TX 79701

Legal Description

Lot: _____ Block: _____ Subdivision: SEE ATTACHED SURVEY

Current Zoning: SF1

Proposed Zone: C

(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

PROPOSED DEVELOPMENT AND OPERATION OF SELF-STORAGE. CURRENT ZONING NEEDS TO BE CHANGED TO ACCOMMODATE DEVELOPMENT.

Present Use of Property: UNDEVELOPED

Proposed Use of Property: SELF-STORAGE

How would this zone change affect the public health, safety and welfare? _____

THERE WOULD BE NO AFFECT TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

Describe how conditions affecting the property have changed since present zoning designation: _____

LAND IS UNDEVELOPED. 1 SIDE FACE A STREET, 2 SIDES FACE CEMETERY. THERE HAS BEEN NO DEVELOPMENT.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

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

Applicant (signature):

Sub. Offi.

Date: *1/19/2022*

Applicant (printed):

JAMES B. GRIFFIN

Property Owner (signature):

Mike Massey

Date: *1-19-22*

Property Owner (printed):

MIKE MASSEY

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

STATE OF TEXAS
COUNTY OF MIDLAND

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

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization

☐ Dimensioned Site Plan

☐ Application Fee

☐ Plans in Digital Format (PDF/JPEG)

Check # _____

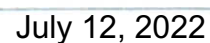
Received By: _____

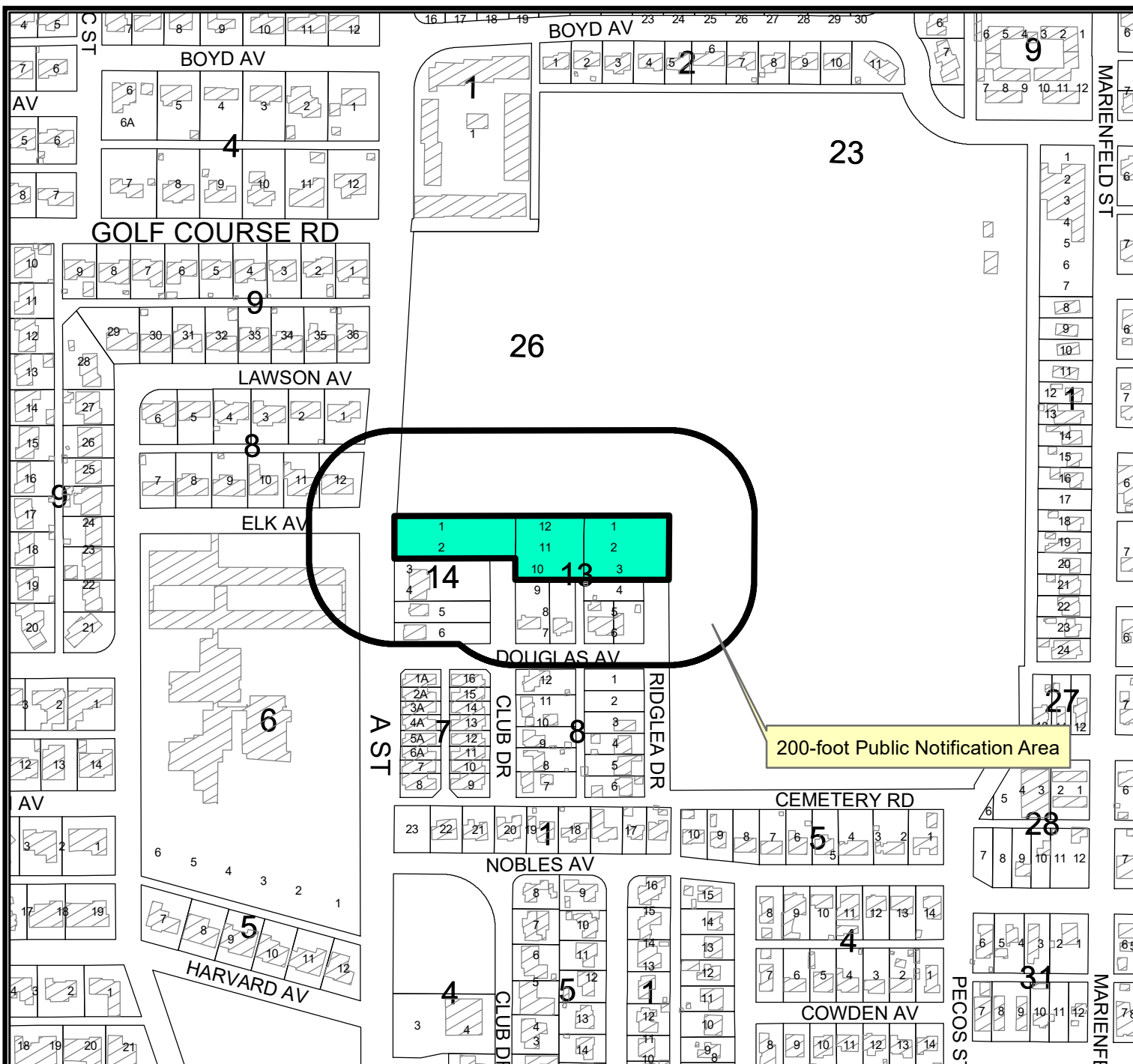
Date: _____

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

Special Exception Application

Revised 10/18/16





LOCATION MAP

Z-22-0283

Scale: 1" = 300'

A request by James Griffis for a Zone Change from SF-1, Single-Family Dwelling District in part and SF-2 Single-Family Dwelling District in part to PD, Planned Development District for Office Center on Lots 1 & 2, Block 14 and Lots 1, 2, 3, 10, 11, & 12, Block 13, Langford-Weathered Addition, City and County of Midland, Texas.

Generally located to the east of the intersection of N. A Street and Elk Avenue. - (Council District 3)

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.

July 12, 2022

LAWSON AV

ELK AV

SF1

DOUGLAS AV

AST

PD

CLUB DR

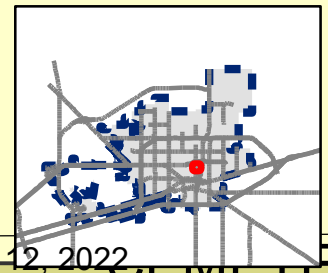
SF2

RIDGLEA DR

PACKET

15.14

July 12, 2022













City Council Meeting

Item Number: 16
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Landon Ochoa, Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,472-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 RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Brian Burns & Andre Patterson, d/b/a Champs Sports Grill and Bar, LLC., is requesting a Specific Use Designation (SUD) for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant Champs Sports Grill and Bar, located at 4610 N. Garfield Street D-1A.

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 the north are zoned O-1, Office District, and PD, Planned District for a Housing Development, and location of Quality Suites and Polo Park Retirement Center, respectively. The properties to the east are zoned 1F-2, One-Family Dwelling District, and PD, Planned District for a Shopping Center, and the location of single-family houses and Extra Space Storage, respectively. The property to the south is zoned 1F-1, One-Family Dwelling District, and the location of the Midland Airpark. The properties to the west are zoned PD, Planned District for a Shopping Center; LR-1, Local Retail District; and PD, Planned District for a Housing Development, and the location of Talbots, Fairfield Inn, and Single-Family houses, respectively.

Discussion:

The applicant is requesting a Specific Use Designation for Champs Sports Grill and Bar, located at 4610 N. Garfield Street D-1A, to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned PD, Planned District for a Shopping Center, which permits the sale of all alcoholic beverages for on-premises consumption, in a restaurant with the approval of a Specific Use Designation with Term.

The restaurant is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. However, this location previously had an approved SUD that expired on May 12, 2022, under the business name Brew Street, ordinance number 9630. The floor plan attached hereto as "Exhibit A" illustrates that the establishment, will have a total square footage of 4,472 - square feet, with an alcohol serviceable area of 2,935 square feet. The site currently has adequate parking, access and internal circulation.

The restaurant has the following hours of operation:

Monday through Sunday from 11:00 a.m. to 2:00 a.m. (the next day)

The restaurant is proposing the following hours of alcohol service:

Monday through Sunday from 11:00 a.m. to 2:00 a.m. (the next 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.

GIS: (Approved)

N/A.

Engineering: (Approved)

No objections.

Oil & Gas: (Approved)

No objections.

Transportation: (Approved)

No objections.

Building Code: (Approved)

The SUD for Champs is acceptable. The property must adhere to the maximum occupant load of 195 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) Champs Sports Grill and Bar is an establishment that will provide Midland residents with a unique social gathering experience.

This request was recommended for approval at the June 21, 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 restaurant, subject to conditions A through G.

Conditions:

- A. That the serviceable area of the restaurant shall be limited to approximately 2,935 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 next 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 restaurant shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of July 6, 2022, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Maps
Ordinance No. 7771 and 9630



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 4,472-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 RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 4,472-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 restaurant (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 2,935 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

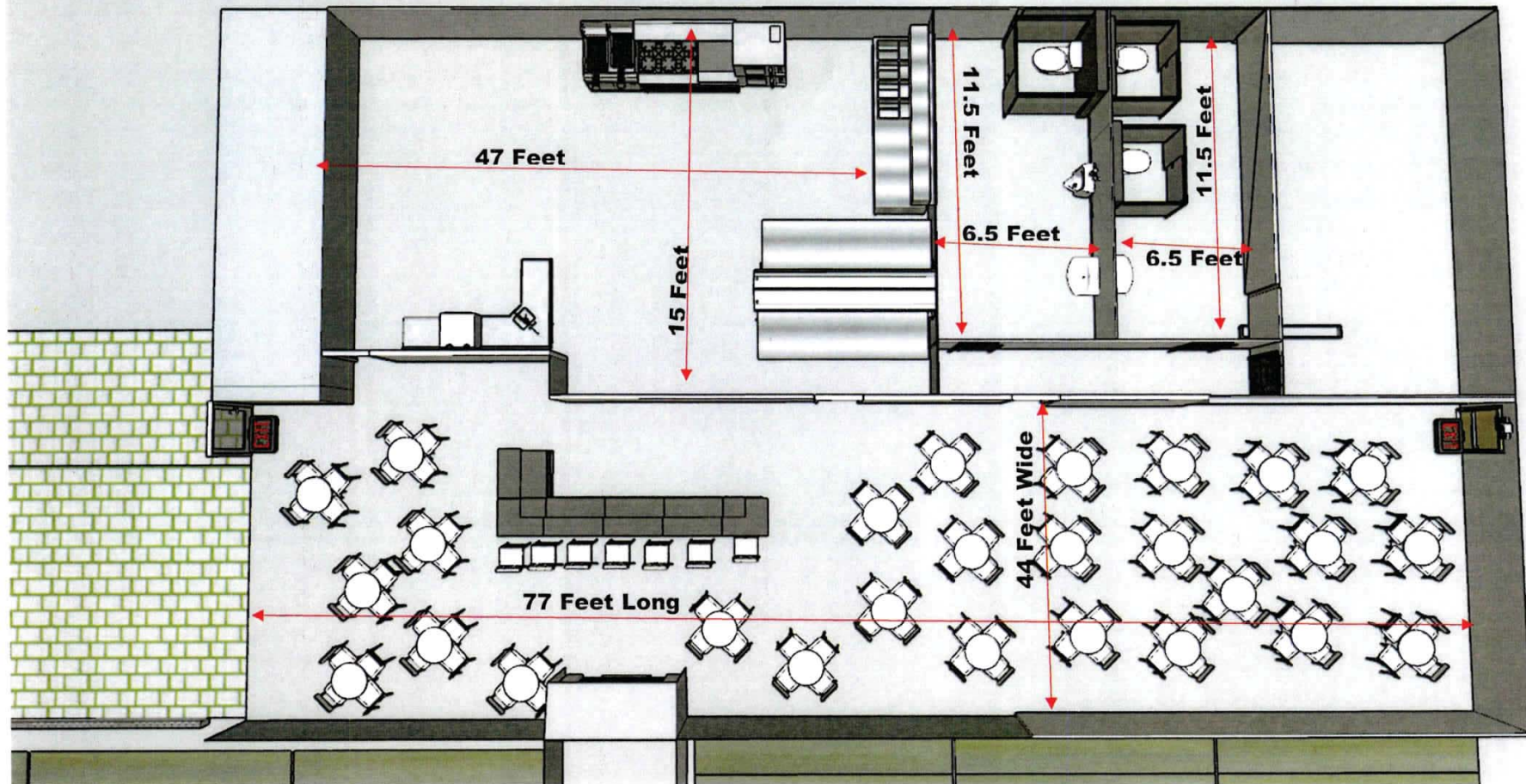
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"



CHAMPS SPORTS GRILL AND BAR
4610 N. GARFIELD STE. D1-A
MIDLAND, TEXAS 79706



11 Tall (4) Top Tables = 44 Chairs
14 Short (4) Top Tables = 56 Chairs
10 Short (6) Top Tables = 60 Chairs

TOTAL CHAIRS = 150

PACKET
16.10
July 12, 2022



Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption

Project Number SUD-22-0133
Case Number: _____

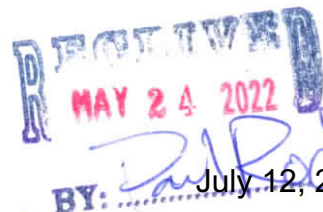
Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Brian Burns & Andre Patterson</u>		Phone (806) 781-4892 Email <u>champsbarmidland@gmail.com</u>	
Address <u>4610 N Garfield St. Ste D1A</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79705</u>

Property Owner Printed Name: <u>Colonnade at Polo Park Woodcrest LP</u>		Phone (817-927-0050) Email <u>ap@woodcrestcapital.com</u>	
Address <u>3113 S University Dr. Suite 600</u>	City <u>Fort Worth</u>	State <u>TX</u>	Zip <u>76109</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () Email _____	
Address _____	City _____	State _____	Zip _____

Street Address: 4610 N. Garfield St. Suite D1A, Midland, Texas 79705			
Business Name: CHAMPS SPORTS GRILL AND BAR LLC			
Legal Description Lot: 1 Block: 8 Subdivision: Polo Park Section 3			
Current Zoning: PD			
Reason for Request: <u>SUD Expired</u>			

Type of Business (restaurant, bar, lounge, nightclub, etc.): Restaurant			
Proposed/Current Days and Hours of Operation: <u>Monday-Sunday 11AM-2AM</u>			
Proposed Days and Hours of Alcohol Service: <u>Monday-Sunday 11AM-2AM</u>			
Total Square Footage of Business: 4,472			
Square Footage of Alcohol Serviceable Area: 2,935			
Restroom Fixtures:	Men	Toilets/Urinals: 1 / 1	Bathroom Sinks: 1
	Women	Toilets: 2	Bathroom Sinks: 1



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): Andre Patterson

Date: 5/24/22

Applicant (printed): Andre Patterson

Property Owner (signature):

Date: 5/24/22

Property Owner (printed): James Ryffel

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

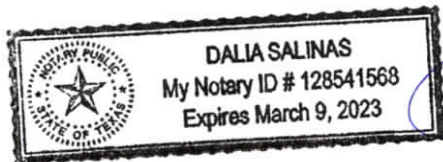
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andre Patterson who, being by me duly sworn, upon oath says: That (s)he is authorized by James Ryffel, 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.

Andre Patterson
Authorized Agent (signature)

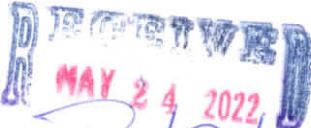
Subscribed and sworn to before me, this 23rd day of May, 20 22 to certify which witness my hand and seal of office.



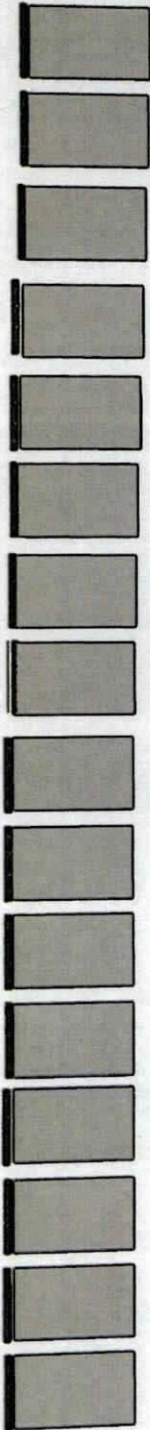
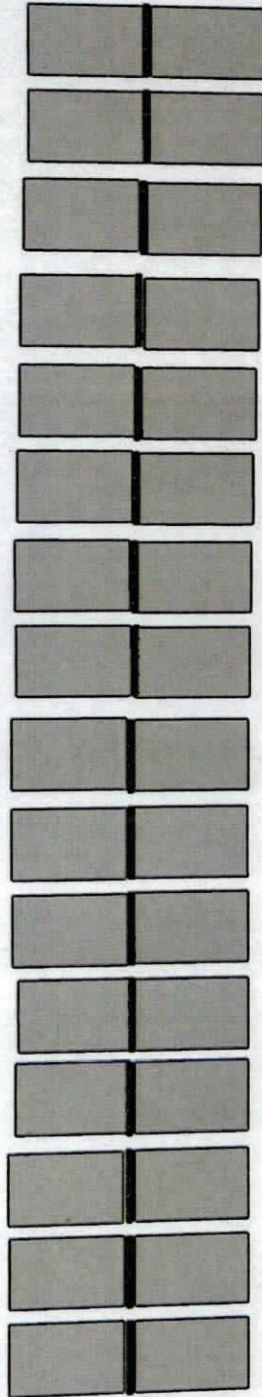
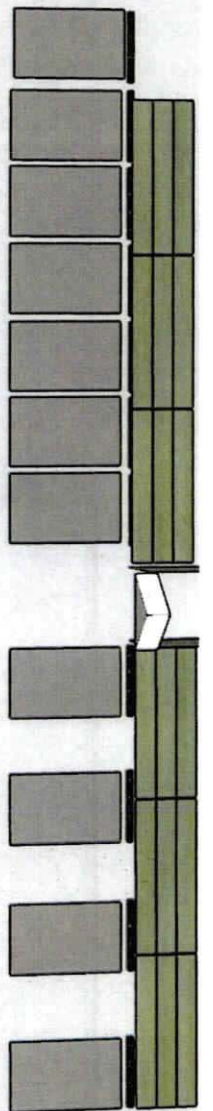
Dalia Salinas
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

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

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☒ Application Fee	☐ Site Plan
Check # <u>5017</u>	☐ Plans in Digital Format (PDF/JPEG)
Received By: <u>PR</u>	Date: <u>5-23-22</u>


 MAY 24 2022
 BY: Paul Rodriguez

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

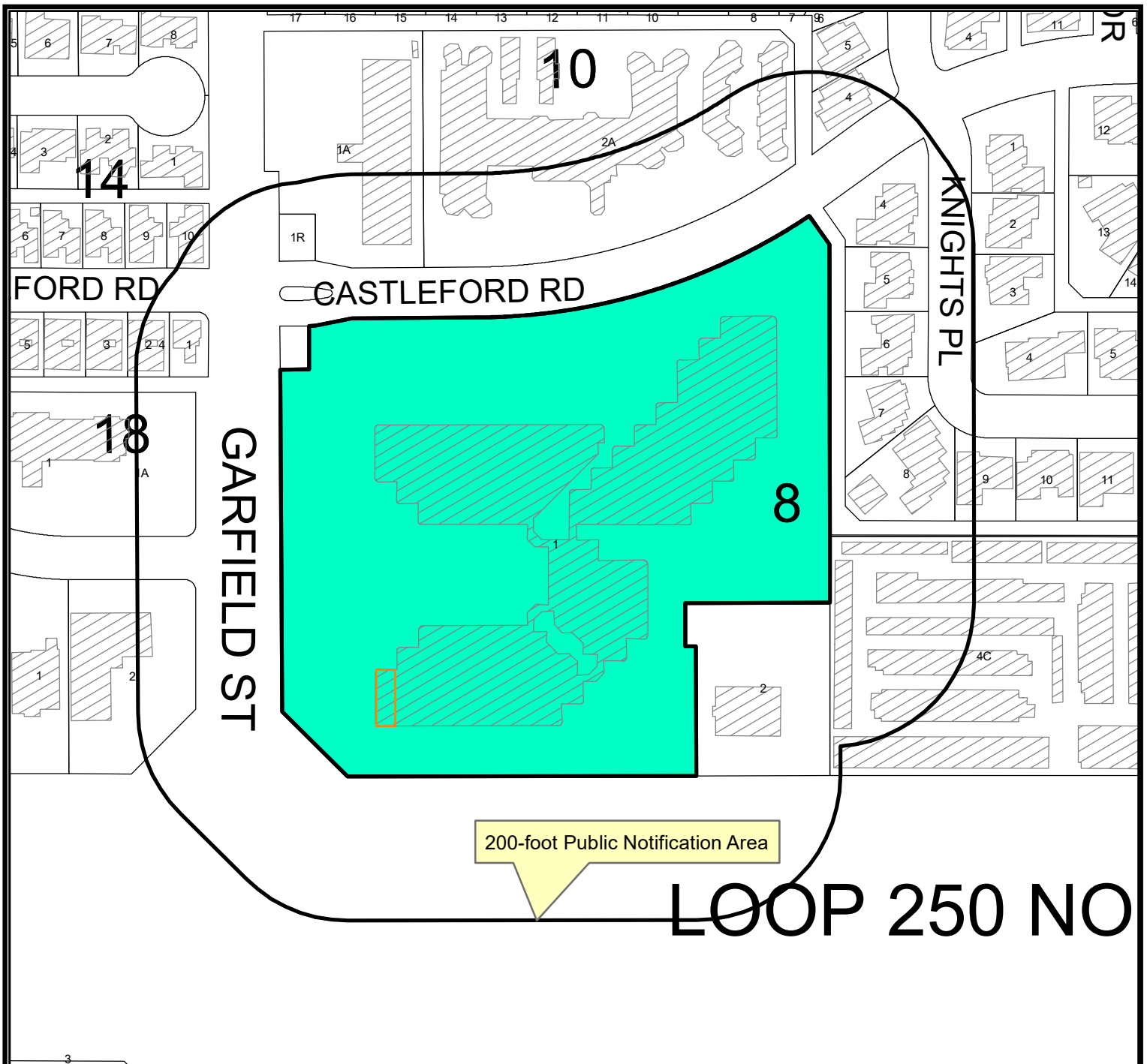


There are (60 Parking Spaces) located in front of the entry
There is ample parking to the North and South sides of the
shopping center.

PACKET

CHAMPS SPORTS GRILL AND BAR
4610 N. GARFIELD STE. D1-A
MIDLAND, TEXAS 79706





LOOP 250 NO

LOCATION MAP

SUD-22-0133

Scale: 1" = 2,400'

Consider a request by Brian Burns & Andre Patterson, D/d/a Champs Sports Grill & Bar, LLC., for a Specific Use Designation for Champs Sports Grill and Bar, LLC on a 4,472 square foot portion of Lot 1, Block 8, Polo Park, Section 3, City and County of Midland, Texas.

Generally located on the northeast corner of the intersection of Garfield Street and West Loop 250 North. (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

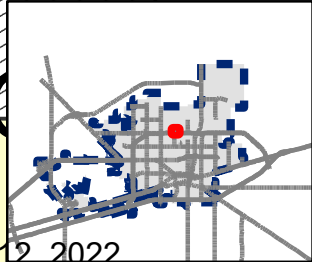


©THE CITY OF MIDLAND - 2021

July 12, 2022

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.











AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 5,141-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH GARFIELD STREET AND CASTLEFORD ROAD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT 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 and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, 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 the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned PD, Planned District for a Shopping Center, to-wit:

A 5,141-square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term

for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together with the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the serviceable area of the restaurant shall be limited to 5,141 contiguous square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- B. That the enclosed patio area, as shown in Exhibit "A", shall have an exit only gate.
- C. That the occupancy of the restaurant shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- D. That the restaurant shall meet all requirements of the Fire Department and the Code Administration Division.
- E. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- F. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Wednesday from 10:00 a.m. to 7:00 p.m.; and
Thursday through Saturday from 10:00 a.m. to 11:00 p.m.
- G. That Ordinance No. 9573 is hereby repealed.

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 10th day of January, A.D., 2017; and passed to second reading on motion of Council member Robnett, seconded by Council member Hotchkiss, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

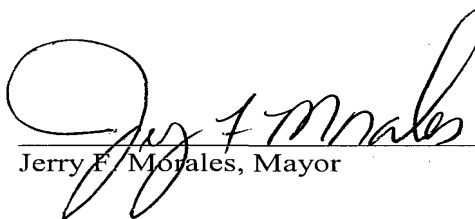
Council members voting "NAY": None

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 Hotchkiss, on the 24th day of January, A.D., 2017, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

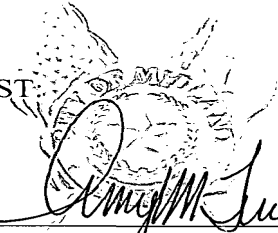
Council members voting "NAY": None

PASSED AND APPROVED THIS 24th day of January, A.D., 2017.



Jerry F. Morales, Mayor

ATTEST




Amy M. Turner, City Secretary

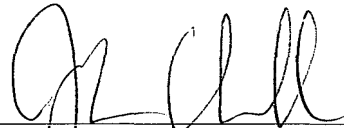
APPROVED AS TO CONTENT
AND COMPLETENESS:



Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:



John Ohnemiller, City Attorney

1 FLOOR PLAN
SCALE: 1/4" = 1'-0"

EXHIBIT A

9630



City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: January 24, 2017

TO: City Council / City Manager

FROM: Kierra Williams, Senior Planner

SUBJECT: Consider an ordinance on second reading on a request by Alli Bixler for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 5,141-square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, City and County of Midland, Texas. (Generally located southeast of the intersection of N. Garfield Street and Castleford Road. - District 1)

Purpose:

Consider an ordinance on second reading on a request by Alli Bixler for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant, Brew Street Bakery.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located at 4610 N. Garfield Street in a PD, Planned District for Shopping Center (Ordinance No. 7771). Zoning to the north and east of the restaurant is PD, Planned District for a Shopping Center, and the location of the Colonnade at Polo Park Shopping Center with various establishments such as, Jason's Deli, Kayser CHRISTmas Experience, and The Blue Door. Zoning to the south of the restaurant is 1F-1, One-Family Dwelling District, and the location of Midland Airpark. The zoning to the west is PD, Planned District for a Shopping Center, and the location of Talbots Retail store.

The applicant is requesting an amendment to the current Specific Use Permit with Term, for the sale of all alcoholic beverages, for on-premises consumption, for the Brew Street Bakery restaurant.

The applicant wishes to amend Condition A of the adopted ordinance (Ordinance No. 9573) to include the outdoor patio area in the total square footage of the restaurant. The patio is approximately 580-square feet and has ingress and egress through the restaurant as well as from the parking lot. All other conditions of the ordinance will remain intact.

The current Specific Use Permit with Term, for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant adopted on June 14, 2016, granted the restaurant the following alcohol serviceable hours;

From 10:00 a.m. to 7:00 p.m., Monday through Wednesday
From 10:00 a.m. to 11:00 p.m., Thursday through Saturday

The operating hours for the restaurant are as follows;

6:30 a.m.-9:00 p.m. Monday through Wednesday
6:30 a.m.-11:00 p.m. Thursday through Saturday

There are no schools or churches located within 300-feet (walking distance) of this site.

Establishments within 200-feet of Brew Street Bakery restaurant that have Specific Use Permit for the sale of all alcoholic beverages, for on-premises consumption are the following;

Blue Door

SUP Type: SUP w/Term for the sale of all alcoholic beverages, for on-premises consumption, in a Lounge.

Ordinance No. : #9133, Adopted 4/9/2013

Serviceable Hours: 4:00 p.m. to 12:00 a.m. Midnight, Tuesday through Saturday.

Operating Hours: Closed, Sunday and Monday, 4:00 p.m.-12:00 a.m. (midnight), Tuesday through Thursday, and 4:00 p.m.-1:00 a.m. (the following day), Friday and Saturday

Wine Rack

SUP Type: SUP w/Term for the sale of all alcoholic beverages, for on-premises consumption in a Bar.

Ordinance No.: #9326, Adopted 9/23/2014

Serviceable Hours: 11:00 a.m.-11:00 p.m. Sunday-Saturday

Operating Hours: Closed, Monday; 11:00 a.m.-8:00 p.m., Tuesday-Friday, 11:00 a.m. – 9:30 p.m. Saturday and Sunday

Bill's Bistro

SUP Type: SUP w/Term for the sale of all alcoholic beverages, for on-premises consumption, in a Restaurant

Ordinance No.: #9279, Adopted 5/20/2014

Serviceable Hours: From 11:00 a.m.-11:00 p.m. Sunday-Saturday

Operating Hours: Closed, Sunday and Monday; 5:00 p.m.-9:00 p.m., Tuesday-Thursday; 5:00 p.m.-10:00 p.m., Friday and Saturday.

Chili's

SUP Type: SUP w/o Term for the sale of all alcoholic beverages, for on-premises consumption, in a Restaurant.

Ordinance No.: #6355, Adopted 1/24/1984

Serviceable Hours: 11:00 a.m.-12:00 a.m. (midnight), Monday-Thursday; 11:00 a.m.- 2:00 a.m., Friday and Saturday; 12:00 p.m. (noon) - 12:00 a.m. (midnight), Sunday

Operating Hours: 11:00 a.m. – 10:00 p.m., Sunday-Thursday; 11:00 a.m.-11:00 p.m., Friday and Saturday

Athenian Restaurant

SUP Type: SUP w/Term for the sale of all alcoholic beverages, for on-premises consumption, in a Restaurant.

Ordinance No.: #9321, Adopted 9/23/2014

Serviceable Hours: 11:00 a.m.-10:00 p.m., Monday-Thursday, 11:00 a.m.-11:00 p.m., Friday and Saturday.

Operating Hours: Closed, Sunday; 11:00 a.m.-10:00 p.m., Monday-Thursday; 11:00 a.m.-11:00 p.m., Friday and Saturday.

Shogun

SUP Type: SUP w/o Term for the sale of all alcoholic beverages, for on-premises consumption, in a Restaurant.

Ordinance No.: #6457, Adopted 9/25/1984

Serviceable Hours: 7:00 a.m. – 12:00 a.m. (midnight), Monday-Saturday, 12:00 p.m. (noon)-12:00 a.m. (midnight)

Operating Hours: 11:00 a.m.-9:30 p.m., Sunday-Thursday; 11:00 a.m.-10:00 p.m., Friday and Saturday.

Churrasce Brazillian steakhouse

SUP Type: SUP w/o Term for the sale of all alcoholic beverages, for on-premises consumption, in a Restaurant.

Ordinance No.: #7158, Adopted 3/10/1992

Serviceable Hours: 11:00 a.m.-12-a.m. (midnight), Monday-Saturday; 12:00 p.m. (noon) 12:00 a.m. (midnight)

Operating Hours: 11:30 a.m.-2:00 p.m. and 5:00 p.m.-10:00 p.m., Monday-Friday; 4:00p.m.-10:00 p.m., Saturday; 12:00 p.m. (noon)-2:30 p.m. and 5:00 p.m.-9:00 p.m., Sunday

Staff recommends approval of a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, Subject to conditions A-G.

The Planning and Zoning commission approved this request on December 5, 2016.

Engineering and Transportation:

Engineering and Transportation stated they had no objections regarding the request.

Public Safety:

Comments from Fire are as follows:

Means of egress shall meet the requirements of the IBC-2015 for its use.

Portable fire extinguishers shall be approved.

Code Administration:

Code had no comments regarding the request.

Planning:

Planning finds the request in compliance with the comprehensive plan.

Conditions:

- A. That the establishment shall not exceed 5,141 contiguous square feet in area , including the enclosed patio area, as shown in Exhibit "A", which is attached hereto and incorporated herein.
- B. That the enclosed patio are as shown in Exhibit "A", which is attached hereto and incorporated herein, shall have an exit only gate.
- 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 the Code Administration Division.
- E. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- F. That the days and hours of alcoholic beverage sales and consumption shall be limited to:
 - a. Monday through Wednesday from 10:00 a.m. to 7:00 p.m.
 - b. Thursday through Saturday from 10:00 a.m. to 11:00 p.m.
- G. That City of Midland Ordinance No. 9573 is hereby repealed.

Letters of Objection:

As of November 30, 2016, staff has received no letters of objection to this request.

Attachments:

Application
Maps
Site Plan (Exhibit A)
Ordinance No. 9573

Case Number: SUP 16-0057



APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

I. APPLICATION

Applicant: ALLI BIXLER/JUST US GIRLS LLC 432 230-8844
(Name) (Phone)
5205 ELLEN JAYNE WAY 79707
(Address) (Email)

Property Owner: WOODCREST COLONNADE LP 432 638-7163 DENNIS SKAGGS
(Name) (Phone)
3113 S. UNIVERSITY FT WORTH 76109
(Address) (Email)

Operator (if different than the Applicant or Property Owner):
NA
(Name) (Phone)
(Address) (Email)

Street Address: 4610 N GARFIELD #D-1A PATIO AREA

Legal Description:

If Platted: Lot: _____ If Unplatted: *Attach Metes & Bounds Description with Surveyor's Seal
Block: _____
Subdivision: _____

Current Zoning: _____

Reason for Request: We believe our customers would like to sit on the patio and enjoy our bakery items as well as a beer or glass of wine.

Type of Business: BAKERY
(Restaurant, Bar, Lounge, Nightclub, etc.)

Proposed Days and Hours of Alcoholic Beverage Sales: Operating Hours for restaurant and patio
6:30 am - 9 pm MONDAY-WEDNESDAY
6:30 am - 11 pm THURSDAY-SATURDAY

Service hours: M-W, 10am - 7pm; Th-Sat, 10am - 11pm

Total Square Footage of Business: 4561 Square Footage of Area: 580 (Patio)

Restroom Fixtures: Men Toilets/Urinals 1 Bathroom Sinks 1
Women Toilets 1 Bathroom Sinks 1

FOR OFFICE USE ONLY: Maximum Seating Capacity Per City Code: _____

II. FEE & SUBMITTALS

Application Fee (\$300.00):

\$ 300.00

2 FOLDED Copies of Dimensioned Floor Plan:

2 FOLDED Copies of Dimensioned Site Plan:

Digital Copies of Floor Plan & Site Plan (PDF & JPEG):

III. SIGNATURES

Applicant:

Alli Bixler

Date:

11-8-16

Property Owner:

Donna Fagg

Date:

11-8-16

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 ALLI BIXLER who, being by me duly sworn, upon oath says: That (s)he is authorized by WOODCREST COLONNADE I the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this ____ day of NOVEMBER, 2016, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY:	
Rec'd By: _____	Date: _____
Assigned: _____	
For: _____	On: _____

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

ORDINANCE NO. 9573

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 4,472-SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH GARFIELD STREET AND CASTLEFORD ROAD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT 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 and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, 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 the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned PD, Planned District for a Shopping Center, to-wit:

A 4,472-square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term

for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together with the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the maximum square footage of the restaurant shall be limited to 4,472 contiguous square feet as shown in the floor plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.
- B. That the occupancy of the restaurant shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- C. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.
- D. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following when not otherwise prohibited by law:

Monday through Wednesday from 10:00 a.m. to 7:00 p.m.; and
Thursday through Saturday from 10:00 a.m. to 11:00 p.m.

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 24th day of May, A.D., 2016; and passed to second reading on motion of Council member Lacy, seconded by Council member Love, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

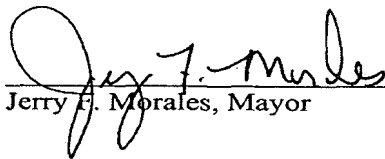
Council members voting "NAY": None

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 Hotchkiss, on the 14th day of June, A.D., 2016, at a regular meeting of the City Council:

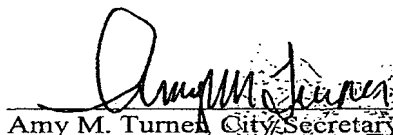
Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Lacy, Robnett

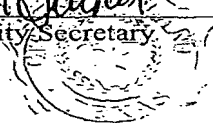
Council members voting "NAY": None

PASSED AND APPROVED THIS 14th day of June, A.D., 2016.

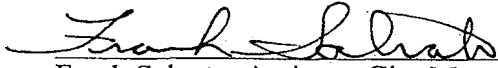

Jerry F. Morales, Mayor

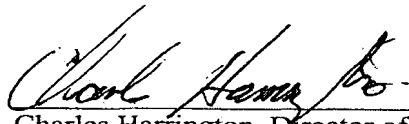
ATTEST:


Amy M. Turner, City Secretary

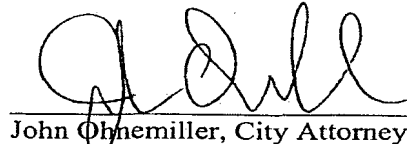


APPROVED AS TO CONTENT
AND COMPLETENESS:


Frank Salvato, Assistant City Manager

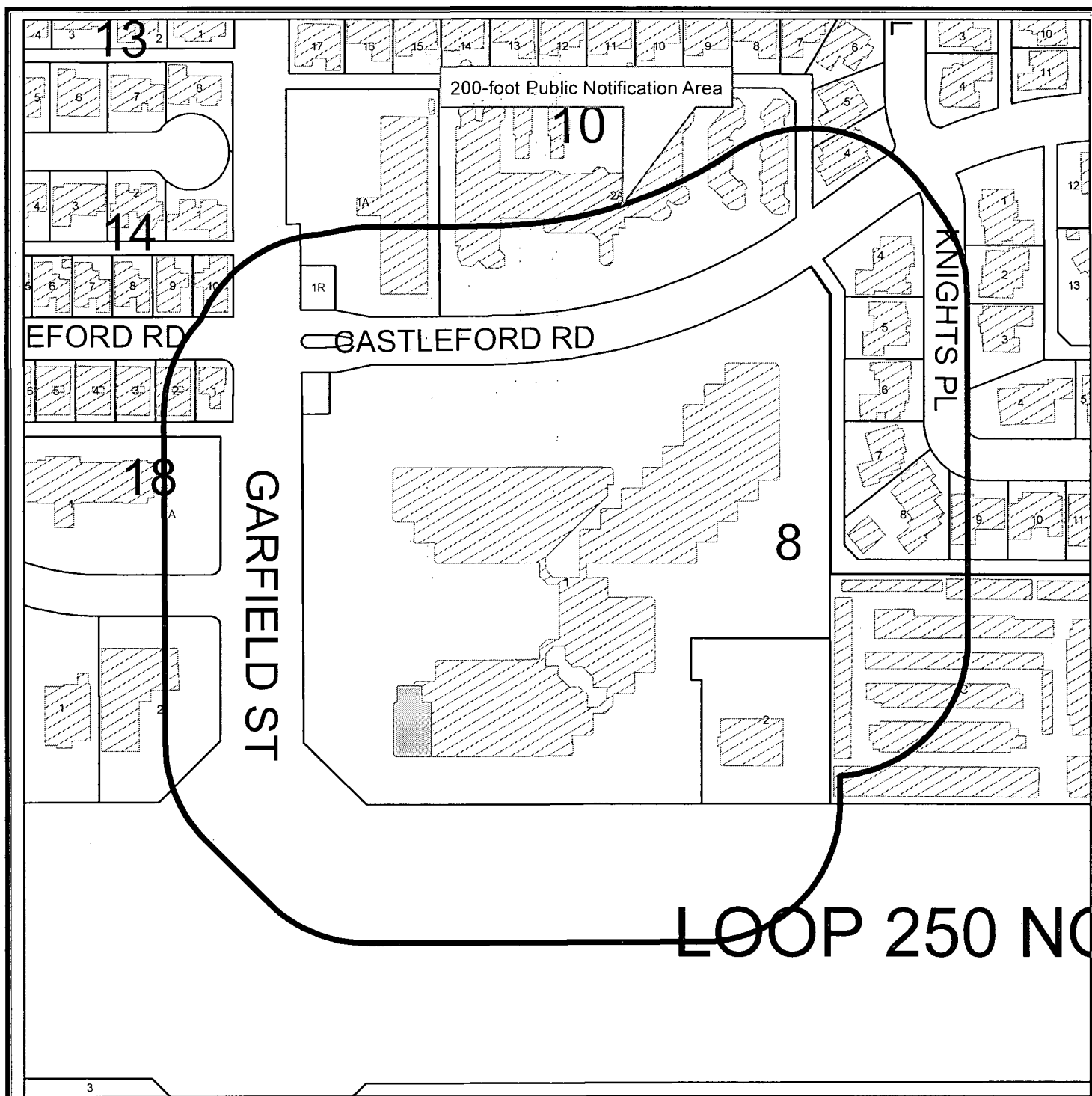

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:


John Ohnemiller, City Attorney

CASTLEFORD ROAD

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Healthcare
Life
Chicago
Punk Rock
GREAT
Residential
Great
Central
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LOCATION MAP

SUP- 16 -0057

Scale: 1" = 200'

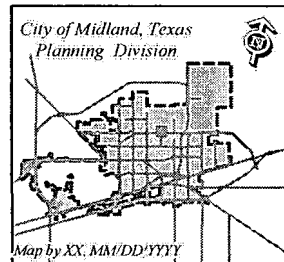
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 5,141-square foot portion of Lot 1, Block 8, Polo Park Addition, Section 3, City and County of Midland, Texas.

Generally located southeast of the intersection of N. Garfield Street and Castleford Road. (Council District 1)

PACKET

LEGEND

- CITY LIMITS
- PARCEL
- ▨ PRIVATE BLDGS

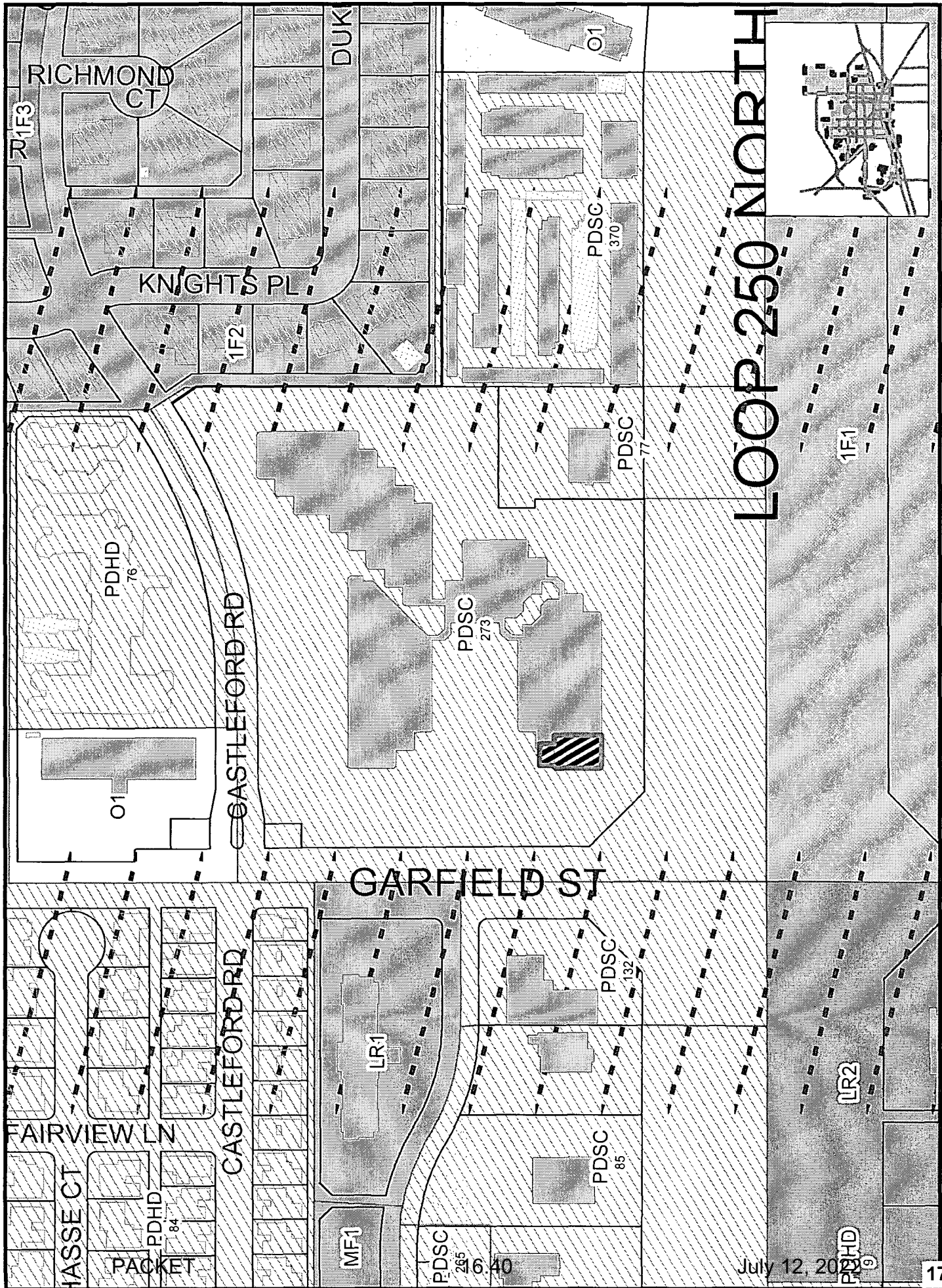


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

July 2, 2022 17.19

16.39



July 12, 2016

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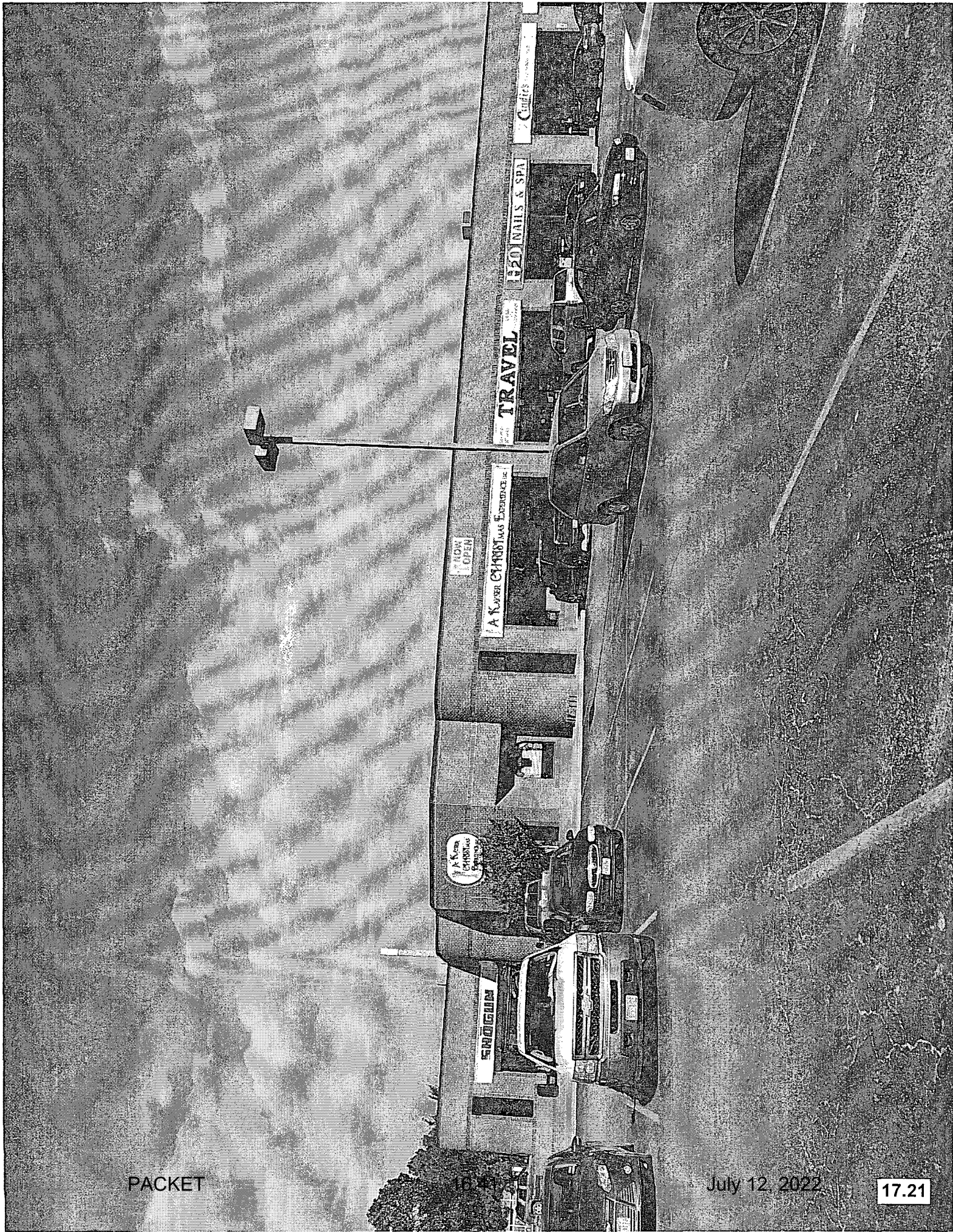


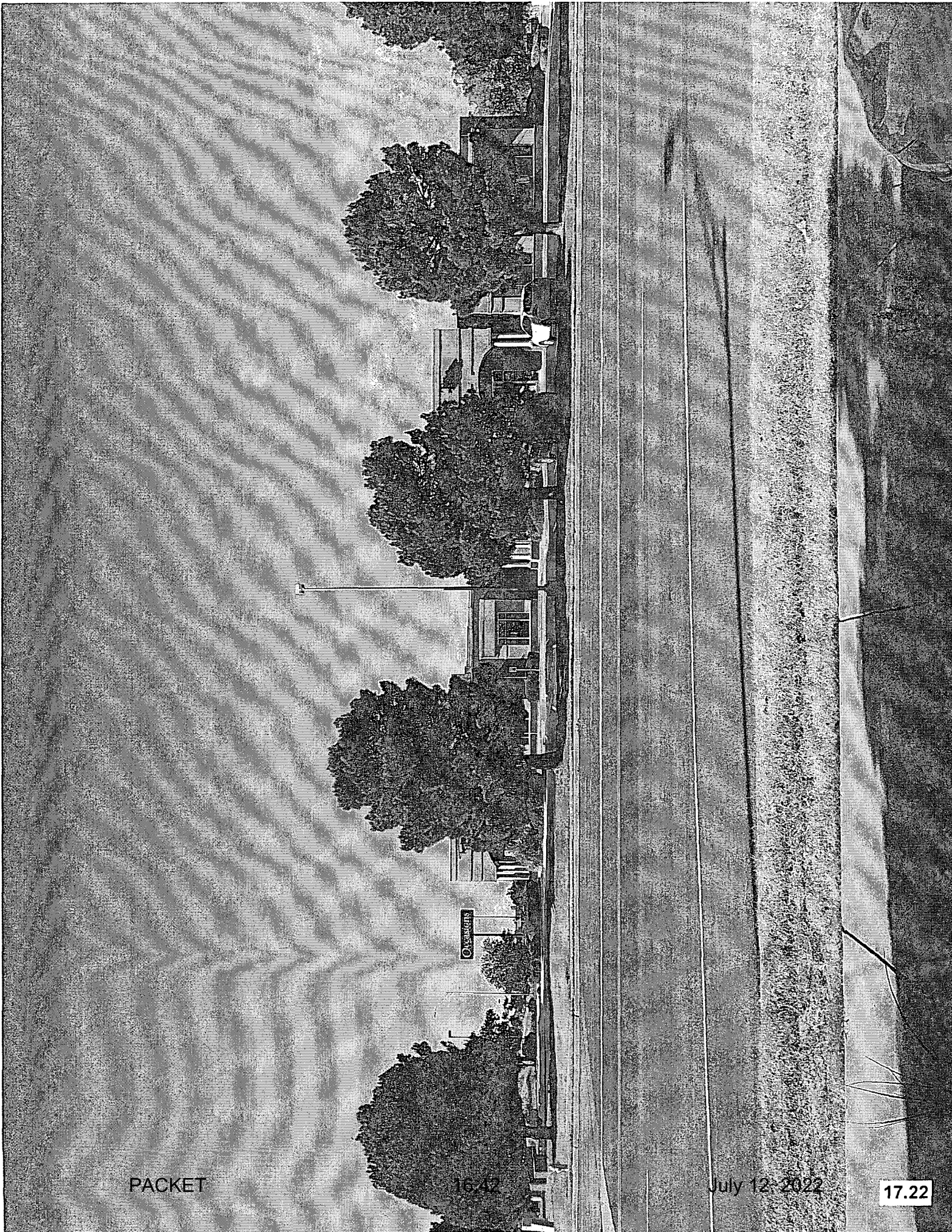
ZONING MAP

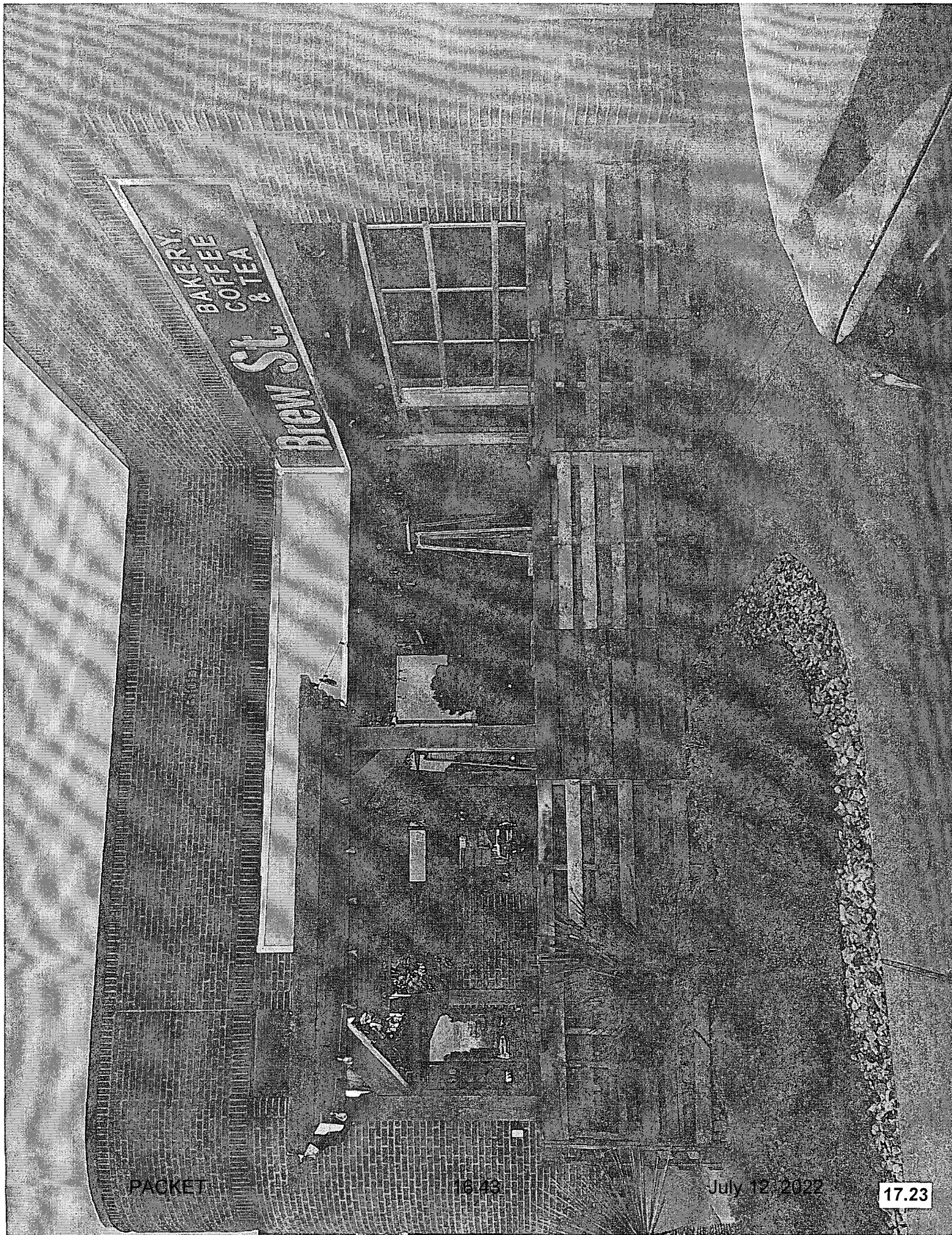
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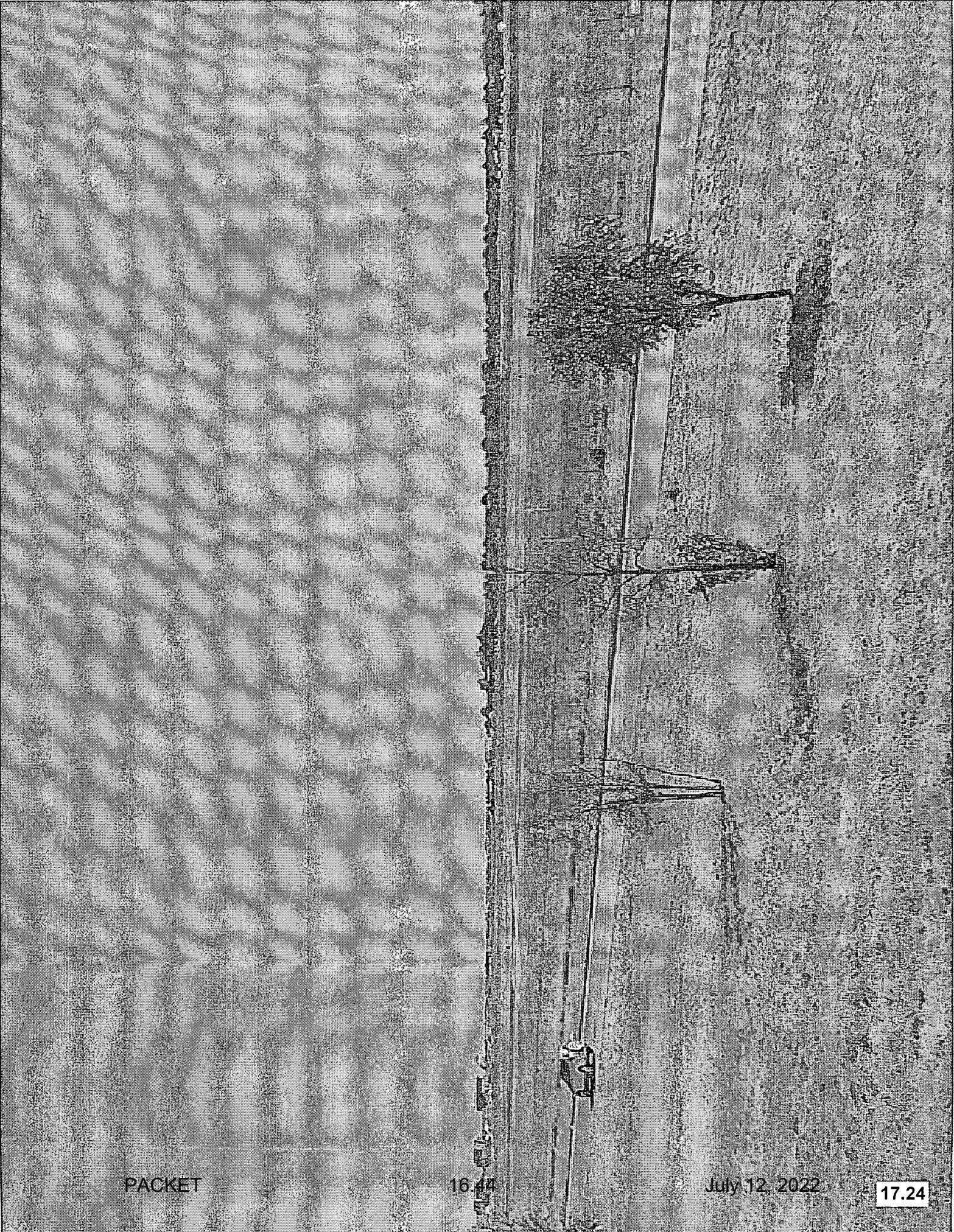
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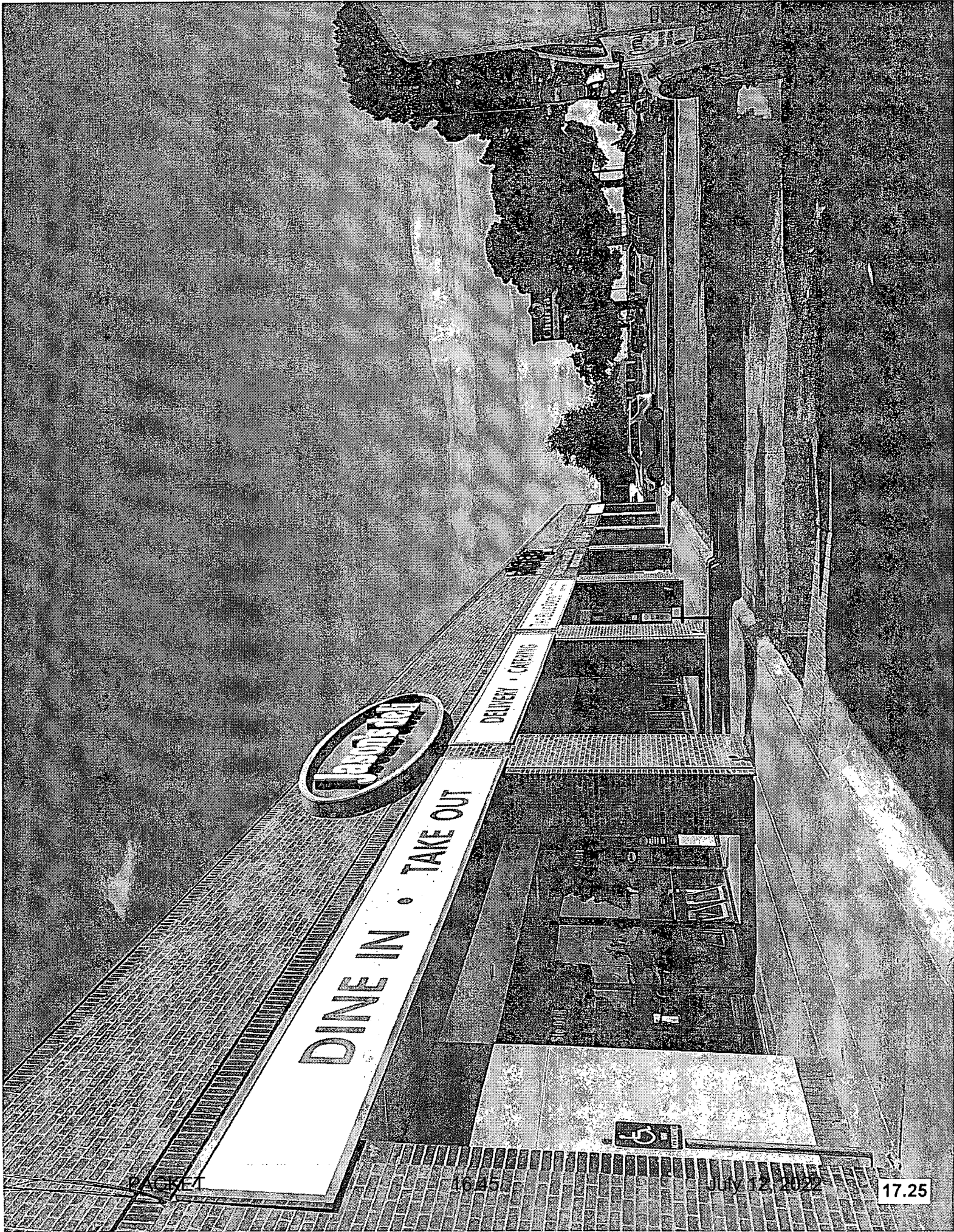
By K.W. 11/22/2016











PACKET

1645

JULY 12, 2022

17.25

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
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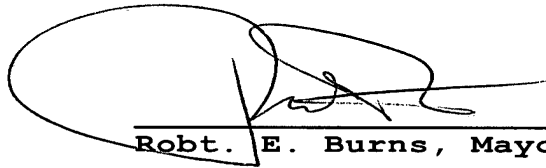
Council members voting "NAY":	None
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The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Brooks, seconded by Council member Cuevas, on the 22nd day of September, A.D., 1998, at a regular meeting of the City Council:

Council members voting "AYE":	Brooks, Cuevas, Wood, Brown, Burns, Simpson and Washburn
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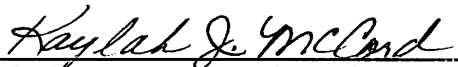
Council members voting "NAY":	None
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PASSED AND APPROVED THIS 22nd day of September,
A.D., 1998.



Robt. E. Burns, Mayor

ATTEST:



Kaylah J. McCord, City Secretary

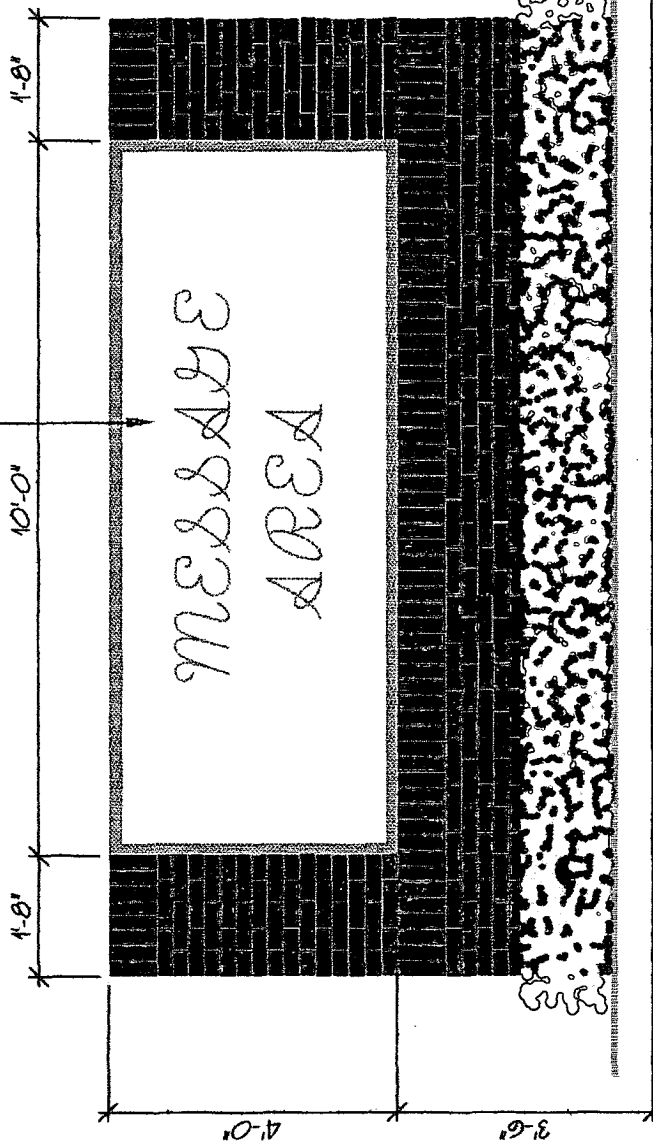
APPROVED AS TO FORM:



Keith Stretcher, City Attorney

ord\planning\plndist\Z-98-022 Red Oak

COLORED OR WHITE BACKGROUND
WITH BLACK LITE BOX &
CONTRASTING MESSAGE.



RECEIVED

AUG 25 1998

PLANNING & DEVELOPMENT
CITY OF MIDLAND



VANDERGRIFF GROUP
ARCHITECTS • PLANNERS
92 N. 835 STREET, SUITE 200 • MIDLAND, TEXAS 79701
MEMBER AMERICAN INSTITUTE OF ARCHITECTS

8-11-98

MONUMENT SIGN PROPOSAL

COLOHADE SHOPPING CENTER
MIDLAND, TEXAS

EXHIBIT B

CASE NO. Z-98-022

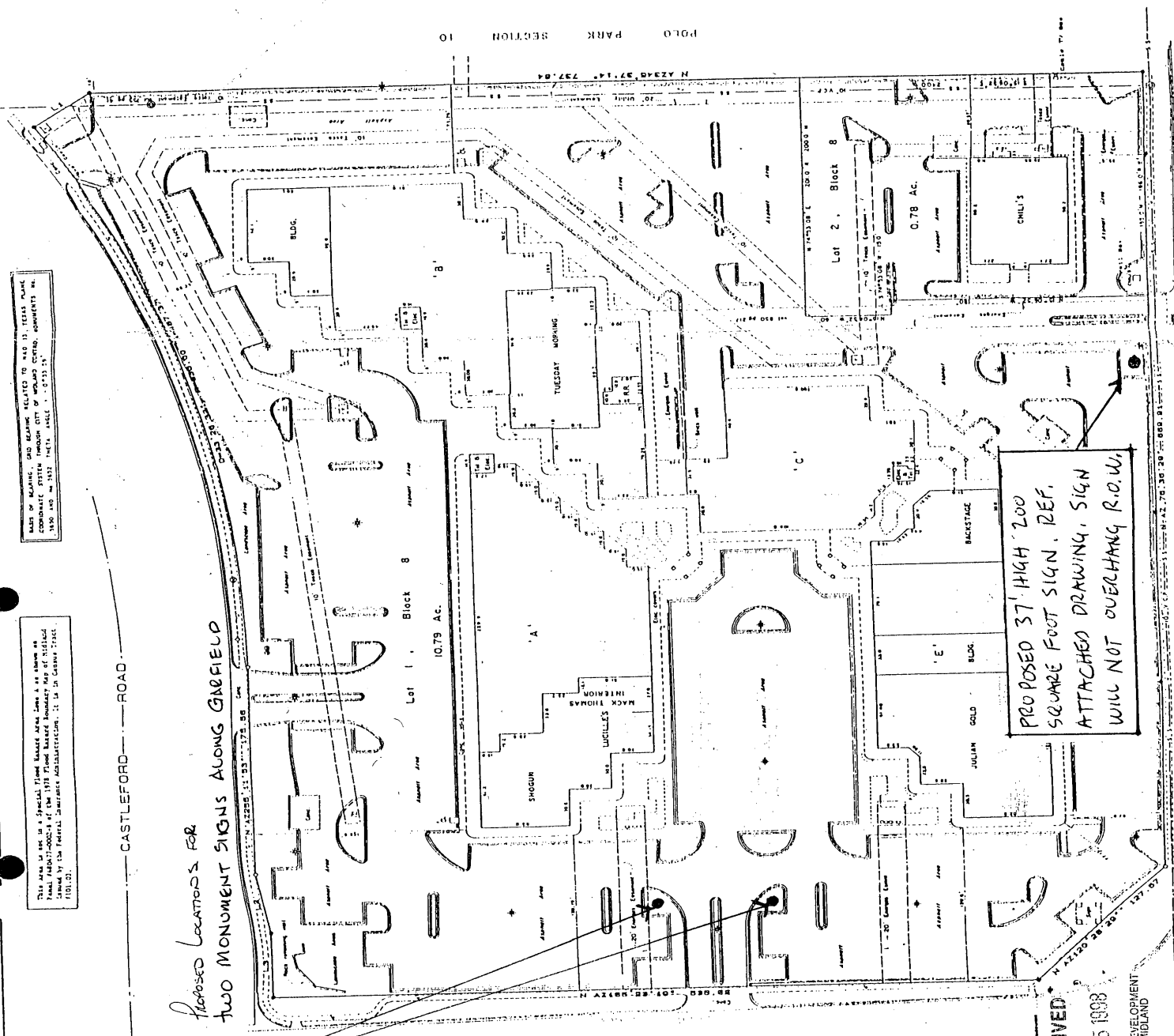
This area is sec in a Special Flood Hazard Area Zone 4 as shown on Panel #40477-000-8 of the 1978 Flood Hazard Boundary Map of Midland issued by the Federal Insurance Administration. It is in Census Tract #101.03.

CASTLEFORD—ROAD—

Division Locations For

TWO MONUMENT SIGNS ALONG GARFIELD

PROPOSED 37' HIGH 200
SQUARE FOOT SIGN, REF.
ATTACHED DRAWING, SIGN
WILL NOT OVERHANG R.O.W.,



6.51

July 12, 2022

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PLANNING & DEVELOPMENT
CITY OF MIDLAND

250-00P

No.	Direction	Length
1	N AZ30 48.02	47.87
2	N AZ31 50.33	50.93
3	N AZ24 51.53	48.88

LEGEND

- [illegible]

STUBBINS, S. BOYD

The undersigned Registered Professional Land Surveyor ("Surveyor") hereby certifies that (a) this plat of survey and the property description set forth herein are based on a survey of the land and were prepared in accordance with the laws of the State of Texas and the rules and regulations of the State Board of Land Surveyors; (b) such survey was conducted by the Surveyor or under his supervision; (c) all monuments shown herein actually exist and the monument(s) except as type of monument shown herein is or are not monuments; (d) except as type of monument shown herein, there are no encroachments onto the property or any part thereof; (e) there are no improvements on the property, or any part thereof, that are not shown herein; (f) there are no easements or right-of-way conflicts, encroachments and there are no visible easements or right-of-way conflicts, encroachments and there are no boundary line conflicts; (g) the area, location and extent of the improvements as shown herein, and all are located within the boundaries of the land shown herein; (h) the distance from the property boundary to the center of the road is as shown; (i) the property is not intersecting street or road is shown; (j) all property has access to and from a public highway; (k) all recorded easements have been correctly platted and shown herein as true boundaries, dimensions and other details shown herein as true

The surveyor expressly understands and agrees that (a) this certificate is made for the benefit of Federal Deposit Insurance Corporation as assignee of title insurance company and for the benefit of assign title insurance company (title company) to issue a policy of title insurance insuring the validity and priority of such deed to trust lien; (b) both FIDIC and title company are deemed to rely on this plat of survey as being true and accurate in all respects and upon this certificate as being true and accurate.

Discussed this 11st day of March : 1991.

John Wiley

Registered Professional Land
Surveyor No. 2172

CASE NO. Z-98-022



Recall/ship Name: First Gibraltar
Asset Number: 1601-00008-00-1
Asset Name: Condo # Polo Park
Property Description: SEC Carlfield
John Vaila Tel ID: 75-192620



WALLISLAND SURVEYORS

P.O. Box 1111
Melbourne, Victoria 3000

0-03-2051



City Council Meeting

Item Number: 17
Meeting Date: July 12, 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 LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH COLORADO STREET, APPROXIMATELY 66 FEET SOUTH OF OHIO AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a Lounge at 319 N Colorado Street.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Surrounding Zoning and Land Uses:

The properties to the north, east, south, and west are all zoned CB, Central Business District, and the locations of restaurants and businesses.

Discussion:

The property is in a CB, Central Business District, which permits the sale of alcoholic beverages, for on-premises consumption in a Lounge with the approval of a Specific Use Designation with term. The property previously had an SUD for the sale of alcohol in a Lounge, however, that SUD expired in 2014. Brass Munky will have a total square footage of 2,800, of which 2,200 square feet will be dedicated to the alcohol serviceable area.

The restaurant will have the following hours of operation and alcohol service:

**Monday through Saturday from 10:00 a.m. to 2:00 a.m. (the following day),
and Sunday from 8:00 a.m. to 10:00 p.m.**

The lounge offers very little off-street parking; however, the applicant is proposing to use the property across the street on 312 Colorado Street as parking. A total of 34 parking spaces are provided, of which 2 will be accessible spaces. The lounge will have a total occupancy of 146 people; therefore, 37 parking spaces will be required. There is additional street parking located near the property that customers will have access to.

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 request has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Engineering: (Approved)

No objection.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objection.

Code Administration: (Approved)

The SUD is acceptable. The property must adhere to the maximum occupant load of 146 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 follows the *Tall City Tomorrow Comprehensive Plan, Chapter 2-A Shared Vision: Community Themes* which is to create Downtown Midland as a place to work, live, and entertain. (Tall City Tomorrow page 44). Downtown Midland is experiencing revitalization. We are seeing new development and redevelopment within this area such as new restaurants and bars. Brass Munky will contribute to the entertainment aspect for the revitalization of downtown.

This request was recommended for approval at the July 5, 2022, Planning and Zoning Commission Meeting.

This request meets all requirements; therefore, staff recommends approval of a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

- A. That the alcoholic serviceable area of the lounge shall be limited to approximately 2,200 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 Saturday from 10:00 a.m. to 2:00 a.m. (the following day), and Sunday from 8:00 a.m. to 10:00 p.m.**
- C. 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 11-1-9.07.E.3 of the Zoning Ordinance, the lounge shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of June 29, 2022, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Parking Agreement
Parking Plan
Maps



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 LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH COLORADO STREET, APPROXIMATELY 66 FEET SOUTH OF OHIO AVENUE), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE 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 Lots 2 and 3, Block 27, Original Town Addition, 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 lounge (the "Establishment") for on-premises consumption, together with the uses permitted in the present CB, Central Business District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

- A. That the serviceable area of the Establishment shall be limited to approximately 2,200 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 the following:

Monday through Saturday from 10:00 a.m. to 2:00 a.m. of the following day;
and
Sunday from 8:00 a.m. to 10:00 p.m.
- 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:

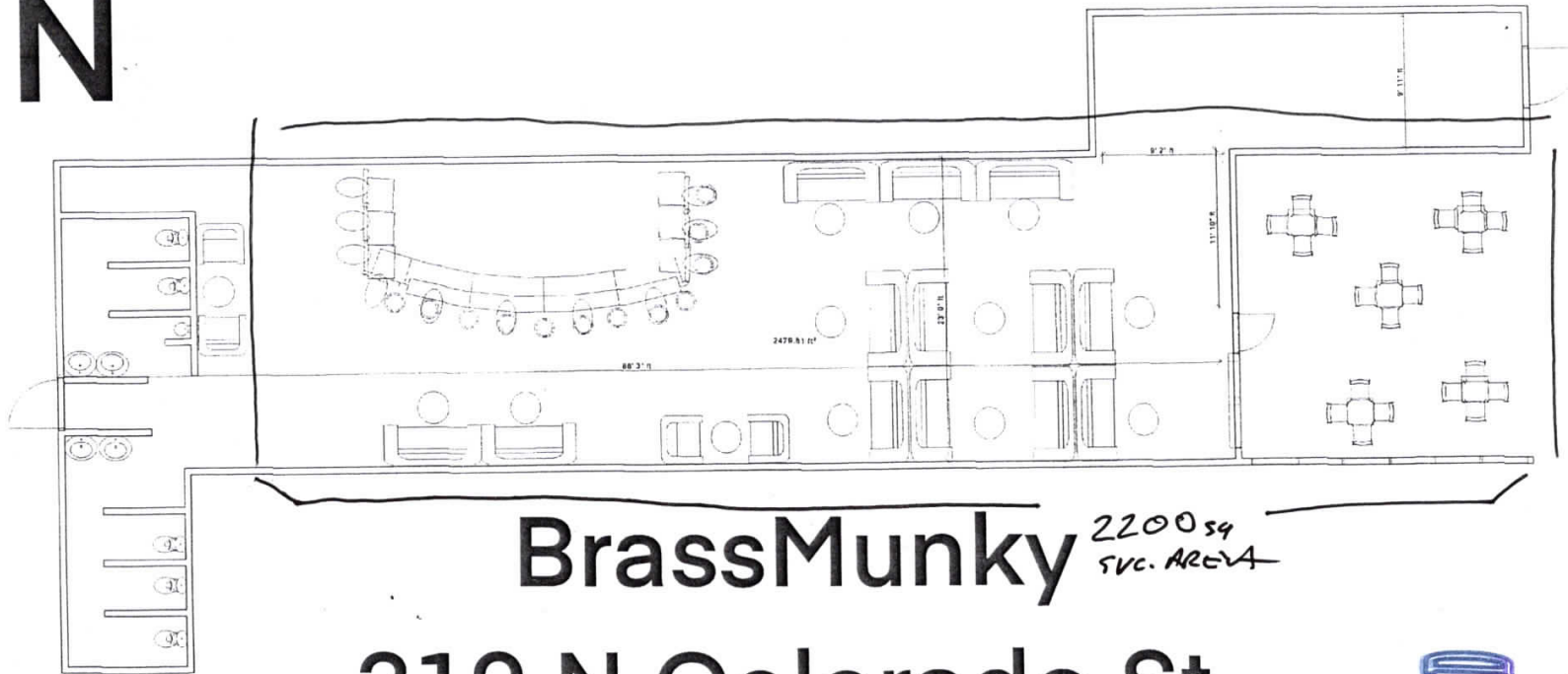
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Ohio Ave.

AN



BrassMunky 2200 sq
SVC. AREA

319 N Colorado St.

BLK:027, Lots:002 & 3
ADDN: ORIGINAL TOWN

RECEIVED
MAY 25 2022

Colorado St.



Specific Use Designation with
Term for the Sale of Alcoholic
Beverages for On-Premises
Consumption

Project Number:

SUD-22-0134

Case Number:

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

Printed Name: Sonny Aguilar

Phone (432) 352-6386

Email: Sonnyaguilar22@gmail.com

Address

P.O. Box 7747

City

Midland

State

TX

Zip

79708

Property Owner

Printed Name: Rita + Sma Properties

Phone (432) 352-6386

Email

Address

P.O. Box 7747

City

Midland

State

TX

Zip

79708

Representative (if different from Applicant or Property Owner)

Firm: Brass Munky

Printed Name:

Phone (432) 325-6386

Email

Address

P.O. Box 7747

City

Midland

State

TX

Zip

79708

Street Address:

319 N Colorado St.

Business Name:

Brass Munky

Legal Description

Lot: 27 Block: 02x3 Subdivision: Original Town

Current Zoning:

CB - Central Bu

Reason for Request:

SUD

Type of Business (restaurant, bar, lounge, nightclub, etc.):

Proposed/Current Days and Hours of Operation: Monday - Saturday

10 AM - 2 AM Sunday 8 AM - 10 PM

Proposed Days and Hours of Alcohol Service:

same as above

Total Square Footage of Business:

2800

Square Footage of Alcohol Serviceable Area:

2200

Restroom Fixtures:

Men

Toilets/Urinals:

2 1

Bathroom Sinks:

2

Women

Toilets:

3

Bathroom Sinks:

2

RECEIVED
MAY 25 2022
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): [Signature] Date: 5/25/22

Applicant (printed): Sonny Aguilar

Property Owner (signature): [Signature] Date: 5/25/22

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.

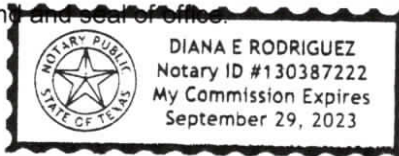
All materials, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

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 Sonny Aguilar 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.

Subscribed and sworn to before me, this 25th day of May, 2022, to certify which witness my hand and seal of office.



Notary Public

FOR OFFICE USE ONLY

- ☒ Property Owner Authorization ☒ Dimensioned Floor Plan
- ☒ Application Fee ☒ Site Plan
- Check # 1576 ☒ Plans in Digital Format (PDF/JPEG)

Received By: [Signature]

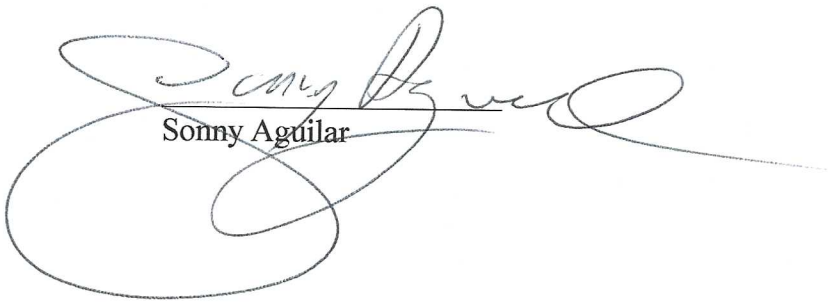
Date: _____

RECEIVED
MAY 25 2022

BY: _____

6/22/22

Rita & SMA Properties INC, hereby give the Brass Munky and its affiliates permission to park at 312 N. Colorado during business hours.


Sonny Aguilar

6/22/22
Date

Alley

Ohio St.

10 additional
Street parking

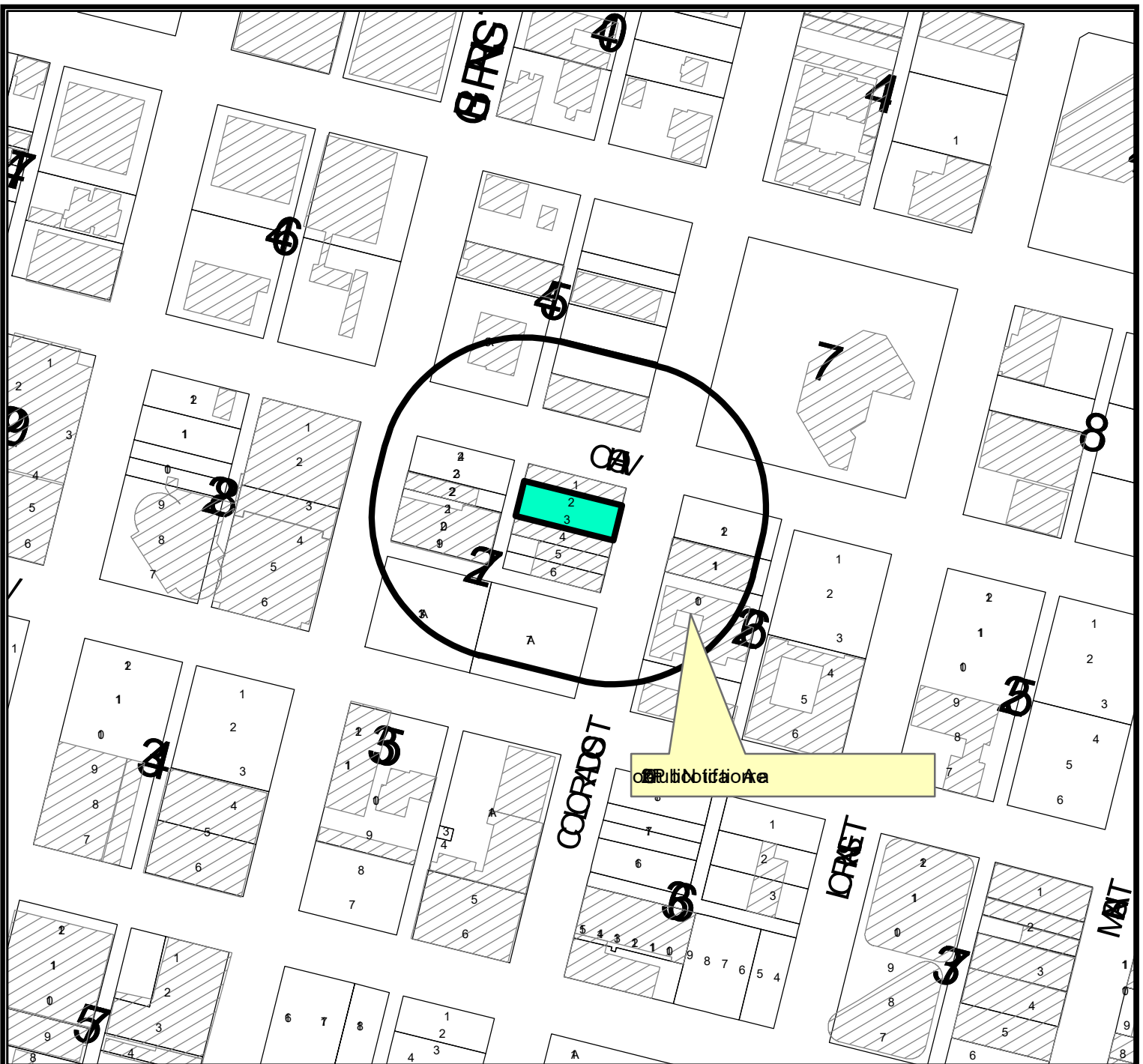
312 N Colorado St.

16 additional
Street parking →

PACKET
↓

17.13

July 12, 2022



LOCATION MAP

SUD-22-0134

Scale: 1" = 200'

Consider a request by Sonny Aguilar, for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a Lounge, on Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas.

Generally located on the west side of N. Colorado Street, approximately 66-feet south of Ohio Avenue.
(Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021

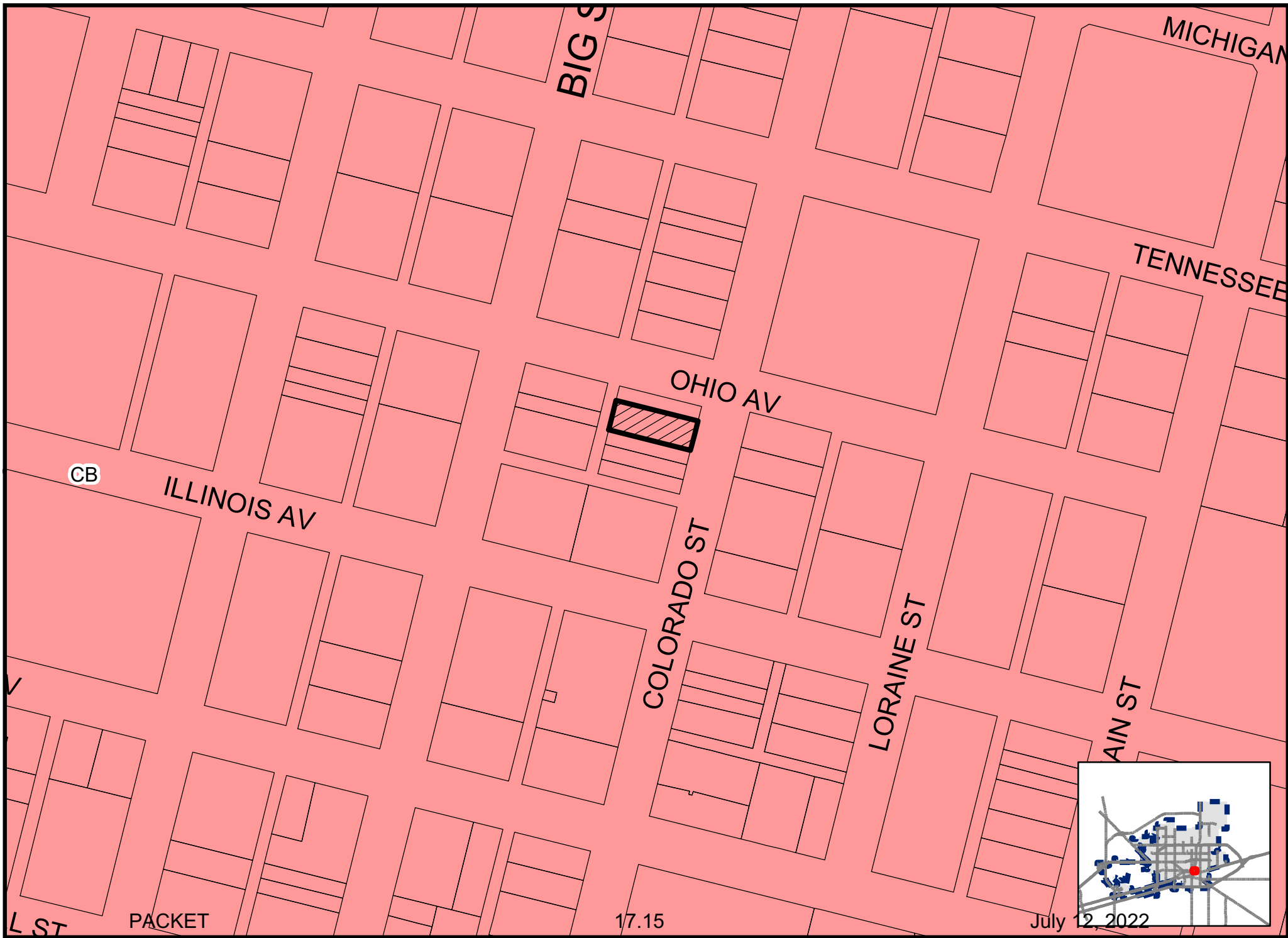
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

PACKET

17.14

July 12, 2022













City Council Meeting

Item Number: 18
Meeting Date: July 12, 2022
To: City Council / City Manager
From: Kelly Martinez, Senior Planner
Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 5, BLOCK 1, KALPOWAR ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF TROBAUGH BOULEVARD, APPROXIMATELY 409 FEET NORTH OF GLASGOW DRIVE), BY PERMITTING AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS; 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 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Sarah Blackwood, is requesting a Special Exception from the City of Midland Zoning Ordinance, *Section 4.09 Accessory Building and Uses for an increased number of accessory buildings* for an increased number of maximum accessory buildings for the property located at 4900 Trobaugh Boulevard.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 4900 Trobaugh boulevard and the location of a single-family residence. The applicant is requesting a special exception to the maximum number of

accessory buildings on the property. They are proposing to build a 90 ft. by 90 ft. barn for storage.

Per our City of Midland Zoning Ordinance, *Section 4.09 – Accessory Buildings and Uses*
Table 5: Residential Accessory Building Requirements

Lots 5-acres or greater

Maximum Number of Accessory Buildings: 4

This property is allowed to have 4 (four) accessory structures, which the property currently has. The new accessory structure will exceed the allowable amount. The property sits on an 8.5-acre tract of land. Therefore, the total square footage of the accessory buildings combined does not exceed 15 % of the property.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection to zone change. [For the Applicant's information only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

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.]

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas issues.

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.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, 4.09. *Accessory Buildings and Uses* for an increase maximum number of accessory buildings.

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

- A. That Property shall significantly conform to the conditions shown in Exhibit "A", which is attached hereto and incorporated herein.**
- B. That the maximum number of accessory buildings on the property shall be 5 (five).**

Letters of Objection:

As of June 29, 2022, staff has not received any letters of objection

Attachments:

Application
Site Plan (Exhibit A)
Elevations
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 5, BLOCK 1, KALPOWAR ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF TROBAUGH BOULEVARD, APPROXIMATELY 409 FEET NORTH OF GLASGOW DRIVE), BY PERMITTING AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS; 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 5, Block 1, Kalpowar Estates, City and County of Midland, Texas (the “Property”). Said special exception shall allow an increased maximum number of accessory buildings.

SECTION TWO. Said special exception is subject to the following special conditions:

- A. That the maximum number of accessory buildings on the Property shall be five (5).
- B. That the Property shall significantly conform to Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

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



Special Exception Application

Project Number: E-22-0080
Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2) Printed Name: <u>Kevin Blackwood, Sarah</u>		Phone <u>(432) 631-4886</u> Email _____	
Address <u>4900 Trobaugh Blvd</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79707</u>

Property Owner Printed Name: <u>Kevin Blackwood</u>		Phone <u>(432) 664-9206</u> Email <u>Sarah.j.blackwood@gmail.com</u>	
Address <u>4900 Trobaugh Blvd</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79707</u>

Representative (if different from Applicant or Property Owner) Firm: _____ Printed Name: _____		Phone () _____ Email _____	
Address _____	City _____	State _____	Zip _____

Street Address: <u>4900 Trobaugh Blvd</u>		
Legal Description Lot: <u>005</u> Block: <u>001</u> Subdivision: <u>Kalpower Estates</u>		

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: <u>Our homestead sits on 7.5 acres, even with the additional building and house all buildings are less than 8.5% of overall square footage.</u>

Submittal and Fees Items to be submitted with this application form: • Application Fee – Payable to the 'City of Midland' • Dimensioned Site Plan showing: • Parking • Building Footprint • Digital Copies of Site Plan (PDF/JPEG)
--

Signatures

Applicant (signature):

Date:

Applicant (printed):

Sarah Blackwood

Property Owner (signature):

Date:

Property Owner (printed):

Sarah Blackwood

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.

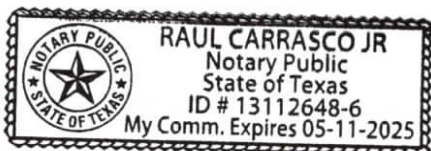
If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Sarah Blackwood who, being by me duly sworn, upon oath says: That (s)he is authorized by Sarah Blackwood 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 03 day of June, 20 22, 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 #

123

Received By:

Paul Rodriguez

Date:

6/3/22

RECEIVED
JUN 03 2022

BY:

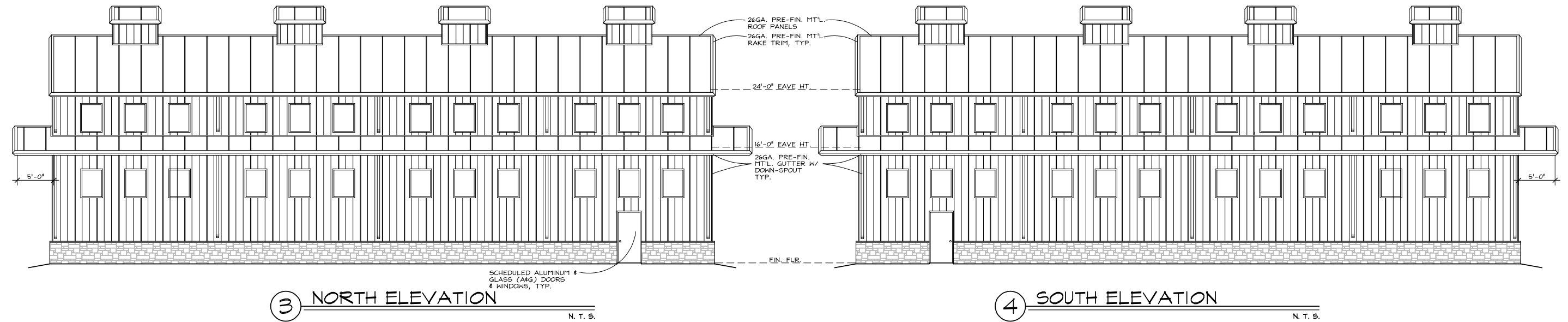
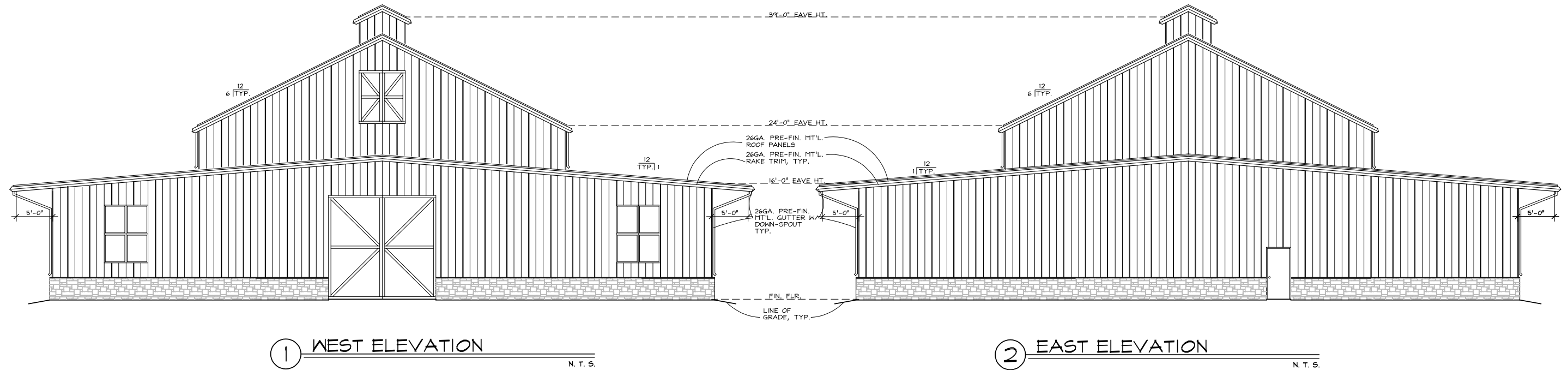
Paul Rodriguez

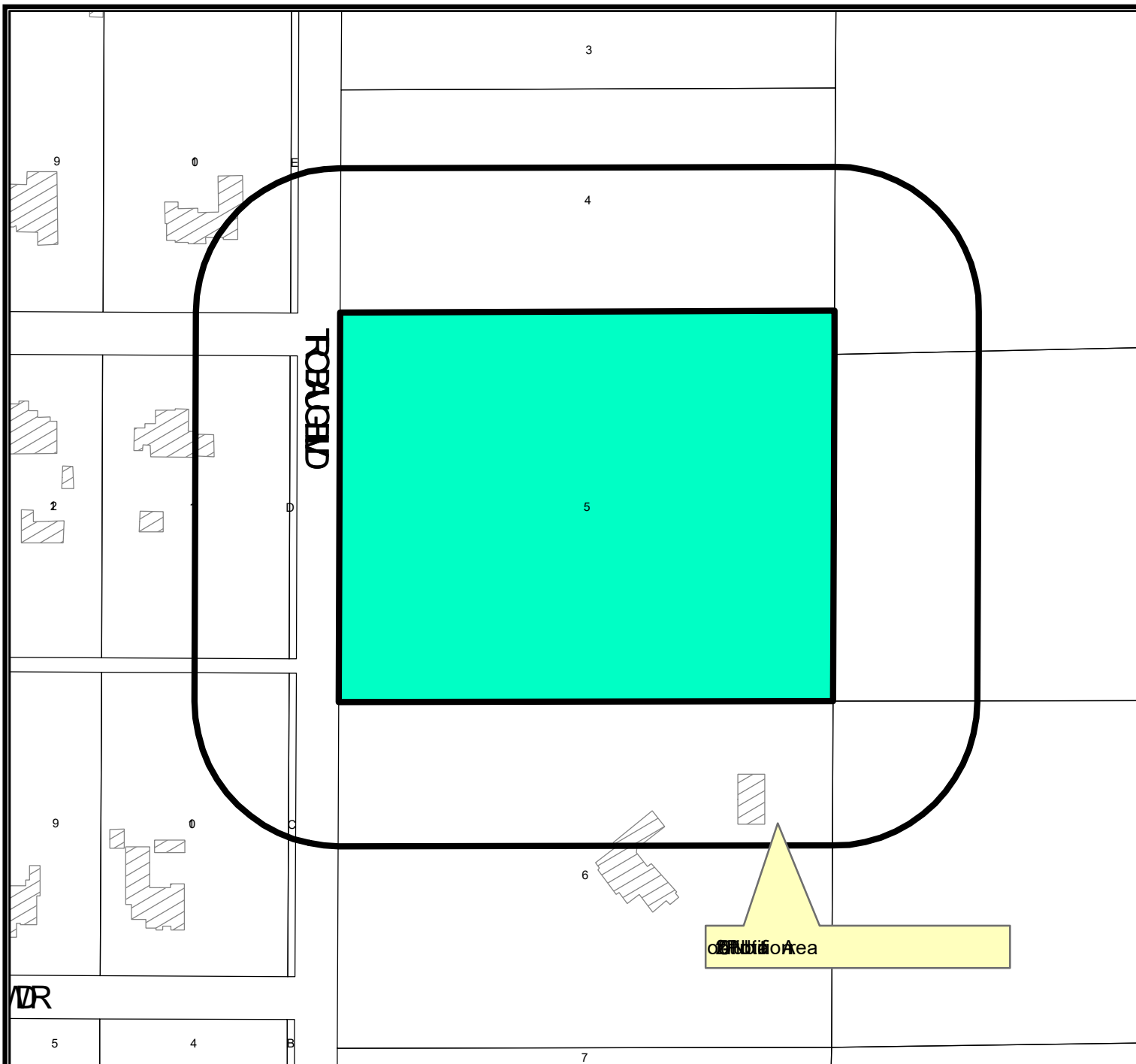
****Application will not be considered for scheduling until reviewed by a planner.****

PACKET
Special Exception Application

18.10
2

July 12, 2022
Revised 08/19/20





LOCATION MAP

E-22-0080

Scale: 1" = 200'

Consider a request by Sarah Blackwood for a Special Exception from the City of Midland Zoning Ordinance, Section 4.09 Accessory Building and Uses for an increased number of accessory buildings on Lot 5, Block 1, Kalpowar Estates, City and County of Midland, Texas.

(Generally located on the east side of Trobaugh Boulevard, approximately 409-feet north of Glasgow Drive. Council District 4)

PACKET

18.12

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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July 12, 2022

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY, ENGINEERING, OR IT IS DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

